

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

FIFTH SECTION

CASE OF KHOMULLO v. UKRAINE

(Application no. 47593/10)

JUDGMENT

STRASBOURG

27 November 2014

FINAL

27/02/2015

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



In the case of Khomullo v. Ukraine,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ganna Yudkivska,
Vincent A. De Gaetano,
André Potocki,
Aleš Pejchal, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 4 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 47593/10) 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 Russian national, Mr Andrey Aleksandrovich Khomullo ("the applicant"), on 17 July 2010.

2. The applicant was represented by Mr A. Panfilov and Mr S. Alifanov, lawyers practising in Murmansk. The Ukrainian Government ("the Government") were represented by their then Agent, Mr Nazar Kulchytskyy.

3. The applicant complained, in particular, under Article 5 §§ 1 and 4 of the Convention that his detention in Ukraine pending extradition to the Russian Federation had been unlawful and devoid of adequate judicial review.

4. On 12 December 2012 the application was communicated to the Government.

5. The Russian Government, having been informed of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court), indicated that they did not wish to exercise that right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1976 and lives in Murmansk, Russia.

7. In November 2008 the Murmansk Regional Prosecutor's Office in Russia instituted criminal proceedings against him on suspicion of fraud. The applicant had been working as a police officer and was suspected of having obtained by fraud a number of sick leave certificates justifying his absence from work.

8. On 24 November 2008 the applicant arrived in Ukraine.

9. On 1 December 2008 he was placed on the list of wanted persons by the Murmansk Regional Department of the Interior.

10. On 3 December 2008 the Oktyabrskiy District Court of Murmansk ordered the applicant's arrest. On the same date an international arrest warrant was issued.

11. On 19 April 2010 the applicant was arrested by the Ukrainian police with a view to his extradition.

12. On 22 April 2010 the Prymorskyy District Court of Odessa ("the Prymorskyy Court"), following an application from the prosecution authorities, remanded the applicant in custody for forty days pending the extradition procedure.

13. On 29 or 30 April 2010 (both dates are mentioned in different case-file materials) the General Prosecutor's Office of Ukraine ("the GPOU") received a request from its Russian counterpart about the applicant's extradition and the extension of his detention pending extradition. As noted in that request, there were criminal proceedings against the applicant pending in Russia on suspicion of fraud. The extradition request did not contain any further details in that regard, but mentioned that "a detailed description of the charges against [the applicant was] in the enclosed documents". It is not known what enclosures were attached to the request in question.

14. It appears from the judicial ruling of 30 July 2010 (see paragraph 25 below) that on 11 May 2010 the GPOU received another request from the Russian prosecution authorities about the applicant's detention and extradition. There is no mention of that request in any other documents in the case file.

15. On 19 May 2010 the Prymorskyy District Prosecutor's Office applied to the Prymorskyy Court for an extension of the applicant's detention "pending resolution of the issue of his extradition".

16. On 21 May 2010 the Prymorskyy Court allowed that application.

17. On 26 May 2010 the applicant appealed. He complained that he had not been familiarised with the charges against him, that no time-limit for his detention had been set, and that the Prymorskyy Court had announced the contested decision following a hearing at which he had not been present.

18. On 3 June 2010 the Odessa Regional Court of Appeal examined the applicant's appeal in a hearing at which two prosecutors were present, but in the absence of the applicant. The prosecutors submitted that the applicant's extradition to Russia was all but settled and would take place shortly

thereafter. Having regard to those arguments and noting that an international arrest warrant had been issued in respect of the applicant, the appellate court upheld the lower court's decision extending his detention pending extradition.

19. On 21 June 2010 the Malynivskyy District Prosecutor's Office applied to the Malynivskyy District Court of Odessa ("the Malynivskyy Court") for an extension of the applicant's "extradition detention" pursuant to the legislative amendments to the Code of Criminal Procedure in force since 17 June 2010 (see paragraph 37 below).

20. On 23 June 2010 the Malynivskyy Court allowed the above application and ordered that the applicant's extradition detention be extended "pending resolution of the question of his extradition and the actual transfer".

21. On 25 June 2010 the applicant appealed against the above ruling. He submitted that the time-limits for his detention remained unspecified, that he was still unaware of the charges against him, that his detention had been unreasonably long and that the court had not taken into account the fact that he had two young children.

22. On 8 July 2010 the Odessa Regional Court of Appeal allowed his appeal in part. It quashed the aforementioned ruling on the grounds that the respective provision of the Code of Criminal Procedure did not provide for any extension of extradition detention. The case was remitted to the first-instance court for a fresh examination.

23. On 21 July 2010 the Malynivskyy Court allowed the applicant's request for a lawyer to be appointed for him. As a result, the hearing was adjourned till 30 July 2010.

24. On 27 July 2010 the Malynivskyy Prosecutor's Office lodged a new application with the court for the applicant's extradition detention pursuant to the amendments to the Code of Criminal Procedure. This time it concerned the imposition of such detention, rather than its extension.

25. On 30 July 2010 the Malynivskyy Court, following a hearing in the presence of the lawyer appointed for the applicant, allowed the prosecutor's application. The ruling mentioned that the Russian prosecution authorities had lodged a request for the applicant's extradition on 11 May 2010, without any reference to the similar request of 30 April 2010 (see paragraphs 13 and 14 above). The court relied on the aforementioned CCP amendments effective since 17 June 2010 and stated that the extradition inquiry case-file materials complied with the applicable legislation. Lastly, the court noted that it had not established any impediments to the applicant's extradition to Russia.

26. On 21 August 2010 the applicant complained to the Malynivskyy Court that his detention was unlawful and asked to be released. The case file does not contain a copy of this complaint.

27. On 30 August 2010 the General Prosecutor's Office of the Russian Federation sent an updated extradition request in respect of the applicant, of which there is no copy on the case file. It appears that, in addition to the initial fraud charge, six other counts of fraud were imputed to the applicant (see paragraph 28 below).

28. On 1 September 2010 the GPOU decided to extradite the applicant to Russia in connection with six episodes of fraud but rejected the extradition request in respect of one such episode. That decision was explained by the fact that Ukrainian criminal law normally does not prescribe imprisonment as a penalty for fraud. However, where fraud has been committed repeatedly, it can be punished by imprisonment. In the applicant's case there were six "repeated fraud" episodes. The GPOU decision referred to two extradition requests relating to the applicant: one of 30 April 2010 regarding one episode of fraud and one of 30 August 2010 regarding six further episodes (see paragraphs 13 and 27 above).

29. On 10 September 2010 the applicant complained to the Malynivskyy Court that his detention was unlawful and had been unreasonably long. He argued that the Ukrainian authorities had not been diligent in dealing with the extradition requests in his respect, in contravention of Article 5 § 1 (f) of the Convention. The applicant further referred to Article 5 § 4 of the Convention and submitted that his earlier complaint, of 21 August 2010, had never been examined.

30. On 17 September 2010 the applicant lodged another complaint with the Malynivskyy Court concerning the alleged unlawfulness of his detention and asked to be released.

31. On 22 September 2010 the Malynivskyy Prosecutor's Office applied to the Malynivskyy Court for an extension of the applicant's extradition detention. It referred to the aforementioned decision of 1 September 2010 and noted that the issue of the applicant's actual transfer back to Russia was being decided.

32. On 28 September 2010 the court granted that application in a hearing attended by the applicant. It noted that the GPOU's decision of 1 September 2010 had not been challenged and had come into force. Furthermore, pursuant to the respective prosecutor's instructions, the applicant was to be transferred to Russia by 29 October 2010. As reported in the minutes of the hearing, the judge read out the applicant's complaints of 21 August and of 10 and 27 September 2010, and the applicant reaffirmed them. The court ruling did not, however, mention those complaints.

33. On 30 September 2010 the applicant challenged the above ruling on appeal. He noted that, while the Code of Criminal Procedure provided for extradition detention of up to eighteen months, it did not establish any time-limits for submitting and examining the associated extradition request. Accordingly, the applicant argued that the Ukrainian authorities should abide by the 1993 Minsk Convention, which provided for a one-month

time-limit for submitting an extradition request once the person was detained and a maximum two-month extension of that time-limit for supplementing the extradition request if need be (see paragraph 38 below). He emphasised that in his case a duly completed extradition request had not been submitted until 30 August 2010, whereas he had been in detention since 19 April 2010. The applicant therefore argued that he should be released immediately. Lastly, he submitted that the charges against him were ridiculous and that it was in his own interests to go to Russia so that his trial could be completed without delay.

34. On 8 October 2010 the appellate court, while allowing the applicant's appeal in part, modified the first-instance court's ruling as follows: instead of the extension of the applicant's extradition detention, which was not provided for in the legislation, his continued detention was found to be lawful, since its maximum time-limit of eighteen months had not been exceeded and there were no grounds for the applicant's release.

35. On 12 October 2010 the applicant was extradited to Russia.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. Code of Criminal Procedure 1960 (in force till 20 November 2012)

36. The pertinent provisions of the Code as they stood before 17 June 2010, are summarised in the judgment *Soldatenko v. Ukraine* (no. 2440/07, §§ 26-29, 23 October 2008).

37. The applicable provisions following the amendments adopted on 21 May 2010 and effective since 17 June 2010 (without any transitional provisions in place) are quoted in the judgment *Molotchko v. Ukraine* (no. 12275/10, §§ 90-91, 26 April 2012).

B. The Minsk Convention 1993

38. The relevant provisions of the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993 ("the Minsk Convention") are also quoted in the *Molotchko* judgment (cited above, § 89).

THE LAW

I. SCOPE OF THE CASE

39. The Court notes that the applicant raised a number of new complaints in his reply (dated 31 May 2013) to the Government's observations on the admissibility and merits of this case. In particular, he complained about the conditions of his detention in Ukraine and the unfairness of his conviction following his extradition to Russia.

40. In the Court's view, the applicant's new complaints are not an elaboration of his original complaints to the Court on which the parties have commented. The Court considers, therefore, that it is not appropriate to take up these matters in the context of the present case (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

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

41. The applicant complained that his detention in Ukraine prior to his extradition to Russia had been in breach of Article 5 § 1 (f) of the Convention, which reads as follows in the relevant part:

> "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 ... against whom action is being taken with a view to ... extradition."

A. Admissibility

42. Having regard to the Government's objection to the admissibility of this complaint (see below), it should be specified that it was communicated to the Government together with the question regarding the lawfulness of the applicant's detention both prior to 17 June 2010 (the effective date of the pertinent legislative amendments – see paragraph 37 above) and after that date.

43. The Government submitted that this complaint should be rejected as incompatible *ratione personae* with the Convention, because the applicant had never referred to the aforementioned amendments in his arguments. The Government further observed that he had complained about the alleged unlawfulness of the entire period of his detention pending extradition, from 19 April to 12 October 2010, without splitting that period into that before and after 17 June 2010.

44. The applicant did not comment on this issue in his reply to the Government's observations.

45. The Court notes that the compatibility *ratione personae* of an individual application comprises two elements: the responsibility of the State and the applicant's victim status. The Government's objection concerns the second element only. The Court reiterates in this connection that, in order to be able to lodge a petition in pursuance of Article 34, a person must be able to claim "to be the victim of a violation [...] of the rights set forth in the Convention". In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure or omission (see, among others, *Burden v. the United Kingdom* [GC], no. 13378/05, § 33, ECHR 2008).

46. The Court observes – and this is not disputed by the Government – that the applicant complained of the unlawfulness of the entire period of his detention in Ukraine. Nor is it in dispute that the measure complained of had a direct impact on the applicant. In fact, the Government's objection in this case did not concern the applicant's standing to lodge that complaint, but rather noted his failure to raise a specific argument in its support. The Court, however, considers this to be immaterial for its competence *ratione personae* to deal with the complaint in question. It therefore dismisses this objection on the part of the Government.

47. The Court further notes that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

48. The applicant maintained that he had been detained unlawfully. He submitted, in particular, that there had been no time-limit set for his detention in any of the decisions to that effect, save for the first one of 22 April 2010 (see paragraph 12 above).

49. The applicant further noted that the Russian prosecution authorities had not submitted an appropriate extradition request containing all the requisite information and documents until 30 August 2010, that is to say almost four and a half months after his arrest on 19 April 2010. As to their first such request of 30 April 2010, on which the domestic courts had relied in endorsing the applicant's continued detention, he contended that it had been incomplete and had eventually been rejected on 1 September 2010 (see paragraphs 13 and 28 above). The applicant therefore argued that his detention pending extradition had been unreasonably long and that he had not been protected from the arbitrariness of the authorities.

50. The Government's observations on the merits of this complaint were limited to the period of the applicant's detention from 30 July to 12 October 2010, which they considered to have had an adequate legal basis. As regards the applicant's earlier detention, the Government stood by their objection regarding the admissibility of this complaint (see paragraph 43 above) and did not submit any observations on its merits.

2. The Court's assessment

(a) General principles established in the Court's case-law

51. Article 5 of the Convention enshrines a fundamental human right, namely, the protection of the individual against arbitrary interference by the State with his or her right to liberty. Subparagraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008).

52. The Court observes that Article 5 § 1 (f) does not demand that the detention in question be reasonably considered necessary, for example to prevent the individual from committing an offence or absconding. It provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". Any deprivation of liberty under the second limb of Article 5 § 1 (f) will, however, be justified only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see *Chahal v. the United Kingdom*, 15 November 1996, §§ 112-113, *Reports of Judgments and Decisions* 1996-V). In other words, the length of the detention for this purpose should not exceed what is reasonably required (see *Saadi*, cited above, §§ 72 and 74).

53. The Court further reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that the detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. The Court must, moreover, ascertain whether the domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is

therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

(b) Application of the above general principles in the present case

54. The Court considers, and this is not disputed by the parties, that the applicant was detained pending extradition from Ukraine to Russia. Article 5 § 1 (f) of the Convention is thus applicable to the instant case.

55. The Court observes that the thrust of the applicant's grievance is the length of his detention, allegedly without valid reasons, as well the lack of due diligence manifested by the authorities. The Court will later analyse those arguments. It notes, however, that nothing prevents it from assessing the State's compliance with the safeguards of Article 5 § 1 (f) from a different perspective and, if need be, finding a violation of that provision for a different reason (see *Muminov v. Russia*, no. 42502/06, § 118, 11 December 2008).

56. Having regard to the legal basis for the applicant's detention, the Court considers it appropriate, for the purposes of its analysis, to divide it into several distinctive periods.

(i) The applicant's detention between 19 April and 17 June 2010

57. The Court has already found that the Ukrainian legislation in force prior to 17 June 2010 could not be regarded as providing an adequate legal basis for detention pending extradition as required by Article 5 § 1 (f) of the Convention (see for example, *Soldatenko v. Ukraine*, no. 2440/07, §§ 109-114, 23 October 2008; *Svetlorusov v. Ukraine*, no. 2929/05, §§ 47-49, 12 March 2009; and *Kamyshev v. Ukraine*, no. 3990/06, §§ 67-68, 20 May 2010). The reason for that finding was the failure of the national legislation at the time to provide, even by reference, a procedure for detention pending extradition.

58. The same legislation – which has already been found to be non-compliant with the "quality of law" requirement – was applicable in the present case. The applicant's detention during the period in question was therefore unlawful within the meaning of Article 5 § 1 of the Convention.

(ii) The applicant's detention between 17 and 23 June 2010

59. The Court notes that on 17 June 2010 the Code of Criminal Procedure was amended so as to provide a legal basis for extradition proceedings. Those amendments, however, did not affect the applicant

during the period in question, as he continued to be detained by virtue of the decision of the Prymorskyy Court given on 21 May 2010. In the absence of any transitional arrangements for the aforementioned amendments, and given the lack of an adequate legal basis for detention pending extradition as at the date of the court decision in question, the Court considers that the applicant continued to be unlawfully deprived of his liberty during this period, too (see and compare with *Mokallal v. Ukraine,* no. 19246/10, § 40, 10 November 2011).

(iii) The applicant's detention between 23 June and 30 August 2010

60. It appears that the aforementioned amendments to the Code of Criminal Procedure affected the applicant starting with effect from 23 June 2010, even though the court ruling of the aforementioned date was eventually quashed as erroneous and was replaced by a "corrected" one of 30 July 2010 (see paragraphs 20 and 25 above).

61. The new legislation provides a regulatory framework for extradition proceedings in which deprivation of liberty pending extradition is envisaged. The Court has already found those new provisions to be sufficiently clear and precise in its judgment on the case of *Molotchko* (cited above, § 166). Accordingly, the "quality of law" requirement has been met in the present case too.

62. It was admitted by the appellate court in its rulings of 8 July and 8 October 2010 that there had been an error in the application of the legislation in question. Specifically, the first-instance court had wrongly extended the applicant's extradition detention, whereas no such extension was possible. Instead, the legal provisions prescribed extradition detention which could last no longer than eighteen months.

63. The Court considers such a technical error, which was recognised and remedied by the domestic courts, to be insufficient for rendering *ab initio* the respective period of the applicant's detention unlawful.

64. At the same time, the Court considers it necessary to turn now to the applicant's argument regarding the lack of due diligence demonstrated by the authorities in the extradition proceedings in the context of which his detention was ordered (see paragraph 52 above for the respective case-law principles).

65. The Court observes that, as noted in the decision on the applicant's extradition of 1 September 2010, there had been two requests from the Russian prosecution authorities to that end: one on 30 April 2010 regarding one episode of fraud and one on 30 August 2010 regarding a further six episodes (see paragraph 28 above). While another such request, dated 11 May 2010, was also mentioned in the court ruling of 30 July 2010 (see paragraph 25 above), the Court considers that, in the absence of any further information about it and the lack of any reference to it in the extradition decision of 1 September 2010, it cannot be stated with confidence that that

request was indeed lodged. In any event, it was not taken into consideration by the domestic authorities and cannot be analysed here.

66. The Court recalls that in its judgments in the cases of *Mokallal* and *Molotchko*, when assessing compliance of applicants' detention under the applicable provisions of the Code of Criminal Procedure after the amendments of 17 June 2010, the Court took into account the fact that throughout the entire period of detention it was the authorities' intention to extradite the applicants, and that there was no legal or factual impediment to the ultimate extradition (see § 43 in the *Mokallal* judgment and § 168 in the *Molotchko* judgment).

67. As regards the present case, the Court notes that the decision of 1 September 2010 concerning the applicant's extradition rejected the Russian authorities' request for his extradition in so far as it concerned one episode of fraud, since that was not an offence punishable by imprisonment in Ukraine. However, given that the same offence committed repeatedly was punishable with such a penalty, it was decided to grant the extradition request in respect of the several other fraud episodes imputed to the applicant. As is apparent from the extradition decision itself, until 30 August 2010 the Ukrainian authorities had before them a request for the applicant's extradition which could not be granted, and it was only thereafter, once the Russian prosecutor had lodged an "updated request", that reasons for the applicant's extradition manifested themselves.

68. The Court considers this situation to be different from that examined in the *Molotchko* case. In that case the Court noted that an impediment to the applicant's extradition had been found to exist only with the passage of time and could not be regarded as rendering the applicant's detention unlawful retrospectively (ibid.). In the present case, however, it is clear that the impediment to the applicant's extradition existed from the very outset, once the initial extradition request in his regard had been lodged on 29 (30) April 2010, and that it ceased to exist only on 30 August 2010. All that time the applicant remained in detention.

69. Whilst certain matters may be clarified in the context of the extradition inquiry and the authorities need time for its completion. But they are under an obligation to be diligent. In the present case, there is no explanation as to why the Ukrainian authorities waited for four months before clarifying the extradition request in respect of the applicant. The Court therefore considers that the due diligence requirement has not been met.

(iv) The applicant's detention after 30 August until his extradition on 12 October 2010

70. The Court notes that after 30 August 2010 the applicant continued to be detained pursuant to the ruling of the Malynivskyy Court of 30 July 2010, which was based on the applicant's extradition file as it stood before

30 August 2010, for about a month, more precisely until 28 September 2010. Thus, the legal basis for the applicant's detention during that period remained the same as it had been during the period from 30 July to 30 August 2010, which the Court has already examined (see paragraphs 65-69 above). Accordingly, the Court's findings in the preceding paragraph are equally pertinent to the question of lawfulness of the applicant's detention between 30 August and 28 September 2010.

71. The Court further notes that on 28 September 2010 the Malynivskyy Court and then on 8 October 2010 the Odessa Regional Court of Appeal reconsidered the grounds for the applicant's detention in the light of the new developments in the applicant's extradition case and in particular the extradition decision of 1 September 2010, which was based on the "updated" extradition request of 30 August 2010. The domestic courts ruled that the applicant's continued detention was lawful principally as he was to be extradited pursuant to the decision of 1 September 2010 and the maximum statutory period for the applicant's detention had not been exceeded (see paragraphs 32 and 34 above). Thus, the applicant's detention from 28 September until his extradition on 12 October 2010 had a new legal basis, namely, the court decisions grounded on the new developments in the extradition proceedings which had reached the execution stage. There is nothing to suggest that after 28 September 2010 the authorities failed to proceed with the applicant's extradition case in accordance with the procedure prescribed by law and in good faith. Furthermore, the applicant's detention during this period of two weeks does not appear to have exceeded that reasonably required for the implementation of the extradition decision in the present case.

(v) Conclusion

72. In the light of the foregoing, the Court concludes that the applicant's detention in Ukraine between 19 April and 28 September 2010 was not lawful within the meaning of Article 5 § 1 (f) of the Convention, since it was either based on legislation that was not compliant with the "quality of law" requirement or was not safeguarded from arbitrariness by the authorities' due diligence. There has therefore been a violation of Article 5 § 1 of the Convention as regards that period.

73. The Court further finds that the applicant's detention in Ukraine from 28 September until his extradition on 12 October 2010 was lawful and that accordingly there has been no violation of Article 5 § 1 of the Convention in this regard.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

74. The applicant also complained that there had been no adequate or speedy judicial review of the lawfulness of his detention pending his extradition. He relied on Article 5 § 4 of the Convention, which reads:

> "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."

A. Admissibility

75. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

76. The applicant contended that, in their review of the lawfulness of his detention, the Ukrainian courts had failed to give any consideration to the absence of any time-limits, even though that had been one of his key arguments. Similarly, he maintained they had ignored his argument that his detention had been devoid of any basis because of the delayed submission by the Russian authorities of the extradition request in his regard.

77. The applicant also submitted that it had taken the Ukrainian courts unreasonably long to review the lawfulness of his detention, which had further contributed to his lengthy detention caused by the aforementioned procrastination by the Russian authorities.

78. The Government's observations were limited to the period of the applicant's detention between 30 July and 12 October 2010. They submitted that the lawfulness of his detention had been examined by the courts adequately and speedily. The Government noted that the applicant could, but had failed to, additionally challenge the lawfulness of his detention before the court once per month.

2. The Court's assessment

(a) General principles

79. The Court reiterates that the purpose of Article 5 § 4 is to secure for persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see

Nasrulloyev v. Russia, no. 656/06, § 86, 11 October 2007). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading to his or her release, where appropriate. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, for example, *Shchebet v. Russia*, no. 16074/07, § 75, 12 June 2008).

80. Furthermore, Article 5 § 4 of the Convention, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of the detention and the ordering of its termination if it proves unlawful (see *Baranowski*, cited above, § 68). There is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should benefit fully from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001). The same logic may be applicable to detention pending extradition when the investigation is pending (see *Khudyakova v. Russia*, no. 13476/04, § 92, 8 January 2009).

(b) Application of the above general principles in the present case

81. The Court refers to its findings under Article 5 § 1 of the Convention concerning the lack of legal provisions governing the procedure in Ukraine for detention pending extradition prior to the amendments to the Code of Criminal Procedure of 17 June 2010 (see paragraph 58 above). It considers that in the circumstances of the case, these findings are equally pertinent to the applicant's complaint under Article 5 § 4 of the Convention, as the Government failed to demonstrate that the applicant had at his disposal any procedure through which the lawfulness of his detention from 19 April to 17 June 2010 could have been examined by a court (see *Soldatenko*, cited above, §§ 126-127).

82. The Court further observes that the law implementing the new regulations contained no transitional arrangements concerning, in particular, their application in respect of persons already in detention on the date of the regulations' entry into force. Thus, it is unclear whether the applicant would have been able to initiate the review procedure under the new legislation before a decision to apply extradition detention was taken in his case pursuant to that legislation (that is during the period from 17 to 23 June 2010). The Court has already expressed its view on this issue in the *Molotchko* case (cited above, § 160). Specifically, it held that in those circumstances, where the new regulations could have created some uncertainty as to their application in the applicant's situation, the authorities were under an obligation to ensure, without delay and through the relevant

judicial review procedure, that the applicant's continued detention was in compliance with the new regulations. In the cited case the Court found a violation of Article 5 § 4 of the Convention on account of the absence of any such review for six days. The same delay occurred in the present case: from 17 to 23 June 2010 there was no judicial review of the lawfulness of the applicant's detention, and the applicant could hardly have initiated it given the uncertainty of the legal basis for his detention.

83. The Court further notes that on 25 June 2010 the applicant challenged on appeal the ruling of the Malynivskyy Court of 23 June 2010 concerning his extradition detention under the newly-introduced legislative amendments. It took the appellate court thirteen days to examine his appeal. There is no indication that the applicant contributed to that delay in any way. Having regard to the aforementioned obligation on the part of the authorities to ensure expeditious judicial review of the lawfulness of the applicant's detention in the light of the amendments in question, the Court does not consider that in the circumstances of the present case the thirteen-day delay to be compatible with the "speediness" requirement of Article 5 § 4 (see, for comparison, *Shakurov v. Russia*, no. 55822/10, § 187, 5 June 2012).

84. The Court also notes that, even though the appellate court quashed the impugned ruling on 8 July 2010, it omitted to examine any of the applicant's arguments and, in particular, whether the length of his detention exceeded what was reasonably required for the completion of the inquiry. The Court has already criticised such an omission in its judgment on the case of *Molotchko* (cited above, § 189). That criticism remains pertinent for the present case too.

85. The Court next observes that the Malynivskyy Court delivered a new decision concerning the lawfulness of the applicant's continued detention on 30 July 2010, that is to say twenty-two days after the appellate court had remitted the case for a fresh examination. It appears that the hearing, which was initially scheduled for 21 July, had to be adjourned till 30 July 2010 because of the applicant's request that a lawyer be appointed for him. However, the responsibility for this delay cannot be attributed to the applicant, since the prosecutor's office waited until 27 July 2010 before lodging a new application concerning the applicant's extradition detention in line with the ruling of 8 July 2010 (see paragraphs 22 and 24 above).

86. It does not escape the Court's attention that the lawyer appointed for the applicant was able to attend the hearing on 30 July 2010. It remains unknown what arguments he advanced. The Court is therefore not in a position to assess whether those arguments received due attention. What the Court does note, however, is that no assessment was made as regards the reasonableness of the applicant's continued detention. Furthermore, the Court does not find it insignificant that the Malynivskyy Court referred to the extradition request pertaining to the applicant dated 11 May 2010,

without mentioning that of 29 (30) April 2010. Given that the ruling in question appears to be the only document referring to 11 May 2010 as the date of the extradition request, it cannot be ruled out that that was an erroneous reference. In any event, the obvious failure of the Malynivskyy Court to properly analyse the situation regarding the extradition requests, their dates and their contents, undermines the thoroughness of its assessment as to whether there were any impediments to the applicant's extradition to Russia.

87. The Court observes that, pursuant to the ruling of 30 July 2010, the applicant was placed in extradition detention in accordance with the amended provisions of the Code of Criminal Procedure. According to those provisions, the lawfulness of the application of the preventive measure must be reviewed by a court, at the request of prosecutors, every two months. The applicant was also entitled to seek such a review of his own motion, a procedure which could be repeated once a month (see paragraph 37 above).

88. The Court notes that the applicant availed himself of the opportunity of initiating a judicial review of the lawfulness of his detention on three occasions, having lodged complaints in that respect on 21 August, and again on 10 and 27 September 2010 (see paragraphs 26, 29 and 30 above). It appears from the hearing minutes that the Malynivskyy Court examined them on 28 September 2010 (see paragraph 32 above). The Court finds it striking, however, that the respective ruling remained silent about those complaints altogether, failing to mention any of the applicant's arguments, let alone responding to them.

89. The Court is mindful of the applicant's apparent failure to appeal against the decision concerning his extradition in accordance with the established procedure. At the same time, it remained within his rights to seek the judicial review of the lawfulness of his detention. In the Court's opinion, the manner in which the Malynivskyy Court dealt with his repeated complaints cannot be considered compatible with the effective judicial review principles enshrined in Article 5 § 4 of the Convention.

90. Having regard to the above considerations, the Court concludes that during his detention from 19 April to 12 October 2010 the applicant was denied an effective or speedy judicial review of the lawfulness of his detention. There has therefore been a violation of Article 5 § 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

91. Lastly, the applicant complained under Article 6 § 3 (a) and (c) of the Convention that the criminal proceedings against him had been initiated without any valid grounds, that he had not been promptly informed of the charges against him, and that no lawyer had been appointed for him.

92. The Court reiterates that decisions regarding the entry, stay and deportation or extradition of aliens cannot be considered as involving determination of an applicant's civil rights or obligations or of a criminal charge against him within the meaning of Article 6 § 1 of the Convention (see *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X, and *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 82, ECHR 2005-I).

93. It follows that this complaint is incompatible *ratione materiae* with the Convention and should be dismissed under its Article 35 § 3 (a).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

95. The lawyers representing the applicant after the communication of the application to the Ukrainian Government claimed 30,000 euros (EUR) in respect of non-pecuniary damage. In substantiation of that claim, they referred to the allegedly inadequate conditions of the applicant's detention and the unfairness of his criminal prosecution.

96. The Government contested the claim as unrelated to the complaints under Articles 5 §§ 1 and 4 of the Convention which had been communicated to them for observations.

97. The Court agrees with the Government that the arguments advanced by the applicant's lawyers should be dismissed as irrelevant. On the other hand, it considers that the applicant must have undoubtedly suffered non-pecuniary damage as a result of the violations found and decides to award him EUR 6,000 under this head.

B. Costs and expenses

98. The applicant did not make any claim under this head. The Court therefore makes no award.

C. Default interest

99. The Court considers it appropriate that the default interest rate 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 complaints under Articles 5 §§ 1 and 4 of the Convention concerning the applicant's detention pending extradition admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the applicant's detention in Ukraine between 19 April and 28 September 2010;

3. *Holds* that there has been no violation of Article 5 § 1 of the Convention as regards the applicant's detention in Ukraine between 28 September and 12 October 2010;

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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage;
   (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;

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

Done in English, and notified in writing on 27 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Mark Villiger President