

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

FIFTH SECTION

DECISION

Application no. 14308/05
Fiodor Dumitru CORETCHI
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 20 September 2016 as a Chamber composed of:

Angelika Nußberger, *President*,
Khanlar Hajiyev,
Erik Møse,
Faris Vehabović,
Yonko Grozev,
Carlo Ranzoni,
Mārtiņš Mits, *judges*,
and Milan Blaško, *Deputy Section Registrar*,

Having regard to the above application lodged on 20 March 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Fiodor Dumitru Coretchi, is a Moldovan national who was born in 1960 and lives in Ialoveni, Moldova. He was represented before the Court by Ms A. Dadu, a lawyer practising in Ialoveni. The Bulgarian Government ("the Government") were represented by their Agent, Mrs N. Nikolova, of the Ministry of Justice.

2. The applicant complained, in particular, about having been unlawfully detained in Bulgaria pending extradition to Moldova.

3. On 8 February 2010 the application was communicated to the Government. Later the same month the Moldovan Government was informed of their right to intervene in the proceedings in accordance with

Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court. They chose not to avail themselves of this right.

A. The circumstances of the case

4. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Background

5. In 2001 the Moldovan investigating authorities came upon information leading them to suspect that in 1998 the applicant had been involved in a car theft. However, they were unable to question him as he had left Moldova earlier the same year to work in Greece. In 2002 they issued an international warrant for his arrest through Interpol.

2. Applicant's first period of detention

6. On 31 July 2004, when crossing into Bulgaria from Greece, the applicant was arrested by the Bulgarian border police on the basis of the warrant issued by the Moldovan authorities. He was informed in the presence of an interpreter that he was being arrested in connection with that warrant. The same day the police ordered that he be held under arrest for twenty-four hours under section 70(1)(6) of the 1997 Ministry of Internal Affairs Act (see paragraph 36 below). The applicant was given a copy of the order. He surrendered his car to the border police.

7. On the same day, 31 July 2004, the Moldovan authorities confirmed their intention to their Bulgarian counterparts to submit an official request for the applicant's extradition to Moldova. Later that day the National Interpol Office within the Bulgarian Ministry of the Interior informed the Sofia city prosecutor about the applicant's arrest.

8. The prosecutor then issued an order for the applicant's detention for seventy-two hours, counting from the expiry of the twenty-four-hour police arrest. The order referred to Article 16 of the 1957 European Convention on Extradition ("the Extradition Convention"), as well as Article 440 of the Bulgarian Code of Criminal Procedure of 1974 ("the 1974 Code") in conjunction with Article 152a § 3 of the 1974 Code. The order also stated that the regional prosecutor of Blagoevgrad should be immediately put on notice in order to ask the Blagoevgrad Regional Court to authorise the applicant's further detention.

9. On 4 August 2004 the Blagoevgrad Regional Court ordered the applicant's detention for forty days, pending receipt of the Moldovan extradition request. On 5 August 2004 he was transferred to Bobov Dol Prison on the basis of that court's decision. On 11 August 2004 the Bulgarian Prosecution Service informed the Moldovan authorities that the

applicant had been detained pending the official Moldovan request for his extradition. Such a request had to reach Bulgaria by 8 September 2004 when the applicant's forty-day detention would expire.

10. On 7 September 2004 the Bulgarian Supreme Cassation Prosecutor's Office received the extradition request. The next day that Office extended the applicant's detention for seventy-two hours following the end of the forty-day detention period ordered by the court. The prosecutor relied on Articles 440 and 440a of the 1974 Code (see paragraphs 28-29 below) and Article 22 of the Extradition Convention (see paragraph 26 below). The Bulgarian Supreme Cassation Prosecutor's Office additionally instructed the Blagoevgrad regional prosecutor's office immediately to seek a court order extending the applicant's detention and to submit the extradition request to the court for examination.

11. On 9 September 2004 the Blagoevgrad Regional Court, in proceedings in which the applicant was assisted by an interpreter and a court-appointed lawyer, refused to authorise the applicant's extradition to Moldova or his detention for that purpose. The court found in particular that there had been no order in Moldova for the applicant's detention with a view to his serving a sentence, one of the conditions of the Extradition Convention. On 10 September 2004 the applicant was released from Bobov Dol Prison on the basis of that decision.

12. On 9 September 2004, seeing that the proceedings for the applicant's extradition were still pending, the regional prosecutor of Blagoevgrad imposed a ban on the applicant leaving the country. The ban was valid until the end of the extradition proceedings and was based on a provision in the 1974 Code which stated that individuals could be banned from leaving the country if criminal proceedings were pending against them (see paragraph 34 below).

13. On 16 September 2004 the applicant registered with the authorities in Blagoevgrad where he took up his residence on a provisional basis. On 20 September 2004 the border police returned the applicant's car to him. He signed a form confirming that the car was not damaged and that nothing was missing from it.

3. Applicant's second period of detention

14. The Bulgarian border police placed the applicant under arrest for twenty-four hours at 12.30 a.m. on 25 September 2004 when he tried to leave Bulgaria by crossing the border with Greece. The order for his arrest was based on section 70(1)(7) of the 1997 Ministry of Internal Affairs Act (see paragraph 36 below) and referred to the arrest warrant issued by the Moldovan authorities in connection with the applicant's extradition. The applicant was informed of the essence of the order in the presence of a Russian interpreter. He surrendered his car to the border police and signed a form where he wrote in Russian that he objected to his arrest.

15. Having verified that a valid ban on the applicant's leaving the country was in force and that there were no grounds for his detention, the police released him at midday on 25 September 2004, which was twelve and a half hours before the expiry of the order for his arrest. It is unclear what happened to the applicant's car. He did not ask for its return.

4. Applicant's third period of detention

16. In a decision delivered on 27 September 2004, following a public hearing that had been held the previous week in response to an appeal by the prosecutor against the ruling of the Blagoevgrad Regional Court of 9 September 2004 (see paragraph 11 above), the Sofia Court of Appeal allowed the applicant's extradition to Moldova. It found that the lower court had wrongly assessed the Moldovan authorities' request. In particular, the applicant had not been wanted in Moldova to serve a sentence, as the first-instance court had found, but to be tried in connection with an offence. That meant that a different provision of the Extradition Convention had applied and all the material and procedural requirements to grant that request had been met.

17. The Sofia Court of Appeal held in a separate decision of 27 September 2004, issued following a closed hearing the same day, that it could not rule on the applicant's detention pending extradition. It said that it had already adopted a final and enforceable decision allowing the applicant's extradition and that that decision had put an end to the extradition proceedings. Given that those proceedings had been concluded, the applicant could thereafter only be detained for the purposes of being handed over to the requesting authorities.

18. In a letter of 7 October 2004, the Blagoevgrad regional prosecutor's office advised the Supreme Prosecution Office that the applicant was not in detention but that there was a valid ban on his leaving the country. It noted that he was also registered at the address of his court-appointed lawyer and that his passport and car had been returned to him.

19. On 14 October 2004 the Bulgarian Supreme Cassation Prosecutor's Office ordered the applicant's detention for the purposes of his extradition to Moldova. The prosecutor's order, written over five pages, comprised an overview of the procedural steps carried out up to that point. The order specified that the extradition proceedings were in their final phase and that the applicant was not in detention. Given that his extradition had been agreed with the Moldovan authorities and a concrete date and time for it had been set – 18 October 2004 at 11 a.m. local time – it was necessary to apprehend him for the purposes of his actual transfer into the custody of the Moldovan authorities.

20. The prosecutor then instructed the police to place the applicant under arrest on 15 October 2004 for twenty-four hours in order to extradite him. In the same order the prosecutor authorised keeping the applicant in detention

for the same purpose for seventy-two hours, starting from 16 October 2004. The order referred to section 119(2)(4) of the Judicial Power Act 1994 (see paragraph 33 below, last sentence), as well as to Article 152a § 3 of the 1974 Code of Criminal procedure (see paragraph 32 below) and Articles 18 and 22 of the Extradition Convention (see paragraphs 24 and 26 below). It also stated that personal possessions taken from the applicant by the Bulgarian authorities when he had been arrested should be handed over to the Moldovan authorities at the same time as his transfer.

21. The applicant was detained on 15 October 2004 and handed over to the Moldovan authorities on 18 October 2004 as agreed. The report on his transfer stated that personal possessions held by the Bulgarian authorities were handed over to the Moldovan authorities at the same time.

5. Further developments

22. On 23 December 2004 the Moldovan authorities discontinued the criminal proceedings against the applicant. On 1 July 2005 the applicant asked the Bulgarian authorities to take him off their database of wanted persons so that he could transit Bulgaria without fearing arrest. On 4 July 2005 the Supreme Cassation Prosecutor's Office allowed that request and informed him accordingly. The border police recorded on 4 July 2005 that the applicant left Bulgaria with his car on that day.

B. Relevant international and domestic law

1. The 1957 European Convention on Extradition

23. The Extradition Convention entered into force in respect of Bulgaria on 15 September 1994 and in respect of Moldova on 31 December 1997. Article 16 of the Convention, which governs provisional arrest, provides as follows:

> "1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.
>
> 2. The request for provisional arrest shall state that one of the documents mentioned in Article 12, paragraph 2.a, exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.
>
> 3. A request for provisional arrest shall be sent to the competent authorities of the requested Party either through the diplomatic channel or direct by post or telegraph or through the International Criminal Police Organisation (Interpol) or by any other means affording evidence in writing or accepted by the requested Party. The requesting authority shall be informed without delay of the result of its request.

4. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought.

5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently."

24. Article 18 governs the surrender of the person to be extradited and provides that:

"1. The requested Party shall inform the requesting Party by the means mentioned in Article 12, paragraph 1, of its decision with regard to the extradition.

2. Reasons shall be given for any complete or partial rejection.

3. If the request is agreed to, the requesting Party shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.

4. Subject to the provisions of paragraph 5 of this article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The requested Party may refuse to extradite him for the same offence.

5. If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party. The two Parties shall agree a new date for surrender and the provisions of paragraph 4 of this article shall apply."

25. Article 20, which governs the handing over of property, provides as follows:

"1. The requested Party shall, in so far as its law permits and at the request of the requesting Party, seize and hand over property:

a) which may be required as evidence, or

b) which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.

2. The property mentioned in paragraph 1 of this article shall be handed over even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.

3. When the said property is liable to seizure or confiscation in the territory of the requested Party, the latter may, in connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned."

26. Article 22, which specifies the applicable procedure, provides as follows:

"Except where this Convention otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested Party."

2. Explanatory Report to Protocol No. 7 to the Convention

27. The Explanatory Report defines the scope of application of Article 1 of Protocol No. 7 and clarifies the notion of "expulsion" as follows:

> "9. The word "resident" is intended to exclude from the application of the article any alien who has arrived at a port or other point of entry but has not yet passed through the immigration control or who has been admitted to the territory for the purpose only of transit or for a limited period for a non-residential purpose ...
>
> The word lawfully refers to the domestic law of the State concerned. It is therefore for domestic law to determine the conditions which must be fulfilled for a person's presence in the territory to be considered "lawful".
>
> [A]n alien whose admission and stay were subject to certain conditions, for example a fixed period, and who no longer complies with these conditions cannot be regarded as being still "lawfully" present.
>
> 10. The concept of expulsion is used in a generic sense as meaning any measure compelling the departure of an alien from the territory but does not include extradition. Expulsion in this sense is an autonomous concept which is independent of any definition contained in domestic legislation."

3. The 1974 Code of Criminal Procedure

(a) Extradition

28. At the relevant time the extradition of persons accused of criminal offences was governed by Articles 439a-41 of the 1974 Code of Criminal Procedure. Articles 440-440c governed the procedure for processing an extradition request made by another State.

29. Once received, the extradition request had to be sent to the competent regional prosecutor (Article 440 §§ 1 and 2). That prosecutor then had to take the statement of the person whose extradition was being sought, implement any measure taken to secure his or her appearance, and transmit the extradition request to the competent regional court (Article 440 § 3). The request was then to be examined by three judges at a public hearing. The person whose extradition was being sought had to be provided with counsel and an interpreter (Article 440a § 1). The court had to hear the public prosecutor, the person and his or her counsel, and then either allow or refuse the extradition. In its ruling it additionally had to specify whether personal items, documents and money found on the individual and having a connection with his or her offence should be handed over to the requesting State as well (Article 440a § 2). The court's ruling was subject to appeal before the court of appeal whose decision was final (Article 440c). The prosecutor was responsible for implementing judicial decisions authorising extradition (Article 440b § 3 and Article 440c § 2).

30. At present the procedure for detention in the context of extradition proceedings requested by a third State is laid down in considerable detail in the 2005 Extradition and European Arrest Warrant Act (section 13), which entered into force on 4 July 2005 and repealed Articles 435-41 of the 1974 Code.

(b) Detention at the pre-trial stage

31. Article 152a of the 1974 Code of Criminal Procedure, which governs the procedure for imposing pre-trial detention, was changed entirely – with effect from 1 January 2000 – in a bid to bring Bulgarian law into line with Article 5 the Convention (тълк. реш. № 1 от 25 юни 2002 г. по н.д. № 1/2002 г., ОСНК на ВКС).

32. The amended paragraph 3 of Article 152a provided at the time of the facts that the investigation and prosecution authorities had to ensure the prompt appearance of the accused before the competent first-instance court and, if necessary, detain him or her for that purpose before bringing him or her before the court. Such detention could not exceed twenty-four hours if ordered by an investigator or seventy-two hours if ordered by a prosecutor. No judicial review was available in respect of such detention.

33. At the relevant time the bodies responsible for the investigation at the pre-trial stage were investigators (Article 172 of the 1974 Code) and the prosecutors who supervised the activities of the former (Article 176 of the 1974 Code). The prerogatives of the prosecutor included the issuing of mandatory instructions to the police (section 119(2)(4) of the Judicial Power Act 1994).

(c) Bans on leaving the country

34. Under Article 153a § 1 of the 1974 Code of Criminal Procedure, as applicable at the relevant time, the prosecutor could prohibit an individual accused of a criminal offence from leaving Bulgaria without permission. The prohibition order was subject to judicial review (Article 153a § 3). The court had to rule immediately by means of a final decision (Article 153a § 4).

4. State Responsibility for Damage Act ("the SMRDA")

35. At the relevant time and until 2012, individuals could seek damages for unlawful detention under the SMRDA provided that such detention had been set aside in prior proceedings for lack of lawful grounds. Following amendments introduced in the SMRDA in 2012, in particular in section 2(1)(1), individuals can seek damages for all cases of detention in breach of Article 5 § 1 of the Convention. Civil courts examine the issue of lawfulness and compensation in the same set of proceedings.

5. The 1997 Ministry of Internal Affairs Act ("the 1997 Act")

36. Under the 1997 Act, as in force at the relevant time, the police could, on the basis of a written order, arrest individuals who were on international wanted lists owing to extradition requests from other States (section 70(1)(7)). An individual taken into police custody was entitled to be assisted by counsel and seek judicial review of his detention (section 70(3) and (4)). The application had to be examined immediately (section 70(3) *in fine*). Police detention under section 70 could not exceed twenty-four hours (section 71 *in fine*).

37. Arrest orders under section 70 were administrative decisions and any subsequent judicial review of them was carried out in accordance with the standard rules of administrative procedure, meaning that such an order could be appealed against within fourteen days of the arrestee's being apprised of the order. According to the case-law of the Supreme Administrative Court (опр. № 1793 от 17 февруари 2006 г. по адм. д. № 1390/2006, ВАС, V отд.; реш. № 894 от 31 януари 2005 г. по адм. д. № 5783/2004 г., ВАС, V отд.), persons affected by police arrests could challenge their lawfulness before a court and, if the orders were set aside, the individuals concerned could seek damages under section 1 of the SMRDA.

COMPLAINTS

38. The applicant complained under Article 5 § 1 of the Convention that his detention in Bulgaria pending his extradition to Moldova had breached his right not to be deprived of his liberty arbitrarily and under Article 1 of Protocol No. 1 that the Bulgarian authorities had failed to return his car to him. He also complained under Article 1 of Protocol No. 7 that his extradition had been tainted by irregularities.

39. He also submitted that his arrest on 25 September 2004 had amounted to a breach of Article 4 of Protocol No. 7. He further complained under Article 5 § 2 of the Convention that he had not been informed in a language which he understood of the reasons for his arrest,

40. Lastly, the applicant referred to Articles 2, 6, 7, 8 and 14 of the Convention and Articles 2, 3 and 4 of Protocol No. 4, without providing further details.

THE LAW

A. Alleged violation of Article 5 § 1 of the Convention

41. The applicant complained that he had been unlawfully held in custody in the context of his extradition to Moldova. He relied on Article 5 § 1, 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 against whom action is being taken with a view to ... extradition."

1. Submissions by the parties

42. The Government provided a detailed account of the events related to the applicant's detention for the purposes of his extradition to Moldova. According to the documents submitted by them, the applicant had been detained on three occasions: between 31 July 2004 and 10 September 2004; on 25 September 2004; and between 15 and 18 October 2004. He had spent the rest of the time at liberty on Bulgarian territory, registered at the address of his court-appointed lawyer, awaiting extradition to Moldova.

43. The Government also stated that the applicant had failed to exhaust domestic remedies in connection with his detention in Bulgaria. More specifically, he could have brought proceedings for damages under the SMRDA (see paragraph 35 above) or challenged the prosecutors' orders for his detention before a higher prosecutor.

44. The applicant disagreed and reiterated his complaint of having been detained unlawfully while awaiting extradition.

2. The Court's assessment

45. The Court finds, and this is common ground between the parties, that the applicant was detained in Bulgaria for the purposes of his extradition in response to a request from the Moldovan authorities. Consequently, Article 5 § 1 (f) is applicable.

46. The actual period which the applicant spent in detention appears to be in dispute. While the applicant submitted, without providing any proof, that he had remained in detention during the entire period between his arrest at the Bulgarian border on 31 July 2004 and his extradition to Moldova on 18 October 2004, the Bulgarian Government provided a series of documents showing that he had been detained for several distinct periods and had spent the rest of the time at liberty on Bulgarian territory, though he had been banned from leaving the country pending extradition. On the basis of the

documents in the file the Court accepts the Government's position as established.

47. The Court will carry out a separate examination of each of the periods which the applicant spent in detention in Bulgaria while awaiting extradition to Moldova, as follows.

(a) First period of detention

48. The first period of detention lasted from 31 July 2004, when the applicant was arrested at the Greek-Bulgarian border, to 10 September 2004, when he was released following the court's refusal to prolong his detention (see paragraphs 6-11 above). The Court finds that the applicant's complaint in relation to that period is out of time as the application was lodged on 20 March 2005, six months and ten days after the applicant's release.

49. Therefore, the complaint concerning that period must be rejected, in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) Second period of detention

50. The second period of detention lasted eleven and a half hours on 25 September 2004 (see paragraphs 14-15 above), following an attempt by the applicant to leave the country while extradition proceedings were pending.

51. The Court observes that the applicant was released the same day and that he had fourteen days to challenge his arrest in court. If the court found his arrest to be unlawful, he could seek damages from the State (see paragraph 35 above). After his release at midday on 25 September 2004 the applicant registered himself at the address of the court-appointed lawyer who had been provided to him by the authorities for the purposes of the extradition proceedings. However, he did not seek any judicial review of his arrest (see paragraph 36 above for the applicable law). Consequently, the Court finds that in respect of that period of detention the applicant has not exhausted the available and effective domestic remedies, as required by Article 35 § 1.

52. That part of the application must therefore be rejected in accordance with Article 35 § 4 of the Convention.

(c) Third period of detention

53. The third period of detention lasted from 15 October 2004, when he was arrested by the police for the purposes of his transfer to the Moldovan authorities, to 18 October 2004, when he was handed over to the latter (see paragraphs 16-21 above). His detention was based on the prosecutor's order of 14 October 2004 (see paragraphs 19-20 above).

54. As far as it concerns the Government's objection of non-exhaustion of domestic remedies concerning that period of detention, the Court

observes that the detention order was issued by the highest prosecutor's office in Bulgaria. Consequently, the applicant could not challenge it before a higher prosecutor. As regards a potential claim for damages, the Court notes that it has only become possible since 2012 for an individual to claim damages under the SMRDA for any unlawful detention and that the civil court which hears the claim rules in the same proceedings on the question of lawfulness and on damages. At the time of the facts in the present case the applicant needed a prior decision by a court declaring his detention unlawful in order for him to seek damages from the State. Given that his detention between 15 and 18 October 2004 was not subject to judicial review (see paragraph 32 above, last sentence), the applicant had no way of obtaining a judicial decision in respect of the lawfulness of that detention. Consequently, the applicant cannot be reproached for not bringing a claim for damages under the SMRDA before turning to the Court with that complaint. The Court thus concludes that the applicant did not fail to use a remedy which the Government has shown to be effective and adequate in the circumstances. On that ground it dismisses the Government's objection regarding non-exhaustion of domestic remedies.

55. The Court will next examine the lawfulness of the applicant's detention during that period and, more specifically, the question whether the prosecutor's order for his detention was based on clear procedural rules which were sufficiently precise and foreseeable so as to protect the applicant from arbitrariness.

(i) General principles

56. The Court has repeatedly held that Article 5 § 1 (f) does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary. All that is required under this provision is that "action is being taken with a view to deportation or extradition" (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I, and *Chahal v. the United Kingdom*, 15 November 1996, § 112, *Reports of Judgments and Decisions* 1996-V). It falls to the Court to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national system. Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified, however, 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 that provision (see, among other authorities, *Chahal*, cited above, § 113; *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009; *Mikolenko v. Estonia*, no. 10664/05, § 63, 8 October 2009). The Convention requires in addition that any deprivation of liberty be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, 25 June 1996, § 50, Reports 1996-III; *Nasrulloyev v. Russia*,

no. 656/06, § 71, 11 October 2007, with further references; *Sadaykov v. Bulgaria*, no. 75157/01, § 23, 22 May 2008; and *Soldatenko v. Ukraine*, no. 2440/07, §§ 112-14, 23 October 2008).

(ii) Application of these principles to the case at hand

57. At the material time Bulgarian law regulated in some detail the procedure for deciding on extradition requests by foreign States (see paragraphs 28-29 above). However, while specific comprehensive provisions governing detention for the purposes of extradition were introduced in 2005 (see paragraph 30 above), the law at the time of the facts did not contain any such specific provisions. The sole exception was Article 440 § 3 of the 1974 Code according to which the regional prosecutor was in charge of implementing decisions authorising the detention of an individual whose extradition was being sought. In that connection, the Court is mindful of its judgment in *Soldatenko* (cited above, §§ 113-114). In that case it found a violation of Article 5 (1) because there were no specific domestic legal provisions governing detention pending extradition in the terms of Article 5 (1) (f), and the general provisions of the Ukrainian Code of Criminal Procedure were not applicable to those detention proceedings, which had resulted in a situation where there was no procedure offering guarantees against the risk of arbitrary detention pending extradition. Contrary to that case, in a subsequent judgment against Russia the Court established that, whilst domestic law did not contain separate legal provisions governing detention with a view to extradition, general criminal law provisions could be relied upon to authorise detention pending extradition (see *Eminbeyli v. Russia*, no. 42443/02, § 46, last two sentences, 26 February 2009). The crucial question was whether those provisions contained sufficient procedural guarantees against arbitrariness.

58. In the instant case, in his decision of 14 October 2004 ordering the applicant's detention, the prosecutor referred to a domestic legal provision of a general character, Article 152a § 3 of the 1974 Code of Criminal Procedure, which governed detention pending criminal proceedings (see paragraph 32 above). According to that provision, the power to order the initial detention of a suspect was vested in prosecutors and investigators. Detention ordered under that provision aimed at ensuring that the accused appeared before a court in connection with criminal proceedings. It also specified strict time-limits: seventy-two hours if the order was made by a prosecutor and twenty-four hours if the order was made by an investigator. That has to be contrasted with the situation in *Abdulkhakov v. Russia* (no. 14743/11, § 178, 2 October 2012) where, in reaching a conclusion of a violation of Article 5 (1), the Court found it significant that the detention order – for the purposes of the applicant's extradition – had not referred to any domestic legal provision, be it one governing measures of restraint during pending criminal proceedings or otherwise, and had not set any

time-limits on that detention. Similarly to *Abdulkhakov* (cited above) the cases of *Nasrulloyev* (cited above, § 72) and *Amuur* (cited above) involved decisions on an applicant's detention pending extradition that had no set time-limits.

59. The prosecutor's detention order of 14 October 2004 referred explicitly to the judicial decision which had authorised the applicant's extradition to Moldova in response to a request from the competent Moldovan authorities for the purposes of criminal proceedings pending against him in Moldova (see paragraph 16 above). The order clearly specified that the detention was necessary to ensure the applicant's subsequent transfer into the custody of the requesting authorities in the context of the extradition proceedings (see paragraph 19 above). It also indicated the day, time and place the applicant had to be arrested, the authorities who were authorised to do so, the place where he was to be held, how long he was to be held, as well as the place, day and time he was to be handed over to representatives of the Moldovan authorities, who were specified by name. The situation in the present case is therefore to be distinguished from that in *Eminbeyli* (cited above, § 47) and *Sadaykov* (cited above, § 25), where the Court found that the applicant's detention pending extradition was not in accordance with a "procedure prescribed by law" as required by Article 5 § 1, as there was no decision – either by a prosecutor or a judge – authorising the applicant's detention prior to the deportation, even if, as the Court held in *Sadaykov* (cited above) the deportation order itself "may be taken to imply that he [the applicant] could be subjected to some sort of physical constraint for the purposes of being taken to the border". The applicant in the instant case was effectively detained between 15 and 18 October 2004 in application of the prosecutor's order. Given that he was handed over to the Moldovan authorities at the end of this period the Court finds that the Bulgarian authorities pursued diligently the extradition procedure, as required by the Court under this provision (see paragraph 56 above).

60. In view of all the above considerations, the Court finds that it cannot be said that the applicant's detention in the period immediately preceding his extradition to Moldova did not follow a procedure providing safeguards against arbitrariness. The combination of the Bulgarian court decision authorising the applicant's extradition, the prosecutor's written order for his detention for the purposes of handing him over under the extradition proceedings, as well as the procedure applied and duration concerned in practice, provided sufficient safeguards capable of protecting the applicant against arbitrariness.

61. The complaint related to that period of his detention must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 1 of Protocol No. 1

62. The applicant complained under Article 1 of Protocol No. 1 that his right to the peaceful enjoyment of his possessions had been breached as the Bulgarian authorities had not returned his car to him. Article 1 of Protocol No. 1 provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

63. First of all, the Court observes that the Bulgarian authorities returned the applicant's car to him on 20 September 2004 (see paragraph 13 above). It then notes that subsequently the applicant surrendered his car to the border police. That happened upon his arrest on 25 September 2004 (see paragraph 14 above).

64. The Court observes that at no point in time thereafter did the applicant seek the return of his car from the Bulgarian authorities. That was the case in respect of the period prior to his extradition to Moldova, despite the fact that he had been released eleven and a half hours after his arrest on 25 September 2004 and had been at liberty while awaiting the arrival of the formal extradition request. This was also the case in respect of the period after the extradition took place. The Court notes from the submissions of the parties that the first and only time the applicant made reference to his car before the Bulgarian authorities, without however making a request for it, was on 4 July 2005 when he transited Bulgaria on his way to Greece after the criminal proceedings against him had been discontinued in Moldova seven months earlier. As can be seen in record by the border police of 4 July 2005, the applicant left Bulgaria with his car on that day (see paragraph 22 above).

65. In view of the above, the Court finds that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

C. Alleged violation of Article 1 of Protocol No. 7

66. The applicant also complained under Article 1 of Protocol No. 7 that his extradition had been tainted by irregularities. Article 1 of Protocol No. 7 provides as follows:

> "1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:
>
> (a) to submit reasons against his expulsion,
>
> (b) to have his case reviewed, and
>
> (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.
>
> 2. An alien may be expelled before the exercise of his rights under paragraph 1 (a), (b) and (c) of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security."

67. The Court observes that this provision does not apply to extradition or to people, such as the applicant, who are "admitted to the territory for the purpose only of transit or for a limited period for a non-residential purpose" (see paragraph 27 above and *Bolat v. Russia*, no. 14139/03, §§ 76-78, ECHR 2006-XI (extracts)).

68. Consequently, the Court finds that this complaint should be rejected in accordance with Article 35 § 4 as being incompatible *ratione materiae* with the provisions of the Convention.

D. Other alleged violations

69. The applicant also complained under Article 4 of Protocol No. 7 that his second arrest, on 25 September 2004, had been in breach of his right not to be tried twice for the same offence. He also complained under Article 5 § 2 that he had not been informed of the reasons for his arrest. Lastly, he complained under Articles 2, 6, 7, 8 and 14 and under Articles 2, 3 and 4 of Protocol No. 4, without providing further detail.

70. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that these complaints do not disclose any appearance of a violation of the Convention. It follows that they are inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 October 2016.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President