[TRANSLATION-EXTRACTS]

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THE FACTS

The applicant [Mr Roland Raf], who says that he is of Yugoslav nationality, was born in 1949 and is held in Madrid III Prison. He was represented before the Court by Mr E. Rodríguez González, a lawyer practising in Madrid.

A. The circumstances of the case

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

On 11 April 1997 the applicant was arrested in Torremolinos (Malaga) and detained pursuant to an order of the Madrid central investigating judge under an arrest warrant issued by Interpol. On 9 May 1997 the French authorities lodged a request with the Spanish government for the applicant's extradition on charges of rape, torture and kidnapping of his former companion, the mother of his son, on 19 August 1996. On 23 October 1998 the Criminal Division of the *Audiencia Nacional* authorised the applicant's extradition.

The applicant lodged an appeal (*recurso de súplica*) against that decision, arguing that the French State had not made the request for extradition in the form required by Spanish law. On 14 December 1998 the Criminal Division of the *Audiencia Nacional*, sitting as a full court, upheld the impugned decision and rejected as unfounded the applicant's allegations that the procedural formalities for extradition had not been complied with.

On 18 February 1999 the applicant requested the *Audiencia Nacional* to expedite the extradition proceedings or to order his release. On 19 February 1999 the Ministry of Justice informed the President of the Criminal Division of the *Audiencia Nacional* that the Cabinet (*Consejo de Ministros*) had agreed to extradite the applicant. On 4 March 1999 the *Audiencia Nacional* informed Interpol that all measures had been taken for the applicant's extradition.

On 25 March 1999 the Criminal Division of the *Audiencia Nacional* authorised the applicant's continued detention for a maximum period of one year, namely until 11 April 2000, as a final decision to extradite him had been taken on 14 December 1998 and the only outstanding matter was the government's confirmation. In a decision of 26 April 1999 the *Audiencia Nacional* dismissed a further appeal lodged by the applicant and upheld the impugned decision.

In the meantime, on 5 April 1999 the Malaga *Audiencia Provincial* gave notice that proceedings were pending against the applicant before it and that he was due to stand trial on 18 May 1999. On 13 April 1999 the applicant's release was ordered in those proceedings but he remained in custody pending extradition. On 28 April 1999 the public prosecutor's office informed the central investigating judge that the applicant's extradition would have to be postponed until the pending criminal proceedings were over.

The applicant lodged an *amparo* appeal with the Constitutional Court on the basis of Articles 17 § 4 (right to liberty) and 24 (right to a fair hearing within a reasonable time) of the Constitution. On 30 June 1999 the Constitutional Court declared the appeal inadmissible. It noted that the complaint about the length of the proceedings had not been raised before the ordinary courts and rejected it for failure to exhaust domestic remedies. As regards the length of detention, it held that it was justified and that its purpose was to prevent the applicant from absconding. It added that the extradition had been judicially authorised and that all that was now required was the governmental decision to hand over the applicant to the French authorities. That fact, coupled with the nature of the offence for which extradition had been requested, constituted reasonable, non-arbitrary grounds justifying the applicant's continued detention.

On 21 September 1999 the applicant made a further application for release to the *Audiencia Nacional* on the ground that the extradition proceedings had been inordinately long. That application and a subsequent appeal were dismissed in two decisions made on 6 October and 15 November 1999 respectively.

B. Relevant domestic law

1. Code of Criminal Procedure

Article 503

"The court may only order pre-trial detention if the following conditions are satisfied:

It must be shown that an act capable of constituting an offence [*delito*] has been committed.

The offence must be punishable by more than six years' imprisonment [*prisión menor*] or, if the prescribed sentence is less, the court must consider the accused's detention necessary in the light of his criminal record, the circumstances of the offence, any breaches of the peace caused or the frequency with which the accused has committed similar acts ...

Sufficient grounds must exist for considering the accused criminally liable for the offence."

Article 504 § 4

Pre-trial detention shall not exceed three months for offences punishable by a short term of imprisonment (from one month and a day to six months) [*arresto mayor*], one year for offences punishable by a medium term of imprisonment (from six months and a day to six years) [*prisión menor*] and two years for offences carrying a higher sentence. In the latter two cases, if circumstances exist that lead the court to believe that the case cannot be tried within those time-limits and that there is a risk that the accused will abscond, the period of pre-trial detention may be extended to two years and four years respectively. Any such extension shall be made by order after the accused and a representative from the public prosecutor's office have been heard."

2. Regulations governing detention for the purposes of extradition

Section 10(3) of Law no. 4/85 of 21 March 1985 on extradition

"Subject to the provisions of this Act, the maximum period for which a person may be detained with a view to his or her extradition and the rights guaranteed to him or her while detained shall be governed by the relevant provisions of the Code of Criminal Procedure."

COMPLAINTS

Relying on Article 6 § 1 of the Convention, the applicant maintained that he had been denied a fair hearing. More particularly, he alleged that his detention pending extradition to France had exceeded the period allowed by Spanish law and that had not been responsible for the delays. He further complained that, unlike the public prosecutor's office, his lawyer had not been informed of the *Audiencia Nacional*'s decision of 4 March 1999.

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THE LAW

1. The applicant complained of the length of the extradition proceedings and of the fact that his lawyer had not been informed of one of the decisions that had been delivered. He argued that his right to a fair hearing, as guaranteed by the Article 6 § 1 of the Convention, had thereby been infringed. That provision reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

However, the Court reiterates that the right not to be extradited, as such, is not one of the rights and freedoms recognised by the Convention and its Protocols (see K. and F. v. the Netherlands, application no. 12543/86, Commission decision of 2 December 1986, Decisions and Reports (DR) 51, p. 272). Furthermore, extradition proceedings do not concern a dispute (*contestation*) over an applicant's civil rights and obligations or the determination of a criminal charge against him or her within the meaning of Article 6 of the Convention (see, among other authorities, Farmakopoulos v. Belgium, application no. 11683/85, Commission decision of 8 February 1990, DR 64, p. 52; B., H. and L. v. Austria, application no. 15776/89, Commission decision of 5 December 1989, DR 64, p. 264; and A.R. v. Austria, application no. 25342/94, Commission decision of 4 September 1995, DR 82-A, p. 134). It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3, and must be rejected pursuant to Article 35 § 4.

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For these reasons, the Court unanimously,

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Declares the remainder of the application inadmissible.