CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 8320/04
by Aleksandr Ivanovich RYABIKIN
against Russia

The European Court of Human Rights (First Section), sitting on 10 April 2007 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs N. VAJIĆ,
Mr A. KOVLER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 5 March 2004,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

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

The applicant, Aleksandr Ivanovich Ryabikin, is a citizen of Turkmenistan. He was born in 1953 and is currently residing in St Petersburg, Russia. He is represented before the Court by Ms O. Tseytlina, a lawyer practising in St Petersburg. The respondent

Government were represented by Mr P.A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

1. Proceedings in Turkmenistan

The applicant was born and lived in Ashkhabad, Turkmenistan. He is of Russian ethnic origin and has family members in Russia. In Turkmenistan he headed a limited liability company called Argamak, which was involved in the construction business and trade.

In 1997 to 1999 Argamak performed works under a government contract. The applicant submitted that certain officials from the Ministry of Finance of Turkmenistan had refused to honour the obligations under the contract and to pay for the work performed unless the applicant paid a bribe in the amount of 10,000 United States dollars (USD). The applicant further submitted that in May 2000 he had applied to the Ministry of the Interior's Department for Economic Crime and complained about two inspectors from the Ministry of Finance, S. and D. Both inspectors, according to the applicant, were of Turkmen ethnic origin. The Department for Economic Crime allegedly supplied the applicant with specially marked banknotes and S. was detained during the transfer of the money. Following a criminal investigation, the case in respect of S. and D. was referred to a court, which after two days of hearings ordered an additional investigation. It appears that the applicant participated as a witness. The applicant who submits that he does not speak Turkmen, was not provided with an interpreter, although the proceedings were conducted in Turkmen. The applicant is not aware of the outcome of the criminal case.

After May 2000 the applicant allegedly came under pressure from the law-enforcement bodies. According to him, officers of these bodies threatened him with revenge and demanded that he changed his position in the criminal case. The applicant submitted that in October and November 2000 he was called for questioning to the transport police department for organised crime about 25 times, that is, almost every day. He also received threats from D. and the relatives of S. Also in October and November 2000 the applicant was allegedly questioned on several occasions by the Committee on State Security of Turkmenistan about his economic activities and was asked to become an informant. When the applicant refused he received further threats.

As a result, the applicant submitted that he feared for his life and for the lives of his relatives. The applicant felt that he had become targeted in

particular because he belonged to the Russian minority and decided to leave Turkmenistan.

2. Proceedings relating to the applicant's status in Russia

On 1 December 2000 the applicant applied for Russian citizenship at the Russian Embassy in Ashkhabad. The applicant submitted that all the required documents had been collected and registered at the Embassy and that he had received a notification that his case file had been registered as no. 22850.

On 15 December 2000 the office of the Russian Federal Migration Service at the Embassy in Turkmenistan supplied the applicant with a document entitled "Permission to Repatriate from Turkmenistan to Russia and the Granting of Migrant Status". The document was based on the bilateral treaty on resettlement.

On 28 December 2000 the applicant received an exit visa from Turkmenistan valid for three months. On 21 January 2001 the applicant travelled to the United Arab Emirates on a private invitation.

On 13 May 2001 the applicant was issued with an entry visa by the Russian Embassy in the United Arab Emirates, with the purpose of entry indicated as "for permanent residence".

On 9 June 2001 the applicant went to Moscow by plane. On 17 June 2001 he travelled to St Petersburg, where his brother lives, and from then on he resided at his brother's address.

The applicant submitted that in June 2001 he visited the office of the Federal Migration Service in St Petersburg, where he was advised that he should not apply for refugee status because he already had the status of a migrant and that he should proceed with obtaining Russian citizenship.

On several occasions from 2001 to 2003 the applicant contacted the Russian Embassy in Turkmenistan, the Presidential Commission on Citizenship Issues and the Ministry of the Interior, enquiring about the progress of his application for citizenship. He submitted that he did not receive any relevant response.

On 9 July 2003 the applicant again applied to the St Petersburg office of the Federal Migration Service and asked in writing to be granted refugee status. On 23 September 2003 the applicant was interviewed and submitted that he feared persecution in Turkmenistan and that he was the subject of a criminal investigation. The applicant submitted all necessary documents to the migration service, including his national passport.

On 24 October 2003 the St Petersburg office of the Federal Migration Service rejected the applicant's application for refugee status, and on 27 October 2003 the applicant was notified of this in writing. The rejection stated that the applicant had not met the criteria of a refugee, and that the real reason for his arrival in Russia was, most probably, his attempt to escape the criminal proceedings. The decision stated that in 2001 the

applicant had obtained migrant status in the Russian Embassy for himself and for his family; however, his family had continued to reside in Turkmenistan. The applicant had travelled first to the United Arab Emirates on business purposes, and had arrived in Russia only in June 2001. Since his arrival the applicant had failed to obtain legal status in Russia and had not applied for a residence permit or registration at his place of residence. The decision further stated that the St Petersburg Regional Department of the Interior had confirmed that the applicant had been wanted by the Turkmen authorities since April 2001, and in Russia, further to a request by the Turkmen authorities, since December 2002. The letter also informed the applicant that he could appeal to a district court against the decision and that he should leave Russia if he had no other legal grounds for staying.

On 24 November 2003 the applicant appealed to the Kuybyshevskiy District Court of St Petersburg against the refusal. On the same day the case was registered by the court and the first meeting between the parties was scheduled for 15 December 2003. At the same time, the judge requested the applicant's file from the St Petersburg office of the Federal Migration Service.

On 15 December 2003 the hearing was scheduled for 2 February 2004. On 2 February 2004 the judge decided that a request should be sent to Turkmenistan asking about the applicant's participation as a witness in the criminal case against S. and D. The next hearing was first scheduled for 30 March 2004 and then postponed to 10 June 2004.

At the same time, the applicant again contacted various bodies in relation to his application for citizenship. On 28 January 2004 the Presidential Commission on Citizenship Issues informed the applicant that his application for citizenship had been returned to the Russian Embassy in Turkmenistan for further processing.

In January 2004 the applicant wrote to the Ministry of the Interior. He stated that he had applied for Russian citizenship in December 2000, and that consideration of such applications should take between six and twelve months. He had received no reply to his application. On 21 January 2004 the Passport and Visa Service of the Ministry of the Interior informed the applicant that his application had been forwarded to the St Petersburg Department of the Interior and that it would inform him of the results.

3. Request for extradition to Turkmenistan and the applicant's detention

The applicant's family – his wife, daughter, son and two grandchildren – remained in Turkmenistan. After the applicant had arrived in Russia, his wife informed him that she had been summoned to the Committee on State Security on several occasions and questioned about her husband's whereabouts. She also told him that a criminal case against him had been opened and that part of his property had been confiscated.

On 12 February 2004 the applicant was summoned to the Passport and Visa Service of the St Petersburg Department of the Interior "for issues relating to the granting of Russian citizenship".

On 25 February 2004 the applicant went to the Department's premises, where he was arrested. He was told that the detention related to a criminal case in Turkmenistan.

On 26 February 2004 the prosecutor of the Central District of St Petersburg issued an order for the applicant's arrest on the basis of international search warrant no. 1207, issued by Turkmenistan in 2001. The order listed the details of the charges brought against the applicant, which included the embezzlement of about USD 139,000 in 2000 and 2001, when the applicant had been the director of a Turkmen-US joint venture. He was charged with offences under Article 228, part 4, of the Turkmen Criminal Code. On 4 April 2001 he was declared wanted in Turkmenistan, and on 26 April 2001 a prosecutor in Turkmenistan issued an arrest warrant. The General Prosecutor of Russia had been informed of the applicant's detention. The prosecutor requested the Kuybyshevskiy District Court of St Petersburg to authorise the applicant's detention.

On 27 February 2004 the applicant was brought before the Kuybyshevskiy District Court. He was represented by a lawyer. The prosecutor requested the court to detain the applicant and stated that he had been wanted in Turkmenistan since April 2001 for an offence under Article 228, part 4, of the Turkmen Criminal Code. The General Prosecutor's Office had been informed of the applicant's arrest. The Kuybyshevskiy District Court ordered the applicant's detention pending his extradition to Turkmenistan. The court did not specify the term of his detention.

The applicant's lawyer appealed to the St Petersburg City Court. The appeal stated that the applicant's appeal concerning his refugee status was pending before the same court. It referred to his pending application for Russian citizenship. It further stated that the applicant had been detained unlawfully because there had been no decision by the competent prosecutor to detain him with a view to his deportation.

On 3 March 2004 the head of the Ashkhabad Criminal Police requested the Kuybyshevskiy District Court to authorise the applicant's detention on charges of embezzlement on a large scale, an offence punishable under the Turkmen Criminal Code by eight to fifteen years' imprisonment. The letter stated that the question of extradition would be immediately resolved through the general prosecutors' offices of the two countries.

On 3 March 2004 the applicant invited Ms Tseytlina to represent him. The applicant submitted that she had been denied access to the documents that had served as a ground for his detention, including information about the criminal proceedings in Turkmenistan, and the decision of the General Prosecutor to detain him with a view to his extradition. On 9 March 2004

the lawyer submitted a written complaint to the President of the Kuybyshevskiy District Court. On 11 March 2004 the lawyer was informed that she could have access to the documents in question if she submitted a written request to the judge. In reply to her written request the President of the Kuybyshevskiy District Court postponed the hearing from 11 to 12 March 2004.

On 9 March 2004 the Office of the United Nations High Commissioner for Refugees (UNHCR) in Moscow issued a letter stating that the applicant's appeal concerning his refugee status was pending before the Kuybyshevskiy District Court and that his extradition to Turkmenistan prior to the determination of his appeal might be in violation of section 10 of the Refugees Act and Article 33 of the 1951 UN Convention relating to the Status of Refugees, to which Russia was a party.

On 9 March 2004 the European Court, under Rule 39 of the Rules of Court, requested the Russian authorities not to extradite the applicant to Turkmenistan until further notice.

On 12 March 2004 the St Petersburg City Court, in the presence of the applicant's lawyer, upheld the decision of 27 February 2004. The City Court noted that the applicant was on the international wanted list and that on 26 February 2004 [this should read 2001] the Deputy Prosecutor of Ashkhabat had ordered his arrest. In the absence of a decision by a foreign court to detain the applicant the Russian court was competent to do so at the prosecutor's request. The decision of the City Court did not specify a term for the applicant's detention.

On 17 March 2004 the General Prosecutor's Office received a request from Turkmenistan for the applicant's extradition. The Russian Government referred to this document but no copy has been submitted to the Court. The applicant and his lawyer submitted that they had not seen this document.

On 24 March 2004 the Russian Government informed the Court that the applicant had been detained in accordance with Article 466 of the Code of Criminal Procedure (CCP) and that no decision to extradite him had been taken. The Government further submitted that all proceedings in Russia would be suspended until further notice from the Court.

On 27 August 2004 the Kuybyshevskiy District Court dismissed the applicant's complaint concerning his refugee status, because the applicant had failed to substantiate his allegations regarding his fear of persecution in Turkmenistan.

On 4 November 2004 the St Petersburg City Court upheld the decision of 27 August 2004.

In the meantime, on 8 September 2004 the Deputy General Prosecutor had submitted a request for supervisory review (*надзорное представление*) to the Presidium of the St Petersburg City Court. In it he challenged the procedural fairness of the decision of 12 March 2004 on the ground that the applicant's presence had not been secured.

On 29 September 2004 the Presidium of the City Court quashed the decision of 12 March 2004 in the supervisory review proceedings and referred it back for re-examination. On 12 October 2004 the City Court again upheld the decision of 27 February 2004. The applicant participated by video link.

On 25 May 2005 the General Prosecutor of Turkmenistan addressed the following letter to the Deputy General Prosecutor of Russia:

> "The General Prosecutor's Office of Turkmenistan presents its compliments to the General Prosecutor's Office of the Russian Federation and informs [it] about the guarantees of criminal prosecution against Aleksandr Ivanovich Ryabikin only in respect of the crimes committed by him (embezzlement on a large scale) and [that he] would not be subjected to, and has never been subjected to, persecution on political, religious or ethnic grounds."

4. Further proceedings to challenge the lawfulness of the applicant's detention

After March 2004 the applicant appealed against his detention on several occasions. Since he had been arrested in the Central Administrative District of St Petersburg, he complained to the three courts operating in the district, namely the Kuybyshevskiy, Smolninskiy and Dzerzhinskiy district courts. He also submitted appeals to the Kalininskiy District Court, which has jurisdiction in respect of pre-trial detention centre IZ-47/4, where he had been detained.

Before the domestic courts the applicant submitted that in accordance with the Code of Criminal Procedure, his detention could be authorised only for two months, and that after 27 April 2004 it had became unlawful.

In addition, the applicant applied on numerous occasions to various prosecutors' offices in relation to the issue of the lawfulness of his detention.

A summary of these proceedings is set out below.

(a) Proceedings before the Kuybyshevskiy District Court

On 3 May 2004 the applicant, and on 19 May 2004 his lawyer, submitted complaints to the Kuybyshevskiy District Court, alleging that the authorisation of his detention, which that court had given on 27 February 2004, had expired on 27 April 2004 and had not been prolonged.

On 26 May 2004 the Kuybyshevskiy District Court informed the applicant's lawyer that the complaints had been transferred to the St Petersburg Prosecutor's Office.

The applicant's lawyer appealed against the court's actions to the St Petersburg City Court on 3 June 2004, both directly and via the District Court. On the same day the Kuybyshevskiy District Court informed the

applicant that his complaint had been forwarded to the St Petersburg Prosecutor's Office.

On 14 June 2004 the applicant's lawyer again complained to the St Petersburg City Court, challenging the Kuybyshevskiy District Court's refusal to consider the complaints.

In reply, on 23 June 2004 the St Petersburg City Court forwarded the applicant's complaint to the City Prosecutor's Office.

On 29 June 2004 the Kuybyshevskiy District Court replied to the applicant that his complaints to the City Court had been forwarded to the City Prosecutor's Office, which he should contact in the future if he wished to apply to change the measure of restraint imposed on him.

On 13 July 2004 the President of the Kuybyshevskiy District Court informed the applicant's lawyer that no decision had been taken by that court, and that therefore no appeals were possible.

(b) Proceedings before the Smolninskiy District Court

On 4 June 2004 the applicant complained to the Smolninskiy District Court about the unlawfulness of his detention. On 15 June 2004 the administration of the detention facility returned the complaint to the applicant, with a letter from a judge of that court which stated that the court had no jurisdiction to consider it.

On 24 June 2004 the applicant, and on 25 June his lawyer, wrote to the Smolninskiy District Court, complaining about his unlawful detention and requesting it to adopt a formal decision on his complaint. On 25 June the applicant's lawyer also complained to the St Petersburg City Court.

On 9 July 2004 the St Petersburg City Court returned to the applicant's lawyer her complaints against the actions of the Kuybyshevskiy and Smolninskiy District Courts without examining them, and stated that she could appeal against the decision of the Kuybyshevskiy District Court's decision of 27 February 2004 by means of supervisory review.

On 12 July 2004 the Smolninskiy District Court returned the complaints to the applicant and stated that he could not appeal against a forwarding letter and that no decision had been taken on his complaint for lack of jurisdiction. All questions relating to extradition fell within the competence of the General Prosecutor's Office, to which he should apply.

(c) Proceedings before the Dzerzhinskiy District Court

On 2 June 2004 the applicant complained about his unlawful detention to the Dzerzhinskiy District Court. On an unspecified date that court returned his complaint without examining it and stated that since no investigation was pending in respect of the applicant in the Central Administrative District of St Petersburg, it had no jurisdiction with regard to his detention. The court informed him that he should challenge the lawfulness of his

detention before the Kalininskiy District Court, which was responsible for the detention centre where he had been detained.

On 15 July 2005 the applicant appealed against that decision to the City Court through the District Court. On an unspecified date the court returned the applicant's complaint and stated that since no investigation was pending in respect of him in the Central Administrative District, he should appeal against his detention to the body responsible for his extradition.

On 19 July 2004 the applicant's lawyer again contacted the Dzerzhinskiy Court. She requested it to review the substance of the complaint. On 13 August 2004 the court ordered an oral hearing in the applicant's case and requested the City Prosecutor's Office to send it all the documents relating to his extradition and detention.

On 18 August 2004 the Dzerzhinskiy District Court held an oral hearing in the presence of the applicant and his lawyer and refused to consider the complaint on the merits for lack of territorial jurisdiction. The court stated the following:

> "The applicant's reference to Article 109 of the CCP is unfounded because Chapter 54 of the CCP, which regulates extradition on criminal charges, does not provide for the procedure of extending a person's detention. Persons who were arrested under Article 466 of the CCP can remain in detention until extradited to the foreign State. The law on criminal procedure links the term of detention only to the pre-established date set by the parties for the transfer of the detainee (Article 467 § 1 CCP). The law contains no reference to application of Article 109 by analogy; therefore, the obligation on the investigators to seek an extension of the detention does not apply to this category of persons. Neither the European Convention on Extradition (13 July 1957) nor the Minsk Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases, as amended on 28 March 1997 (Article 62), contains a provision corresponding to the meaning of Article 109 of the CCP.
>
> The court does not question the fact that Mr Ryabikin, who is being kept in detention, has the right to judicial protection as guaranteed by the Constitution of Russia. However, the court considers that he and his lawyer can exercise this right by challenging the actions of officials through civil proceedings, by submitting a complaint to a competent court at the location of the St Petersburg Prosecutor's Office or the General Prosecutor's Office, which is the body on which the Russian criminal procedural law confers responsibility for issues relating to extradition."

The applicant's lawyer appealed against this decision on 25 August 2004. She argued that the provisions of Article 109 of the CCP should apply in the applicant's case and that the courts should be competent to review the lawfulness of his detention. She stated that Russian law provided that all issues relating to the application of the provisions of criminal and criminal procedural law should be resolved in the manner provided for by the CCP and not through civil proceedings.

On 25 November 2004 the St Petersburg City Court dismissed the appeal and upheld the decision of 18 August 2004. In addition to the conclusions of

the District Court, it stated that the applicant could appeal to a court against the prosecutor's actions under Article 125 of the CCP.

(d) Proceedings before the Kalininskiy District Court

On 30 April 2004 the applicant complained to the Kalininskiy District Court through the administration of the detention facility about the unlawfulness of his detention. On 5 May 2004 the head of the detention facility returned the complaint to the applicant, noting that the Kalininskiy District Court had no jurisdiction to deal with it and that the applicant should apply to the St Petersburg City Court instead.

On 18 May 2004 the applicant's lawyer wrote to the head of the detention facility and stated that he had exceeded his powers by refusing to forward the applicant's complaint to the court. She also noted that the applicant's continued detention was unlawful and requested his release.

On 19 May 2004 the applicant's lawyer submitted a complaint about the applicant's detention to the Kalininskiy District Court. On 25 May the court refused to consider the complaint in substance, because no investigation was pending in respect of the applicant in Russia, and therefore the provisions of the CCP did not apply to him.

On 3 June 2004 the applicant's lawyer appealed against that decision to the City Court, which on 2 September quashed the order of 25 May 2004 and remitted the case to the District Court.

On 27 October 2004 the Kalininskiy District Court held a hearing in the case and requested the St Petersburg Prosecutor's Office to submit documents justifying the applicant's detention. Pending the receipt of the documents, it adjourned the consideration of the case until 23 December, and subsequently until 29 December 2004. On 29 December the hearing was adjourned until 13 January 2005, and subsequently again until 16 February 2005.

On 16 February 2005 the Kalininskiy District Court, at a public hearing in the presence of the applicant and his lawyer, reviewed the complaint about the unlawfulness of his detention. The court dismissed the complaint concerning the unlawfulness of the detention and ruled that the case should be transferred to the Kuybyshevskiy District Court.

(e) Appeals to the prosecutors' offices

The applicant and his lawyer have on numerous occasions applied to prosecutors at various levels, seeking to obtain his release.

On 14 April 2004 the St Petersburg Prosecutor's Office informed the applicant, in reply to his request to be released, that the General Prosecutor's Office was considering the request for his extradition, that he would be informed of the outcome and that there were no reasons to release him from detention.

On 25 May 2004 the General Prosecutor's Office of Russia wrote the following to the applicant's lawyer:

> "Ryabikin was detained in St Petersburg in accordance with Article 61 of the [Minsk] Convention on Legal Assistance, as a person in respect of whom an international search warrant had been issued by the Turkmen law-enforcement bodies.
>
> Within 40 days the General Prosecutor of Turkmenistan submitted a request to extradite Ryabikin, on the basis of which, on an application by the St Petersburg Prosecutor's Office, the Kuybyshevskiy District Court applied the preventive measure of detention under Article 446 § 1 of the CCP.
>
> The question of extending the detention of a person detained under Article 446 § 1 of the CCP is not dealt with by Russian legislation.
>
> According to information from the Representative of the Russian Federation at the European Court of Human Rights, the decision of the President of the Chamber of the European Court to apply Rule 39 of the Rules of Court concerned only the expulsion/extradition/deportation, or any other forcible transfer, of Ryabikin to Turkmenistan, and no decision to release him has been taken."

On 8 and 21 June 2004 the St Petersburg City Prosecutor's Office informed the applicant's lawyer that her complaints of 12, 25 and 28 May and 7 July 2004 concerning the applicant's release were unsubstantiated, because Article 466 of the CCP did not provide for the possibility of prolonging the detention of persons being held with a view to extradition.

On 8 July 2004 the General Prosecutor's Office informed the applicant that his extradition to Turkmenistan had been stayed in view of the Court's application of Rule 39 of the Rules of Court. His allegations concerning persecution in Turkmenistan on political and ethnic grounds were under consideration. The letter concluded that there were no reasons to change the preventive measure applied to him.

On 26 August 2004 the General Prosecutor's Office replied to the applicant's request to release him by a letter similar to that of 25 May 2004.

On 31 December 2004 the General Prosecutor's Office replied to the applicant's lawyer that his detention was lawful and that on 12 October 2004 the St Petersburg City Court had confirmed the lawfulness of the decision of 27 February 2004. It further stated that the applicant's complaint concerning the lawfulness of his detention had been accepted for review by the Kalininskiy District Court.

(f) Complaints to the head of the detention facility

The applicant and his lawyer also appealed directly to the head of the detention facility IZ-47/4, asking for his release and stating that his detention since 27 April 2004 had been unlawful.

On 1 June 2004 his lawyer was informed that the applicant's continued detention was based on the court's decision of 27 February 2004, taken in accordance with Article 446 of the CCP.

The applicant again complained to the head of detention facility IZ 47/4 on 2 and 28 September 2004.

The applicant submits that his medical condition deteriorated while he was in detention.

On 17 December 2004 the applicant's lawyer submitted a letter to the head of the detention facility in which she stated that on 10 December 2004 she had talked to her client and had noted a visible deterioration of his health. Notably, he had difficulties talking in a coherent manner, and displayed neurotic reactions. She suggested that the applicant had had a stroke and requested an independent examination by a cardiologist and a neuropathologist.

On 29 December 2004 the head of the detention facility replied that the applicant had been transferred to the prison hospital and diagnosed with hypertension and a whitlow on one finger.

On 11 February 2005 the applicant's lawyer again requested the head of the detention facility to check if the applicant was in need of cardiological treatment.

On 17 February 2005 the head of the facility replied that the applicant had been diagnosed with coronary heart disease and arrhythmia, but that he had received medical treatment and did not require hospitalisation.

4. The applicant's release

On 9 March 2005 the Kuybyshevskiy District Court accepted for review the applicant's complaint concerning the unlawfulness of his continued detention, in which he had also referred to the deterioration of his health.

On 14 March 2005 the General Prosecutor's Office, in response to the request by the Kuybyshevskiy District Court, stated that no decision concerning the applicant's extradition to Turkmenistan had been taken and that his continued detention was lawful.

On 14 March 2005 the Kuybyshevskiy District Court held a public hearing in the presence of the applicant and his lawyer and decided to release him. The court noted that no decision on extradition had been taken by the General Prosecutor's Office, in view of the application of Rule 39 of the Rules of Court. It further noted that the CCP did not provide for the extension or alteration of a preventive measure in respect of a person arrested further to an extradition request. The District Court directly applied Article 17 of the Constitution of Russia, which guarantees rights and freedoms in accordance with internationally recognised principles and norms of international law, and Article 5 of the European Convention on Human Rights and concluded that the applicant should be released.

The General Prosecutor's Office appealed against that decision, but on 14 April 2005 the St Petersburg City Court upheld it.

5. Subsequent developments

In September 2005 the Court lifted the interim measure applied previously in respect of the applicant's extradition. At the same time it requested the Government to inform it about any new developments regarding the extradition proceedings pending against the applicant.

The applicant submitted that he continued to be under threat of arrest and extradition to Turkmenistan even after his release. According to him, on 5 December 2005 two plain-clothes policemen had visited his brother's house in St Petersburg, looking for him. They did not produce any documents and said that the applicant should go to the City Department of the Interior.

On 7 December 2005 the applicant's lawyer and his brother went to the Department's premises and were informed that the interim measure had been lifted and that the applicant should report to the Department of the Interior. No documents were produced in respect of any proceedings. The officers also refused to clarify whether there had been a decision to extradite the applicant to Turkmenistan. On 8 December the applicant called the Department but again received no explanations as to the status of his extradition. He did not go there in person, fearing that he would again be arrested.

In January 2006 the Government informed the Court that "the General Prosecutor's Office reverted to the examination of the question of the applicant's possible extradition. Since the applicant's whereabouts are not established, the ... Ministry of the Interior, acting on instructions of the General Prosecutor's Office, is taking actions in order to apprehend the applicant." In reply, the Court reminded the Government that they had been requested to submit updated information concerning the applicant's extradition. No such information has been forthcoming.

B. Relevant domestic law and practice

1. The Code of Criminal Procedure

Articles 108 and 109 of the Code of Criminal Procedure (CCP) of 2002 contain provisions relating to pre-trial detention. They provide that detention can be imposed by a judge on a reasoned request by the prosecutor, or an investigator duly authorised by the prosecutor, if no other measure of restraint can be applied. The presence of the accused in the courtroom is obligatory unless he has been placed on the international wanted list. The decision of the court to impose detention can be appealed against within three days to a higher court, which must consider it within three days from the day of receipt of the appeal. Article 109 sets the following terms of pre-trial detention: the term of detention cannot exceed two months. If the investigation continues, it can be extended up to six

months by the court on an application by the prosecutor. After that, an application by the prosecutor of the region, it can be extended up to 12 months. In exceptional circumstances, on an application by the General Prosecutor or his deputy, pre-trial detention can be extended up to a maximum of 18 months.

Article 125 of the CCP provides for judicial review of decisions by investigators that might infringe the constitutional rights of the participants in the proceedings or prevent a person's access to court.

Chapter 54 of the CCP regulates extradition on criminal charges. Articles 462 and 463 state that the decision to extradite a person further to a request from another country is taken by the General Prosecutor or his deputy. Such a decision is subject to appeal to a regional court within 10 days from the date of notification of the decision to the person concerned. The complaint is reviewed at a public hearing, in the presence of the person in question, his representative and the prosecutor. The decision of the regional court can be appealed against to the Supreme Court.

Article 464 provides that extradition cannot take place if the person whose extradition is sought is a Russian national or if he has refugee status.

Article 466 contains provisions relating to the detention of a person whose extradition is sought. Detention can be authorised by the General Prosecutor or his deputy upon receipt of an extradition request. If a foreign court has authorised the person's arrest, the decision of the prosecutor does not need to be confirmed by a Russian court. The period of detention cannot exceed the normal terms of detention pending investigation set by the Code of Criminal Procedure for similar crimes.

2. The 1993 Minsk Convention

The CIS Convention on legal assistance and legal relations in civil, family and criminal cases (the 1993 Minsk Convention), to which both Russia and Turkmenistan are parties, provides in Article 5 that the Parties communicate through their central, regional and other bodies. Its other relevant provisions are as follows:

Article 61: Arrest or detention before the receipt of a request for extradition

"1. The person whose extradition is sought may also be arrested before receipt of a request for extradition, if there is a related petition (*ходатайство*). The petition shall contain a reference to a detention order ... and shall indicate that a request for extradition will follow. A petition for arrest ... may be sent by post, wire, telex or fax.

2. The person may also be detained without the petition referred to in point 1 above if there are legal grounds to suspect that he has committed, in the territory of the other Contracting Party, an offence entailing extradition.

3. In case of [the person's] arrest or detention before receipt of the *request* for extradition, the other Contracting Party shall be informed immediately."

Article 61-1: Search for a person before receipt of the request for extradition

"1. The Contracting Parties shall ... search for the person before receipt of the request for extradition if there are reasons to believe that this person may be in the territory of the requested Contracting Party ...

2. A request for the search ... shall contain ... a request for the person's arrest and a promise to submit a request for his extradition.

3. A request for the search shall be accompanied by a certified copy of ... the detention order ...

4. The requesting Contracting Party shall be immediately informed about the person's arrest or about other results of the search."

Article 62: Release of the person arrested or detained

"1. A person arrested pursuant to Article 61 § 1 and Article 61-1 shall be released ... if no request for extradition is received by the requested Contracting Party within 40 days of the arrest.

2. A person arrested pursuant to Article 61 § 2 shall be released if no petition issued pursuant to Article 61 § 1 arrives within the time established by the law concerning arrest."

3. Case-law of the Constitutional Court

On 4 April 2006 the Constitutional Court examined an application by a Mr Nasrulloyev, who claimed that the legal situation where detention of a person pending extradition was not limited in time was incompatible with the constitutional guarantee against arbitrary detention. The Constitutional Court declared the application inadmissible. It pointed out that there was no ambiguity in the contested provisions because the general provisions governing measures of restraint should apply to all forms and stages of criminal proceedings, including proceedings concerning extradition. The Constitutional Court reiterated its settled case-law to the effect that excessive or arbitrary detention, unlimited in time and without judicial review, is not compatible with the Constitution.

C. Conditions in Turkmenistan

The applicant submitted a number of reports on the situation in Turkmenistan, including documents issued by the OSCE, the European Parliament, the UN Commission on Human Rights, the US State Department, Amnesty International, Memorial, Human Rights Watch and the International Helsinki Federation for Human Rights. These documents speak of serious and continuing human-rights violations occurring in Turkmenistan. In particular, they refer to persecution of ethnic minorities including Russians, violations of the principle of fair trial, widespread use of torture, intolerable conditions of detention and lack of access to detainees by independent bodies, lawyers and relatives.

In particular, the OSCE Moscow Mechanism Rapporteur's Report on Turkmenistan, issued by Prof. Emmanuel Decaux on 12 March 2003, stated:

> "Large-scale violations of all the principles of due process of law, like arbitrary detentions or show trials took place. Not only torture has been used to extract confessions, but the forced use of drugs was a means of criminalising the detainees, entailing lethal risks for them. A multiform collective repression fell on the 'enemies of the people', whereas forced displacement is announced in arid regions of the country, especially against people targeted on the ground of their ethnic origin. Even if the death penalty has been legally abolished, in practice, the survival expectancy of political detainees and displaced persons seems very low."

The Report recommended, *inter alia*:

> "Third States, and particularly the States parties to the European Convention on Human Rights, should refuse to extradite or to hand over Turkmen nationals who, in the current circumstances, are in danger of being subjected to torture or inhuman and degrading treatments. They should envisage the possibility of granting refugee status to all persons having a well-founded fear of persecution and co-operate with the UNHCR to this end."

Resolution 2003/11 of the Commission on Human Rights on the situation of human rights in Turkmenistan deplored "the conduct of the Turkmen authorities with regard to the lack of fair trials of the accused, the reliance on confessional evidence which may have been extracted by torture or the threat of torture, the closed court proceedings, contrary to Article 105 of the Constitution of Turkmenistan... and the refusal to allow diplomatic missions or international observers in Ashkhabad access to the trials as observers".

Resolution 2004/12 of the Commission on Human Rights on the situation of human rights in Turkmenistan expressed its grave concern "at the continuing failure of the Government of Turkmenistan to respond to the criticisms identified in the report of the Rapporteur of the Moscow mechanism of the OSCE as regards the investigation, trial and detention procedures following the reported assassination attempt against President Niyazov in November 2002, as well as the failure of the Turkmen authorities to allow appropriate independent bodies, family members and lawyers access to those convicted, or to provide any kind of evidence to dispel rumours that some of the latter have now died in detention". The Commission also called on Turkmenistan "to grant immediate access by appropriate international bodies, including the International Committee of the Red Cross, as well as lawyers and relatives, to detained persons, especially to persons detained following the events of 25 November 2002".

COMPLAINTS

1. The applicant complained under Article 3 of the Convention that his extradition to Turkmenistan would expose him to a real risk of being

subjected to torture or inhuman or degrading treatment. He argued that his extradition prior to the final determination of his appeal concerning the determination of his refugee status would be in violation of Russia's obligations under Article 3.

2. The applicant challenged the lawfulness of his detention with a view to extradition. He invoked Article 5 § 1 (f) of the Convention and argued that the detention had been unlawful under the national legislation and international instruments. He also submitted that the proceedings had not been conducted with the required diligence.

3. The applicant argued that he had not been properly informed of the reasons for his arrest, in violation of Article 5 § 2 of the Convention.

4. The applicant submitted that there had been a violation of Article 5 § 4 because he and his lawyer had been denied access to the materials that had served as a basis for the decision to detain him and because he had not been present at the hearing of 12 March 2004. He also submitted that he had had no opportunity to challenge the lawfulness of his detention, in breach of Article 5 § 4 of the Convention.

THE LAW

1. The applicant submitted that his extradition to Turkmenistan would be contrary to Article 3 of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government referred to the assurances of May 2004 from the General Prosecutor's Office of Turkmenistan that the applicant would not be subjected to persecution on political, religious or ethnic grounds, and that he would be prosecuted only for the offences of which he had been accused. This served as a guarantee, in their view, that the applicant would not be subjected to treatment in breach of Article 3 if he were returned to Turkmenistan. The Government also stated that the applicant's appeal concerning his refugee status had a suspensive effect on the extradition proceedings and that no decision concerning his extradition had been taken until the final determination of the case.

The applicant stressed that the Government had failed to obtain any relevant information from the Turkmen Government that could serve as such assurances. He referred to the reports on the situation in Turkmenistan by various international bodies and stated that he would be at risk of torture, inhuman or degrading treatment in custody because of the general conditions in places of detention in Turkmenistan and the widespread use of ill-treatment during investigations. He also submitted that he would be at

risk of persecution because of his ethnic origin and because of his personal experience.

The Court considers, in the light of the parties' submissions, that the complaint raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. Consequently, the Court concludes that the application cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant argued under Article 5 of the Convention that his detention for the purposes of extradition had been unlawful within the meaning of the Convention and the national legislation and that several safeguards relating to detention had been breached. This Article reads, as far as relevant:

> "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 to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. ...
>
> 4. 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. Article 5 § 1 (f) of the Convention

According to the Government, the applicant's detention with a view to extradition was in compliance with the relevant legislation and the Convention case-law. They noted that the applicant had been placed by Turkmenistan on the list of internationally wanted persons in 2001, and that he had first left Turkmenistan for the United Arab Emirates. They noted that following the applicant's arrest in St Petersburg, his detention had been authorised by the Kuybyshevskiy District Court in a decision of 27 February 2004, upheld on 12 March 2004. They also referred to the letter of 3 March 2004 from the head of the Ashkhabad Criminal Police containing additional information concerning the criminal charges against the applicant and envisaging further steps by the two General Prosecutors concerned.

The applicant argued that the procedure established for the authorisation of detention pending extradition under domestic law had not been complied with. He referred, in particular, to Articles 61 and 62 of the 1993 Minsk Convention and to Article 466 of the CCP and challenged the validity of the

documents relied on by the Government. He further argued that the proceedings had not been conducted with the required diligence and had therefore been arbitrary.

The Court considers, in the light of the parties' submissions, that the complaint raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. Consequently, the Court concludes that the application cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Article 5 § 2 of the Convention

The applicant argued that he had not been informed properly of the reason for his arrest.

Article 5 § 2 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Bordovskiy v. Russia*, no. 49491/99, §§ 55-56, 8 February 2005, and *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 19, § 40). When a person is arrested on suspicion of having committed a crime, Article 5 § 2 requires neither that the necessary information should be given in a particular form, nor that it should consist of a complete list of the charges held against the arrested person (see *X v. Germany*, no. 8098/77, Commission decision of 13 December 1978, Decisions and Reports (DR) 16, p. 111). When a person is arrested with a view to extradition, the information given may be even less complete (see *K. v. Belgium*, no. 10819/84, Commission decision of 5 July 1984, DR 38, p. 230).

The Court notes that in the present case the applicant was aware about a criminal case pending against him in Turkmenistan from a number of sources prior to his arrest. This information was also conveyed to him on 25 February 2004 during his arrest. Detailed information about the nature of the charge was contained in the order of 26 February 2004 issued by the prosecutor of the Central District of St Petersburg.

In such circumstances the Court is satisfied that the applicant understood the nature of the proceedings brought against him, as well as the reasons and legal basis for his detention. It follows that the complaint under Article 5 § 2 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Article 5 § 4 of the Convention

1. As to the alleged procedural defects of the hearings authorising the applicant's detention

The Government argued that during the court hearings concerning the applicant's detention he had been represented by a lawyer at first instance and on appeal. The applicant had been present at the hearing on 27 February 2004. They also stated that the applicant's second lawyer, Ms Tseytlina, had been allowed access to the case file before the hearing in the appellate court, which had been delayed for one day for that purpose. Finally, the Government noted that the St Petersburg City Court had later quashed the decision of 12 March 2004 and referred it back for re-examination in order to allow the applicant to participate in the proceedings.

The applicant insisted that there had been a violation of Article 5 § 4 because prior to the hearing of 12 March 2004 his new lawyer had not been allowed full access to the material in the file in his case and because his personal attendance had not been secured for that hearing.

The Court considers, in the light of the parties' submissions, that the complaint raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. Consequently, the Court concludes that the application cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. As to the availability of judicial review of the applicant's detention

The Government stated that the applicant had been able to challenge his continued detention. They referred to his numerous applications to the Kalininskiy, Dzerzhinskiy, Smolninskiy and Kuybyshevskiy district courts of St Petersburg and the decisions given by them. They pointed out that on 14 March 2005 the Kuybyshevskiy District Court had released the applicant from detention, referring directly to Article 5 of the Convention, in the absence of a time-limit in the domestic legislation for detention pending extradition.

The applicant maintained his complaint under this heading and stressed that for more that one year he had been unable to obtain a review of his detention.

The Court considers, in the light of the parties' submissions, that the complaint raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. Consequently, the Court concludes that the application cannot be declared manifestly ill-founded within the meaning of

Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints under Article 3 and Article 5 §§ 1 (f) and 4;

Declares inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Christos ROZAKIS
President