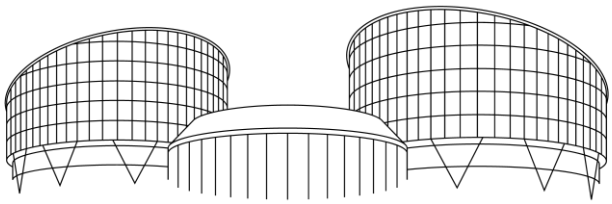

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KOZHAYEV v. RUSSIA

(Application no. 60045/10)

JUDGMENT

STRASBOURG

5 June 2012

FINAL

22/10/2012

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

In the case of Kozhayev v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 15 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 60045/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Belarusian national, Mr Vadim Yuryevich Kozhayev ("the applicant"), on 18 October 2010.

2. The applicant was represented by Ms R. Magomedova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. On 19 October 2010 the President of the First Section, acting upon the applicant's request of 18 October 2010, decided to apply Rules 39 and 41 of the Rules of Court, indicating to the Government that the applicant should not be extradited to Belarus until further notice and granting priority treatment to the application.

4. On 17 March 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Moscow.

A. The applicant's arrest and extradition proceedings

6. On 21 September 2004 the Belarus authorities instituted criminal proceedings against the applicant on charges of extortion. On 11 November 2004 the applicant was found guilty of extortion and sentenced to four years' detention in an open detention facility.

7. In 2005 the applicant escaped from the detention facility and arrived in Moscow.

8. On 1 April 2005 the Belarusian authorities issued an arrest warrant against the applicant in connection with his escape, which is a criminal offence in Belarus.

9. On 11 February 2009 the Prosecutor's Office for the Gomel Region (in Belarus) opened criminal proceedings against the applicant for escape from the detention facility and for being an accomplice to an attempted murder by a group of people in 1998. This second accusation concerned Article 139 § 1 of the Belarusian Criminal Code in conjunction with its Article 14 (see paragraphs 62-63 below). On the same date, the Prosecutor's Office ordered his detention and issued an arrest warrant.

10. On 23 November 2009 the applicant was arrested in Moscow and remanded in police custody. On the same day, the Belarusian authorities confirmed that the applicant was being prosecuted in Belarus and asked the Russian authorities to arrest him pending the submission of a formal extradition request.

11. A Russian prosecutor applied to the Savelovskiy District Court of Moscow seeking authorisation of the applicant's detention with a view to extradition. On 25 November 2009 the District Court granted this request and ordered the applicant's detention, referring to Articles 108 and 466 of the Russian Code of Criminal Procedure ("the CCrP") and to Article 61 of the Minsk Convention (see paragraphs 31, 37 and 53 below). No limit on the duration of the applicant's detention was specified in the detention order. The applicant did not appeal.

12. On 24 December 2009 the Russian Prosecutor General's Office received an extradition request in respect of the applicant from the Belarusian authorities. It contained the following information:

> "The investigation has established that [the applicant], acting with pre-meditation and in concert with Sh. and I., assisted I. in attempting to murder P. ... The victim remained alive ...
>
> If extradited, [the applicant] would not be prosecuted or punished for any criminal offence other than those indicated in the extradition request... He will not be subjected to torture, inhuman or degrading treatment or punishment... The extradition request is not aimed at persecuting him for political reasons or on racial, religious or national grounds. The acts for which extradition is sought are not punishable by the death penalty ..."

13. On 18 January 2010 the District Court examined a request from a prosecutor and extended the term of the applicant's detention until 23 May 2010, with reference to the statutory six-month period contained in Article 109 of the CCrP, as well as to Article 466 of the CCrP and Article 61 of the Minsk Convention. The District Court relied on the following considerations:

(i) the applicant was being prosecuted in Belarus for a particularly serious offence for which the statutory limitation period had not expired;

(ii) a detention order had been issued by Belarusian authorities; and

(iii) the applicant's detention was necessary in relation to an "extradition check procedure" pending in relation to the extradition request from the Belarusian authorities.

14. The detention order of 18 January 2010 was upheld on appeal on 24 February 2010.

15. On 12 April 2010 the Russian Prosecutor General's Office issued an extradition order on the charges under Article 139 § 1 of the Belarusian Criminal Code, in the following terms:

> "[The applicant] has been charged under Articles 139 § 1 and 415 of the Belarusian Criminal Code, in conjunction with its Article 14 ... He has been accused of assisting, in concert with others, Mr I. in committing attempted murder ..."

Extradition on the charges under Article 415 of that Code was refused. The extradition order does not contain an assessment of the risk of the applicant being subjected to inhuman or degrading treatment or punishment.

16. After the expiry of the previous detention order on 23 May 2010, on 24 May 2010 the District Court examined a request from a prosecutor and extended the applicant's detention until 23 November 2010. The court considered that the prosecutor's delay in applying for the extension did not impede the court's examination of the request and could not justify its dismissal.

17. On 23 June 2010 the Moscow City Court upheld the detention order of 24 May 2010.

18. In the meantime, the applicant sought judicial review of the extradition order of 12 April 2010 before the Moscow City Court. Several hearings were scheduled and adjourned because the applicant sought to obtain additional evidence, lodged refugee and temporary asylum applications and subsequently brought judicial review proceedings concerning those applications (see paragraphs 25-27 below), or because one of his lawyers could not attend a court hearing. The City Court considered that the outcome of the above applications and proceedings were relevant to the judicial review of the extradition order and that the review proceedings before it therefore required adjournment.

19. The applicant argued that he should not be extradited to Belarus because he feared being subjected to ill-treatment and capital punishment there and because he was a follower of the Hare Krishna movement.

20. On 6 September 2010 the City Court confirmed the extradition order. The court held as follows:

> "... [The applicant's] application to the migration authority for temporary asylum does not affect the examination of the extradition order on judicial review. Such application, lodged after his arrest, should not affect the court's conclusions concerning the extradition order ...
>
> As follows from the information provided by the Russian Ministry of Foreign Affairs, there is no information concerning any persecution in respect of [the applicant] in Belarus for political, religious or other reasons.
>
> As follows from the Belarusian Criminal Code, the offence with which he has been charged in Belarus is not punishable by the death penalty. The Belarusian Prosecutor General's Office provided assurances that [the applicant] would not be prosecuted for any other offenses committed prior to extradition and would not be subjected to any proscribed form of ill-treatment or punishment ..."

21. On 20 October 2010 the Supreme Court of Russia upheld the judgment of 6 September 2010. The appeal court held as follows:

> "[The applicant's] arguments concerning persecution on political or religious grounds were properly examined and dismissed by the first-instance court ... Its judgment should not be set aside because the extradition order was issued before any final court decision on the refugee application ..."

22. The twelve-month period of the applicant's detention was set to expire on 23 November 2010. Thus, having examined a prosecutor's request, on 19 November 2010 the City Court extended the applicant's detention to 23 May 2011, the date on which the maximum statutory detention period of eighteen months would be reached (see paragraph 31 below). The court noted that the applicant had lodged an application before the Court; that the Court had indicated, under Rule 39 of the Rules of Court, to the Russian authorities not to enforce the extradition order until further notice; and that such indication remained in force. The court held as follows:

> "The Supreme Court's ruling of 29 October 2009 requires that detention of a person with a view to extradition should be determined under the procedure prescribed in Article 109 of the CCrP ... It provides that detention beyond twelve months and until eighteen months may be ordered, in exceptional circumstances, in relation to an investigator's applications and in relation to particularly serious offences... The present case discloses exceptional circumstances, taking into account the gravity of the charges ..."

Apparently, the applicant did not appeal.

23. On 16 May 2011 the applicant was released from detention on an undertaking not to leave his town of residence.

B. Refugee and temporary asylum applications

24. As stated in a letter of 1 July 2010 signed by the representative of the Moscow Chapter of the International Society for Krishna Consciousness, the applicant was married to a Russian national and they were raising a child in compliance with the "Vedic standards". The marriage ceremony had been religious and had followed the Vedic rules. As indicated in another similar letter, the applicant had joined the Hare Krishna movement in the 1990s and had been actively involved in the movement as a follower and a preacher.

25. The applicant applied for refugee status, stating that between 1992 and 2005 he had distributed printed material in Belarus about the Hare Krishna movement and had practised and taught yoga. From 1997 onwards he had started to "have problems" with the Belarusian authorities because of his religion and related activities. He had been arrested on several occasions. In 2004 he had wanted to open an educational institution in Minsk, which would have taught the teachings of Bhaktivedanta Swami. In 2004 he and his wife had been poisoned and his wife had been admitted to hospital. Thereafter, they had had to move to another town in Belarus. Soon thereafter, a criminal case had been opened against the applicant and he had been sentenced to four years' imprisonment. He feared ill-treatment and the imposition of the death penalty on account of the criminal charges against him, if returned to Belarus.

26. By a final decision of 17 August 2010 the City Court rejected the applicant's refugee application. The court considered that his allegations concerning criminal prosecution in the country of origin did not disclose any risk of ill-treatment; he had not provided any evidence concerning any previous persecution or a risk of persecution on religious grounds; between 2005 and his arrest in 2009 he had not sought protection in Russia on any such grounds; his application had thus been no more than a challenge to the extradition proceedings pending in respect of him.

27. In September 2010 the applicant applied for temporary asylum on similar grounds. His application was rejected by the migration authority on 4 October 2010. This refusal was confirmed by the Federal Migration Authority on 17 January 2011, stating that:

> "The Belarusian Criminal Code provides for capital punishment as an exceptional penalty. Such sentences are carried out. Conditions of detention are in line with generally acceptable standards (see the Ministry of Foreign Affairs, no. 2031/1 of 10 March 2010). The Belarusian Prosecutor General's Office indicates that the charges against the applicant do not entail the death penalty as a possible sentence. The MFA has no information about torture, ill-treatment, unlawful arrest, discrimination, persecution for racial, religious or social reasons in Belarus ... The applicant has not provided convincing facts in support of his fear of being a victim of religious persecution in Belarus. The criminal prosecution in respect of him has no connection to his claimed religious beliefs. He would be able to lodge an appeal against the trial judgment ..."

The applicant did not seek judicial review of the above refusals.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation of 1993

28. Everyone has the right to liberty and security (Article 22 § 1). Detention is permissible only on the basis of a court order. The length of time for which a person may be detained prior to obtaining such an order must not exceed forty-eight hours (Article 22 § 2).

B. Code of Criminal Procedure

29. The term "court" is defined by the Code of Criminal Procedure ("the CCrP") of 2002 as "any court of general jurisdiction which examines a criminal case on the merits and delivers decisions provided for by this Code" (Article 5 § 48). The term "judge" is defined by the CCrP as "an official empowered to administer justice" (Article 5 § 54).

30. A district court has the power to examine all criminal cases except for those falling within the respective jurisdictions of a justice of the peace, a regional court or the Supreme Court of Russia (Article 31 § 2).

31. Chapter 13 of the CCrP governs the application of preventive measures. Detention is a preventive measure applied on the basis of a court decision to a person suspected of or charged with a criminal offence punishable by at least two years' imprisonment when it is impossible to apply a more lenient preventive measure (Article 108 § 1). A court request for remand in custody is submitted by an investigator (*следователь*) with the support of the head of the investigative authority or by the police officer in charge of the inquiry (*дознаватель*) with the support of a prosecutor (Article 108 § 3). A request for remand in custody should be examined by a judge of a district court or a military court of a corresponding level in the presence of the person concerned (Article 108 § 4). Appellate courts should examine appeals lodged against judicial decisions on remand in custody within three days (Article 108 § 11). The period of detention pending the investigation of a criminal case must not exceed two months (Article 109 § 1) but may be extended up to six months by a judge of a district court or a military court of a corresponding level. Further extensions up to twelve months may be granted with regard to persons accused of serious or particularly serious criminal offences (Article 109 § 2). Extensions up to eighteen months may be granted on an exceptional basis with regard to persons accused of particularly serious criminal offences (Article 109 § 3).

32. A preventive measure can be applied with a view to ensuring a person's extradition in compliance with the procedure established under Article 466 of the CCrP (Article 97 § 2).

33. Chapter 54 of the CCrP (Articles 460-468) governs the procedure to be followed in the event of extradition.

34. A court is to review the lawfulness and validity of a decision to extradite within a month of receipt of a request for review. The decision should be taken in open court by a panel of three judges in the presence of a prosecutor, the person whose extradition is sought and the latter's legal counsel (Article 463 § 4).

35. Article 464 § 1 lists the conditions under which extradition cannot be authorised. Thus, the extradition of the following should be denied: a Russian citizen (Article 464 § 1-1) or a person who was granted asylum in Russia (Article 464 § 1-2); a person in respect of whom a conviction has become effective or criminal proceedings have been terminated in Russia in connection with the same act for which he or she has been prosecuted in the requesting State (Article 464 § 1-3); a person in respect of whom criminal proceedings cannot be launched or a conviction cannot become effective in view of the expiry of the statute of limitations or under another valid ground in Russian law (Article 464 § 1-4); or a person in respect of whom extradition has been blocked by a Russian court in accordance with the legislation and international treaties of the Russian Federation (Article 464 § 1-5). Finally, extradition should be denied if the act that gave grounds for the extradition request does not constitute a criminal offence under the Russian Criminal Code (Article 464 § 1-6).

36. In the event that a foreign national whose extradition is being sought is being prosecuted or is serving a penalty for another criminal offence in Russia, his extradition may be postponed until the prosecution is terminated, the penalty is lifted on any valid ground or the sentence is served (Article 465 § 1).

37. Upon receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, the Prosecutor General or his deputy is to "take measures" in order to decide on the preventive measure in respect of the person whose extradition is being sought. The preventive measure is to be applied in accordance with established procedure (Article 466 § 1).

38. Upon receipt of a request for extradition accompanied by an arrest warrant issued by a foreign judicial body, a prosecutor may place the person whose extradition is being sought under house arrest or in custodial detention without prior approval of his or her decision by a court of the Russian Federation (Article 466 § 2).

C. Decisions of the Russian Constitutional Court

1. Decision of 17 February 1998

39. Verifying the compatibility of section 31 § 2 of the Law on the Legal Status of Foreign Nationals in the USSR of 1981, the Constitutional Court ruled that a foreign national liable to be expelled from Russia could not be detained for more than forty-eight hours without a court order.

2. Decision no. 101-O of 4 April 2006

40. Assessing the compatibility of Article 466 § 1 of the CCrP with the Russian Constitution, the Constitutional Court reiterated its settled case-law to the effect that excessive or arbitrary detention, unlimited in time and without appropriate review, was incompatible with Article 22 of the Constitution and Article 14 § 3 of the International Covenant on Civil and Political Rights in all cases, including extradition proceedings.

41. In the Constitutional Court's view, the absence of specific regulation of detention matters in Article 466 § 1 did not create a legal lacuna incompatible with the Constitution. Article 8 § 1 of the 1993 Minsk Convention provided that, in executing a request for legal assistance, the requested party would apply its domestic law, which in the case of Russia was the procedure laid down in the CCrP. That procedure comprised, in particular, Article 466 § 1 of the CCrP and the provisions in its Chapter 13 ("Preventive measures"), which, by virtue of their general character and position in Part I of the Code ("General provisions"), applied to all stages and forms of criminal proceedings, including proceedings for the examination of extradition requests.

42. The Constitutional Court emphasised that the guarantees of the right to liberty and personal integrity set out in Article 22 and Chapter 2 of the Constitution were fully applicable to detention with a view to extradition. Accordingly, Article 466 of the CCrP did not allow the authorities to apply a custodial measure without complying with the procedure established in the CCrP or in excess of the time-limits fixed in the Code.

3. Decision no. 158-O of 11 July 2006 on the Prosecutor General's request for clarification

43. The Prosecutor General asked the Constitutional Court for official clarification of its decision no. 101-O of 4 April 2006 (see above), for the purpose, in particular, of elucidating the procedure for extending a person's detention with a view to extradition.

44. The Constitutional Court refused the request on the grounds that it was not competent to indicate specific provisions of criminal law governing the procedure and the maximum periods for holding a person in custody

with a view to extradition. That matter was within the competence of the courts of general jurisdiction.

4. Decision no. 333-O-P of 1 March 2007

45. The Constitutional Court reiterated its settled case-law to the effect that the scope of the constitutional right to liberty and personal inviolability was the same for foreign nationals and stateless persons as for Russian nationals. A foreign national or stateless person may not be detained in Russia for more than forty-eight hours without a judicial decision. That constitutional requirement served as a guarantee against excessively long detention beyond forty-eight hours, and also against arbitrary detention, in that it required a court to examine whether the arrest was lawful and justified.

46. The Constitutional Court held that Article 466 § 1 of the Code of Criminal Procedure, read in conjunction with the Minsk Convention, could not be construed as permitting the detention of an individual for more than forty-eight hours on the basis of a request for his or her extradition without a decision by a Russian court. A custodial measure could be applied only in accordance with the procedure established in the Russian Code of Criminal Procedure and within the time-limits fixed in the Code.

5. Decision no. 383-O-O of 19 March 2009

47. The Constitutional Court dismissed as inadmissible a request for a review of the constitutionality of Article 466 § 2 of the CCrP, stating that this provision "does not establish maximum periods for custodial detention and does not establish the reasons and procedure for choosing a preventive measure, it merely confirms a prosecutor's power to execute a decision already delivered by a competent judicial body of a foreign state to detain an accused. Therefore the disputed norm cannot be considered to violate the constitutional rights of [the claimant] ...".

D. Ruling no. 22 of 29 October 2009 by the Russian Supreme Court

48. In Ruling no. 22, adopted by the Plenary Session of the Supreme Court of the Russian Federation on 29 October 2009 ("the Ruling"), it was stated that, pursuant to Article 466 § 1 of the CCrP, only a court could order the remand in custody of a person in respect of whom an extradition check was pending and where the authorities of the country requesting extradition had not submitted a court decision remanding him or her in custody. The judicial authorisation of remand in custody in that situation was to be carried out in accordance with Article 108 of the CCrP and following a prosecutor's request for that person to be remanded in custody (paragraph 34 of the Ruling). In deciding to remand a person in custody, a court was to

examine whether there were factual and legal grounds for the application of that preventive measure. If the extradition request was accompanied by a detention order of a foreign court, a prosecutor was entitled to remand the person in custody without a Russian court's authorisation (Article 466 § 2 of the CCrP) for a period not exceeding two months, and the prosecutor's decision could be challenged in the courts under Article 125 of the CCrP.

49. In extending a person's detention with a view to extradition, a court was to apply Article 109 of the CCrP.

III. RELEVANT INTERNATIONAL DOCUMENTS AND OTHER MATERIAL

A. The 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters ("the Minsk Convention")

50. When carrying out actions requested under the Minsk Convention, to which Russia and Belarus are parties, an official body applies its country's domestic laws (Article 8 § 1).

51. Extradition for the institution of criminal proceedings can be sought with regard to a person whose acts constitute crimes under the legislation of the requesting and requested parties and which are punishable by imprisonment for at least one year (Article 56 § 2).

52. Upon receipt of a request for extradition, the requested country should immediately take measures to search for and arrest the person whose extradition is being sought, except in cases where no extradition is possible (Article 60).

53. The person whose extradition is sought may be arrested before receipt of a request for extradition if there is a related petition. The petition must make reference to a detention order and indicate that a request for extradition will follow (Article 61 § 1). If the person is arrested or detained before receipt of the extradition request, the requesting country must be informed immediately (Article 61 § 3).

54. A person detained pending extradition pursuant to Article 61 § 1 of the Minsk Convention must be released if the requesting country fails to submit an official request for extradition with all requisite supporting documents within forty days of the date of remand in custody (Article 62 § 1).

B. International reports on Belarus

55. In support of his complaint of a risk of ill-treatment, the applicant referred to a 1997 report from the United Nations Human Rights

Committee; a 2000 report of the UN Committee against Torture; and 2005-2006 reports by the UN Special Rapporteur on human rights in Belarus.

56. The applicant also relied on a 2004 report of the UN Working Group on Arbitrary Detention and, deploring appalling conditions of detention in Belarus, the 2008 report on the international fact-finding mission from the International Federation for Human Rights ("the FIDH").

57. Lastly, the applicant referred to the Human Rights Watch Report "*Shattering Hopes. Post-Election Crackdown in Belarus*", as well as the report entitled "*Belarus. Restrictions on the Political and Civil Rights of Citizens Following the 2010 Presidential Election*" issued by the FIDH.

58. Furthermore, as reported by Amnesty International, in June 2010 the Belarusian House of Representatives set up a working group to draft proposals on imposing a moratorium on the death penalty. However, Belarus has continued to hand down death sentences despite international pressure. Reportedly, four people were sentenced to death for murder in 2009 and two people were sentenced to death for murder in 2010. In 2011 two more people were sentenced to death.

59. In 2010 the UN Committee against Torture considered the fourth periodic report of Belarus, which contained information in relation to the period under review (September 1999 – August 2009). In 2011 the Committee adopted, *inter alia*, the following conclusions (CAT/C/BLR/CO/4):

> "... 6. The Committee is seriously concerned about numerous, consistent reports that detainees are frequently denied basic fundamental legal safeguards, including prompt access to a lawyer and medical doctor and the right to contact family members, and this pertains especially to those detainees charged under article 293 of the Criminal Code. Such reports include cases raised jointly by several special procedure mandate holders, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and pertaining to, inter alia, Andrei Sannikov who made an allegation during trial in May 2011 about the denial of his rights to prompt access to lawyer, to contact family and to medical treatment despite injuries caused by the authorities during arrest, and Vladimir Neklyaev ...
>
> 10. The Committee is deeply concerned over the numerous and consistent allegations of widespread torture and ill-treatment of detainees in the State party. According to the reliable information presented to the Committee, many persons deprived of their liberty are tortured, ill-treated and threatened by law enforcement officials, especially at the moment of apprehension and during pre-trial detention. These confirm the concerns expressed by a number of international bodies, inter alia, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Human Rights Council (resolution 17/24), the United Nations High Commissioner for Human Rights and the Organization for Security and Cooperation in Europe. While noting article 25 of the Constitution which prohibits torture, the Committee is concerned about the substantial gap between the legislative framework and its practical implementation (arts. 2, 4, 12 and 16)...
>
> 11. The Committee continues to be deeply concerned about the persistent and prevailing pattern of failure of officials to conduct prompt, impartial and full

investigations into the many allegations of torture and ill-treatment and to prosecute alleged perpetrators, the lack of independent investigation and complaint mechanisms, the intimidation of the judiciary, the low level of cooperation with international monitoring bodies, which have led to serious underreporting and impunity ...

16. While noting the information provided by the State party that the definition of torture contained in article 1 of the Convention is used for the purpose of criminal prosecution of perpetrators of acts of tortures and the Office of the Procurator-General is preparing a bill on amendments to the criminal legislation, the Committee is concerned that such definition of torture has never been applied by domestic courts. The Committee remains concerned that the national legislation does not contain provisions defining torture and ensuring absolute prohibition of the torture. It is also concerned that articles 128 and 394 of the Criminal Code do not criminalize torture in accordance with article 4, paragraph 2, of the Convention (arts. 1, 2 and 4) ..."

The Committee's observations contain the following conclusions concerning conditions of detention and the death penalty in Belarus:

"19. While welcoming efforts made by the State party to improve the living condition of detained persons (CAT/C/BLR/4, paras. 21 ff.) and the State party's acceptance of the recommendation made in the course of the universal periodic review to that end (A/HRC/15/16, para. 97.30), the Committee remains deeply concerned about continuing reports of poor conditions in places of deprivation of liberty, including an appeal by the Special Rapporteur on the question of torture concerning the conditions in several places of detention such as the SIZO in Minsk (A/HRC/4/33/Add.1, para. 16). This includes the problem of the overcrowding, poor diet and lack of access to facilities for basic hygiene and inadequate medical care (arts. 11 and 16) ...

27. The Committee is concerned by reports of the poor conditions of persons sentenced to death, and regarding the secrecy and arbitrariness surrounding the execution of persons sentenced to death, including reports that the families of persons sentenced to the death penalty are only informed days or weeks after the execution has taken place, that they are not given the opportunity for a last visit to the prisoner, that the body of the executed prisoner is not handed over to the family and the place of burial is not disclosed to them. Furthermore, the Committee is deeply concerned at reports that some death row prisoners are not provided with fundamental legal safeguards and the discrepancy between reports of the authorities and other, various sources on this matter. Although the Committee notes that a parliamentary working group continues to consider the possibility of establishing a moratorium of the death penalty, it regrets the execution of two death row inmates whose cases were being reviewed by the Human Rights Committee, despite its request for interim measures ..."

60. Some other reports and information concerning Belarus have been summarised by the Court in *Puzan v. Ukraine*, no. 51243/08, §§ 20-24, 18 February 2010.

C. Relevant provisions of Belarusian law

61. Article 59 of the Belarusian Criminal Code provides, in its current version, that the death penalty can be exceptionally imposed for certain

particularly serious criminal offenses related to premeditated murder with aggravating circumstances.

62. As follows from Article 139 § 1 of the Code, in its current version, murder is punishable by a prison term from six to fifteen years. The death penalty is enumerated in Article 139 § 2 among the possible sentences for certain specific situations, such as: murder committed by a group of people; murder of two or more people; murder of a child, an elderly person or a pregnant woman; murder in connection with kidnapping; and murder committed to cover up another criminal offence.

63. Article 14 § 1 of the Code provides a definition of an attempted/inchoate criminal offence. Its paragraph 2 specifies that "liability for an attempted offence should be imposed under the same Article of the Code". Article 67 of the Code provides that the death penalty should not be imposed for an attempted offence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

64. The applicant complained under Article 3 of the Convention that if extradited to Belarus, he risked being sentenced to the death penalty; he would be ill-treated in Belarusian detention facilities, in particular, with a view to extracting a confession from him in relation to the criminal offences he was accused of; and that he would have to suffer from appalling conditions of detention in such facilities. The applicant also alleged that the above matters, in particular concerning the risk of ill-treatment, had not been properly examined by the Russian authorities.

65. Article 3 of the Convention reads as follows:

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

A. The parties' submissions

1. The Government

66. The Government argued that the applicant did not have victim status, as enforcement of the extradition order had been and remained suspended due to the application of Rule 39 of the Rules of Court. Furthermore, in the Government's view, the applicant had not made any detailed submissions about the risk of ill-treatment and, thus, had not exhausted domestic

remedies. Finally, the Government submitted that Belarus had ratified and applied a large number of international treaties aimed at the protection of human rights. The Belarusian authorities had provided assurances that the applicant would not be prosecuted for offences other than those indicated in the extradition request and would not be subjected to torture or ill-treatment or political persecution. The offences for which the applicant was being prosecuted did not entail the possibility of a sentence of capital punishment. The Russian courts had delved into the issue of the possible risk of the applicant's ill-treatment and had found it to be unsubstantiated. Thus, the applicant had no case to argue.

2. The applicant

67. The applicant argued that while the current charges against him in Belarus did not entail capital punishment, they might be reviewed by the Belarusian authorities, for instance on account of the ongoing preliminary investigation. The Belarusian assurances did not directly dispel the risk of ill-treatment; they did not bind the Belarusian investigating authorities and were not subject to any enforcement mechanism. The unexplained delay in bringing a prosecution against the applicant (for offences dating back to 1998) coupled with his profile as a member of a religious community, constituted reasonable grounds to consider that he would be persecuted in Belarus.

68. The information concerning ill-treatment in detention in Belarus was reliable while it remained scarce due to the country's refusal to co-operate with the UN agencies and the Council of Europe (see paragraphs 55-57 above). The crime of torture was not punishable under Belarusian law.

B. The Court's assessment

1. Admissibility

69. The Court notes that the extradition order remains in force and thus that the applicant can still be regarded as running a risk of extradition in view of the criminal case pending against him in Belarus. Therefore, the applicant has not lost victim status in respect of the alleged violation of Article 3 of the Convention.

70. The Court observes that the applicant raised before the national authorities, including in the course of the extradition proceedings, various arguments relating to the risk of inhuman and degrading treatment or punishment in the event of his extradition to Belarus. Thus, the Government's argument concerning non-exhaustion of domestic remedies should be dismissed.

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

2. Merits

(a) General principles

72. The Court reiterates that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 of the Convention in the requesting country. The establishment of that responsibility inevitably involves an assessment of the situation in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the requesting country, whether under general international law, the Convention or otherwise. In so far as any responsibility under the Convention is or may be incurred, it is responsibility incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I, and *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

73. In determining whether it has been shown that the applicant runs a real risk, if extradited, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *H.L.R. v. France*, 29 April 1997, § 37, *Reports* 1997-III). Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the extradition (see *Cruz Varas and Others v. Sweden*, 20 March 1991, §§ 75-76, Series A no. 201, and *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215). However, if the applicant has not been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Chahal v. the United Kingdom*, 15 November 1996, §§ 85-86, *Reports* 1996-V).

74. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of the applicant being extradited to the requesting country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others*, cited

above, § 108 *in fine*). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *Ryabikin v. Russia*, no. 8320/04, § 112, 19 June 2008; see also paragraphs 79-80 below concerning the assessment of and weight to be given to the available material).

75. As regards the general situation in a particular country, the Court considers that it can attach certain weight to the information contained in recent reports from independent international human rights protection organisations or governmental sources (see, for example, *Chahal*, cited above, §§ 99-100; *Müslim v. Turkey*, no. 53566/99, § 67, 26 April 2005; *Said v. the Netherlands*, no. 2345/02, § 54, ECHR 2005-VI; and *Al-Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007).

76. At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the country of destination does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001). Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov*, cited above, § 73).

77. Concerning its own scrutiny, the Court reiterates that, in view of the subsidiary nature of its role, it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a case. The Court has held in various contexts that where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, among others, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 179-80, 24 March 2011). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (ibid).

78. At the same time, as already mentioned, in accordance with Article 19 of the Convention, the Court's duty is to ensure the observance of the commitments undertaken by the Contracting Parties to the Convention. With reference to extradition or deportation, the Court reiterates that in cases where an applicant provides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government, the Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic

materials, as well as by materials originating from other reliable sources (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007).

79. In assessing such material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations (see *Saadi v. Italy* [GC], no. 37201/06, § 143, ECHR 2008). Consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State), through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that the same consideration must apply, *a fortiori*, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do (see *NA. v. the United Kingdom*, no. 25904/07, § 121, 17 July 2008).

80. While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports which consider the human rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court. Ultimately, the Court's own assessment of the human rights situation in a country of destination is carried out only to determine whether there would be a violation of Article 3 if the applicant in the case before it were to be extradited to that country. Thus the weight to be attached to independent assessments must inevitably depend on the extent to which those assessments are couched in terms similar to Article 3 (ibid, § 122).

81. Lastly, the relevant general principles concerning the death penalty have been summarised by the Court in *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, §§ 115-28, ECHR 2010 (extracts).

(b) Application of the principles to the present case

(i) Risk of ill-treatment

82. In line with the case-law cited above, the Court should examine whether the foreseeable consequences of the applicant's extradition to Belarus, which is not a Council of Europe member State, are such as to bring Article 3 of the Convention into play. Since he has not yet been extradited owing to the indication by the Court of an interim measure under Rule 39 of the Rules of Court, the material date for the assessment of that

risk is that of the Court's consideration of the case, taking into account the assessment made by the domestic authorities.

83. It is noted that the substantial part of the reports, relied upon by the applicant, are not recent or concern political rights and freedoms, in particular in the context of the 2010 Presidential election (see paragraphs 55 and 57 above). At the same time, the Court also notes that a number of more recent international documents available demonstrate serious concerns as to the human rights situation in Belarus (see, among others, paragraph 59 above).

84. The Court observes at the outset that the domestic authorities and the Government discarded the alleged risk of ill-treatment and relied on the assurances provided by the Belarusian authorities that the applicant would not be prosecuted for offences other than those indicated in the extradition request and would not be subjected to torture or ill-treatment or political persecution (see paragraphs 20 and 66 above). In this respect the Court reiterates that it has already cautioned against reliance on diplomatic assurances against torture from States where torture is endemic or persistent. Furthermore, it should be pointed out that even where such assurances are given that would not absolve the Court from the obligation to examine whether such assurances provided, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention (see, *Chahal*, § 105 and *Saadi*, § 148, both cited above). In the present case the Court considers that the first undertaking was not such as to dispel the risk of inhuman or degrading treatment or punishment. As to the second statement, the Government did not comment on the applicant's argument that such statement did not bind the Belarusian investigating authorities and were not subject to any enforcement mechanism. In any event, in view of the available reports (see, among others, paragraph 59 above), the Court is not ready to give any particular weight to this statement in the present case (see, for comparison, *Babar Ahmad and others v. the United Kingdom* (dec.), nos. 24027/07, 11949/08 and 36742/08, § 105, 6 July 2010).

85. Turning to the assessment of the applicant's situation, the Court observes that between his arrival in Russia in 2005 and the extradition proceedings the applicant did not initiate any proceedings relating to the circumstances of his departure from the country of origin. In fact, it does not follow from the available material that after his arrest the applicant made any specific allegations of a risk of ill-treatment in Belarus. This explains, at least in part, why the extradition order contained no assessment of the risk of the applicant being subjected to inhuman or degrading treatment.

86. The Court notes that the Russian Code of Criminal Procedure listed the conditions under which extradition could not be authorised, including when a person was granted asylum in Russia or when a Russian court established obstacles to extradition, in accordance with the legislation and

international treaties of Russia (see paragraph 35 above). It should also be noted that the national court adjourned proceedings on judicial review in respect of the extradition order, awaiting the outcome of the refugee application lodged by the applicant, and took it into consideration.

87. The Court observes in that connection that the applicant's application for refugee status related - in substance - to his alleged religious beliefs and activities (see paragraph 25 above). However, besides making reference to various international reports concerning the general human-rights situation in Belarus, the applicant has not substantiated an individualised risk of ill-treatment on account of his alleged religious beliefs. He did not provide convincing arguments and evidence relating to any alleged persecution of Hare Krishna followers in Belarus.

88. Furthermore, while it is common ground between the parties that in the event of his extradition the applicant will be kept in detention in Belarus pending trial, his reference to a general problem concerning human rights observance in the requesting country cannot alone serve as a sufficient basis to bar extradition.

89. It is true that the Court previously considered that extradition or deportation to a specific country on charges relating to politically and/or religiously motivated criminal offences could, depending on the context, raise serious issues under Article 3 of the Convention (see *Muminov v. Russia*, no. 42502/06, § 94, 11 December 2008, concerning the extradition to Uzbekistan on the criminal charges relating to his membership of a proscribed religious organisation). At the same time, no such special context was present when an applicant was charged with an ordinary criminal offence (see, for comparison, *Elmuratov v. Russia*, no. 66317/09, § 84, 3 March 2011, and *Garayev v. Azerbaijan*, no. 53688/08, § 72, 10 June 2010, also concerning the extradition to Uzbekistan). By way of comparison, it is noted that the applicant in the present case was charged with an ordinary criminal offence without any particular, for instance political, context (see, for comparison, *Kamyshev v. Ukraine*, no. 3990/06, § 44, 20 May 2010; and *Galeyev v. Russia*, no. 19316/09, § 55, 3 June 2010, in which the Court considered that the applicants' extradition to Belarus on charges of abuse of power by a public official and extortion, respectively, would not entail a violation of Article 3 of the Convention). The applicant in the present case does not claim to belong to the political opposition (see *Y.P. and L.P. v. France*, no. 32476/06, § 66, 2 September 2010, in which case the Court considered that the removal of a Belarusian national who had been actively involved with the political opposition movement in Belarus, would violate Article 3 of the Convention). The applicant's reliance on various reports based on the assessment of the political context in relation to the elections in Belarus is therefore not persuasive.

90. The applicant did not allege that his previous experience of criminal prosecution in Belarus had involved any circumstances that substantiated a

serious risk of ill-treatment or unfair trial in the future (see, by contrast, *Koktysh v. Ukraine*, no. 43707/07, § 64, 10 December 2009, in which case the allegation of ill-treatment was assessed in the light of the major issue relating to the death penalty and the alleged prior ill-treatment). The applicant's allegation that any detained criminal suspect in Belarus runs a risk of ill-treatment is too general. Having examined the available material and the parties' submissions, the Court considers that it has not been substantiated that the human rights situation in Belarus is such as to call for a total ban on extradition to that country, for instance on account of a risk of ill-treatment of detainees (see, for a similar approach, *Bordovskiy v. Russia* (dec.), no. 49491/99, 11 May 2004, and, more recently, *Puzan*, § 34; *Kamyshev*, § 44, and *Galeyev*, § 55, all cited above).

91. Lastly, the Court noted that there is no evidence that members of the applicant's family were previously persecuted or ill-treated in Belarus. No inferences, beyond mere speculation, should be made in the present case from the alleged delay in bringing proceedings against the applicant in relation to the attempted murder in 1998.

92. Therefore, it cannot be said that the applicant referred to any individual circumstances which substantiated his fears of ill-treatment and that substantial grounds have been shown for believing that he would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 of the Convention in the requesting country. The Court concludes that the applicant's extradition to Belarus would not be in breach of Article 3 of the Convention.

(ii) Risk of capital punishment

93. The applicant's second argument concerned the risk of his being subjected to the death penalty as a form of "punishment" in breach of Article 3 of the Convention. However, it is common ground between the parties that the charges against the applicant under Article 139 § 1 of the Belarusian Criminal Code, as stated in the extradition request and as examined in the extradition order, do not carry the death penalty as a possible punishment (see paragraphs 61-62 above; see also, by contrast, *Koktysh*, cited above, § 61, in which case the applicant was charged under Article 139 § 2 of the Belarusian Criminal Code).

94. The City Court in its judicial review of the extradition order had regard to the relevant provisions of the Belarusian Criminal Code and concluded that the applicant did not risk being given the death penalty (see paragraph 20 above).

95. The Court further reiterates that the extradition order indicated that the applicant was accused, and subject to extradition on the charge, of assisting, in concert with others, Mr I. in committing attempted murder (see paragraph 15 above). In that connection, it is noted that the death penalty was, at the time, and remains enumerated in Article 139 § 2 among the

possible sentences for certain offences, for instance murder committed by a group of people (see paragraph 62 above). However, the Court should not speculate on the possible outcome of the applicant's criminal case in Belarus. Even assuming that the accusation against the applicant can be reclassified, there is no evidence that an attempted/inchoate nature of the offence in question, which is not disputed, entails the death penalty, or that persons convicted of such offences are liable in practice to be sentenced to death. In fact, it is clear from Article 67 of the Belarusian Criminal Code that the death penalty should not be imposed for attempted offences.

96. Therefore, the Court concludes that there are no substantial grounds for believing that the applicant would run a real risk of being sentenced to death if tried and convicted by a Belarusian court.

(iii.) Conclusion

97. There would be no violation of Article 3 of the Convention in the event of the applicant's extradition to Belarus.

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

98. The applicant complained that his arrest and detention from 23 November 2009 to early November 2010 had been in breach of Article 5 §§ 1 and 4 of the Convention. The Court will examine the applicant's complaint under Article 5 § 1 of the Convention, which reads in the relevant parts 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 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..."

A. The parties' submissions

99. The applicant argued that the detention order of 25 November 2009 had not set a limit on the duration of his detention and that there had been no extension orders. At the same time, the applicant also argued that subsequent detention orders had authorised his detention for long periods of time. The circumstances relating to his detention could have changed with the passage of time, while the detention orders had remained based on the gravity of the charges against him and the existence of pending extradition

proceedings. In any event, the applicable procedures and legislation had been insufficiently clear and precise.

100. The Government argued that under Russian law, as interpreted by the Constitutional Court, both Russian and foreign nationals had the right not to be detained without a court order for more than forty-eight hours. The applicant, who had been assisted by a lawyer at the national level, could have determined the statutory length of detention with a view to extradition, referring to the 2007 ruling of the Constitutional Court (see paragraphs 45-46 above). The Russian authorities had displayed proper diligence in the conduct of the extradition proceedings, which had required a thorough examination of the alleged risk of ill-treatment, a determination of the applicant's citizenship status and the compiling of several expert reports. The applicant had had and had used the opportunity to appeal against the detention orders, thus benefiting from effective review of his detention.

B. The Court's assessment

1. Admissibility

101. Before dealing with the substance of the applicant's complaint, the Court reiterates that it is not open to it to set aside the application of the six-month rule solely because a Government have not made a preliminary objection to that effect (see *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

102. The Court observes at the outset that the complaint relating to the lawfulness of the applicant's arrest on and detention after 23 November 2009 was first raised before the Court on 2 November 2010. It is also noted that, unlike in some previous cases (see, among others, *Muminov*, cited above, § 120), the applicant's detention after his arrest consisted of several precise periods, each of which was authorised by a court order and ended with a subsequent court order. Thus, it is appropriate to apply the six-month rule to each such period of detention by taking, as the starting point, the relevant appeal decisions in the chain of exhaustion of domestic remedies, or, in the absence of an appeal decision and the Government's argument concerning the exhaustion requirement, the date when the relevant detention order became final or the date on which the alleged violation ceased to exist. Therefore, the Court is not competent to examine the lawfulness of the applicant's detention until and including 23 May 2010 because the relevant final decisions concerning this period of detention had been taken no later than on 24 February 2010 whereas the issue was first raised before the Court on 2 November 2010.

103. Thus, as regards formal legality, the Court is only competent to examine the alleged lack of any legal basis for the applicant's detention as from 24 May 2010 and until 2 November 2010.

104. The applicant's complaints concerning the lawfulness of his subsequent detention did not form part of the initial application and were first raised in substance in the applicant's observations submitted on 30 June 2011. Thus, they will not be taken into consideration in the present case.

105. The Court considers that the complaint concerning the lawfulness of the applicant's detention from 24 May to 2 November 2010 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Thus, it must be declared admissible.

2. Merits

106. As acknowledged by the respondent Government, the period of the applicant's detention under the court order of 18 January 2010 expired on 23 May 2010. A new detention order was issued on 24 May 2010. For detention to meet the standard of "lawfulness", it must have a basis in domestic law. It does not appear that, under Russian law, a detainee could continue to be held in detention once an authorised detention period had expired, or that any exceptions to that rule were permitted or provided for, no matter how short the duration of the detention (see *Khudoyorov v. Russia*, no. 6847/02, § 149, ECHR 2005-X (extracts)). Thus, the period of the applicant's detention between the expiry of the previous detention order at midnight on 23 May 2010 until the time when a new one was issued on 24 May 2010 was "unlawful" and thus in breach of Article 5 § 1 of the Convention.

107. As to the applicant's subsequent detention until 2 November 2010, the Court observes, and it has not been argued otherwise, that it was regularly ordered by a competent court, in compliance with the maximum periods set in Article 109 of the Russian Code of Criminal Procedure, as well as in compliance with the ruling of the Supreme Court of Russia (see paragraph 48 above, and, for comparison, *Nasrulloyev v. Russia*, no. 656/06, §§ 73-75, 11 October 2007). The lawfulness of such detention was reviewed and confirmed by the appeal court on several occasions.

108. The Court also observes that the first-instance court set limits on the duration of the applicant's detention in the detention orders, in accordance with Article 109 of the CCrP and the Minsk Convention. The Court does not find any reason to disagree with the domestic courts' assessment. Before the domestic courts and this Court, the applicant did not put forward any other argument prompting the Court to consider that his detention was in breach of Article 5 § 1 of the Convention. The Court does not find that the domestic courts acted in bad faith, that they neglected to apply the relevant legislation correctly or that the applicant's detention during the relevant period of time was otherwise unlawful or arbitrary.

109. In conclusion, the Court finds that there has been a violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's

detention on 24 May 2010 until the time when the detention order was issued on that day and no violation of Article 5 § 1 as regards the lawfulness of the remaining period of his detention until 2 November 2010.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

110. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

111. The applicant claimed compensation in respect of non-pecuniary damage, leaving the amount to be awarded to the Court's discretion.

112. The Government disagreed.

113. Having regard to the nature of the violation found under Article 5 § 1 of the Convention, the Court considers that the finding of a violation constitutes sufficient just satisfaction.

B. Costs and expenses

114. The applicant also claimed 7,200 euros (EUR) for costs and expenses incurred before the domestic courts and the Court.

115. The Government contested the claims.

116. According to the Court's case-law, where the Court has found a violation of a right guaranteed by the Convention or its Protocols, an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The applicant's claims are not supported by appropriate evidence. In particular, the applicant submitted no proof that he has paid the lawyers' fees or that he was under a legal and enforceable obligation to do so. Regard being had to the above criteria and the absence of any supporting evidence, the Court rejects the claims under this head.

IV. RULE 39 OF THE RULES OF COURT

117. The Court recalls that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until: (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of

the Grand Chamber rejects any request to refer under Article 43 of the Convention.

118. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 3 above) must continue in force until the present judgment becomes final or until further order.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints concerning the risk of inhuman and degrading treatment and punishment if extradited to Belarus, and the lawfulness of the applicant's detention from 24 May to 2 November 2010, and the remainder of the application inadmissible;

2. *Holds* that the applicant's extradition to Belarus would not be in breach of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention as to the applicant's detention on 24 May 2010 until the time when the detention order was issued on that day;

4. *Holds* that there has been no violation of Article 5 § 1 of the Convention in respect of the remaining period of the applicant's detention until 2 November 2010;

5. *Holds* that the finding of a violation of Article 5 § 1 of the Convention constitutes sufficient just satisfaction;

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

7. *Decides* to maintain the indication to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to extradite the applicant until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 5 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President