



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

FIRST SECTION

Application no. 21302/10  
Dmitriy Vitalyevich ZUYEV  
against Russia  
lodged on 5 March 2010

**STATEMENT OF FACTS**

The applicant, Mr Dmitriy Vitalyevich Zuyev, is a Ukrainian national who was born in 1983 and until his arrest lived in the Kurgan Region.

**A. The circumstances of the case**

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

*1. Proceedings against the applicant in Ukraine*

On 3 June 2004 the Ternopol Town Court convicted the applicant of assault occasioning grievous bodily injury and hooliganism committed with the use of a knife under Articles 121 § 1 and 296 § 4 of the Criminal Code of Ukraine respectively and sentenced him to four years' imprisonment.

The applicant escaped from correctional colony on 13 September 2005.

On 28 September 2005 criminal proceedings were instituted against the applicant under Article 393 § 1 of the Criminal Code of Ukraine (escape from a penitentiary institution).

On 8 November 2005 the Supreme Court of Ukraine quashed the judgment of 3 June 2004 on appeal and remitted the case for a retrial.

The Ternopol Town Court suspended the proceedings on 24 January 2006. A custodial measure was ordered. The applicant was put on a wanted list.

## 2. Applicant's detention in Russia and extradition proceedings

### (a) Administrative arrest

On 27 June 2009 the applicant was arrested by police officers of the Mishkinskiy District Department of the Interior, Kurgan Region, (*ОВД по Мишкинскому району Курганской области*) and subjected to an administrative fine.

When checking the applicant's identity the police discovered that the applicant was being searched for by the Ternopol Chief Department of the Ministry of the Interior of Ukraine (*ГО УМВД Украины в Тернопольской области*).

On 28 June 2009 the Mishkinskiy District Department of the Interior received from the Ternopol Chief Department of the Ministry of the Interior of Ukraine a fax request for the applicant's provisional arrest (no. 7/30-1696 of 27 June 2009) pursuant to Articles 1 and 16 of The 1957 European Convention on Extradition and Articles 56 and 61 of the 1993 Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, to which both Russia and Ukraine were parties. The request was accompanied by a copy of the decision of the Ternopol Town Court of 24 January 2006. The documents were sent to the Mishkinskiy District Prosecutor's Office.

### (b) Detention pending the receipt of extradition request

On 29 June 2009 the applicant, in the absence of any counsel or interpreter (which he allegedly needed) was interrogated by the Deputy Prosecutor of the Mishkinskiy District of the Kurgan Region.

The Mishkinskiy District Prosecutor on 1 July 2009 authorised the applicant's detention for forty days to be counted from 29 June 2009, with reference to Article 466 § 2 of the Russian Code of Criminal Procedure and Article 60 of the Minsk Convention, awaiting receipt of extradition request from Ukraine.

On 28 July 2009 the Mishkinskiy District Court upheld the decision of 1 July 2009 authorising the applicant's detention for forty days.

During the hearing the applicant requested to be provided with an interpreter, to no avail. The court established that the applicant had sufficient knowledge of the Russian language (both spoken and written).

The applicant further claimed that his detention pending extradition should be counted from 27 June 2009, not 29 June 2009. However, the court established that for forty-eight hours between 27 June and 29 June 2009 the applicant had been under administrative detention.

### (c) Detention pending the decision on extradition

Following the receipt of the extradition request, on 24 July 2009 the Deputy Prosecutor of the Kurgan Region authorised the applicant's further detention pending extradition; the term of the detention was not specified. Reference was made again to Article 466 § 2 of the Russian Code of Criminal Procedure. The applicant was not notified of the above decision until 29 July 2009, in the remand prison.

On 9 December 2009 the Kurgan City Court found the above decision lawful and justified.

On 9 February 2010 the Kurgan Regional Court upheld the judgment of the Kurgan City Court on appeal.

**(d) Extradition proceedings**

On 30 September 2009 the Deputy Prosecutor General of Russia took a decision to extradite the applicant to Ukraine.

The Kurgan Regional Court on 11 November 2009 found the above decision lawful and justified.

On 9 February 2010 the Supreme Court of Russia upheld the above judgment on appeal.

The case file contains no information regarding any further developments in the applicant's case.

**B. Relevant international and domestic legal material**

*1. The Russian Constitution*

The Constitution guarantees the right to liberty (Article 22):

“1. Everyone has the right to liberty and personal integrity.

2. Arrest, placement in custody and detention are permitted only on the basis of a judicial decision. Prior to a judicial decision, an individual may not be detained for longer than forty-eight hours.”

*2. The European Convention on Extradition*

The European Convention on Extradition of 13 December 1957 (CETS no. 024), to which both Russia and Ukraine are parties, provides as follows:

**Article 1. Obligation to extradite**

“The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.”

**Article 16. Provisional arrest**

“1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.

...

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

### 3. *The 1993 Minsk Convention*

The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (signed in Minsk on 22 January 1993 and amended on 28 March 1997, “the 1993 Minsk Convention”), to which both Russia and Ukraine are parties, provides as follows:

#### **Article 56. Obligation of extradition**

“1. The Contracting Parties shall ... at each other’s request extradite persons who find themselves in their territory, for criminal prosecution or to serve a sentence.

2. Extradition for criminal prosecution shall extend to offences which are criminally punishable under the laws of the requesting and requested Contracting Parties, and which entail at least one year’s imprisonment or a heavier sentence.”

#### **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 or a final conviction and shall indicate that a request for extradition will follow ...”

#### **Article 62. Release of the person arrested or detained**

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

#### **Article 67. Surrender of the person being extradited**

“The requested Party shall notify the requesting Party of the place and time of surrender. If the requesting Party does not accept the person being extradited within fifteen days of the scheduled date of surrender, that person shall be released.”

### 4. *The Code of Criminal Procedure*

Chapter 13 of the Russian Code of Criminal Procedure (“Preventive measures”) governs the use of preventive measures (*меры пресечения*), which include, in particular, placement in custody. Custody may be ordered by a court on an application by an investigator or a prosecutor if a person is charged with an offence carrying a sentence of at least two years’ imprisonment, provided that a less restrictive preventive measure cannot be used (Article 108 §§ 1 and 3). The period of detention pending investigation may not exceed two months (Article 109 § 1). A judge may extend that period to six months (Article 109 § 2). Further extensions to twelve months, or in exceptional circumstances eighteen months, may be granted only if the person is charged with serious or particularly serious criminal offences (Article 109 § 3). No extension beyond eighteen months is permissible and the detainee must be released immediately (Article 109 § 4).

Chapter 16 (“Complaints about acts and decisions by courts and officials involved in criminal proceedings”) provides for the judicial review of decisions and acts or failures to act by an investigator or a prosecutor that are capable of adversely affecting the constitutional rights or freedoms of

parties to criminal proceedings (Article 125 § 1). The court must examine the complaint within five days of its receipt.

Chapter 54 (“Extradition of a person for criminal prosecution or execution of sentence”) regulates extradition procedures. On receipt of a request for extradition not accompanied by an arrest warrant issued by a foreign court, a prosecutor must decide on the preventive measure to be applied to the person whose extradition is sought. The measure must be applied in accordance with the established procedure (Article 466 § 1).

If there is a detention order issued by a foreign court (*решение судебного органа об избрании меры пресечения в виде заключения под стражу*), a Russian prosecutor issues a detention order; no judicial authorisation is required (Article 466 § 2).

An extradition decision made by the Prosecutor General may be challenged before a court. Issues of guilt or innocence are not within the scope of judicial review, which is limited to an assessment of whether the extradition order was made in accordance with the procedure set out in the relevant international and domestic law (Article 463 §§ 1 and 6).

#### *5. Relevant case-law of the Constitutional and Supreme Courts of Russia*

On 4 April 2006 the Russian Constitutional Court examined the compatibility of Article 466 § 1 of the CCP with the Constitution and ruled that Chapter 13 of the CCP was fully applicable to detention with a view to extradition thus clarifying that the CCP procedure and time-limits were to be respected. Later the Constitutional Court reiterated its position in this respect.

So far the Constitutional Court refused to examine the constitutionality of Article 466 § 2 under which a person could be detained without any authorisation or review by a Russian court. On 19 March 2009 the Constitutional Court by its decision no. 383-O-O dismissed as inadmissible a request for constitutionality review of Article 466 § 2 of the CCP stating that this provision “does not establish time-limits 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 constitutional rights of [the claimant] ...”.

On 10 February 2009 the Plenary Session of the Russian Supreme Court adopted Directive Decision No. 1 stating that a prosecutor’s decision to hold a person under house arrest or to remand her in custody with a view to extradition could be appealed against to a court under Article 125 of the CCP.

On 29 October 2009 the Plenary Session of the Russian Supreme Court adopted Directive Decision No. 22, stating that, pursuant to Article 466 § 1 of the CCP, only a court could order placement in custody of a person in respect of whom an extradition check was pending and the authorities of the country requesting extradition had not submitted a court decision to place her in custody. The judicial authorisation of placement in custody in that situation was to be carried out in accordance with Article 108 of the CCP and following a prosecutor’s petition to place that person in custody. In

deciding to remand a person in custody a court was to examine if there existed factual and legal grounds for applying the 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 CCP) for a period not exceeding two months, and the prosecutor's decision could be challenged in the courts under Article 125 of the CCP. In extending a person's detention with a view to extradition a court was to apply Article 109 of the CCP.

## COMPLAINTS

1. The applicant complained under Articles 3 and 6 of the Convention that he would risk being ill-treated if extradited to Ukraine and would not be able to benefit from the guarantees of a fair trial.

2. Invoking Articles 5, 6 and 13 the applicant further complained that:

(a) there had been no lawful grounds for his detention on 1 July 2009;

(b) the decision of 24 July 2009 maintaining the custodial measure had not limited the application of that measure to any specific date and that the domestic court had wrongly determined that his detention pending extradition had started to run from 29 June 2009;

(c) he had not been assisted by a lawyer and an interpreter at his questioning on 29 June 2009;

(d) his certain appeals had been examined in the absence of a lawyer and an interpreter;

(e) the extradition order had been unlawful;

(f) there had been no effective domestic remedies against the above violations.

## **QUESTIONS TO THE PARTIES**

1. Was the applicant's detention from 29 June 2009 onwards "lawful" within the meaning of Article 5 § 1 (f) of the Convention? Was it authorised by domestic courts (see *Dzhurayev v. Russia*, no. 38124/07, § 74, 17 December 2009, and *Elmuratov v. Russia*, no. 66317/09, § 109, 3 March 2011)?

The Government are invited to submit copies of all decisions which were taken by the Russian authorities and formed the basis for the applicant's detention from 29 June 2009 onwards.

2. Were the provisions governing the applicant's detention pending extradition sufficiently clear? In particular, did they provide the applicant with an opportunity to estimate the length of his detention pending extradition? Was the overall length of the applicant's detention compatible with Article 5 § 1 (f) of the Convention?

3. In the light of the state of Russian law and jurisprudence at the relevant time, did the applicant have at his disposal a procedure by which the lawfulness of his detention pending extradition could be examined by a court and his release ordered, as required by Article 5 § 4 of the Convention?

4. Were the applicant's appeals against the prosecutors' decisions of 1 July and 24 July 2009 examined "speedily", as required by Article 5 § 4 of the Convention?

5. Was the applicant provided with legal assistance during his detention pending extradition? If not, did it disclose a violation of Article 5 § 4 of the Convention?

6. The parties are requested to submit further information concerning the latest developments in the extradition proceedings.