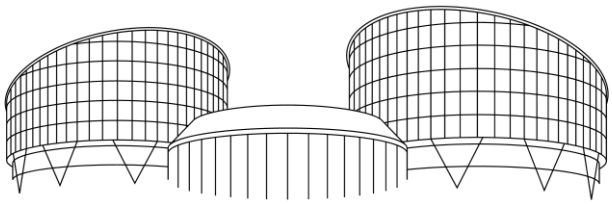

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 43611/02
Aleksandr Fedorovich BELOZOROV
against Russia and Ukraine

The European Court of Human Rights (First Section), sitting on 16 October 2012 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse, *judges,*
Stanislav Shevchuk, ad hoc *judge,*
and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 10 December 2002,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Aleksandr Fedorovich Belozorov, is a Ukrainian national who was born in 1967 and lives in the town of Feodosiya, the Autonomous Republic of Crimea, Ukraine. He is represented before the Court by Mrs Ye. A. Bugayenko, a lawyer practising in Moscow. The Russian Government were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human

Rights. The Ukrainian Government were represented by their Agent, Mr Yu. Zaytsev, from the Ministry of Justice.

A. The circumstances of the case

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

1. The criminal case against the applicant, his arrest in Ukraine and subsequent journey to Moscow

2. On 19 September 2000 the Prosecutor's office of the North-Western Administrative District of the city of Moscow ("the Prosecutor's office") opened a criminal investigation into the murder of a businessman.

3. By a decision of 30 October 2000 the Prosecutor's office ordered the applicant to appear as a witness in this case. Since at that time the applicant resided in the town of Feodosiya in Ukraine, the prosecutor also ordered the police to take measures with a view to ensuring the applicant's attendance. It appears that the relevant summons was sent to the applicant's only known address in Russia, that of his sister, who resided in Moscow. The applicant denied having received them at the time.

4. On 1 and 2 November 2000 the Prosecutor's office ordered a search of the applicant's apartment in Feodosiya, requested the cooperation of the Ukrainian authorities in conducting the search, and also dispatched a team of police officers of the Department of Criminal Investigations of the Moscow City Department of the Interior to Ukraine. In his letter of 1 November 2000 a prosecutor of the Prosecutor's office specifically mentioned that he had decided to send two police officers from that Department to Feodosiya for an "operative follow-up".

5. Two Russian police officers, Ti. and Go., were entrusted with this operation and at once sent to Ukraine. It appears that they secured the support of the head of the Department of Criminal Investigation of the Feodosiya Department of the Interior, lieutenant-colonel Mir., who had apparently instructed his subordinate, police officer Kov., to assist the Russian police officers in their task. The exact mandate of police officer Kov. is unclear.

6. On 3 November 2000 police officer Kov. and the two Russian police officers, Ti. and Go., located and arrested the applicant. He was handcuffed and his apartment was searched. The search took place in the presence of the applicant's mother B.N. and her neighbours K.M. and P.N. acting as witnesses; it was documented in a report drawn up by Kov. on 3 November 2000. The report specified that the applicant had received a copy of the report on the day of the search.

7. According to the applicant, after the search he remained in the custody of the Russian police, who the next day escorted him to a local

airport. They all took the earliest flight to Moscow. On arrival, the applicant was formally arrested by the same two officers and detained on suspicion of murder.

8. The applicant submitted a copy of the passenger manifest for flight Su-200 dated 4 November 2000. The document showed that the applicant and police officers Go. and Ti. had travelled on the same flight and occupied seats nos. 5 (Go.), 6 (the applicant) and 7 (Ti.).

9. According to the Russian Government, after the search the applicant was taken to the Ukrainian police and shortly thereafter released. The next day he bought a ticket and took a flight to Moscow. Two police officers, Ti. and Go., were tipped off about the applicant's decision to buy a ticket and managed to buy tickets for the same flight. When the applicant arrived at a Moscow airport, he was arrested by Ti. and Go. and brought before an investigator of the Prosecutor's office.

10. The Ukrainian Government did not submit their own version of these events.

2. The applicant's attempts to challenge the actions of the Russian and Ukrainian authorities

(a) The applicant's complaints to the Ukrainian authorities

11. After the events of 3 and 4 November 2000 the applicant's parents made a number of complaints about the actions of the Ukrainian policemen to various Ukrainian officials and bodies and requested assistance from the Ukrainian Ministry of Foreign Affairs in repatriating the applicant to Ukraine from Russia.

12. More specifically, on 25 November 2000 the applicant made a criminal complaint to the Ukrainian Prosecutor General's office, alleging abuse of power and unlawfulness of the search, arrest and detention.

13. In response to one of the applicant's complaints, on 8 December 2000 a prosecutor of the Feodosiya Prosecutor's office initiated administrative proceedings against the Ukrainian officials involved in connection with the events of 3 November 2000. The decision stated that:

> "... On 3 November 2000 police officers of the Moscow department of criminal investigations arrived at the town of Feodosiya with a warrant to carry out a search at [the applicant's home address], this decision having been authorised by [a] prosecutor of the Moscow North-Western District.
>
> The head of the criminal investigation department of the Department of the Interior ... police lieutenant-colonel M., seriously breached the requirements of Article 177 of the Code of Criminal Procedure of Ukraine and Article 80 of the Minsk Convention ... according to which contacts concerning the questions of extradition, criminal prosecution, and execution of investigatory missions ... are made by the Prosecutor General's offices of the respective parties. He directed his [subordinates] to render assistance [to the Russian police] in carrying out their search.

> Before the start of the search the Moscow police officers, in the presence of Ukrainian police officers Kov., Ga., and Bol., arrested [the applicant] and handcuffed him: this was confirmed by [the applicant's parents and witnesses] K.M. and P.N.
>
> After the search, a Ukrainian national [the applicant] was apprehended by Russian police and taken to an unknown location ..."

14. On 9 December 2000 the head of the Feodosiya Department of the Interior, lieutenant-colonel Mir., issued order no. 478, in which he reprimanded police officer Kov. who had earlier taken part in the events of 3 November 2000, for "wrong and incompetent actions during the assistance to police of other states".

15. On 22 December 2000 the same official of the Feodosiya Department of the Interior issued order no. 501, in which he mentioned that the initial authorisation given to police officer Kov. only included the instruction "to locate [the applicant] and indicate that location to the police officers from Moscow".

16. By a letter of 30 December 2000 the Ukrainian authorities informed the applicant's mother that police officer Kov. had been reprimanded and that the question of disciplinary liability of lieutenant-colonel Mir. would be decided when he returned from holiday.

17. On 22 January 2001 a prosecutor of the Ukrainian Prosecutor General's office wrote a letter to the applicant's father and informed him that they "had requested legal assistance [from the Russian authorities] in resolving [the applicant's complaint] about the unlawful arrest ... and his ... subsequent transfer to [Russia]". By the same letter the applicant's father was informed that the applicant's complaint about unlawful actions on the part of the Ukrainian policemen had been forwarded to a prosecutor's office for further investigation.

18. By a letter of 23 April 2001, in response to one of the complaints from the applicant's family, a prosecutor of the Feodosiya Prosecutor's office informed the applicant that the Russian law-enforcement bodies had never formally requested the Ukrainian authorities to conduct a search at the applicant's address in Ukraine.

19. In July 2004 the applicant's mother applied to the Feodosiya Town Court with a complaint about the events of 3 November 2000. This complaint remained unexamined and on 19 August 2004 it was forwarded instead to the Feodosiya Town Prosecutor's office. A cover letter signed by the President of the Feodosiya Town Court explained to the applicant's mother that the complaint had been forwarded to the prosecution service for examination. The applicant's parents appealed against the Town Court's failure to examine her arguments on the merits before the Appeal Court of the Autonomous Republic of Crimea on 29 November 2004. On 8 December 2004 the President of the Appeal Court explained that on 6 April 2001 an investigator had already refused to bring criminal proceedings in respect of the events of 3 November 2000.

20. It is not clear whether the applicant or his family received a copy of the decision of 6 April 2001.

(b) The applicant's complaints before the Russian authorities

21. On 6 December 2000 the applicant lodged a similar complaint with the Russian Prosecutor General, stating that his arrest in Ukraine, transfer to Moscow and taking into custody by the Russian authorities had been unlawful.

22. By a decision of 26 December 2000 an investigator of the Prosecutor's office rejected the applicant's complaint on the ground that the applicant had come to Moscow of his own free will and had been detained on arrival in accordance with domestic law. The prosecutor relied principally on the evidence given by the two Russian police officers, who had explained that they had happened to be on the same plane to Moscow as the applicant by mere chance. They denied that they had taken an active part in the events in Ukraine and stated that the applicant had been released after the search and then bought a plane ticket to Moscow on his own. The officers had been tipped off by an undisclosed source in the Ukrainian police and had managed to buy tickets for the same flight, "sitting not very far from the applicant's seat". On arrival in Moscow the officers arrested the applicant in the airport terminal and took him to the investigation authorities.

23. Upon further complaints by the applicant, the prosecutor in decisions of 16 February and 16 April 2001 reiterated his earlier findings.

24. By a judgment of 2 September 2002 the Khoroshevskiy District Court of the city of Moscow confirmed the prosecutor's decision to dispense with criminal proceedings in respect of the allegedly unlawful arrest, search and detention. Among other things, the court referred to the Minsk Convention.

25. The Moscow City Court quashed this judgment on 31 October 2002 on the ground that the questions of lawfulness of the applicant's arrest and search of his apartment had been intertwined with the merits of the applicant's criminal case and could not be decided before the trial court judgment.

26. The case was remitted for a fresh examination at first instance and on 27 November 2002 the Khoroshevskiy District Court of Moscow rejected the applicant's appeal. This judgment was upheld on appeal by the Moscow City Court on 9 January 2003.

27. It appears that the applicant subsequently tried to bring court proceedings in respect of the same questions before the domestic courts. By a judgment of 18 July 2003, given in the applicant's absence, these arguments were rejected. According to the applicant, he received a copy of the judgment on 28 July 2003, and tried to appeal against it on 30 July 2003.

His request for restoration of the time-limits for appeal, submitted on 31 October 2003 remained unexamined.

28. After the Court had communicated the case to the Russian Government on 30 November 2005, police officers Ti. and Go. on 13 March 2006 wrote explanatory reports to their superiors dated concerning the events of 3 and 4 November 2000, with the following contents:

> "... After the search was carried out, [the applicant] along with [the Ukrainian police officials] went to the Police Department for further explanations about the circumstances of the case. Subsequently [the Ukrainian police officials] explained to us that the applicant had refused to give any further comments and had been released from the Police Department.
>
> On the next day I and officer Go. departed for Moscow by air. We were told by one of the Ukrainian police officers that [the applicant] had bought tickets to Moscow; we managed to buy tickets for the same flight.
>
> Upon arrival in Moscow, after going through customs and border control in the airport terminal, we ... approached [the applicant and arrested him].
>
> No physical or psychological restraint was exercised on [the applicant] ..."

3. The applicant's detention in Russia and his attempts to challenge detention orders

29. At around 9 p.m. on 4 November 2000 an investigator of the Prosecutor's Office in Moscow drew up a report on the applicant's arrest, having specified that the applicant was wanted on suspicion of murder. The report noted that the applicant had the status of an accused in the case and confirmed that the applicant had been notified of his rights.

(a) The applicant's detention pending investigation

30. It appears that the applicant's detention was first authorised by a decision of 7 November 2000 taken by the District Prosecutor of the Prosecutor's office in Moscow. The decision stated that the applicant had been detained on 4 November 2000. It further referred to the gravity of the charge against him, the danger of his fleeing or interfering with the course of the investigation, and the fact that he had no permanent residence in the Moscow region. The decision neither specified the term of the applicant's detention nor commented on the lawfulness of his arrest in Ukraine, transfer to Moscow and subsequent taking into custody by the Russian authorities.

31. The detention was subsequently extended by the prosecutor's order on 7 December 2000. It described the course of the investigation in the case, having mentioned the progress achieved so far. More specifically, the investigation identified and located Sm. and Ko., two other persons allegedly directly implicated in the murder of the businessman in question. It also carried out a number of expert examinations, a forensic examination

of the body of the businessman, two ballistic examinations and a dactylographic examination. The investigator mentioned that he still needed to study the circle of the applicant's and Ko.'s connections and to bring new versions of charges against the applicant, Sm. and Ko. The order extended the applicant's detention until 2 February 2001.

32. By order of 23 January 2001 the applicant's detention was extended until 19 March 2001. It contained the same reasoning as the detention order of 7 December 2000.

33. On 22 March 2001 the prosecution concluded the investigation and remitted the case for examination on the merits. It does not appear that there was any procedural decision authorising the applicant's detention between 19 March and 4 April 2001.

(b) The applicant's detention pending trial

34. On 4 April 2001 the Moscow City Court conducted a preliminary examination of the applicant's case and, without examining the question of the lawfulness of his detention between 19 March and 4 April 2001, further remanded the applicant in custody. No time-limit was indicated.

35. Thereafter the court repeatedly extended the applicant's detention on 24 July, 2 August, 4 September and 17 December 2001 as well as 1 July 2002, without specifying any time-limits for his detention. All these decisions were taken with reference to the gravity of the charge against the applicant and the fact that the proceedings in the case had not been completed.

36. The applicant and his counsel were not invited to attend the hearing of 1 July 2002.

37. It does not appear that the applicant made any complaints about the extensions of his detention by the prosecutor or by the court prior to the decision of 1 July 2002. The applicant's complaints of 1 and 22 July 2002 against that decision were rejected by the Supreme Court on 24 October 2002.

38. According to the applicant, he and his counsel were not invited to attend the hearing of 24 October 2002. However, the Government submitted that the applicant and his counsel had been informed about the hearing of 24 October on 15 October 2002. The applicant's counsel had not given the appeal court any reasons for her failure to appear, and did not ask for the hearing to be postponed. At the same time, the applicant's request to attend in person remained unexamined.

39. It appears that on 16 September and 16 December 2002 the trial court extended the applicant's detention again. The applicant submits that he challenged these decisions on 17 September and 17 December 2002 respectively but received no reply.

40. According to the Government, the applicant's appeals against the decision of 16 September 2002 were dated 30 December 2002 and

22 January 2003, whilst the decision of 16 December 2002 was appealed against on 13 January 2003. The Government were unable to specify the reasons for the domestic courts' failure to examine these appeals.

4. Court proceedings in the criminal case against the applicant in Russia

41. On 22 March 2001 the preliminary investigation was concluded and the prosecutor remitted the applicant's criminal case to the Moscow City Court for trial.

42. On 4 April 2001 Judge N. listed the case for a hearing on 16 April 2001.

43. On 16 April 2001 the court adjourned the hearing until 21 June 2001. On the latter date the hearing was adjourned until 25 July 2001 as a lawyer for one of the co-accused failed to appear.

44. Judge M. took over the case on 24 July 2001 and scheduled the hearing for 1 August 2001.

45. On 1 August 2001 the court adjourned the case until 2 August 2001, when the case was again suspended until 3 September 2001 because of the failure of some witnesses to appear.

46. On 4 September 2001 the hearing was postponed until 8 October 2001 for the same reasons.

47. By a decision of 8 October 2001 the court fixed the next date of the hearing for 30 November 2001.

48. Between 30 November and 17 December 2001 hearings were held regularly.

49. On 17 December 2001 the case was adjourned on the ground of witnesses' absence and the need for a psychiatric examination of the applicant. The examination was carried out on 4 April 2002.

50. In July 2002 the case was transferred to Judge Z. The next hearing took place in August 2002, when the case was yet again postponed until 17 October 2002 due to witnesses' failure to appear.

51. On 30 January 2003 the Moscow City Court convicted the applicant of conspiracy to murder and sentenced him to eight years and six months' imprisonment. The court did not address the question of the lawfulness of the applicant's arrest and detention until his arrival in Moscow on 4 November 2000.

52. On 27 November 2003 the Supreme Court of Russia upheld the judgment on appeal.

B. Relevant domestic law

1. The relevant domestic rules of criminal procedure

(a) Applicable Ukrainian law

53. Article 106 of the Ukrainian Code of Criminal Procedure (1960) governs the arrest and detention of individuals suspected of committing a criminal offence. It provides:

> "Article 106: Detention of a criminal suspect by the investigating body
>
> The investigating body shall be entitled to arrest a person suspected of a criminal offence for which a penalty in the form of deprivation of liberty may be imposed only on one of the following grounds:
>
> 1. if the person is discovered whilst or immediately after committing an offence;
>
> 2. if eyewitnesses, including victims, directly identify this person as the one who committed the offence;
>
> 3. if clear traces of the offence are found on the body of the suspect or on the clothing which he is wearing or which is kept at his home.
>
> For each case of detention of a criminal suspect, the investigating body shall be required to draw up a record mentioning the grounds, the motives, the day, time, year and month, the place of detention, any statements by the person detained and the time when it was recorded that the suspect was informed of his right to have a meeting with defence counsel before his first questioning, in accordance with the procedure provided for in paragraph 2 of Article 21 of the present Code. The record of detention shall be signed by the person who drew it up and by the detainee.
>
> A copy of the record with a list of his rights and obligations shall be immediately handed to the detainee and shall be sent to the prosecutor. At the request of the prosecutor, the material which served as a ground for detention shall be sent to him as well.
>
> The investigating body shall immediately inform one of the suspect's relatives of his detention ...
>
> Within seventy-two hours of the arrest the investigating body shall:
>
> (1) release the detainee if the suspicion that he committed the crime has not been confirmed, if the term of detention established by law has expired or if the arrest has been effected in violation of the requirements of paragraphs 1 and 2 of the present Article;
>
> (2) release the detainee and select a non-custodial preventive measure;
>
> (3) bring the detainee before a judge with a request to impose a custodial preventive measure on him or her.

If the detention is appealed against to a court, the detainee's complaint shall be immediately sent by the head of the detention facility to the court. The judge shall consider the complaint together with the request by the investigating body for application of the preventive measure. If the complaint is received after the preventive measure has been applied, the judge shall examine it within three days of receiving it. If the request has not been received or if the complaint has been received after the term of seventy-two hours of detention, the complaint shall be considered by the judge within five days of receiving it.

The complaint shall be considered in accordance with the requirements of Article 165-2 of this Code. Following its examination, the judge shall give a ruling, either declaring that the detention is lawful or allowing the complaint and finding the detention to be unlawful.

The judge's ruling may be appealed against within seven days of the date of its adoption by the prosecutor, the person concerned, or his or her defence counsel or legal representative. Lodging such an appeal does not suspend the execution of the court's ruling.

Detention of a criminal suspect shall not last for more than seventy-two hours.

If, within the terms established by law, the judge's ruling on the application of a custodial preventive measure or on the release of the detainee has not arrived at the pre-trial detention facility, the head of the pre-trial detention facility shall release the person concerned, drawing up a record to that effect, and shall inform the official or body that carried out the arrest accordingly."

54. Article 148 of the Code provides that preventive measures shall be imposed on a suspect, accused, defendant, or convicted person.

55. Article 165-2 of the Code concerns the selection of a preventive measure in criminal proceedings. It reads as follows:

"Article 165-2: Procedure for the selection of a preventive measure

At the stage of the pre-trial investigation, a non-custodial preventive measure shall be selected by the investigating body, investigator or prosecutor.

In the event that the investigating body or investigator considers that there are grounds for selecting a custodial preventive measure, with the prosecutor's consent he shall lodge an application with the court. The prosecutor is entitled to lodge an application to the same effect. In determining this issue, the prosecutor shall be obliged to familiarise himself with all the material evidence in the case that would justify placing the person in custody, and to verify that the evidence was received in lawful fashion and is sufficient grounds for charging the person.

The application shall be considered within seventy-two hours of the time at which the suspect or accused is detained.

In the event that the application concerns the detention of a person who is currently not deprived of his liberty, the judge shall be entitled, by means of an order, to give permission for the suspect to be detained and brought before the court under guard. Detention in such cases may not exceed seventy-two hours; and in the event that the

person is outside the locality where the court is situated, it may not exceed forty-eight hours from the moment at which the detainee is brought within the locality.

Upon receiving the application, the judge shall examine the material in the criminal case file submitted by the investigating bodies or investigator. A prosecutor shall question the suspect or accused and, if necessary, shall hear evidence from the person who is the subject of the proceedings, shall obtain the opinion of the previous prosecutor or defence counsel, if the latter appeared before the court, and shall make an order:

(1) refusing to select a preventive measure if there are no grounds for doing so;

(2) selecting a preventive measure in the form of taking a suspect or accused into custody.

The court shall be entitled to select for the suspect or accused a non-custodial preventive measure if the investigator or prosecutor refuses to select a custodial preventive measure for him or her.

The judge's order may be appealed against to the court of appeal by the prosecutor, suspect, accused or his or her defence counsel or legal representative, within three days of the date the order was made. The lodging of an appeal shall not suspend the execution of the judge's order."

56. Article 177 of the Code of Criminal Procedure of Ukraine provided that a search of a dwelling could only take place after the adoption of a reasoned decision of an appropriate investigating body and with approval of a competent prosecutor. In urgent cases, this requirement could be dispensed with, but the relevant official was under an obligation to notify the prosecutor about the search, its scope and results.

(b) Applicable Russian law

57. The Russian Constitution of 12 December 1993 provides that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22).

58. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (Law of 27 October 1960). From 1 July 2002 that Code was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, "the CCrP").

59. "Preventive measures" or "measures of restraint" include an undertaking not to leave a town or region, a personal guarantee, bail and detention (Article 98 of the CCrP).

60. The CCrP requires a judicial decision by a district or town court on a reasoned request by a prosecutor supported by appropriate evidence (Article 108 §§ 1, 3-6).

61. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are "sufficient

grounds to believe" that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or reoffend (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99).

62. The CCrP sets a general rule permitting defendants to be remanded in custody if the charge carries a sentence of at least two years' imprisonment. In exceptional cases, the Code permits detention of defendants on a charge carrying a sentence of less than two years' imprisonment, if they have previously defaulted, have no permanent residence in Russia or if their identity cannot be ascertained. A defendant should not be remanded in custody if a less severe preventive measure is available (Articles 97 § 1 and 108 § 1).

63. An appeal against a judicial decision ordering or extending detention may be lodged with a higher court within three days. The appeal court must rule on the appeal within three days of its receipt (Article 108 § 10). The right to appeal against a judicial decision belongs to a defendant, his representative and legal guardian, a prosecutor, a victim and his representative (Articles 127 § 1 and 354 § 4).

64. At any time during the judicial proceedings the court may order, vary or revoke any preventive measure, including remand in custody (Article 255 § 1). Any such decision must be given in the deliberation room and signed by all the judges on the bench (Article 256).

65. An appeal against such a decision lies with a higher court. It must be examined within the same time-limit as an appeal against the judgment on the merits (Article 255 § 4).

2. The 1993 Minsk Convention

66. 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 to extradite
>
> 1. The High Contracting Parties are obliged in accordance with conditions set out in this Convention, upon request, to extradite persons located on their territory for criminal prosecution ...
>
> Article 57. Refusal to extradite
>
> 1. No extradition can take place if:
>
> a) the person whose extradition is requested is a national of the requested High Contracting Party. ...

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 80. Special order of relations

"All relations concerning the questions of extradition and criminal prosecution are carried out by the Prosecutor General's offices of the High Contracting Parties. The relations in connection with execution of procedural and other actions requiring the approval of a competent prosecutor or of a court are carried out in accordance with the rules set out by the Prosecutor General's offices of the High Contracting Parties."

COMPLAINTS

67. The applicant complained about the actions of the Russian and Ukrainian authorities under Article 5 § 1 of the Convention. He referred to his arrest in Ukraine on 3 November 2000, subsequent transfer to Russia and detention. He submitted that all these actions were unlawful. The applicant also complained about alleged irregularity of his detention between 4 and 7 November 2000 as well as from 19 March to 4 April 2001.

68. Referring to the actions of the Russian and Ukrainian officials, the applicant complained about the search of his apartment in Feodosiya. He argued that the search had been unlawful and arbitrary, in breach of Article 8 of the Convention.

69. Referring solely to the actions of the Russian authorities and relying on Article 5 §§ 3 and 4 of the Convention, the applicant also complained that his pre-trial detention had been too long, that he and his counsel had been unable to take part in the hearings of 1 July and 24 October 2002, that their complaints to the Supreme Court dated 1 and 22 July 2002 had been examined with a significant delay and that their complaints of 17 September and 17 December 2002 had remained unanswered.

70. With reference to the actions of the Russian authorities, the applicant further complained that criminal proceedings in his case had lasted too long, in breach of Article 6 § 1 of the Convention.

THE LAW

71. Relying on Articles 5 § 1 and Article 8 of the Convention, the applicant complained about the actions of the Ukrainian and Russian authorities on 3 and 4 November 2000. He argued that his arrest, the search of his apartment and subsequent transfer on a flight to Moscow had been unlawful and arbitrary. The Convention provisions in question, in so far as relevant, state as follows:

Article 5 § 1

"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:

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so. ...

(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."

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

72. The Ukrainian Government did not submit any comments concerning the merits of the applicant's grievances and argued that the applicant had failed to take proceedings before the Ukrainian courts and thus failed to exhaust domestic remedies. As an alternative, they also argued that if the Court were to consider the domestic remedies ineffective the applicant's complaints should be rejected as belated.

73. The Russian Government denied that their agents had taken any active part in the events of 3 and 4 November 2004 before the applicant's arrival in Russia. They stated that the applicant came to Moscow of his own free will and was arrested in the Moscow airport terminal upon his arrival. They denied that any physical coercion had been used on the applicant by the two Russian agents on the territory of Ukraine. They also argued that the applicant had failed to appeal against the judgment of 18 July 2003 and thus

failed to exhaust effective remedies, as required by Article 35 § 1 of the Convention.

74. The applicant disagreed with the respondent Governments and maintained his complaints. More specifically, he drew the Court's attention to his family's repeated attempts to bring his grievances to the attention of various Ukrainian bodies and officials and to their manifest unwillingness to deal with his arguments on the merits. He argued that the Ukrainian authorities had been made sufficiently aware of his problems and that, accordingly, it could not be said that he had failed to exhaust the domestic remedies. In response to the arguments of the Russian Government, the applicant maintained that his attempts to pursue the examination of his complaints about the events of 3 and 4 November 2000 had ultimately been thwarted by the domestic courts. The applicant received a copy of the judgment of 18 July 2003 with delay and his subsequent attempts to appeal against this judgment remained unsuccessful, even despite his request for restoration of time-limits on 31 October 2003. He considered that the Russian Government had been made sufficiently aware of his situation and that he could be seen as having complied with the relevant admissibility criteria. The applicant considered that the actions of both the Ukrainian and Russian Governments on 3 and 4 November 2000 had been unlawful and arbitrary.

75. The Court finds that the information contained in the case file is at present insufficient to resolve the issue of the applicant's compliance with the requirements of Article 35 § 1 of the Convention in respect of the complaints directed against Ukraine. The Court decides to join this objection to the merits. Furthermore, it finds that in the light of the parties' submissions this part of the application, as directed against both Ukraine and Russia, raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring them inadmissible have been established.

76. The applicant complained about the actions of the Russian authorities under Article 5 §§ 3 and 4 of the Convention in respect of the length of his pre-trial detention, his inability to attend the detention hearings of 1 July and 24 October 2002, serious delays in examination of his appeals of 1 and 22 July 2002, and the domestic courts' alleged failure to examine his appeals of 17 September and 12 December 2002. The Convention provisions relied upon by the applicant provide as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

> 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."

77. The Government acknowledged that the domestic court had failed to notify the applicant of and to secure his presence at the detention hearing of 1 July 2002, and that his request to attend the hearing of 24 October 2002 in person had remained unexamined. They denied that there had been breaches of the applicant's Convention rights on account of other situations mentioned by the applicant. They agreed that the applicant's detention had been quite long but argued that it had been necessary in view of the applicant's lack of permanent residence in Russia and other relevant aspects of his character and his criminal case.

78. The applicant maintained his earlier complaints and submissions.

79. In the light of the parties' submissions, the Court finds that these complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring them inadmissible have been established.

80. Lastly, the Court notes that the applicant was dissatisfied with his detention between 4 and 7 November 2000 and with the lack of any legal basis for his remand in custody from 19 March and 4 April 2001, and also complained about the length of the criminal proceedings in his case as conducted by the Russian authorities.

81. His complaints about the alleged irregularity of his remand in custody, the latest of which ended on 4 April 2001, should be rejected as belated. He first complained about these events on 10 December 2002, which is more than six months later. As to his complaint about the length of the criminal proceedings, the Court notes at the outset that the period to be taken into consideration began on 4 November 2000, when the investigator brought criminal proceedings in respect of the applicant (see, among many other authorities, *Kalashnikov v. Russia*, no. 47095/99, § 124, ECHR 2002-VI), and ended on 27 November 2003 with the judgment of the Supreme Court. It follows that the period to be taken into consideration was three years and twenty-three days for two levels of jurisdiction. The Court reiterates in the first place that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, amongst many others, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

82. The Court considers that the present case was rather complex, as it concerned a charge of conspiracy to murder and involved three co-accused.

As regards the applicant's conduct, there is no indication in the case file that he contributed noticeably to the length of the criminal proceedings. In so far as the conduct of the authorities is concerned, the conduct of the investigation was reasonably fast, ending within just four months. It is true that there was a period of inactivity in the examination of the applicant's case by the trial court in July and August 2002. However, the Court recalls that a delay at some stage may be tolerated if the overall duration of the proceedings cannot be deemed excessive (see, for example, *Pretto and Others v. Italy*, 8 December 1983, § 37, Series A no. 71, and *Posedel-Jelinović v. Croatia*, no. 35915/02, § 26, 24 November 2005). The foregoing considerations lead the Court to conclude that the total duration of the proceedings of three years and twenty-three days does not give rise to any appearance of a violation of the reasonable-time requirement in Article 6 § 1.

83. It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join to the merits the examination of the issue of the applicant's compliance with the requirements of Article 35 § 1 of the Convention in respect of his complaints directed against Ukraine;

Declares admissible, without prejudging the merits of the case:
(a) the applicant's complaints under Articles 5 § 1 and 8 of the Convention about his arrest and the search of his apartment in Feodosiya as well as his subsequent transfer to Russia made with reference to the actions of the Russian and Ukrainian authorities;
(b) the applicant's complaints under Article 5 § 3 of the Convention about the length of his pre-trial detention made with reference to the actions of the Russian authorities;
(c) the applicant's complaints under Article 5 § 4 of the Convention about his inability to take part in the hearings of 1 July and 24 October 2002, serious delays in examination of his appeals dated 1 and 22 July 2002 and the courts' failure to examine his appeals of 17 September and 17 December 2002 made with reference to the actions of the Russian authorities;

Declares inadmissible the remainder of the application.

Søren Nielsen	Nina Vajić
Registrar	President