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

FIRST SECTION

Application no. 34378/07
Vitaliy Vasilyevich POVAR
against Russia
lodged on 31 July 2007

STATEMENT OF FACTS

The applicant, Mr Vitaliy Vasilyevich Povar, is a Moldovan national, who was born in 1968 and lives in the town of Ungeny, Moldova.

A. The circumstances of the case

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

1. Criminal proceedings against the applicant in Moldova

On an unspecified date the Moldovan authorities opened a criminal case against the applicant on suspicion of his having breached public order and inflicted grave bodily harm.

On 23 May 2001 the Ungen District Court of Moldova issued an arrest warrant in respect of the applicant, authorising his detention for 30 days.

2. The applicant's arrest and remand in custody

On 16 November 2005 the Russian police, acting in conformity with the warrant of 23 May 2001, arrested the applicant in the town of Nizhniy Tagil.

On 22 November 2005, having received the news, the Ungen District Police Commissariat sent a letter to their Russian counterparts confirming the applicant's identity and the charges brought against him. They further noted:

> "... [we] request that Mr Povar be detained in the remand prison of Nizhniy Tagil until the Moldovan and Russian Prosecutor General's Offices will decide on his extradition in accordance with the Minsk Convention ...".

On 9 December 2005 the Deputy Prosecutor of the Sverdlovskiy Region issued a decision on application of a preventive measure and ordered to place the applicant in custody on the basis of the Moldovan court's order of 23 May 2001 and Articles 60 and 61 of the Minsk Convention. The decision did not set any time-limits for the detention. It mentioned that:

> "the detention [is necessary]... for a possible extradition of Mr Povar to the requesting party and [it] does not need to be authorised by a Russian court."

The decision did not indicate whether it was possible to appeal against it.

3. Extradition proceedings

On 4 May 2006 the Deputy Prosecutor General of Russia authorised the applicant's extradition to Moldova. The applicant challenged that decision in courts.

On 12 September 2006 the Sverdlovskiy Regional Court examined and rejected the complaint in full. The applicant appealed.

On 29 January 2007 the Supreme Court of Russia upheld the Regional Court's decision of 12 September 2006 on appeal. It concluded that:

> "... [the issue of] lawfulness and sufficiency of reasons for Mr Povar's detention... were not examined in these proceedings, as these issues should to be examined in the course of the applicant's trial ..."

4. The applicant's attempts to challenge his detention

On an unspecified date the applicant lodged a separate complaint regarding his detention with the Verkh-Isetskiy District Court. On 11 December 2006 a judge of that court sent the applicant a letter returning the complaint to him and explaining that it should be lodged with the Regional Court instead.

On 21 March 2007 the applicant tried to challenge his detention before the Supreme Court of Russia. By a letter of 3 April 2007 the Supreme Court returned the complaint, commenting that it was not competent to examine such issues.

5. The applicant's extradition and conviction in Moldova

On an unknown date the applicant was extradited to Moldova. On 27 April 2007 he arrived in Kishinev.

On 26 June 2007 the Ungeny District Court found the applicant guilty and sentenced him to four years' imprisonment.

On an unspecified date in 2008 the applicant has served his sentence and was released.

6. The conditions of the applicant's detention in remand prisons

Most of his detention from 16 November 2005 to 18 April 2007 the applicant spent in remand prisons IZ-66/3 of Nizhniy Tagil and IZ-66/1 of Yekaterinburg.

He claims that in both prisons he stayed in cells which measured around 30 square metres and were designed for twelve persons, but held from forty five to sixty five persons during that period. The sanitary conditions were

poor and the applicant did not receive adequate medical treatment of his conditions.

The applicant also alleged the lack of proper medical assistance during his detention pending extradition. He did not submit any evidence to confirm these allegations and it does not appear from the case file that he has ever raised this question before any of the competent domestic authorities.

B. Relevant domestic and international law and practice

1. Code of Criminal Procedure of the Russian Federation

The term "court" is defined by the Code of Criminal Procedure ("CCP") 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 CCP as "an official empowered to administer justice" (Article 5 § 54).

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).

Chapter 13 of the CCP governs the application of preventive measures. Placement in custody is a preventive measure applied on the basis of a court decision to a person suspected of or charged with a crime punishable with at least two years' imprisonment where it is impossible to apply a more lenient preventive measure (Article 108 § 1). A request for placement in custody should be examined by a judge of a district court or a military court of a corresponding level (Article 108 § 4). A judge's decision on placement in custody may be challenged before an appeal court within three days (Article 108 § 11). The period of detention pending investigation of a crime cannot 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 (Article 109 § 2). Further extensions may be granted only if the person is charged with serious or particularly serious criminal offences (Article 109 § 3).

Chapter 16 of the CCP lays down the procedure by which acts or decisions of a court or public official involved in criminal proceedings may be challenged. Acts or omissions of a police officer in charge of the inquiry, an investigator, a prosecutor or a court may be challenged by "parties to criminal proceedings" or by "other persons in so far as the acts and decisions [in question] touch upon those persons' interests" (Article 123). Those acts or omissions may be challenged before a prosecutor (Article 124). Decisions taken by police or prosecution investigators or prosecutors not to initiate criminal proceedings, or to discontinue them, or any other decision or inaction capable of impinging upon the rights of "parties to criminal proceedings" or of "hindering an individual's access to court" may be subject to judicial review (Article 125).

Extradition may be denied if the act that gave grounds for the extradition request does not constitute a crime under the Russian Criminal Code (Article 464 § 2 (1)).

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).

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

When performing actions requested under the Minsk Convention, a requested official body applies its country's domestic laws (Article 8 § 1).

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

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 contain a reference to a detention order and indicate that a request for extradition will follow (Article 61 § 1). If the person is arrested or placed in detention before receipt of the extradition request, the requesting country must be informed immediately (Article 61 § 3).

3. Decisions of the Constitutional Court

(a) Decision of the Constitutional Court no. 101-O of 4 April 2006

Verifying the compatibility of Article 466 § 1 of the CCP with the Russian Constitution, the Constitutional Court reiterated its constant case-law 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.

In the Constitutional Court's view, the guarantees of the right to liberty and personal integrity set out in Article 22 and Chapter 2 of the Constitution, as well as the legal norms of Chapter 13 of the CCP on preventive measures, were fully applicable to detention with a view to extradition. Accordingly, Article 466 of the CCP did not allow the authorities to apply a custodial measure without respecting the procedure established in the CCP, or in excess of the time-limits fixed therein.

(b) Decision of the Constitutional Court no. 158-O of 11 July 2006 on the Prosecutor General's request for clarification

The Prosecutor General asked the Constitutional Court for an 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.

The Constitutional Court dismissed the request on the ground that it was not competent to indicate specific criminal-law provisions governing the procedure and time-limits for holding a person in custody with a view to extradition. That was a matter for the courts of general jurisdiction.

(c) Decision of the Constitutional Court no. 333-O-P of 1 March 2007

In this decision the Constitutional Court reiterated that Article 466 of the CCP did not imply that detention of a person on the basis of an extradition request did not have to comply with the terms and time-limits provided for in the legislation on criminal procedure.

COMPLAINTS

1. With reference to Article 3 of the Convention the applicant complains of inadequate conditions of detention and of lack of medical assistance in remand prisons IZ-66/3 of Nizhniy Tagil and IZ-66/1 of Yekaterinburg.

2. The applicant complains under Article 5 § 1 (f) of the Convention that his detention pending extradition was not "in accordance with a procedure prescribed by law". He alleges, in particular, that the detention was arbitrary, excessively long and that there were no safeguards against it in domestic law.

QUESTIONS TO THE PARTIES

1. Was the applicant's detention pending extradition "lawful" within the meaning of Article 5 § 1 (f) of the Convention?

2. Were the provisions governing the applicant's detention pending extradition sufficiently clear? (see *Nasrulloyev v. Russia*, no. 656/06, 11 October 2007 and *Dzhurayev v. Russia*, no. 38124/07, 17 December 2009).

3. Did the said provisions 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?

4. Did the applicant have an opportunity to bring judicial review proceedings in respect of the decision authorising his detention, as required by Article 5 § 4 of the Convention?

5. Were the conditions of the applicant's detention in remand prisons IZ-66/3 of Nizhniy Tagil and IZ-66/1 of Yekaterinburg compatible with Article 3 of the Convention? If the Government consider that the occupancy numbers given by the applicant were inaccurate, they are invited to produce extracts from the prison population register covering at least one day per week during the entire period of the applicant's detention.