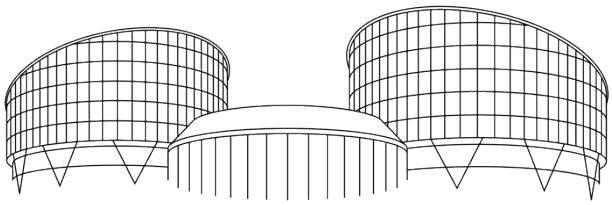

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF K. v. RUSSIA

(Application no. 69235/11)

JUDGMENT

STRASBOURG

23 May 2013

FINAL

23/08/2013

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

In the case of K. v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 30 April 2013,

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

PROCEDURE

1. The case originated in an application (no. 69235/11) 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 K. ("the applicant"), on 9 November 2011.

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

3. The applicant alleged, in particular, that he would be exposed to inhuman treatment or torture if returned to Belarus, that he had no remedies available to him in relation to that complaint, that he had been unlawfully detained pending extradition, and that his appeals against the extradition orders had not been examined speedily.

4. On 15 November 2011 the President of the First Section, acting upon the applicant's request of 14 November 2011, 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. The President of the Section also acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

5. On 9 March 2012 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

6. The applicant was born in 1966 and lived until his arrest in Moscow.

A. The applicant's version of the circumstances prompting his extradition to Belarus

7. In 1998 the applicant helped a former Interior Minister of Belarus, Mr Z., to set up an NGO which was meant to unite former military and police officers in the fight against "human rights violations" and "lawlessness". According to the applicant, Mr Z. had entrusted him with the tasks of finding, among members of the organisation, those physically and psychologically fit enough to become bodyguards, and of training them. On 7 May 1999 a group of unidentified individuals kidnapped Mr Z. His whereabouts remain unknown.

8. The applicant further alleged that he had been involved in the establishment of "the security service" for the former Vice President of the Belarus Parliament, Mr G. However, on 16 September 1999 Mr G. disappeared. His car was discovered abandoned in a remote area with its windows broken and blood stains inside. According to the applicant, the media attributed both disappearances/kidnappings to the Belarus authorities.

9. At the beginning of 2000, the applicant moved his family to Russia. He, however, continued visiting Belarus to take part in its political life. In particular, as a member of a Belarusian opposition party, Gromada, the applicant participated in demonstrations, meetings and other political activities organised by the party. On a number of occasions, the applicant was arrested and subjected to inhuman and degrading treatment in Belarus. Each time he was deprived of his liberty, he was forced to remain on his knees on a concrete floor with his hands cuffed behind his back.

10. The applicant provided the Court with a copy of "Free citizen certificate no. 0327", allegedly issued by the Belarus Social Democratic Party on 17 October 2005 and attesting to the applicant's having become a member of that party on that date. The certificate was in Russian, had the applicant's photo attached and was signed only by the applicant.

11. The applicant stated that he had decided to move to Russia permanently in 2008 because he had feared for his life. A private security agency in Moscow had hired him as a bodyguard.

12. At the same time, the applicant continued his political activities in Belarus. In February 2010 a number of prominent leaders of the Belarusian opposition parties initiated a campaign entitled "Tell the Truth", in which the applicant also took part, including by providing financial support. The

applicant stressed that the aim of the campaign had been to "awaken Belarusian society, which is living amid lies". Repressions followed: the most active participants in the campaign were arrested and criminal proceedings were instituted against them; the main office was raided; and documents were seized.

13. In March 2010 the applicant visited Belarus and, acting on orders from his employer, ordered bullet-proof vests and camouflage uniforms. The applicant assumed that Belarusian law-enforcement officials, suspecting him of attempting to provide opposition members with the vests and uniforms, had decided to fabricate criminal charges against him.

14. The applicant also submitted that when his Belarusian passport had expired in 2010, he had applied for a new one and the Belarusian authorities had issued it without delay. The authorities had not connected him to any criminal case, questioned him in respect of any criminal charge or attempted to arrest him.

B. The applicant's arrest and detention in Russia – extradition and asylum proceedings

(a) Criminal proceedings against the applicant in Belarus

15. On 7 April 2011 an investigator from the main department of the Belarusian Ministry of the Interior resumed the investigation in a criminal case that had been pending since 19 February 2001 against unidentified individuals suspected of aggravated robbery. Four other cases of aggravated kidnapping, including that of a minor, and extortion committed in May and June 2000 were joined to that case. On 28 April 2011 the investigator issued a decision stating that the applicant was the prime suspect in the case and making a detailed account of every criminal act of which the latter stood accused. The criminal offences were punishable by up to fifteen years' imprisonment. The investigator also noted that, having been convicted by a Belarusian court on 7 September 2001 for causing accidental death in a road traffic accident, the applicant had been relieved of the remainder of his sentence on 16 August 2002 by an Amnesty Act. On 28 April 2011 a deputy Prosecutor General of Belarus authorised the applicant's arrest and an international arrest warrant was issued.

(b) Extradition proceedings

16. On 16 May 2011 the applicant was arrested in Moscow.

17. On the following day the Ostankinskiy District Court in Moscow, having noted the gravity of the charges against the applicant, the fact that he was on the wanted persons' list and the absence of any authorisation for the applicant to reside, permanently or temporarily, in the Russian Federation, ordered his detention for forty days until the formal request for extradition

could be dealt with. It also stated that the applicant had been arrested on the basis of an international arrest warrant, which, as confirmed by the Belarusian authorities, was still in force, and that the preliminary examination of the extradition issue had not revealed any circumstances that could have led to a decision to refuse extradition. The District Court further observed that it had taken into account the applicant's arguments that he was ready to stand bail and that he was not fit for detention conditions given the poor state of his health, and had dismissed them as irrelevant. The decision was upheld on appeal by the Moscow City Court on 6 June 2011, with the appeal court confirming the District Court's findings that the applicant was likely to reoffend, abscond and obstruct the course of justice.

18. On 20 June 2011 the Belarusian Prosecutor General's Office (hereinafter "the Belarusian PGO") wrote to the Russian Prosecutor General's Office (hereinafter "the Russian PGO") submitting a formal request for the applicant's extradition and assuring their Russian counterpart that the applicant's criminal prosecution was not politically motivated or based on any discriminatory grounds.

19. Four days later the District Court extended the applicant's detention until 16 November 2011, using the same formula as in the initial detention order. The District Court also noted that the Belarusian prosecution authorities had to carry out a number of additional procedural measures before the applicant's extradition could be effected, and therefore needed additional time. The decision became final on 25 July 2011, when the Moscow City Court endorsed the District Court's reasoning.

20. On 24 August 2011 a deputy Prosecutor General of the Russian Federation accepted the request for the applicant's extradition in view of the criminal charges pending against him in Belarus. The decision stated, in particular, that the applicant had been charged with three counts of aggravated kidnapping, including one of a minor, committed for the purpose of extorting money and property, and one count of aggravated robbery committed within an organised criminal group in February 2001. The listed offences were punishable under Articles 126, 162 and 163 of the Russian Criminal Code and carried a penalty of over one year's imprisonment. The statutory time-limit for criminal prosecution had not expired under either the Russian or the Belarusian criminal codes. The applicant had not acquired Russian citizenship and there were no circumstances precluding his extradition.

21. Following an appeal lodged by the applicant on 5 September 2011 against the extradition order of 24 August 2011, in which he argued that he risked political persecution, torture and unfair criminal conviction in Belarus given his active involvement in the opposition movement, on 4 October 2011 the Moscow City Court upheld the deputy Prosecutor General's decision. The City Court considered that the applicant had failed to produce any evidence in support of his claims that he risked persecution,

including on political grounds, torture and unfair trial in Belarus. At the same time, the Belarusian PGO provided the Russian authorities with a letter of commitment guaranteeing respect for the applicant's rights, including the right not to be subjected to torture, inhuman and degrading treatment and the right to a fair trial. The City Court noted that the Belarusian authorities had also guaranteed that the applicant would stand trial only for the criminal offence in respect of which the extradition request had been made and that the criminal case against him had no political, religious, racial or other discriminatory motivation.

22. The applicant appealed to the Supreme Court of the Russian Federation, repeating the arguments that he had put forward in the appeal against the prosecutor's decision.

23. In the meantime, on 2 November 2011 the District Court issued a further order extending the applicant's detention until 16 May 2012. The court's reasoning was identical to that employed in the two previous detention orders. The City Court upheld the decision on 30 November 2011, noting that it had authorised the applicant's extradition in its lawful and well-founded decision of 4 October 2011.

24. On 14 November 2011 the Supreme Court of the Russian Federation dismissed the appeal lodged by the applicant, and upheld the Moscow City Court's decision of 4 October 2011 to extradite.

25. The applicant was released from custody on 16 May 2012 by a decision of the Ostankinskiy District prosecutor of Moscow who, having cited the European Court's decision to apply Rule 39 of the Rules of Court and a decision by the Russian immigration authorities to award the applicant temporary asylum until 14 May 2013, decided that his further detention was unwarranted.

(c) Asylum proceedings

26. According to the applicant, on 25 May 2011 he submitted a request to the Russian immigration authorities seeking refugee status. His request was not duly registered until 31 August 2011.

27. On 20 December 2011 the Moscow branch of the Federal Migration Service (hereinafter "the FMS") dismissed the applicant's asylum request. The authorities reasoned that an analysis of the information and materials available to them had indicated that the applicant had never been involved in any political or public activities in Belarus. Having studied his "Free citizen certificate no. 0327", they were not convinced of its authenticity, given that it bore no official insignia confirming that it had been issued by the political party. As the applicant had applied for asylum only after his arrest with a view to extradition, they concluded that his application had been motivated by his wish to avoid prosecution for purely criminal conduct.

28. On 14 May 2012 the Moscow branch of the FMS granted the applicant temporary asylum for one year, until 14 May 2013. Having mainly copied the reasoning from the decision of 20 December 2011, the authorities reiterated the European Court's decision under Rule 39 of the Rules of Court indicating to the Russian Government that the applicant should not be extradited to Belarus until further notice. Citing humanitarian grounds, the authorities stressed that the Court had decided to apply Rule 39 in the applicant's case because it had not yet entirely ruled out the risk that the applicant might face persecution and inhuman treatment in Belarus.

II. RELEVANT INTERNATIONAL MATERIALS AND DOMESTIC LAW AND PRACTICE

A. Detention pending extradition and judicial review of detention

1. Russian Constitution

29. 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 only permitted 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 1993 Minsk Convention

30. The CIS Convention on legal assistance and legal relations in civil, family and criminal cases ("the Minsk Convention"), to which both Russia and Belarus are parties, provides that in executing a request for legal assistance, the requested party applies its domestic law (Article 8 § 1).

31. A request for extradition must be accompanied by a detention order (Article 58 § 2). Upon receipt of a request for extradition, measures should be taken immediately to find and arrest the person whose extradition is sought, except in cases where that person cannot be extradited (Article 60).

32. A person whose extradition is sought may be arrested before receipt of a request for his or her extradition. In such cases a special request for arrest must be sent, containing a reference to the detention order and indicating that a request for extradition will follow (Article 61 § 1). A person may also be arrested in the absence of such a request if there are reasons to suspect that he has committed, in the territory of the other Contracting Party, an offence for which extradition may be requested. The other Contracting Party must be immediately informed of the arrest (Article 61 § 2).

33. A person arrested pursuant to Article 61 must be released if no request for extradition is received within forty days of the arrest (Article 62 § 1).

3. Code of Criminal Procedure

34. The term "court" is defined by the Russian Code of Criminal Procedure ("the CCrP") 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).

35. Chapter 13 of the CCrP ("Measures of restraint") provides for the use of measures of restraint, or preventive measures (*меры пресечения*), while criminal proceedings are pending. Such measures include placement in custody. Custody may be ordered by a court on 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 measure of restraint cannot be used (Article 108 §§ 1 and 3). A period of detention pending investigation may not exceed two months (Article 109 § 1). A judge may extend that period up to six months (Article 109 § 2). Further extensions of up to twelve months, or in exceptional circumstances, up to eighteen months, may only be granted 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). If the grounds serving as the basis for a preventive measure have changed, the preventive measure must be cancelled or amended. A decision to cancel or amend a preventive measure may be taken by an investigator, a prosecutor or a court (Article 110).

36. A judge's decision on detention is amenable to appeal before a higher court within three days of its delivery date (Article 108 § 11 of the CCrP). A statement of appeal should be submitted to the first-instance court (Article 355). While the CCrP does not provide for a time-limit during which the first-instance court should send the statement of appeal and the case file to the appeal court, Order no. 36 of 29 April 2003 by the Judicial Department of the Supreme Court of Russia requires that, after the expiry of the three-day time-limit for appeal, the first-instance court should submit the detention file to the higher court. Having received this file, the second-instance court should examine the appeal lodged against the judge's decision on detention within three days (Article 108 § 11).

37. Chapter 16 ("Complaints about acts and decisions by courts and officials involved in criminal proceedings") provides for 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 competent court is the

court with territorial jurisdiction over the location at which the preliminary investigation is conducted (ibid.).

38. Chapter 54 ("Extradition of a person for criminal prosecution or execution of sentence") regulates extradition procedures. Upon receipt of a request for extradition not accompanied by a detention order issued by a foreign court, a prosecutor must decide on the measure of restraint in respect of the person whose extradition is sought. The measure must be applied in accordance with established procedure (Article 466 § 1). If a request for extradition is accompanied by a detention order issued by a foreign court, a prosecutor may impose house arrest on the individual concerned or place him or her in detention "without seeking confirmation of the validity of that order from a Russian court" (Article 466 § 2).

4. Relevant case-law of the Constitutional and Supreme Courts of Russia

39. On 4 April 2006 the Constitutional Court examined an application by Mr N., who had submitted that the lack of any time-limit on the detention of a person pending extradition was incompatible with the constitutional guarantee against arbitrary detention. In its decision no. 101-O of the same date, the Constitutional Court declared the application inadmissible. In its view, the absence of any specific regulation of detention matters in Article 466 § 1 did not create a legal lacuna incompatible with the Constitution. Article 8 § 1 of the 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 Code and the norms in its Chapter 13 ("Measures of restraint") 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. Accordingly, Article 466 § 1 of the CCrP did not allow the authorities to apply a custodial measure without complying with the procedure or the time-limits established in the Code. The Court also refused to analyse Article 466 § 2, finding that it had not been applied in Mr N.'s case.

40. On 1 March 2007 the Constitutional Court, in decision no. 333-O-P, held that Articles 61 and 62 of the Minsk Convention governing a person's detention pending the receipt of an extradition request did not determine the body or official competent to order such detention, the procedure to be followed, or any time-limits. In accordance with Article 8 of the Minsk Convention, the applicable procedures and time-limits were to be established by domestic legal provisions.

41. The Constitutional Court further 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. The Constitutional Court held that Article 466 § 1 of the CCrP, 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 and within the time-limits established in Chapter 13 of the CCrP.

42. On 19 March 2009 the Constitutional Court, by decision no. 383-O-O, rejected as inadmissible a request for a review of the constitutionality of Article 466 § 2 of the CCrP, stating that this provision "does not establish time-limits for custodial detention and does not establish the grounds 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]".

43. On 10 February 2009 the Plenary Session of the Russian Supreme Court adopted Directive Decision No.1, aimed at clarifying the application of Article 125 of the CCrP. It stated that the acts or inaction of investigating and prosecuting authorities, including a prosecutor's decision to hold a person under house arrest or to remand him or her in custody with a view to extradition, could be appealed against to a court under Article 125 of the CCrP. The plenary particularly emphasised that in declaring a specific decision, act or failure to act on the part of a law-enforcement authority unlawful or unjustified, a judge was not entitled to annul the impugned decision or to order the official responsible to revoke it or to take any particular actions, but could only instruct him or her to rectify the shortcomings indicated. Should the authority concerned fail to comply with the court's instructions, an interested party could raise that matter before a court, and the latter could issue a special decision [*частное определение*], drawing the authority's attention to the situation.

44. 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 CCrP, only a court could remand in custody a person in respect of whom an extradition check was pending when the authorities of the country requesting extradition had not submitted a court decision to place that person in custody. The judicial authorisation of placement in custody in that situation was to be carried out in accordance with Article 108 of the CCrP 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 whether there were 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 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. In extending a person's detention with a view to extradition, a court should apply Article 109 of the CCrP.

45. In a recent ruling, no. 11 of 14 June 2012, the Plenary Session of the Russian Supreme Court held that a person whose extradition was sought may be detained before the receipt of an extradition request only in cases specified in international treaties to which Russia was a party, such as Article 61 of the Minsk Convention. Detention under those circumstances should be ordered and extended by a Russian court in accordance with the procedure, and within the time-limits, established by Articles 108 and 109 of the CCrP. The detention order should mention the term for which the detention or extension had been ordered and the date of its expiry. If the request for extradition was not received within a month – or forty days if the requesting country was a party to the Minsk Convention – the person whose extradition was sought should be released immediately.

B. International reports on Belarus

46. For relevant reports reviewing the situation in Belarus, see *Puzan v. Ukraine* (no. 51243/08, §§ 20-24, 18 February 2010) and *Kozhayev v. Russia* (no. 60045/10, §§ 55-60, 5 June 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

47. The applicant complained that, if extradited to Belarus, he risked being subjected to ill-treatment in breach of Article 3 of the Convention, and that he had been deprived of effective remedies in respect of his grievances. Articles 3 and 13 provide:

Article 3

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Submissions by the parties

48. The Government argued that the applicant had failed to substantiate his allegation that he risked ill-treatment if extradited. Belarus is a party to a number of international agreements on human rights, and its own legislation, including its Constitution and Code of Criminal Procedure, prohibits torture. In approving the decision to extradite the applicant, the Russian courts took into account the assurances provided by the Belarusian authorities. Among other things, the authorities guaranteed that the applicant's criminal prosecution had not been politically motivated; that he would not be subjected to torture; and that he would only be tried for those criminal offences in respect of which the Russian authorities had authorised his extradition. The Government also noted that in their experience of cooperating with the Belarusian authorities in extradition matters, they had never been faced with a failure on the authorities' part to comply with their assurances.

49. The Government further submitted that the domestic authorities had carefully examined the applicant's allegations of risk of ill-treatment in the extradition proceedings at both the pre-trial and the trial stages. Relying on a certificate issued by the Russian Federal Security Service, they also stressed that there was no information that the applicant could have been the subject of political persecution in Belarus. The Government concluded that he had been afforded effective remedies in respect of his grievance under Article 3.

50. Relying on the Court's judgments in which reports of various international NGOs on the situation in Belarus were cited (see, in particular, *Koktysh v. Ukraine*, no. 43707/07, 10 December 2009 and *Kamyshev v. Ukraine*, no. 3990/06, 20 May 2010), the applicant submitted that the human-rights situation in Belarus was worrying, the torture of detainees was not exceptional and that conditions in Belarusian detention facilities were inadequate. He further stressed that the reopening of the criminal proceedings against him in an attempt to link him with the crimes allegedly committed in 2000 and 2001 was an act of pure political persecution. He insisted that the statutory time-limit in respect of those crimes had expired in February 2011. He argued that the Belarusian authorities were attempting to punish him for his political views and his participation in peaceful demonstrations organised by the opposition party. He alleged that he had been arrested on a number of occasions by the Belarusian police and had

been forced to remain for hours on his knees on the stone floor of a police station. The applicant also pointed out that on 14 May 2012 the FMS had decided to grant him temporary asylum. In his view, that decision amounted to an inadvertent acknowledgement by the Russian authorities that there was a serious risk of his being subjected to torture if extradited to Belarus.

51. Lastly, the applicant considered that effective remedies had not been available to him in respect of his grievance under Article 3 because the Russian courts had failed to properly assess the risk that he would be subjected to torture, and had instead heavily relied on the assurances provided by the requesting country without checking whether they were reliable.

B. The Court's assessment

1. Admissibility

52. The Court observes that the extradition order in respect of the applicant remains in force and hence it considers that he can still be regarded as running a risk of extradition in view of the criminal proceedings pending against him in Belarus. It also notes that on 14 May 2012 the applicant was granted temporary asylum in Russia for a year (see paragraph 28 above). At the same time, the Court notes that the parties did not allege that that measure affected the applicant's victim status, since the extradition order, which is at the heart of his complaint, remains enforceable. It therefore considers that the applicant has not lost his victim status in respect of the alleged violation of Article 3 of the Convention.

53. The Court further notes that the complaints under Articles 3 and 13 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) Article 3

(i) General principles

54. 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).

55. 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 *Saadi v. Italy* [GC], no. 37201/06, § 128, ECHR 2008). 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).

56. 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 the applicant's 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 or she 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).

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

58. 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).

59. 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).

60. 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*, cited above, § 143). Consideration must also 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 that 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).

61. While the Court accepts that many reports are, by their very nature, general assessments, greater importance must necessarily be attached to reports that 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).

(ii) Application of these principles to the present case

62. Turning to the circumstances of the present case, the Court will now examine whether the foreseeable consequences of the applicant's extradition are such as to bring Article 3 into play. Bearing in mind that the applicant has not yet been extradited to Belarus, owing to the indication by the Court of an interim measure under Rule 39 of the Rules of Court, the material date for its assessment of the risk is accordingly that of the Court's consideration of the case.

63. It is noted that the majority of the reports relied upon by the applicant are not recent and concern, in particular, the situation in Belarus in the context of the 2010 presidential elections (see paragraph 50 above). At the same time, the Court also notes that a number of more recent international reports express serious concerns as to the human-rights situation in that country (see paragraph 46 above).

64. The Court observes at the outset that the domestic authorities and the Government dismissed 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, ill-treatment or political persecution (see paragraphs 18, 20, 21 and 48 above). In this respect, the Court reiterates that diplomatic assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment, and there is an obligation to examine whether they provide, in their practical application, a sufficient guarantee that the applicant will be protected against any such risk (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 187, 17 January 2012).

65. In *Othman (Abu Qatada)* the Court put forward an extensive list of criteria to be used to assess the quality of the assurances in the particular circumstances of the case, including, among other things, assessment of whether they are couched in general or specific terms and whether the requesting State's compliance with them can be objectively checked through diplomatic or other monitoring mechanisms, for instance by providing the applicant with unfettered access to his or her lawyer (see ibid., § 189). In the present case the Court is inclined to consider that the assurances given by the Belarusian authorities were more of a general nature (compare, for example, *Klein v. Russia*, no. 24268/08, § 55, 1 April 2010). Moreover, the Government did not indicate whether there existed any specific mechanisms – either diplomatic or monitoring – by which compliance with those assurances could be objectively checked (see, by contrast, *Othman (Abu Qatada)*, cited above, §§ 199 and 203-04). Their vague reference to the fact that they had not encountered any problems in their previous cooperation with the Belarusian authorities in similar matters (see paragraph 48 above) is not sufficient for the Court to dispel doubts about those assurances. In sum, the Court is not ready to give any particular

weight to those statements in the present case (see *Kozhayev v. Russia*, no. 60045/10, § 84, 5 June 2012).

66. As the Court has stated above, reference to a general problem concerning human-rights observance in a particular country cannot alone serve as a basis for refusal of extradition. It will now turn to examining the applicant's specific allegations to ascertain whether he has adduced evidence capable of proving that there are substantial grounds for believing that, if extradited, he would be exposed to a real risk of treatment contrary to Article 3.

67. The thrust of the applicant's submissions in this respect is that, given his previous involvement with members of the opposition parties, his participation in rallies and demonstrations organised by the opposition and his membership of the Belarus Social Democratic Party, he was likely to be a victim of political persecution, which would inevitably lead to his being tortured if he were returned to Belarus. In support of his allegations that he risked ill-treatment, the applicant described his previous encounters with the police prior to his move to Russia. He insisted that the reopening of the criminal proceedings against him, despite the fact that the statutory time-limit had already expired in February 2011, was a politically motivated act by the Belarusian authorities.

68. Having regard to the decisions of the Russian courts in the course of the extradition proceedings, as well as the materials before it, the Court considers that the applicant's statement concerning his being a victim of political persecution in Belarus lacks substantiation. The Court observes that the applicant is wanted by the Belarusian authorities on charges of aggravated kidnapping, robbery and extortion, which, although grave, are ordinary criminal offences. The decisions by the Belarusian authorities describing the circumstances of the crimes and outlining the suspicions against the applicant are detailed and well-reasoned. Further, there is no reason to doubt the Russian courts' conclusion that the statutory time-limit for prosecuting the offences in question had not expired.

69. In his submissions before the domestic authorities and the Court, the applicant relied on a copy of a "Free citizen certificate" allegedly attesting to his membership of the Belarus Social Democratic Party and consequently supporting his allegation that he risked ill-treatment. The Court, however, is not convinced by the authenticity or evidentiary value of that certificate, given that it had not been stamped or signed by an official authority of the party. The same doubts were expressed by the Russian courts. The Court's qualms are further strengthened by the following consideration: apart from a vague statement that he took part in the political activities of the opposition parties in Belarus from 1998 to 2000 and again in 2010, the applicant failed to provide any further information in that respect – such as details about his political activities, the dates and places of the opposition meetings, rallies and demonstrations, dates of his visits to Belarus to take part in the political

life of the country, the nature of his alleged financial contribution, or any other relevant data to support his allegation that he was an active member of the opposition movement (see, by contrast, *Y.P. and L.P. v. France*, no. 32476/06, §§ 10-13, 2 September 2010). In the same vein, the applicant's submissions that he had already been a victim of ill-treatment on his previous encounters with the Belarusian police are uncorroborated. Once again he omitted to provide any description of the alleged events, except for the torture technique allegedly used on him by police officers. In the Court's view, the lack of such information strips the applicant's submissions of credence. This conclusion is not altered by the fact that on 14 May 2012 the Russian FMS granted the applicant temporary asylum status. The Court is not persuaded by the applicant's argument that the impugned decision can be regarded as indicative of a personal risk of being subjected to treatment in breach of Article 3 of the Convention. It interprets the decision of 14 May 2012 as no more than the Russian authorities' attempt to provide the applicant with a lawful basis on which to continue residing in Russia while the proceedings before the Court were pending.

70. Furthermore, the Court does not lose sight of the fact that the applicant did not argue that his conviction in 2001, information about which was provided by the Russian Government, had had any connection to his alleged political activities or had involved any circumstances that substantiated a serious risk of ill-treatment or unfair trial in the future (see, for similar reasoning, *Kozhayev*, cited above, § 90). In this respect, the Court also cannot overlook important discrepancies in the applicant's statements concerning the date of his move to Russia. In particular, the applicant stated that he had moved with his family to Russia in 2000, whereas the official records issued by the Belarusian authorities – and the applicant did not comment on their veracity – show that he was convicted in Belarus in September 2001 and was relieved of the sentence only on 16 August 2002 following an Amnesty Act.

71. The Court also notes 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 criminal offences committed in 2000 and 2001 (ibid., § 91).

72. Lastly, the applicant's allegation that any criminal suspect detained in Belarus ran 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 that detainees will be ill-treated (see, for a similar approach, *Bordovskiy v. Russia* (dec.), no. 49491/99, 11 May 2004; and, more recently, *Puzan*, § 34; *Kamyshev*, § 44, both cited above; and *Galeyev v. Russia*, no. 19316/09, § 55, 3 June 2010).

73. In view of the above-mentioned considerations, the Court is unable to conclude that the applicant has raised any individual circumstances that substantiate his fears of torture or ill-treatment, or 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 in the requesting country. Accordingly, it concludes that the applicant's extradition to Belarus would not be in breach of Article 3 of the Convention.

(b) Article 13 of the Convention

74. In view of the foregoing, the Court does not find it necessary to deal separately with the applicant's complaint under Article 13 of the Convention, which essentially contains the same arguments as those that it has already examined under Article 3 of the Convention.

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

75. The applicant complained that his detention from 16 May 2011 to 16 May 2012 pending extradition had been unlawful. He relied on Article 5 § 1 of the Convention, the relevant parts of which read 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. Submissions by the parties

76. The Government insisted that the entire period of the applicant's detention pending extradition had been lawful, and that the domestic provisions governing detention pending extradition were sufficiently accessible and clear. The applicant's detention had been based on detention orders issued by the competent courts. The Government also submitted that, pursuant to the decisions of the Constitutional Court and the Supreme Court of Russia, the provisions of Chapter 13 of the CCrP were fully applicable to persons detained with a view to extradition under Article 466 of the CCrP. The applicant's placement in custody had been ordered and repeatedly extended in accordance with the provisions of Chapter 13 of the CCrP. The domestic courts had referred to those provisions in their decisions. Upon the expiry of the authorised detention term, which had not exceeded the maximum period of eighteen months authorised by Russian law, the applicant had been released. Hence, the applicable legislation had enabled him to estimate the length of his detention.

77. The Government further argued that the applicant had had the opportunity to challenge the lawfulness of his detention in the Russian courts. The fact that the higher courts had not ruled in his favour did not mean that the procedure had been ineffective. The domestic authorities had conducted the extradition proceedings with due diligence and the applicant's detention pending extradition had not been excessively long.

78. The applicant argued that the domestic legal provisions regulating his detention had been unclear and the length of his detention unforeseeable. He submitted that his detention had been unnecessary and could have been changed to a less coercive measure. It had gone beyond what was envisaged by the national law. Given his strong family ties to Russia, with his family residing there, the applicant had no intention of absconding. He also stressed that prior to authorising his detention, the Russian courts should first have thoroughly studied the human-rights situation in Belarus. However, they failed to analyse his particular circumstances in relation to the situation in Belarus and immediately authorised his detention, without balancing his right to liberty against their inter-State obligations.

B. The Court's assessment

1. Admissibility

79. The Court considers 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

80. The Court notes that it is common ground between the parties that the applicant was detained with a view to his extradition from Russia to Belarus. Article 5 § 1 (f) of the Convention is thus applicable in the instant case. This provision does not require the detention of a person against whom action is being taken with a view to extradition to be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition". It is therefore immaterial, for the purposes of Article 5 § 1 (f), whether the underlying decision to expel can be justified under national or Convention law (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I, and *Chahal*, cited above, § 112).

81. The Court reiterates, however, that it falls to it to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national system. Where the "lawfulness" of detention is at issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. However, it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, 25 June 1996, § 50, Reports 1996-III, and *Nasrulloyev v. Russia*, no. 656/06, § 70, 11 October 2007).

82. The Court must therefore ascertain whether the domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court emphasises that where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. In laying down that any deprivation of liberty must be effected "in accordance with a procedure prescribed by law", Article 5 § 1 does not merely refer back to domestic law; like the expressions "in accordance with the law" and "prescribed by law" in the second paragraphs of Articles 8 to 11, it also relates to the "quality of the law", requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. "Quality of the law" in this sense implies that where a national law authorises deprivation of liberty, it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness (see *Nasrulloyev*, cited above, § 71, 11 October 2007, with further references).

83. Lastly, the Court reiterates that deprivation of liberty under Article 5 § 1 (f) will be acceptable only for as long as extradition proceedings are in progress. If such proceedings are not conducted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 72-74, ECHR 2008).

(b) Application of these principles to the present case

(i) Lawfulness of the applicant's detention

84. Before dealing with the applicant's specific arguments in the present case, the Court observes that unlike in some previous Russian cases concerning detention with a view to extradition (see, among many others, *Dzhurayev v. Russia*, no. 38124/07, § 68, 17 December 2009), the applicant's detention was authorised by a Russian court rather than a foreign court or a non-judicial authority (see paragraph 17 above). The Court further points out that the applicant's detention was regularly extended by a competent court, in compliance with the time-limits set in Article 109 of the Russian Code of Criminal Procedure, which was applicable in the context of

detention in extradition cases following the 2009 Supreme Court Directive Decision no. 22 (see paragraph 44 above). The offences with which the applicant was charged in Belarus were regarded as "serious" offences under Russian law, on which basis his detention was extended to twelve months, in accordance with Article 109 § 3 of the CCrP (see paragraph 35 above) and after the expiry of that term he was released (see paragraph 25 above). The lawfulness of such detention was reviewed and confirmed by the appeal court on several occasions.

85. In so far as the applicant complained that there were deficiencies in the review of the detention by the appellate court, the Court will examine those complaints under Article 5 § 4 below.

86. The Court further considers that the applicant failed to put forward, either before it or before the domestic courts, any serious arguments prompting it to consider that his detention during the entire period was in breach of Article 5 § 1 of the Convention. Nor does it find that the domestic courts acted in bad faith, that they neglected to apply the relevant legislation correctly, or that the applicant's detention was otherwise unlawful or arbitrary (see *Kozhayev v. Russia*, cited above, §§ 107-08; *Khodzhamberdiyev v. Russia*, no. 64809/10, § 94, 5 June 2012; *Shakurov*, cited above, § 160; and *Rustamov v. Russia*, no. 11209/10, § 154, 3 July 2012).

87. There has therefore been no violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's detention.

(ii) Alleged lack of due diligence by the authorities in the conduct of the extradition proceedings

88. The Court reiterates that the period complained of lasted twelve months. It started on 16 May 2011, when the applicant was placed in custody with a view to extradition, and ended on 16 May 2012, when he was released. For the reasons presented below, the Court does not consider this period to be excessive.

89. The Court observes first of all that between 16 May and 14 November 2011, when the applicant's appeal against the extradition order was rejected by the Supreme Court in the final instance (see paragraph 24 above), the extradition proceedings were pending. During that period an extradition request and diplomatic assurances were submitted by the Belarusian authorities (see paragraph 18 above), the Russian Prosecutor General's Office issued an extradition order in respect of the applicant (see paragraph 20 above), and the latter had it reviewed by the Russian courts at two levels of jurisdiction (see paragraphs 21 and 24 above).

90. The Court further notes that, as stated above, on 14 November 2011 the lawfulness of the extradition order was confirmed on appeal. Although the domestic extradition proceedings were thereby terminated, the applicant remained in custody for a further six months, until 16 May 2012. During

that time the Government refrained from extraditing him in compliance with the interim measure indicated by the Court under Rule 39 of the Rules of Court. The question thus arises as to whether the extradition proceedings remained in progress between 14 November 2011 and 16 May 2012, such as to justify the applicant's detention with a view to extradition during that period.

91. In accordance with the Court's well-established case-law, this latter period of the applicant's detention should be distinguished from the earlier period (see *Chahal*, cited above, § 114; *Al Hanchi v. Bosnia and Herzegovina*, no. 48205/09, §§ 49-51, 15 November 2011; and *Al Husin v. Bosnia and Herzegovina*, no. 3727/08, §§ 67-69, 7 February 2012). As a result of the application of the interim measure, the respondent Government could not remove the applicant to Belarus without being in breach of their obligation under Article 34 of the Convention. During that time the extradition proceedings, although temporarily suspended pursuant to the request made by the Court, were nevertheless in progress for the purpose of Article 5 § 1 (f) (see, for similar reasoning, *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, §§ 73 and 74, ECHR 2007-II; *Al Hanchi*, cited above, § 51; and *Al Husin*, cited above, § 69). The Court has previously found that the fact that expulsion or extradition proceedings are provisionally suspended as a result of the application of an interim measure does not in itself render the detention of the person concerned unlawful, provided that the authorities still envisage expulsion at a later stage, and on condition that the detention is not unreasonably prolonged (see *Keshmiri v. Turkey* (no. 2), no. 22426/10, § 34, 17 January 2012, and *S.P. v. Belgium* (dec.), no. 12572/08, 14 June 2011).

92. The Court observes that, after the extradition order in respect of the applicant became enforceable, he remained in detention for six months. That period does not appear to be unreasonably prolonged. In this respect the Court reiterates that in the cases of *Al Hanchi* and *Al Husin*, both cited above, it found compatible with Article 5 § 1 (f) the periods of detention which lasted one year and ten months and slightly more than eleven months respectively, pending deportation on the grounds of a threat to national security, following the indication of an interim measure by the Court. By contrast, in the case of *Keshmiri* (cited above, § 34), where the applicant's detention continued for more than one year and nine months after the interim measure had been applied, during which time no steps were taken to find alternative solutions, the Court considered such a period to be in violation of the guarantees of Article 5 § 1 (f) of the Convention. It is also relevant that, as the Court has established in paragraph 87 above, the applicant's detention during that period was in compliance with the procedure and time-limits established under domestic law and that after the expiry of the maximum detention period permitted under Russian law, the

applicant was immediately released (see, for similar reasoning, *Gebremedhin*, cited above, §§ 74 and 75).

93. In view of the foregoing, the Court is satisfied that the requirement of diligence was complied with in the present case and the overall length of the applicant's detention was not excessive.

94. Accordingly, there has been no violation of Article 5 § 1 (f) of the Convention on that account.

III. ALLEGED VIOLATIONS ARTICLE 5 § 4 OF THE CONVENTION

95. Lastly, the applicant complained under Article 5 § 4 of the Convention that his appeals against the court detention orders of 17 May, 24 June and 2 November 2011 had not been examined speedily. Article 5 § 4 reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Submissions by the parties

96. The Government acknowledged that the domestic courts had failed to examine the applicant's appeals against the detention orders "speedily" and that therefore there had been a violation of Article 5 § 4 of the Convention in the applicant's case.

97. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

98. The Court considers 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

99. The Court reiterates that Article 5 § 4 of the Convention proclaims the right to a speedy judicial decision concerning the lawfulness of detention, and to an order terminating it if proved unlawful (see *Baranowski*, cited above, § 68). Article 5 § 4 does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention. However, where domestic law provides for an appeal, the appellate body must also comply with the

requirements of Article 5 § 4, for instance as concerns the speediness of the review in appeal proceedings. Accordingly, in order to determine whether the requirement that a decision be given "speedily" has been complied with, it is necessary to effect an overall assessment where the proceedings have been conducted at more than one level of jurisdiction (see *Mooren v. Germany* [GC], no. 11364/03, § 106, 9 July 2009). At the same time, the standard of "speediness" is less stringent when it comes to proceedings before a court of appeal (see *Lebedev*, cited above, § 96, with further references).

100. The Court notes that the proceedings in which the Russian courts examined the appeals lodged by the applicant against the three detention orders ranged from twenty days to a month. In particular, it took approximately twenty days to examine the applicant's appeal against the detention order of 17 May 2011 (see paragraph 17 above, with the appeal decision having been issued on 6 June 2011), a month to deal with the appeal against the detention order of 24 June 2011 (see paragraph 19 above, with the final decision having been issued on 25 July 2011); and approximately twenty-eight days to examine the appeal against the decision of 2 November 2011 (see paragraph 23 above, with the appeal decision having been taken on 30 November 2011).

101. The Court observes that the Government did not argue that the applicant had caused delays in any of the three sets of the proceedings in which the lawfulness of his detention was being reviewed. In fact, the Government admitted the domestic courts' failure to speedily examine the detention matters in the applicant's case. In this respect, the Court notes that the Russian Code of Criminal Procedure requires a first-instance court to transfer the detention file to a higher court after the expiry of the three-day time-limit for appeal against a detention order and that it lays down an obligation on a second-instance court to examine an appeal against a detention order within three days after the transfer of the file (see paragraph 36 above). The Russian courts did not comply with those requirements in the present case. In these circumstances the Court concludes that the periods in question cannot be considered compatible with the "speediness" requirement of Article 5 § 4, especially given that their duration was entirely attributable to the authorities (see, for similar reasoning, *Niyazov v. Russia*, no. 27843/11, § 163, 16 October 2012, with further references).

102. There has therefore been a violation of Article 5 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

105. The Government considered the applicant's claim to be excessive and unfounded.

106. The Court has dismissed certain grievances and has found a violation of Article 5 § 4 of the Convention in the present case. It accepts that the applicant has suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation. The Court therefore awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

107. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

108. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

V. RULE 39 OF THE RULES OF COURT

109. The Court points out 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 the case under Article 43 of the Convention.

110. The Court considers that the interim measure indicated to the Government under Rule 39 of the Rules of Court on 15 November 2011 (see paragraph 4 above) must remain in force until the present judgment becomes final or until the Court takes a further decision in this connection.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Hold*s that there is no need to examine separately the complaint under Article 13 of the Convention;

4. *Holds* that there has been no violation of Article 5 § 1 (f) of the Convention as regards the lawfulness of the applicant's detention;

5. *Holds* that there has been no violation of Article 5 § 1 (f) of the Convention as regards the conduct of the extradition proceedings;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

7. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

9. *Decides* to continue to indicate 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 to Belarus until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 23 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President