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

FIRST SECTION

CASE OF KHUDYAKOVA v. RUSSIA

(Application no. 13476/04)

JUDGMENT

STRASBOURG

8 January 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Khudyakova v. Russia,

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 13476/04) 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 Ms Svetlana Nikolayevna Khudyakova ("the applicant"), on 16 March 2004.

2. The applicant was represented by Mr A. Fleganov, a lawyer practising in Petrozavodsk. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 14 June 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 in Kazakhstan and currently resides in the town of Petrozavodsk in the Republic of Karelia in Russia. According to both Russian and Kazakh authorities, the applicant is a citizen of

Kazakhstan. According to the applicant, the only citizenship she obtained was that of the former Soviet Union.

6. In October 1997 the applicant moved from Kazakhstan to the Republic of Karelia.

A. Proceedings relating to the applicant's extradition to Kazakhstan

7. On 13 January 1998 the Kazakh police initiated criminal proceedings against the applicant on suspicion of large-scale fraud committed in 1997 in the town of Ust-Kamenogorsk. At the same time she was put on the list of fugitives from justice as her whereabouts were unknown.

8. On 22 January 1998 the Ust-Kamenogorsk Town Prosecutor of Kazakhstan authorised the applicant's arrest.

9. On 7 February 2003 the Prosecutor General's Office of the Russian Federation received a request for the applicant's extradition sent by the General Prosecutor's Office of the Republic of Kazakhstan.

10. On 7 August 2003, pursuant to the arrest warrant issued by the Ust-Kamenogorsk Town Prosecutor, the applicant was arrested in Petrozavodsk with a view to her extradition to Kazakhstan. According to the applicant, the police officers failed to explain why she had been arrested and detained. According to the Government, on the same day the applicant signed the arrest warrant issued by the Ust-Kamenogorsk Town Prosecutor and was informed of the reasons for her arrest and of the charges against her. The Government provided the Court with copies of the arrest warrant signed by the applicant on 7 and 8 August 2003.

11. Upon the applicant's arrest she met with her lawyer, Mr Fleganov.

12. On 13 August 2003 the Karelia Prosecutor's Office sent the extradition file to the Prosecutor General's Office of the Russian Federation for examination of the extradition request.

13. On 15 August 2003 the applicant's lawyer lodged a complaint with the Petrozavodsk Town Court contesting the grounds for his client's detention.

14. On 2 September 2003 the Petrozavodsk Town Court on the request lodged by the Karelia Prosecutor's Office ordered the applicant's detention with a view to her extradition to Kazakhstan on the basis of Article 108 of the Code of Criminal Procedure. The Town Court held that the applicant was charged with a criminal offence punishable by a prison term of more than one year and that the extradition request was pending. The Town Court did not find it possible to apply a more lenient preventive measure, referring to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters ("the 1993 Minsk Convention") and the Russian Code of Civil Procedure. No time-limit for the applicant's detention was set. This decision was upheld on appeal on 11 September 2003 by the Supreme Court of Karelia.

15. Later on 2 September 2003 the Petrozavodsk Town Court examined and dismissed the applicant's lawyer's complaint about the applicant's detention lodged on 15 August 2003. Relying on Articles 61 and 62 of the 1993 Minsk Convention, the Town Court found that the applicant's detention was lawful. The applicant appealed. On 9 October 2003 the Supreme Court of Karelia upheld that decision.

16. On 13 October 2003 the Deputy Prosecutor General of Karelia dismissed the applicant's request to change the measure of restraint, noting that the Prosecutor's Office of Karelia was not authorised to examine this issue.

17. On 20 October 2003 the Petrozavodsk Town Court again dismissed the complaint about the unlawfulness of the applicant's detention. On 27 November 2003 the Supreme Court of Karelia quashed that decision due to procedural flaws and the Town Court's failure to give reasons for its decision to dismiss the complaint. The case was remitted for fresh examination.

18. In the meantime, on 21 October 2003 the Karelia Prosecutor's Office dismissed the applicant's request to inform her about the results of the examination of her extradition file.

19. On three further occasions in October and November 2003 the applicant's lawyer complained about the unlawfulness of the applicant's detention to the Prosecutor's Office. In his submissions Mr Fleganov claimed that Article 109 of the Russian Code of Criminal Procedure prescribed a maximum of two months' detention pending trial without extension. As the detention period had not been extended following the expiry of that period on 7 October 2003, the applicant's subsequent detention was unlawful. On 21 November and 1 and 11 December 2003 Karelia Prosecutor dismissed these complaints. The prosecutor held that the period of the applicant's detention was not limited since the date and time for the applicant's extradition were fixed neither by the 1993 Minsk Convention nor by the Code of Criminal Procedure.

20. The applicant and her lawyer complained to the Petrozavodsk Town Court about the unlawfulness of the applicant's detention and the refusal of the Karelia Prosecutor's Office to authorise her release. They claimed, in particular, that the applicant was not a citizen of Kazakhstan, that she had moved to Russia over six years earlier and that she could thus not be extradited to Kazakhstan.

21. On 17 December 2003 the Petrozavodsk Town Court dismissed the complaint. That decision was upheld on appeal on 16 February 2004 by the Supreme Court of Karelia. The domestic courts found that the applicant's detention was in conformity with the provisions of the 1993 Minsk Convention. The request for the applicant's extradition was under examination by the Prosecutor General of Russia and no final decision was taken. The courts further held that the applicant was to be detained until the

final decision on her extradition had been taken, as neither the Minsk Convention, nor the Code of Criminal Procedure set any time-limit for the examination of an extradition request. The Town and Supreme courts found accordingly that the applicant's detention and the actions of the Prosecutor's Office were in accordance with law.

22. On 10 September 2004 the Petrozavodsk Town Court dismissed the applicant's complaint about the unlawfulness of her detention, relying on the same grounds as in its decision of 17 December 2003.

23. On 14 October 2004 the Supreme Court of Karelia amended the decision of the Petrozavodsk Town Court of 10 September 2004 and ordered the applicant's release. The Supreme Court found as follows:

> "According to Article 109 § 3 of the Code of Criminal Procedure detention over twelve months may be extended only in exceptional circumstances if the person is charged with a serious or particularly serious criminal offence. This extension is to be granted following a request filed by an investigator with the consent of the Prosecutor General of Russia or his Deputy.
>
> Taking into consideration Article 466 § 1 of the Code of Criminal Procedure the issue of subsequent extension of detention may be decided by a court only in exceptional circumstances prescribed by law and on a request lodged by a prosecutor.
>
> It appears from the material of the case-file that the prosecutor has not lodged such a request.
>
> The offence of which the applicant has been accused does not relate to particularly serious offences ..."

24. The Supreme Court concluded as follows:

> "The reasonable time for the applicant's detention (*fourteen months*) had expired ...
>
> The Town Court's referral to the fact that no time-limit was set, either by the 1993 Minsk Convention or by the Code of Criminal Procedure, for the examination of an extradition request was of no relevance to the rights and freedoms of the applicant, who had been held in detention without being charged and without any decision on her extradition for more than one year."

25. According to the applicant, she was released on 18 October 2004. The Government did not comment on this issue.

26. On 8 September 2005 the Office of the Prosecutor General of Russia informed the Deputy Prosecutor General of Kazakhstan that it was not possible to grant the extradition request in respect of the applicant, since the time-limit for criminal prosecution for the offence (two years) had expired.

B. Other proceedings

1. Proceedings relating to the applicant's request for asylum and refugee status

27. On 16 December 2003 the applicant and her son, a minor, sought refugee status and interim asylum at the Migration Department of Karelia. On 20 February 2004 the Migration Department dismissed the applicant's request as unsubstantiated. On 15 June 2004 the applicant's appeal was rejected by the Head of the Migration Department.

28. On 22 October 2004 the Petrozavodsk Town Court dismissed a complaint lodged by the applicant about the refusal to grant her refugee status and interim asylum.

29. Meanwhile the applicant asked the Petrozavodsk Town Court to establish as a legal fact that she had lived on the territory of Russia since November 1997. On 28 October 2004 the Town Court dismissed the application, having found that establishing that fact would not have any effect on the applicant's rights and freedoms.

2. Criminal proceedings against the applicant initiated in Russia

30. On 29 July 2003 the Petrozavodsk police initiated criminal proceedings on suspicion of burglary.

31. On 10 September 2003 the applicant, being detained pending extradition, confessed to the burglary and sent her self-incriminating statement to the police. She was subsequently questioned by the police in the presence of her lawyer.

32. On 29 October 2003 the case investigator terminated the proceedings against the applicant for lack of *corpus delicti*. The investigator found that the applicant had confessed to the crime in order to hinder her extradition to Kazakhstan.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. The Russian Constitution

33. 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."

B. The 1993 Minsk Convention

34. 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 Kazakhstan are parties, provides as follows:

Article 8. Procedure for execution of requests for legal assistance

"1. When executing a request for legal assistance, the requested authority applies the laws of its own State ..."

Article 56. Obligation of extradition

"1. The Contracting Parties shall ... on each other's *request* extradite persons who find themselves in their territory, for criminal prosecution or to serve a sentence.

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

Article 58. Request for extradition

"1. A *request* for extradition (*требование о выдаче*) shall include the following information:

(a) the title of the requesting and requested authorities;

(b) a description of the factual circumstances of the offence, the text of the law of the requesting Contracting Party which criminalises the offence, and the punishment sanctioned by that law;

(c) the [name] of the person to be extradited, the year of birth, citizenship, place of residence, and, if possible, a description of his appearance, his photograph, fingerprints and other personal information;

(d) information concerning the damage caused by the offence.

2. A *request* for extradition for the purpose of criminal prosecution shall be accompanied by a certified copy of a detention order. ..."

Article 60. Arrest or detention with a view to extradition

"Upon the receipt of a request for extradition the requested Contracting Party takes immediate measures aiming at detaining or arresting the person whose extradition is sought ..."

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 ... and shall indicate that a request for extradition will follow.

2. The person may also be detained without the petition referred to in point 1 above if there are legal grounds to suspect that he has committed, in the territory of the other Contracting Party, an offence entailing extradition.

3. In the event of [the person's] arrest or detention before receipt of the request for extradition, the other Contracting Party shall be informed immediately."

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 ..."

C. The European Convention on Extradition

35. The European Convention on Extradition of 13 December 1957 (CETS no. 024), to which Russia is a party, provides as follows:

Article 16 – Provisional arrest

"1. Where there is urgency, the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.

...

4. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought."

D. The Code of Criminal Procedure

36. Chapter 13 of the Code of Criminal Procedure ("Measures of restraint") governs the application of measures of restraint, or preventive measures (*меры пресечения*), which include, in particular, placement in custody. A custodial measure may only be ordered by judicial decision in respect of a person who is suspected of, or charged with, a criminal offence punishable by more than two years' imprisonment (Article 108 "Placement

in custody"). The time-limit for detention pending investigation is fixed at two months (Article 109 "Time-limits for detention"). A judge may extend that period up to six months (Article 109 § 2). Further extensions may only be granted by a judge 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). A judicial decision ordering or extending the application of a custodial measure may be appealed against to a higher court within three days of its issue (Articles 108 § 10 and 109 § 2). A custodial measure may be revoked or modified by a judicial decision if it is no longer considered necessary (Article 110 "Revoking or modifying the measure of restraint").

37. Chapter 54 ("Extradition of a person for criminal prosecution or execution of sentence") regulates extradition procedures. Articles 462-463 state that a decision to extradite a person upon a request from another country is taken by the Prosecutor General or his deputy. Article 462 states that a person's detention finishes when either the Prosecutor General, or his deputy decides on the extradition request. Article 466 governs application of measures of restraint with a view to extradition. Paragraph 1 deals with the situation where a request for extradition is not accompanied by a detention or arrest order issued by a foreign court. In that case a prosecutor must decide whether it is necessary to impose a measure of restraint "in accordance with the procedure provided for in the present Code". Paragraph 2 establishes that, if a foreign judicial decision on placement in custody is available, a prosecutor may place the person in detention or under house arrest. In that eventuality no confirmation of the foreign judicial decision by a Russian court is required. If a foreign court has authorised the person's arrest, the decision of the prosecutor does not need to be confirmed by a Russian court.

38. Article 464 provides that extradition cannot take place if the person whose extradition is sought is a Russian national or if he has refugee status.

39. Chapter 15 ("Petitions") provides that suspects, defendants, victims, experts, civil plaintiffs, civil defendants, and their representatives may petition officials to take procedural decisions that would secure the rights and legitimate interests of the petitioner (Article 119 § 1). 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 damaging the constitutional rights or freedom of the parties to criminal proceedings (Article 125 § 1). The competent court is that which has jurisdiction for the place of the preliminary investigation (ibid.).

E. Subsequent case-law of the Supreme Court

40. In the case of Mr A., concerning his detention with a view to extradition to Armenia, the Criminal Division of the Supreme Court held as follows (case no. 72-005-19, 8 June 2005):

> "The term of detention of the person who is to be extradited to the place of commission of the offence ... is not governed by Article 109 of the Code of Criminal Procedure. In accordance with the requirements of [the 1993 Minsk Convention], the person arrested at the request of a foreign state, may be held in custody for forty days until a request for extradition has been received. Subsequent detention of the person is governed by the criminal law of the requesting party (Armenia in the instant case)."

F. Subsequent case-law of the Constitutional Court

1. Decision no. 101-O of 4 April 2006 in the case of Mr Nasrulloyev

41. Verifying the compatibility of Article 466 § 1 of the Code of Criminal Procedure 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.

42. In the Constitutional Court's view, the absence of a specific regulation of detention matters in Article 466 § 1 did not create a legal lacuna incompatible with the Constitution. Article 8 § 1 of the 1993 Minsk Convention provided that, in executing a request for legal assistance, the requested party would apply its domestic law, that is, the procedure laid down in the Russian Code of Criminal Procedure. Such 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 examination of extradition requests.

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

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

44. The Prosecutor General asked the Constitutional Court for an official clarification of its decision in Mr Nasrulloyev's case (see above), for the purpose in particular of elucidating the procedure for extending a person's detention with a view to extradition.

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

3. Decision of 1 March 2007 in the case of Mr Seidenfeld (no. 333-O)

46. Mr Seidenfeld, a US citizen, was arrested in Russia on 9 December 2005 because his extradition was sought by Kazakhstan. Upon receipt of the formal extradition request, on 30 December 2005 a Russian court ordered his detention *sine die*, pending extradition. Mr Seidenfeld complained to the Constitutional Court that the provisions of the Code of Criminal Procedure which permitted his detention without a judicial decision were incompatible with the Constitution.

47. The Constitutional Court reiterated its constant case-law 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 as such, in that it required a court to examine whether the arrest was lawful and justified.

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

THE LAW

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

49. The applicant complained under Article 5 § 1 of the Convention that she had been unlawfully held in custody. She alleged that neither the criminal-law provisions governing detention with a view to extradition, nor the 1993 Minsk Convention met the requirements of clarity and foreseeability. Thus, due to this confusion in domestic law, she maintained that from 7 August to 2 September 2003 she had been detained without any judicial decision and that the term of her detention had far exceeded the period provided for by the domestic law and had never been lawfully extended. The relevant parts of Article 5 § 1 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 against whom action is being taken with a view to ... extradition."

A. Admissibility

50. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The Government

51. The Government submitted that the applicant's detention had been lawful and complied with Article 5 § 1 (f) of the Convention. Prior to the applicant's arrest the Russian authorities had received a request for extradition from the Office of the Prosecutor General of Kazakhstan, an arrest warrant approved by the Ust-Kamenogorsk Town Prosecutor and a decision on the applicant's placement on the list of fugitives from justice.

52. Pursuant to Article 56 § 2 of the 1993 Minsk Convention a person could be extradited if he or she faced charges punishable with at least one year's imprisonment. Pursuant to Article 60 of the 1993 Minsk Convention the State had to arrest the person in question as soon as a request for extradition was received. The Russian authorities had acted in full compliance with these provisions.

53. The Government maintained that a term of detention with a view to extradition was not governed by any specific provision. By virtue of Article 462 of the Code of Criminal Procedure a person's detention terminated after either the Prosecutor General or his deputy had decided on the extradition request. If the request had been granted, the person was to be extradited to the requesting state. If not, he or she was to be released.

54. The Government observed that the applicant should have foreseen that until such time as her applications for asylum, complaints about the alleged unlawfulness of her detention and other petitions had been decided "the issue of her extradition, and thus of her future" could not have been solved by the authorities. At the same time the Government maintained that the applicant could have estimated the term of her detention as the domestic courts had applied Article 109 of the Code of Criminal Procedure to regulate it. The applicant had been released from custody following the decision of 14 October 2004 due to the expiration of the maximum possible term set by paragraph 3 of Article 109 of the Code of Criminal Procedure. Thus, despite the absence of specific provisions regulating the term of the applicant's detention pending extradition, the legislation had provided the applicant with an opportunity to estimate rather clearly the maximum period of her detention: she either had to remain in custody until the decision on her extradition had been taken by the Prosecutor General, or she had to be released when the general term of detention provided for by the Code of Criminal Procedure had expired.

(b) The applicant

55. The applicant pointed to the inconsistency in the Government's submissions. On the one hand, the Government claimed that detention with a view to extradition was unlimited in time and depended on the date when the Prosecutor General took the decision; on the other hand, they stated that the Code of Criminal Procedure was to be applied to extradition proceedings. Since Article 109 of the Code limited the period of detention to two months, the applicant's detention had already been unlawful after 7 October 2003. In any event it had been unlawful after the expiry of the maximum period of detention mentioned in paragraph 3 of Article 109. That view had been endorsed in the 14 October 2004 decision of the Supreme Court of the Republic of Karelia, which had ordered the applicant's release having regard to the expiry of the maximum detention period prescribed by paragraph 3 of Article 109.

56. The applicant submitted that provisions of the Russian criminal law on detention of persons with a view to extradition fell short of the requirement of legal certainty and the Convention principles. Although Chapter 13 of the Code of Criminal Procedure, and in particular its Articles 108 and 109, contained precise and detailed norms on the application of measures of restraint and set specific time-limits, the absence of an explicit reference to these provisions in Article 466 of the Code of Criminal Procedure had led to confusion. Moreover, the 1993 Minsk Convention on Legal Assistance did not set any time-limits for detention pending extradition.

2. The Court's assessment

57. The Court notes that it is not contested by the parties that the applicant was detained with a view to her extradition from Russia to Kazakhstan. Article 5 § 1 (f) of the Convention is thus applicable in the instant case. This provision does not require that the detention of a person against whom action is being taken with a view to extradition 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 v. the United Kingdom*, 15 November 1996, § 112, *Reports of Judgments and Decisions* 1996-V).

58. However, it falls to the Court 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 in 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, but 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). Since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Benham v. the United Kingdom*, 10 June 1996, §§ 40 and 41, *Reports* 1996-III).

59. Further, as to the length of detention pending extradition, Article 5 § 1 (f) of the Convention does not require domestic law to provide a time-limit for detention pending extradition proceedings. However, if the proceedings are not conducted with the requisite diligence, the detention

may cease to be justifiable under that provision (see *Bordovskiy v. Russia*, no. 49491/99, § 50, 8 February 2005).

60. In the present case the request for the applicant's extradition was accompanied by an arrest warrant issued by a Kazakh prosecutor rather than by a decision of a Kazakh court. In these circumstances, it was the first paragraph of Article 466 of the Russian Code of Criminal Procedure that applied. It required that a measure of restraint be imposed in accordance with the procedure established in the Code (see paragraph 37 above).

61. The Russian Constitution and the Code of Criminal Procedure set at forty-eight hours the maximum period during which an individual may be detained without a judicial decision. The Russian Constitutional Court has constantly laid emphasis in its case-law on the universal applicability of that guarantee against arbitrary detention to all types of deprivation of liberty, including arrest in extradition proceedings, and to any person under the jurisdiction of the Russian Federation, irrespective of his or her nationality (see paragraphs 46 to 48 above).

62. As noted above, the procedure laid down in the Russian Code of Criminal Procedure requires a judicial decision for any detention in excess of forty-eight hours (Articles 10 and 108). In the applicant's case the detention order was issued by a court only on 2 September 2003, that is 26 days after her placement in custody. It follows that the applicant's detention after the first forty-eight hours of custody and until 2 September 2003 was incompatible with the procedure laid down in the Code of Criminal Procedure.

63. As for the period after the judicial decision ordering the applicant's detention, the Court notes, first, that no time-limit was fixed by that decision and, second, that upon the expiry of the maximum initial detention period of two months, no extension was granted by the court. According to the provisions governing the general terms of detention (Article 108 of the Code of Criminal Procedure), to which the domestic courts referred when ordering the applicant's detention, the time-limit for detention pending investigation is fixed at two months. A judge may extend that period up to six months. Further extensions may only be granted by a judge if the person is charged with serious or particularly serious criminal offences. The applicant spent over fourteen months in detention pending extradition. During that period no requests for extension of detention were lodged by the Prosecutor's Office and the court did not extend the detention of its own motion. It follows that the detention of the applicant after the expiry of the initial two-month period was not in accordance with the provisions of the Code of Criminal Procedure either.

64. The Court further notes that, contrary to the assertions of the domestic authorities, the Minsk Convention could not be construed as supplying a legal basis for the applicant's detention. As pointed out by the Russian Constitutional Court, Article 8 of the Minsk Convention explicitly

provided for application by the requested Contracting Party of its own law for execution of requests for legal assistance, such as a request for extradition (see paragraphs 34 and 42above). A similar provision can be found in Article 16 of the European Convention on Extradition, which establishes that provisional arrest of the person whose extradition is sought shall be decided upon by the requested Party in accordance with its law. Thus, the international instrument first required compliance with the domestic procedure which, as the Court has found above, was breached in this case.

65. Furthermore, the Court considers that Article 62 of the Minsk Convention cannot be considered as justifying detention for an initial forty-day period. Like paragraph 4 of Article 16 of the European Convention on Extradition, Article 62 of the Minsk Convention establishes an additional guarantee against the excessive duration of provisional arrest pending receipt of a request for extradition. It does not indicate that a person *may be detained* for forty days but rather requires that the person *should be released* at the end of the fortieth day if the request has not been received in the meantime. In other words, even though under domestic law detention could be ordered for a period exceeding forty days (for instance, Article 108 of the Russian Code of Criminal Procedure provides for an initial two-month period of detention), Article 62 of the Minsk Convention requires the domestic authorities to release anyone who has been detained for more than forty days in the absence of a request for extradition. Thus, the Minsk Convention could not have been a legal basis for the applicant's detention either (see, by analogy, *Shchebet v. Russia*, no. 16074/07, § 68, 12 June 2008).

66. The Government's argument that the lawfulness of the applicant's detention was reviewed upon her complaints filed in 2003-2004 and found lawful cannot be accepted as a justification of the applicant's continued detention. The Court has previously held that review of the applicant's detention following complaints about its unlawfulness and applications for release cannot be regarded as a sufficient legal basis for the continued detention of the applicant (see, by analogy, *Melnikova v. Russia*, no. 24552/02, §§ 57-62, 21 June 2007, and *Fursenko v. Russia*, no. 26386/02, §§ 91-96, 24 April 2008).

67. Finally, the Government's argument that the applicant and her lawyer had contributed to the prolongation of her detention and were directly responsible for the applicant's continued detention is regrettable. Shifting the responsibility for detention to the applicant when she was under the full control of the authorities is neither relevant, nor reasonable. Even assuming that the applicant's actions did protract the extradition procedure as the authorities were under obligation to examine her applications for asylum and her self-incriminating statements in respect of a crime committed in Russia, at this juncture two separate issues should be

distinguished: the applicant's detention and her extradition. The question as to when the Prosecutor General was going to decide on the applicant's extradition is of no relevance to the Court for the purpose of examining the lawfulness and length of the applicant's detention. What is at stake is the applicant's right to liberty pending the decision on extradition. It should be noted that the domestic courts had a possibility to annul the measure of restraint or to change it to a more lenient one during the time the question of the applicant's extradition was under consideration. The Supreme Court of Karelia availed itself of this possibility on 14 October 2004 when it ordered the applicant's release, having found that her detention had exceeded a reasonable time. That ruling was given at a time when the decision on extradition had still not been taken.

68. The above examination of the compliance of the applicant's detention with the domestic law reveals that the law does not lend itself to unequivocal interpretation. The core problem of the present case appears, consequently, to be the applicability and substance of the legal provisions governing the term of the applicant's detention pending extradition. The Court must therefore ascertain whether domestic law is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses 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 *Khudoyorov v. Russia*, no. 6847/02, § 125, ECHR 2005-X (extracts); *Ječius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX; *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III; and *Amuur*, cited above).

69. On the other hand, the issue of the quality of the law only becomes relevant if it is shown that the poor "quality of the law" has tangibly prejudiced the applicant's substantive Convention rights (see *Bordovskiy*, cited above, § 49).

70. The main controversy between the parties in the present case relates to the issue whether the judicial decision of 2 September 2003 was sufficient for the applicant to be held in custody for any period of time – no matter how long – until the decision on the extradition request had been made, or whether her detention should have been reviewed at regular intervals. The applicant maintained that all the provisions of Chapter 13 and

in particular Article 109 which instituted specific time-limits for reviewing detention, should have been applicable in her situation; the Government denied that the domestic law imposed any time-limits on detention with a view to extradition.

71. In this context the Court notes the subsequent development of the case-law of the Russian Constitutional Court, which is the supreme judicial authority competent to give a binding interpretation of the constitutional guarantees of individual rights, such as the right to liberty and personal integrity. Deciding on a complaint similar to that of the applicant in the case of Mr Nasrulloyev (see paragraphs 41-43 above), the Constitutional Court emphasised that in extradition proceedings the right to liberty should be attended by the same guarantees as other types of criminal proceedings. It unambiguously indicated that the application of measures of restraint with a view to extradition should be governed not only by Article 466 but also by the norms of a general character contained in Chapter 13 of the Code of Criminal Procedure. Although the Constitutional Court refused to indicate specific legal provisions governing the procedure for detention with a view to extradition, it constantly referred to the legal prohibition on continuing a custodial measure beyond the established time-limits (see paragraph 43 above). Since Article 109 is the only provision in the Code of Criminal Procedure that deals with time-limits for application of a custodial measure, an argument as to its non-applicability would obviously be at odds with the constant case-law of the Russian Constitutional Court.

72. The Court notes with concern the inconsistent legal positions of the domestic authorities on the issue of provisions applicable to detainees awaiting extradition. On the one hand, the authorities referred to the Code of Criminal Procedure as a legal basis for the applicant's detention, and on the other, to the 1993 Minsk Convention. Moreover, the Supreme Court had expressed the view that, after the initial forty-day period provided for by the 1993 Minsk Convention, the detention of persons whose extradition from Russia had been sought was to be governed by foreign criminal law, i.e. that of the requesting party. At the same time, in the observations filed with the Court the Government explicitly acknowledged that no specific provisions governing the terms of the applicant's imprisonment prior to her extradition were available (see paragraph 37 above).

73. Having regard to the inconsistent and mutually exclusive positions of the domestic authorities on the issue of legal regulation of detention with a view to extradition, the Court finds that the deprivation of liberty to which the applicant was subjected was not circumscribed by adequate safeguards against arbitrariness. The provisions of Russian law governing detention of persons with a view to extradition were neither precise nor foreseeable in their application and fell short of the "quality of law" standard required under the Convention.

74. Taking into account the abovementioned considerations, the Court finds that the applicant's detention over fourteen months pending her extradition exceeded a reasonable time and was not in accordance with the law. It holds, consequently, that there has been a violation of Article 5 § 1 of the Convention on account of the unlawfulness and excessive length of the applicant's detention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

75. The applicant complained of a violation of her right to be informed promptly of the reasons for her arrest and of any charges against her. She claimed that neither at the moment of her arrest, nor at any later stage had she been informed why she had been arrested and detained. The applicant relied on Article 5 § 2 of the Convention, which reads as follows:

> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

A. Admissibility

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

B. Merits

1. Submissions by the parties

77. The Government contested the applicant's argument. To disprove the applicant's allegation, the Government provided the Court with a copy of the arrest warrant issued on 13 January 1998 by the Kazakh police and authorised by the Ust-Kamenogorsk Town Prosecutor on 22 January 1998. This document had been shown to the applicant and signed by her on 7 and 8 August 2003. The Government further submitted that, according to the explanatory note of the head of the temporary detention facility of Petrozavodsk where the applicant had been taken upon her arrest, the reasons for her arrest had been immediately explained to her.

78. The applicant maintained her complaints.

2. The Court's assessment

79. The Court reiterates that Article 5 § 2 contains the elementary safeguard that any person arrested should know why he is being deprived of

his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of § 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with Article 5 § 4 (see *Čonka v. Belgium*, cited above, § 50). Whilst this information must be conveyed 'promptly', it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Fox, Campbell and Heartley v. the United Kingdom*, 30 August 1990, § 40, Series A no. 182).

80. The Court also recalls that when a person is arrested on suspicion of having committed a crime, Article 5 § 2 requires neither that the necessary information be given in a particular form, nor that it consist of a complete list of the charges held against the arrested person (see *X v. Germany*, no. 8098/77, Commission decision of 13 December 1978, Decisions and Reports (DR) 16, p. 111). When a person is arrested with a view to extradition, the information given may be even less complete (see *K. v. Belgium*, no. 10819/84, Commission decision of 5 July 1984, DR 38, p. 230, and *Bordovskiy*, cited above, § 56).

81. In the case at hand, the Government insisted that the applicant had signed a copy of the arrest warrant on two occasions, on 7 and 8 August 2003. The applicant does not contest that she signed the copy on 8 August 2003 but maintained that she had been unable to understand the implications of the warrant and that no further explanations had been given to her. The copy of the applicant's arrest warrant contained brief information concerning the charges against her and referred to a specific Article of the Criminal Code of the Republic of Kazakhstan. The Court considers this information to be clear. Moreover, the applicant did not dispute that on 8 August 2003 she had met with her lawyer, who could have explained what the warrant implied.

82. Having regard to the case-law cited above and to the information in its possession, the Court finds that the information provided to the applicant was sufficient for the purpose of Article 5 § 2 of the Convention.

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

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

84. The applicant further complained of delays in the review of the lawfulness of her detention. She claimed, in particular, that the complaint filed by her lawyer on 15 August 2003 with the Petrozavodsk Town Court

had only been examined on 2 September 2003, that is eighteen days later. She relied on Article 5 § 4 of the Convention which reads as follows:

> "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. Admissibility

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

B. Merits

1. Submissions by the parties

86. The Government contested that complaint. They noted that Chapter 54 of the Code of Criminal Procedure ("Extradition of a person for criminal prosecution or execution of sentence") did not contain any provisions setting time-limits for the examination of complaints filed by detainees awaiting extradition before a decision on their extradition was pronounced by the Prosecutor General.

87. At the same time the Government noted that the Supreme Court of Russia had found that Article 125 § 3 of the Code of Criminal Procedure was applicable to cases concerning extradition. This provision contained a general rule on a five-day time-limit for the examination of complaints against the action (inaction) of investigating or prosecution authorities. The Government acknowledged that that provision had not been respected in the course of the examination of the applicant's complaint filed by her lawyer on 15 August 2003. However, the delay of eighteen days could not have caused excessive damage to the applicant's interests because the lawfulness of her detention had, in any event, been confirmed by the decision of the Petrozavodsk Town Court of 2 September 2003.

88. The applicant maintained her complaint. She claimed that the authorities had violated Article 5 § 4 of the Convention, as well as Article 125 § 3 of the Code of Criminal Procedure, which established a five-day time-limit for examination of a complaint bearing on the lawfulness of detention.

2. The Court's assessment

89. The Court reiterates that the purpose of Article 5 § 4 is to assure to persons who are arrested and detained the right to judicial supervision of the

lawfulness of the measure to which they are thereby subjected (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12). The remedies must be made available during a person's detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading, where appropriate, to his or her release. The accessibility of a remedy implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy (see *Čonka*, cited above, §§ 46 and 55).

90. Turning to the present case, the Court notes that the only complaint raised by the applicant under Article 5 § 4 concerns the length of the examination of her application for release filed on 15 August 2003. The applicant did not question the availability or effectiveness of a remedy for examination of the lawfulness of her detention, contrary to all the previous Russian cases concerning extradition examined by the Court (see *Bordovski*y, cited above, §§ 60-68; *Garabayev v. Russia*, no. 38411/02, §§ 92-98, 7 June 2007, ECHR 2007-... (extracts); *Ismoilov and Others v. Russia*, no. 2947/06, §§ 142-52, 24 April 2008; *Nasrulloyev v. Russia*, no. 656/06, §§ 79-90, 11 October 2007; *Shchebet*, cited above, §§ 71-79; and *Ryabikin v Russia*, no. 8320/04, §§ 134-41, 19 June 2008). In five of the six above-mentioned cases the Court found that the applicants did not have at their disposal any procedure through which they could initiate judicial review of the lawfulness of their detention, established a violation of the applicants' corresponding rights under Article 5 § 4 of the Convention and noted that this problem appeared to be of a structural character. The present case differs from the abovementioned as the applicant's complaints were, in fact, examined by the domestic court. Moreover, the latest complaint contesting the lawfulness of the applicant's detention was finally granted by the Supreme Court of Karelia on 14 October 2004 and the applicant was released.

91. Accordingly, the Court considers that there is no need to examine the question of availability and effectiveness of the domestic remedy for judicial review of the lawfulness of the applicant's detention and will turn to the core of the applicant's complaint, its speediness.

(a) General principles governing the requirement of "speediness"

92. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to persons detained a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of the detention and ordering its termination if it proves unlawful (see *Baranowski v. Poland* [GC], no. 28358/95, § 68, ECHR 2000). There is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending, because the defendant should benefit fully

from the principle of the presumption of innocence (see *Iłowiecki v. Poland*, no. 27504/95, § 76, 4 October 2001). The same logic may be applicable to detention pending extradition when the investigation is pending.

93. Although 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, a State which institutes such a system must in principle accord to the detainees the same guarantees on appeal as at first instance (see *Navarra v. France*, 23 November 1993, § 28, Series A no. 273-B, and *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224). At the same time, the standard of "speediness" is less stringent when it comes to proceedings before the court of appeal. The Court reiterates in this connection that the right of judicial review guaranteed by Article 5 § 4 is primarily intended to avoid arbitrary deprivation of liberty. However, if the detention is confirmed by a court it must be considered to be lawful and not arbitrary, even where appeal is available. Subsequent proceedings are less concerned with arbitrariness, but provide additional guarantees aimed primarily at an evaluation of the appropriateness of continuing the detention (see *Tjin-a-Kwi and Van Den Heuvel v. the Netherlands*, no. 17297/90, Commission decision of 31 March 1993). Therefore, the Court would be less concerned with the speediness of the proceedings before the court of appeal if the detention order under review was imposed by a court and on condition that the procedure followed by that court had a judicial character and gave to the detainee the appropriate procedural guarantees (see, *mutatis mutandis*, *Vodeničarov v. Slovakia*, no. 24530/94, § 33, 21 December 2000).

94. The Court observes that it has found delays of 23 days for one level of jurisdiction, and 43 days or 32 days for two levels of jurisdiction, to be incompatible with Article 5 § 4 (see, respectively, *Rehbock v. Slovenia*, no. 29462/95, §§ 82-88, ECHR 2000-XII; *Jablonski v. Poland*, no. 33492/96, §§ 91-94, 21 December 2000; and *G.B. v. Switzerland*, no. 27426/95, §§ 34-39, 30 November 2000). On the other hand, in *Rokhlina v. Russia* (no. 54071/00, § 79, 7 April 2005), where the total duration of the proceedings was 41 days for two levels of jurisdiction, the Court found no violation of Article 5 § 4 of the Convention. In that case the Court noted, in particular, that the applicant had requested leave to appear in person at the appeal court, and that because of that the court had had to adjourn the proceedings for one week. In another Russian case (see *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006) the Court found delays of 36, 29 and 26 days to be incompatible with Article 5 § 4, stressing that the entire duration of the appeal proceedings was attributable to the authorities. Lastly, in cases involving extradition proceedings, the Court found violations of Article 5 § 4 of the Convention where the review proceedings lasted 31 and 46 days, respectively, for two levels of jurisdiction (see *Sanchez-Reisse v. Switzerland*, no. 9862/82 §§ 55-61,

21 October 1986), and 17 days for one level of jurisdiction (see *Kadem v. Malta*, no. 55263/00, § 44, 9 January 2003).

95. The Court reiterates that the question whether a person's right under Article 5 § 4 has been respected has to be determined in the light of the circumstances of each case (see *Rehbock*, cited above, § 84).

(b) Application of the general principles in the present case

96. Turning to the present case, the Court observes that the applicant's counsel and the applicant herself asked the Petrozavodsk Town Court to review the lawfulness of her detention on 15 August 2003. That complaint was examined and dismissed by the Town Court on 2 September 2003. On 9 October 2003 the Supreme Court of Karelia upheld that decision. The Government did not contest that the complaint had been lodged on 15 August 2003. Moreover, they acknowledged the violation of the five-day time-limit provided for in the Russian Code of Criminal Procedure, noting, however, that the delay of eighteen days could not have affected the applicant's situation.

97. There are two aspects to the requirement that "the lawfulness of the detention shall be decided speedily". First, the opportunity for legal review must be provided soon after the person is taken into detention; secondly, the review proceedings must be conducted with due diligence.

98. The applicant had the opportunity to contest the lawfulness of her detention from the outset. The first aspect of the "speedily" requirement was thus satisfied in the present case.

99. As to the question whether the review proceedings were conducted with due diligence, the Court notes that the applicant filed her complaint on 15 August 2003. It took the Petrozavodsk Town Court eighteen days to examine it. It appears that the court protracted the examination of the complaint about the unlawfulness of the applicant's detention, as it needed first to confirm the detention itself (see paragraphs 14 and 15 above). The examination of the applicant's appeal took another 36 days. Thus, fifty-four days elapsed from the date the application was lodged until the final decision of the appeal court. The Government did not plead that complex issues had been involved in the determination of the lawfulness of the applicant's detention, or otherwise seek to justify the delay, apart from their contradictory statement that the review of the applicant's detention could not have affected her situation as the detention had been authorised by the court and should thus be considered lawful.

100. The Court finds that the period in question does not suggest that the proceedings were conducted with due diligence. Consequently, the Court finds that the application for release introduced by the applicant on 15 August 2003 was not examined "speedily" as required by Article 5 § 4.

101. There has, consequently, been a violation of Article 5 § 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

102. Lastly, the applicant complained under Articles 3, 6 § 2, 8 and 12 of the Convention and Article 2 of Protocol No. 4 and Article 1 of Protocol No. 7 that she had been detained in poor conditions, that she had been presumed guilty of a crime allegedly committed in Kazakhstan, that she had been unable to obtain Russian citizenship, and, finally, that she had had no private life as a result of her arrest and detention. In her observations lodged with the Court on 29 October 2006 the applicant further complained that she had been placed in a punishment cell for fifteen days in May 2004, that she had been transported by train in debasing conditions from Petrozavodsk to the Segezha detention facility on 13 May 2004 and that her release had been delayed as she had not been released until four days after the Supreme Court of Karelia had authorised her release on 18 October 2004.

103. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. 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."

105. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

106. On 15 September 2006 the Court invited the applicant to submit her claims for just satisfaction. The applicant did not submit any such claims within the required time-limits.

107. In such circumstances, the Court would usually make no award. In the present case, however, the Court has found a violation of the applicant's right to liberty. Since this right is of fundamental importance, the Court finds it possible to award the applicant 5,000 euros by way of non-pecuniary damage, plus any tax that may be chargeable.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the lawfulness of the applicant's detention pending extradition and the courts' failure to examine speedily her application for release admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 (f) of the Convention;

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

4. *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 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount;
   (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.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Registrar	President