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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Applications nos. 43369/98 and 51777/99
by Vladimir GORDYEYEV
against Poland

The European Court of Human Rights (Fourth Section), sitting on 3 May 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above applications lodged with the European Commission of Human Rights on 15 April 1998 and 19 January 1998 and registered on 9 September 1998 and 12 October 1999 respectively,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine these applications was transferred to the Court,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Vladimir Mikhaylovych Gordyeyev, is a Belarusian national who was born in 1957 and lives in Baranovitchi, Belarus. He was represented before the Court by Mr J. Woźniak and Mr W. Hermeliński, lawyers practising in Warsaw, Poland. The respondent Government were represented by their Agents, Mr K. Drzewicki, and subsequently by Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

1. The applicant's detention pending extradition

On 16 June 1997 the Prosecutor of the Republic of Belarus in the Brest Region (*Следователь Прокуратуры Республики Беларусь Ђрестской области*) ordered that the applicant be detained in connection with charges of forgery of documents and selling a stolen car that had meanwhile been laid against him. The prosecuting authorities further issued a search warrant in respect of the applicant. Having established that the applicant had left the country, the Belarusian authorities issued in his respect an international search and arrest warrant.

On 7 July 1997 the Prosecutor of the Republic of Belarus, relying on Article 66 of the Agreement of 26 October 1994 between the Republic of Poland and the Republic of Belarus on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters (*Umowa między Rzecząpospolitą Polską a Republiką Białoruś o pomocy prawnej i stosunkach prawnych w sprawach cywilnych, rodzinnych, pracowniczych i karnych*) ("the 1994 Agreement"), asked the Polish Ministry of Justice to extradite the applicant.

On 18 July 1997 the applicant was arrested in Warsaw under the above-mentioned international search and arrest warrant and, on the next day, brought before the Warsaw District Court (Sąd Rejonowy). The court, having regard to the provisions of the 1994 Agreement, ordered that the applicant be detained pending extradition until 18 August 1997.

On 29 July 1997 the District Court prolonged the applicant's detention until 18 October 1997.

On 11 August 1997 the Warsaw Regional Prosecutor (*Prokurator Wojewódzki*) asked the Warsaw Regional Court (*Sąd Wojewódzki*) to issue a ruling as to whether the applicant's extradition to Belarus was permissible.

On 9 September 1997 the applicant applied for asylum.

On 15 September 1997 the applicant's lawyer requested the Regional Court to adjourn consideration of the extradition request until the termination of the asylum proceedings. Alternatively, the applicant's lawyer requested that the court rule against the applicant's extradition. He also requested the applicant's release.

On 18 September 1997 the Regional Court considered the matter. In view of a formal shortcoming in the extradition request, it decided to ask the Belarusian authorities, through the Ministry of Justice, for rectification of that shortcoming. That request was submitted to the Ministry on 25 September 1997. The Regional Court further asked the Minister of the Interior and Administration for information on whether the applicant had applied for asylum in Poland. It also dismissed the applicant's request for release, considering that there was a risk that he would leave Poland.

On 23 September 1997 the Regional Court requested the Ministry of the Interior and Administration to provide information on the asylum proceedings.

On 28 September 1997 the applicant requested the Regional Court to release him on bail. He argued that the charges against him were unsupported by any evidence and that they in fact constituted a form of punishment for his political activities in a Belarusian opposition movement. That application was referred to the Warsaw Regional Prosecutor who, at that stage of the procedure, was competent to deal with it. On 8 October 1997 the Regional Prosecutor refused to release the applicant on the grounds that the charges against him had been sufficiently supported by evidence produced by the Belarusian authorities and that there was a risk that he would go into hiding.

The applicant appealed to the Warsaw Prosecutor of Appeal (*Prokurator Apelacyjny*) on 17 October 1997. He argued that he had never gone into hiding, which, he added, was clearly shown by the fact that his stay in Poland was, and had been, legal, that he had had a place of residence and that he had worked in Poland. He also stressed that he had suffered from depression and had received treatment in Poland. On 3 December 1997 the Prosecutor of Appeal upheld the decision of the Regional Prosecutor.

In the meantime, on 16 October 1997, the Warsaw Regional Court granted the Regional Prosecutor's application for the applicant's detention to be prolonged. The Court ordered that the applicant be held in custody until 18 January 1998.

The applicant appealed on 23 October 1997. He submitted, *inter alia*, that, pursuant to Article 535 § 4 of the Code of Criminal Procedure ("the 1969 Code"), his detention should have been lifted because the requesting State had not produced the necessary evidence in support of the extradition request within one month. He stressed that the Regional Court's request for the rectification of formal shortcomings had still not been

forwarded to the Belarusian authorities. It was posted, after 7 days, to the Ministry of Justice, which subsequently decided that it had no competence to deal with the matter and referred it to the State Prosecutor (*Prokurator Krajowy)*. The State Prosecutor decided that he had no competence to handle it either. He referred it back to the Ministry of Justice on 20 October 1997. The applicant concluded that his detention was no longer lawful.

On 31 October 1997 the contested decision was upheld by the Warsaw Court of Appeal (*Sąd Apelacyjny*). The court stressed that the applicant's detention was the only preventive measure which could ensure the proper conduct of the extradition proceedings.

On 13 November 1997 the Regional Court again requested the Ministry of Justice to enquire with the Belarusian authorities about rectification of their extradition request.

On 25 November 1997 the Ministry of the Interior and Administration informed the Regional Court that the asylum proceedings were pending.

On 16 January 1998 the Regional Prosecutor submitted to the Warsaw Regional Court supplementary information produced by the Belarusian authorities.

In the meantime, on 13 January 1998, the Warsaw Court of Appeal had prolonged the applicant's detention until 18 April 1998. It relied, *inter alia*, on the risk that the applicant would go into hiding.

The applicant appealed to the Supreme Court (*Sąd Najwyższy*) on 19 January 1998. He asked to be released on bail and argued that his detention had been unlawful because the Belarusian authorities had not yet rectified shortcomings in their request for extradition. He alleged, *inter alia*, a violation of Article 535 § 4 of the 1969 Code and a breach of Article 5 § 3 of the Convention.

On 24 March 1998 the Supreme Court rejected the appeal. It considered that the lifting of the applicant's detention was not, as he claimed, mandatory pursuant to Article 535 § 4 of the 1969 Code because the application of that provision was excluded by a special rule laid down in Article 541. In consequence, the applicable provision was Article 73 of the 1994 Agreement, under which the lifting of detention in such circumstances was optional. The Supreme Court also observed that the prolongation of detention was necessary in order to ensure the proper conduct of the extradition proceedings in view of the risk that the applicant would go into hiding. Lastly, the Supreme Court pointed out that there had been no circumstances in the case which would justify the applicant's release pursuant to Article 218 of the 1969 Code.

On 3 April 1998 the Ministry of the Interior and Administration informed the Regional Court that the applicant's request for asylum was being examined by the Ministry of Foreign Affairs.

On 9 April 1998 the Warsaw Court of Appeal prolonged the applicant's detention until 18 July 1998. It considered that the original grounds for

keeping him in custody were still valid and that there were no grounds for releasing him, as provided in Article 218 of the 1969 Code. It stressed that there were justified fears that the applicant would go into hiding because he had already been wanted under the international search and arrest warrant. The applicant's appeal against that decision was dismissed by the Supreme Court on 27 May 1998. The Supreme Court considered that the applicant's continued detention was necessary in order to secure the proper conduct of the extradition proceedings, taking into account that the asylum proceedings were still pending.

The Regional Court's session scheduled for 17 April 1998 was cancelled due to an illness of the presiding judge.

On 16 June 1998 the Regional Court held a session. It adjourned its examination of the extradition request since the applicant had applied to the Minister of the Interior and Administration for reconsideration (*wniosek o ponowne rozpatrzenie sprawy*) of the decision refusing to grant him asylum. The court also dismissed the applicant's request for release.

On 29 June 1998 the Ministry of the Interior and Administration notified the Regional Court that the asylum proceedings should be terminated by October 1998.

On 9 July 1998 the Supreme Court prolonged the applicant's detention pending extradition until 31 December 1998. It emphasised that the asylum proceedings were still pending.

On 23 October 1998 the Regional Court requested the Ministry of the Interior and Administration to provide information on the progress of the asylum proceedings. On 9 November 1998 the Ministry replied that the applicant's asylum request had been rejected by the final decision of 9 October 1998.

The Regional Court's session scheduled for 7 December 1998 was cancelled.

On 16 December 1998 the Regional Court held a session. It adjourned the consideration of the extradition request since the applicant had in the meantime applied for review of the unfavourable asylum decisions by the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).

On 22 December 1998 the Supreme Court prolonged the applicant's detention pending extradition until 31 March 1999. It stressed that the delay in the extradition proceedings had been caused by circumstances which could not be attributed to the court before which those proceedings were pending.

On 2 February 1999 the Supreme Administrative Court informed the Regional Court that the asylum proceedings were still pending.

On 25 March 1999 the Supreme Court prolonged the applicant's detention until 18 July 1999. It considered that the extradition procedure had been prolonged on account of circumstances for which the Polish judicial authorities could not be held responsible. In particular, it

emphasised that the need to await the outcome of the asylum proceedings brought by the applicant had made it impossible for them to rule on the extradition request. Were the applicant to be granted asylum, he could not be extradited pursuant to the relevant provisions of the Code of Criminal Procedure. The court went on to find that the relevant material strongly supported a reasonable suspicion that the applicant had committed the offences with which he had been charged and concluded that the previous reasons for his detention were still valid.

On 20 April 1999 the Supreme Administrative Court informed the Regional Court that the asylum proceedings were still pending.

On 14 July 1999 the Supreme Court ordered that the applicant be held in detention pending extradition until 18 January 2000. It considered, *inter alia*, that keeping him in detention was necessary pending the asylum proceedings.

On 28 July 1999 the applicant requested the Regional Court to order his release. That request was rejected on 5 August 1999.

On 30 December 1999 the Regional Court made an application to the Supreme Court for prolongation of the applicant's detention pending extradition until 30 April 2000. On 11 January 2000 the Supreme Court refused that application.

On 17 January 2000 the Regional Court ruled that the applicant's extradition was permissible. It observed that the applicant had been charged with an ordinary criminal offence of appropriation of property. It also found that the applicant's allegations of his persecution on account of his activities in the Belarusian opposition group had not been corroborated by evidence. It also noted in this respect that the applicant's inconsistent submissions indicated that he had attempted to avoid criminal responsibility for the offence in question. On the same date the Regional Court prolonged the applicant's detention until 1 March 2000.

The applicant appealed to the Court of Appeal on 22 January 2000. He alleged, among other things, a breach of Articles 3 and 6 § 1 of the Convention. He maintained that all available sources, for example reports of international human rights organisations and daily press materials, consistently showed Belarus as a country that did not respect fundamental human rights. Reported instances of unlawful arrests and unfair trials, as well as of beating and maltreatment were so wide-spread that they justified the applicant's fears that if he were extradited, he would be denied a fair trial and would be subjected to inhuman and degrading treatment in Belarusian prisons. Lastly, the applicant submitted that he had already informed the Polish authorities that between 10 and 20 October 1996 he had been arrested by the Belarusian police in connection with his participation in an anti-government demonstration. In his opinion, all those circumstances showed that the request for extradition was made for the purpose of punishing him for his political activities.

The Court of Appeal upheld the contested decision on 18 February 2000.

On the same day the applicant asked the Court to apply Rule 39 of its Rules of Procedure and to stop his extradition to Belarus. That application was rejected on 21 February 2000.

On 23 February 2000 the Warsaw Court of Appeal gave a decision fixing the final deadline for the applicant's detention in the extradition proceedings for 31 July 2000. That decision was upheld on appeal on 18 April 2000.

The applicant was extradited to Belarus on 28 April 2000.

2. Asylum proceeding

On 9 September 1997 the applicant, while in detention pending extradition, applied to the Minister of the Interior and Administration for asylum in Poland. He submitted that for many years he had been a member of a Belarusian dissident organisation, i.e. the People's Belarusian Front “Restitution” (*Ludowy Front Białoruski “Odrodzenie”*) and that, because of his political activity, he risked revenge from the State authorities. He further alleged that the charges against him were based on entrapment by a former officer of the KGB.

The Minister of the Interior and Administration, pursuant to section 10 § 1 of the Aliens Act, requested the Minister of Foreign Affairs to issue an opinion on the applicant's request. On 24 August 1998 the Minister of Foreign Affairs objected to the grant of asylum. This decision was upheld on appeal on 29 September 1998. The Minister of Foreign Affairs, having made relevant inquiries, found no reliable evidence of the applicant's alleged activities in the opposition movement in Belarus. It also observed that the applicant had applied for asylum only after he had been detained with a view to extradition, while he had had sufficient time to do so earlier.

On 21 April 1998 the Minister of the Interior and Administration rejected the applicant's request for asylum. He upheld his decision on 9 October 1998. The Minister found that the actions of the Belarusian prosecuting authorities against the applicant had not been politically motivated. He observed that there had been many inaccuracies in the applicant's account given in support of his asylum request. He also considered that the applicant lacked even basic knowledge about the opposition group of which he had allegedly been a member. The Minister further observed that the applicant had applied for asylum only after he had been placed in detention pending extradition despite the fact that during the period of his alleged persecution he had been in Poland on a few occasions. It noted that at the relevant time the applicant had left Belarus legally and that he had travelled back to his home country on two occasions. Furthermore, he did not apply for asylum immediately after he had entered Poland, but instead took steps to regularise his stay in Poland. Those facts indicated, in the Minister's view, that the applicant had no reason to fear for his life or limb and that his application for asylum constituted an abuse of the relevant procedures.

On an unspecified date in October 1998 the applicant appealed to the Supreme Administrative Court against the unfavourable decisions of both Ministers.

On 21 December 1999 the Supreme Administrative Court dismissed the applicant's appeal[1]. It upheld the findings of the Ministers and considered that the applicant could not be granted asylum as he had not demonstrated that he had been persecuted in Belarus on account of his alleged political activities in the opposition movement.

3. *The alleged censorship of the applicant's correspondence*

In his application of 18 February 2000 the applicant stated that during his detention his correspondence had been opened and intercepted by the Polish authorities. He has not submitted any documentary or other evidence in support of his submissions.

4. *The applicant's fears of torture and of unfair trial*

In his application of 18 February 2000 the applicant submitted that if he were extradited to Belarus, he would be exposed to a serious risk of torture and be denied a fair trial. He relied on the fact that he was a member of the People's Belarusian Front "Restitution" and that he had received from that organisation a silver medal for his activity. He further produced a copy of the document entitled "Information of the Belarusian Helsinki Committee on Violation of Human Rights in December 1997- January 1998". In the opinion of the authors of that document, the Belarusian authorities were responsible for several physical attacks on persons criticising President Lukashenko, as well as on independent journalists. Those attacks were carried out by unknown persons. Culprits had not been found. The authorities had also made some attempts to discredit their political opponents by, for instance, bringing criminal proceedings against them. That document also described the very difficult conditions of detention in Belarusian prisons.

B. Relevant domestic law

1. *The Code of Criminal Procedure*

Until 1 September 1998, i.e. the date on which the Law of 6 June 1997 (commonly referred to as the "new Code of Criminal Procedure") entered into force and repealed the 1969 Code, the rules governing detention and extradition proceedings were contained in the latter statute.

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[1] A copy of this judgment was not produced by the parties. However, the Court obtained it by means of a database of Polish case-law available to it.

Article 218 of the 1969 Code read:

> "If there are no special reasons to the contrary, detention on remand should be lifted, in particular, if:
>
> (1) it may seriously jeopardise the life or health of the accused; or
>
> (2) it would entail excessively serious repercussions for the accused or his family."

Article 534 § 1 read:[2]

> "Extradition shall be refused if a person to be extradited is a Polish national or has been granted asylum in Poland."

Article 535 § 4 specified:

> "If information contained in a request for extradition is insufficient and the court or the prosecutor has asked for it to be supplemented and if, within one month following the date on which [the requesting State] has been served with the request for supplementary information, [that State] has not produced the necessary documents or information, detention shall be lifted."

Article 541 § 1 provided:

> "The provisions of this Chapter shall not apply if an international agreement, to which the Republic of Poland is a party, provides otherwise."

2. The Agreement of 26 October 1994 between the Republic of Poland and the Republic of Belarus on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters (the 1994 Agreement)

Article 66 of that Agreement reads, in so far as relevant:

> "1. Upon a request and subject to the provisions of this agreement, the Contracting Parties undertake to surrender to each other persons who are on their territory in order to proceed against them for an offence or to carry out a sentence."

Article 70 reads:

> "If the information communicated [by the requesting Contracting Party] is not sufficient to allow [the requested Contracting Party] to rule on a request for extradition, the requested Contracting Party may ask for the information to be supplemented. To this end, the requested Contracting Party may fix a time-limit of up to one month [for the receipt thereof]. If there are important grounds [for doing so], that time limit may be prolonged for a [further] month on the request of the requesting Contracting Party."

Article 71 provides:

> "After the receipt of the request for extradition, the requested Contracting Party shall promptly take steps to detain the person concerned. This shall not apply to cases where it is evident that extradition is not admissible under this agreement."

[2] Article 604 § 1 (1) of the new Code of Criminal Procedure contains an identical rule.

Article 73 lays down the following:

> "The requested Contracting party may release the person detained pursuant to Article 71 if no supplementary information has been produced within the time-limit laid down in Article 70."

COMPLAINTS

1. The applicant complained under Articles 5 § 1 (c) and 5 § 1 (f) of the Convention that his detention was unlawful because it lacked a legal basis under Polish law and was based on an incomplete request for his extradition to Belarus, which had not been supplemented in due time. He also alleged that the Polish authorities had failed to show diligence in handling the extradition proceedings.

2. The applicant also complained under Article 5 § 3 of the Convention that his detention had exceeded a "reasonable time".

3. He further complained that surrendering him to the Belarusian authorities would be in breach of Articles 3 and 6 § 1 of the Convention. In that connection, he maintained that, given his previous political activities against the present authorities of Belarus, and the general situation in that country, there was a high risk that he would be subjected to torture or inhuman treatment and would be denied a fair trial.

4. Lastly, the applicant alleged a violation of Article 8 of the Convention in that during his detention the Polish authorities had opened and intercepted letters addressed to him.

THE LAW

1. The applicant complained under Articles 5 § 1 (c) and 5 § 1 (f) of the Convention that his detention was unlawful because it lacked a legal basis under Polish law and was based on an incomplete request for his extradition. He also alleged that the Polish authorities had failed to act with due diligence in the extradition proceedings.

The Court notes that the applicant was detained "with a view to extradition" and therefore it considers that these complaints fall to be examined under Article 5 § 1 (f). This provision reads:

> "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.”

1. The Government's submissions

As to the lawfulness of the applicant's detention pending extradition, the Government emphasised that it had a legal basis under Polish law. They submitted, referring to the Supreme Court's decision of 24 March 1998, that the applicable provisions of the 1994 Agreement authorised the applicant's detention despite the fact that the extradition request had not been supplemented by the requesting State in due time. They underlined that Article 535 § 4 of the 1969 Code of Criminal Procedure did not apply to the applicant's case by virtue of Article 541 of the same Code. Consequently, under the applicable provisions of the 1994 Agreement, it was not mandatory for the domestic courts to release the applicant in the event of a failure by the Belarusian authorities to provide supplementary information.

As regards the authorities' diligence in the conduct of the extradition proceedings, the Government did not contest the fact that the impugned proceedings had been lengthy. However, the Government maintained that the delay in those proceedings had been mainly due to reasons for which the courts could not be held responsible.

Firstly, the extradition proceedings before the Regional Court had been adjourned on several occasions pending the termination of the proceedings on the applicant's request for asylum. The Government submitted that the outcome of the latter proceedings was of considerable importance, since under Polish law a request for extradition had to be refused in respect of a person who had been granted asylum in Poland.

Secondly, some delay in the extradition proceedings was caused by the lack of cooperation on the part of the Belarusian authorities which had not replied in time to requests of the domestic authorities to supplement their extradition request. Thirdly, the Government pointed that the applicant's lawyer on a few occasions had asked the Regional Court to adjourn examination of the request for extradition until the termination of the asylum proceedings.

The Government concluded that the extradition proceedings had been conducted with due diligence.

2. The applicant's submissions

The applicant disagreed with the Government's position as regards the lawfulness of his detention. He submitted that Poland was a party not only to the 1994 Agreement, but also to the 1957 European Convention on Extradition. The applicant maintained that the domestic courts had not taken into account the provisions of the latter Convention concerning time-limits

for submission of supplementary information by the requesting State in the extradition proceedings.

As regards the issue of due diligence in the extradition proceedings, the applicant submitted that those proceedings had not been handled by the authorities with the requisite diligence. He claimed that the period of the applicant's detention had not been reasonable. The applicant further argued that the domestic courts had placed too much reliance on the issue of the determination of the request for asylum in their decisions on prolongation of detention. The prolongation of the applicant's detention solely on the grounds of the pending asylum proceedings had resulted in unjustified delays in the extradition proceedings. The applicant concluded that the extradition proceedings had not been conducted with due diligence.

3. *The Court's assessment*

As to the question whether the applicant's detention pending extradition was lawful for the purposes of Article 5 § 1 (f) of the Convention, the Court recalls that 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 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, namely to protect the individual from arbitrariness (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, § 118).

The Court observes that the applicant was arrested on 18 July 1997 and detained on the following day on the basis of an international search and arrest warrant issued by the Belarusian authorities and in connection with their request for the applicant's extradition of 7 July 1997, made pursuant to the applicable provisions of the 1994 Agreement.

The applicant alleged that since the request for his extradition had not been supplemented by the requesting State within the time-limit of one month, he should have been released pursuant to Article 535 § 4 of the Code of Criminal Procedure. However, the Court, having regard in particular to the decision of the Supreme Court of 24 March 1998 which concluded that the applicant's detention had been authorised under Article 73 of the 1994 Agreement, observes that the applicant's detention had a valid legal basis. The Court does not find the interpretation of the applicable provisions of the domestic law and the 1994 Agreement by the domestic courts to be unreasonable or tainted by arbitrariness or otherwise contrary to the applicant's rights under Article 5 § 1 (f) of the Convention.

It follows that the applicant's detention pending extradition had a legal basis and that there was no breach of the domestic procedure on extradition.

As noted above, the applicant was detained "with a view to extradition" within the meaning of Article 5 § 1 (f) of the Convention. However, any deprivation of liberty under this provision will be justified only for as long

as extradition proceedings are in progress. If such proceedings are not pursued with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) of the Convention (see *Chahal v. the United Kingdom*, cited above, §§ 112-113). The Court must therefore determine whether the extradition proceedings in the applicant's case were conducted with due diligence. In that respect the Court recalls that Article 5 § 1 (f) of the Convention does not contain specific time requirements and whether the length of extradition and ancillary proceedings could affect the lawfulness of detention under this provision must therefore depend upon an examination of the circumstances of the particular case (see *Osman v. the United Kingdom*, no. 15933/89, Commission's decision of 14 January 1991, unpublished).

In the present case, the applicant was arrested on 18 July 1997 and extradited to Belarus on 28 April 2000. The extradition proceedings thus lasted 2 years, 9 months and 10 days.

The Court notes that on 9 September 1997, while already detention pending extradition, the applicant applied for asylum on the grounds that he had been a member of the opposition movement in Belarus and that the request for his extradition had been politically motivated.

The asylum proceedings, which altogether lasted 2 years, 3 months and 12 days, involved consideration and reconsideration of the applicant's claim by the Minister of Foreign Affairs (decisions issued respectively on 24 August and 29 September 1998) and the Minister of the Interior and Administration (decisions issued respectively on 21 April and 9 October 1998). They also involved a review of the decisions taken by those Ministers by the Supreme Administrative Court (judgment of 21 December 1999). Having regard to the issue to be determined in the asylum proceedings, i.e. whether the applicant had well-founded fears of being subjected to persecution within the meaning of the Geneva Convention Relating to the Status of Refugees and/or treatment contrary to Article 3 of the Convention, the Court considers that it was neither in the interests of the individual applicant nor in the general public interest in the administration of justice that such decisions should be taken hastily, without due regard to all the relevant issues and evidence.

When assessing the length of the asylum proceedings, the Court attaches considerable weight to the fact that the applicant's request for asylum was rejected by the authorities as being entirely without substance. The Court also notes that the Minster of the Interior and Administration considered that the applicant's asylum claim amounted to an abuse of the relevant procedures. Against this background and bearing in mind what was at stake for the applicant and the interest that he had in his claims being thoroughly examined by the domestic authorities, and given the nature of the decision-making process in respect of asylum claims in Poland, the total duration of the asylum proceedings cannot be regarded as excessive (see, i*nter alia,*

Tekdemir v. the Netherlands, decision, nos. 46860/99 and 49823/99, 1 October 2002, unpublished).

As regards the extradition proceedings, the Court observes that they appear to be linked with the determination of the asylum claim, as found, *inter alia*, by the Supreme Court in its decisions of 27 May 1998 and 25 March 1999. The Court notes that both under the applicable provisions of the Code of Criminal Procedure and the 1994 Agreement the applicant could not have been extradited if he had been granted asylum in Poland. For that reason the domestic courts adjourned the consideration of the issue of the applicant's extradition on a number of occasions. In these circumstances, the Court considers that the applicant should have been aware that by bringing his asylum claim he might contribute to the length of the extradition proceedings.

The Court notes that once the asylum proceedings were terminated, the issue of the applicant's extradition was determined without any significant delay.

The Court further observes that the applicant himself asked the Regional Court, on at least one occasion, that consideration of the request for extradition be adjourned until the termination of the asylum proceedings. The Court also notes the argument advanced by the Government that certain delay in the extradition proceedings resulted from the late submission of the supplementary information by the authorities of the requesting State. The Court finds this argument only partially correct. It notes that the domestic authorities were also partly responsible for the delay in question due to an apparent disagreement between them as to who was competent to ask for rectification of the extradition request.

The Court finds, having regard to the circumstances of the case and considering all the relevant factors, that the extradition proceedings do not disclose any lack of due diligence on the part of the domestic authorities such as to render the applicant's detention pending extradition in breach of Article 5 § 1 (f) of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicant complained under Article 5 § 3 of the Convention that his detention had exceeded a “reasonable time”.

That provision reads, in so far as relevant:

> “Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

The Court observes at the outset that this provision speaks of only one specific form of deprivation of liberty, which is referred to in paragraph 1 (c) of Article 5 and which is “effected for the purpose of bringing [a person] before the competent legal authority on reasonable suspicion of having committed an offence or fleeing after having done so”.

It further notes that the Polish authorities detained the applicant not for the reasons mentioned in that provision but "with a view to extradition", which brings paragraph 1 (f) of Article 5 into play and makes Article 5 § 3 inapplicable in the present case (cf. *William Posnett Lynas v. Switzerland*, no. 7317/75, Commission's decision of 6 October 1976, Decisions and Reports 6, pp. 166-67).

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

3. The applicant further submitted that surrendering him to the Belarusian authorities would entail a breach of Article 3, which provides:

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

The Court reiterates that the decision by a Contracting State to extradite a person may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. However, the applicant must show that he runs a real risk, if extradited to that country, of suffering treatment prohibited under Article 3. That risk cannot be based exclusively on the general situation existing in the State of destination and a general situation of violence cannot be considered as entailing, in the event of extradition, a violation of Article 3 (see, among other examples, *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, pp. 35-36, § 92; and, *mutatis mutandis*, *H.L.R. v. France*, judgment of 29 April 1997, *Reports of Judgments and Decisions* 1997-III, pp. 757-58, §§ 35-41).

In this respect, the Court notes the findings of the domestic authorities in both the asylum and the extradition proceedings. Having made thorough inquiries, they established that the applicant had no reason to fear for his life or limb in case of return to Belarus and that his allegations of politically-based persecution by the Belarusian authorities had been entirely unsubstantiated. Accordingly, the Court finds that the applicant has not shown that, in the event of surrendering him to the authorities of his home country, he would run a real and serious risk of being subjected to treatment contrary to Article 3.

In view of the foregoing, the Court considers that no substantial grounds have been established for believing that the applicant, following his extradition, would be exposed to a genuine risk of torture or inhuman or degrading treatment or punishment.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

4. The applicant alleged a breach of Article 6 § 1 of the Convention in that, given his previous political activity in Belarus and the general situation in that country, there was a high risk that, if extradited, he would be denied a fair trial.

Article 6 § 1 reads, in so far as relevant:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

In the present case the Court sees no cause to elaborate on the question whether or not the execution of the extradition decision could entail a breach of the applicant's right to a fair hearing (cf. *Soering v. the United Kingdom*, cited above, §§ 112-13) because it finds that he has failed to adduce any *prima facie* evidence to demonstrate even the mere likelihood of this happening in his case. Indeed, he has not even informed the Court whether his case has been heard.

Accordingly, it finds that the complaint lacks any basis.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

5. Lastly, the applicant alleged a violation of Article 8 of the Convention in that during his detention the Polish authorities had opened and intercepted letters addressed to him.

Article 8, in its relevant part, provides:

> "1. Everyone has the right to respect for ... his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court observes that the applicant, apart from making a general complaint, has not supplied any details of the dates or circumstances or any evidence relating to the alleged interference with his correspondence.

It consequently finds that this complaint is unsubstantiated.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President