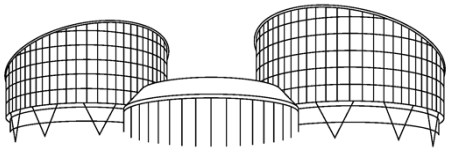

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KOMISSAROV v. THE CZECH REPUBLIC

(Application no. 20611/17)

JUDGMENT

Art 5 § 1 (f) • Extradition • Excessive length of detention pending extradition due to serious delays in asylum proceedings, not in accordance with domestic law • Domestic time-limits for asylum proceedings greatly exceeded • Authorities' failure to demonstrate the required diligence

STRASBOURG

3 February 2022

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 Komissarov v. the Czech Republic,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Lətif Hüseynov,
Ivana Jelić,
Mattias Guyomar,
Kateřina Šimáčková, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 20611/17) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Yury Komissarov ("the applicant"), on 8 March 2017;

the decision to give notice to the Czech Government ("the Government") of the complaint concerning the applicant's detention pending extradition and to declare inadmissible the remainder of the application;

the decision not to give notice of the present application to the Russian Government under Article 36 § 1 of the Convention;

the parties' observations;

Having deliberated in private on 11 January 2022,

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

INTRODUCTION

1. The application concerns in particular the allegedly excessive length of the applicant's detention pending extradition (Article 5 § 1 (f) of the Convention).

THE FACTS

2. The applicant was born in 1968. He lives in Nizhny Novgorod, Russia. He was represented by Mr F. Schmidt, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice.

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

5. The applicant arrived in the Czech Republic in 1998 and in 2000 he was granted permanent residence there. In 1999, a child was born from his marriage with a Czech national and, in 2016, his then partner gave birth to twins. While several extradition requests had been lodged by the Russian

authorities during his stay in the Czech Republic (see paragraph 6 below), the applicant remained there until 15 November 2017.

I. EXTRADITION PROCEEDINGS

6. In 1999, the applicant was indicted in Russia for fraud. Between 2005 and 2014 several requests lodged by the Russian authorities for the applicant's extradition failed for various reasons, notably because the requests had not been supported by all the necessary documents. On 7 October 2014 the Prosecutor General's Office of the Russian Federation lodged yet another request with the Czech Minister of Justice for the applicant to be arrested and extradited to stand trial in the Russian Federation.

7. On 11 March 2015 the Prague Municipal Court ruled that the applicant could be extradited, on the condition that the Russian Prosecutor General's Office provided certain diplomatic guarantees and assurances. On 17 August 2015 the Prague High Court dismissed an appeal by the applicant. On 10 November 2015 the Minister of Justice authorised the applicant's extradition in order that he could face a criminal trial in Russia.

8. On 15 February 2016 the applicant lodged a constitutional appeal against the above-mentioned decisions of the courts and the Minister of Justice. On 29 March 2016 the Constitutional Court dismissed the appeal as belated in respect of the courts' decisions and as manifestly ill-founded in respect of the authorisation given by the Minister of Justice.

9. On 15 November 2017 at 1.15 p.m., the applicant was surrendered to Russian authorities at Václav Havel Airport in Prague.

II. APPLICANT'S DETENTION PENDING EXTRADITION

10. On 16 May 2016 the applicant was apprehended and placed under police arrest, and on 17 May 2016 he was placed into detention pending extradition.

11. On 18 May 2016 he lodged an application for asylum. On the following day the Minister of Justice informed the applicant that the process of preparing for his extradition had been halted, pending the asylum proceedings.

12. On 15 June 2016 the applicant lodged an application to be released from detention, on the grounds that his continued detention no longer had any purpose and was interfering with his family life. He also requested that alternative measures (such as bail or an undertaking not to abscond) be imposed instead of detention.

13. On 29 June 2016 the Prague Municipal Court dismissed that application and declined to impose the proposed alternative measures. Following an appeal lodged by the applicant, on 26 July 2016 the Prague High Court upheld that decision, noting that the use of alternatives to detention was

ruled out once the Minister of Justice had authorised a person's extradition. The court observed that it was obligatory to impose detention on a person who was the subject of an extradition order, and such a detainee could be released only if that extradition order were suspended or if the duration of the detention reached the maximum statutory period of time (excluding the period for which the person in question was detained during asylum proceedings).

14. On 12 September 2016 the applicant lodged a constitutional appeal against the decisions of the Municipal Court and the High Court, alleging, *inter alia,* that his continuing detention was contrary to Article 5 § 1 (f) of the Convention since the relevant authorities had not proceeded with due diligence.

15. On 13 December 2016 the Constitutional Court dismissed the appeal as manifestly ill-founded. It noted that a person who had been taken into detention pending extradition could not be released solely on the grounds that he or she had lodged an asylum application while in detention. It also pointed out that the entire process – that is to say, both the asylum proceedings and the detention proceedings – should take place within the respective statutory time-limits which were, according to the Constitutional Court, proportionate to the right to liberty.

16. In the meantime, on 23 November 2016, the applicant again applied to be released from detention, citing as additional grounds the alleged delays in the asylum proceedings. The application was dismissed by the Prague Municipal Court on 8 December 2016. A subsequent appeal by the applicant was dismissed by the Prague High Court on 5 January 2017. The courts did not find the duration of the applicant's detention to have been excessively long, taking into account the asylum proceedings triggered by the applicant.

17. On 23 May 2017 the applicant lodged another complaint with the Prague Municipal Court challenging his detention.

18. On 8 June 2017 the Prague Municipal Court rejected that complaint as unsubstantiated.

19. On 30 October 2017, the Prague Municipal Court ordered that the applicant be released from detention on 15 November 2017 and handed over to the Russian authorities.

III. ASYLUM PROCEEDINGS

20. On 18 May 2016 the applicant lodged an application for asylum with the Ministry of Interior, which was dismissed on 23 January 2017.

21. On 27 February 2017 the applicant lodged an application with the Prague Municipal Court for a judicial review of the Ministry decision, which was dismissed on 2 June 2017.

22. On 19 June 2017 the applicant lodged a cassation appeal against the dismissal with the Supreme Administrative Court, which was rejected as inadmissible on 17 October 2017.

23. On 31 October and 8 November 2017 respectively, the Ministry of Interior received new asylum applications from the applicant. They were dismissed for the absence of any material change to the relevant circumstances.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. LAW NO. 104/2013 ON INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS

24. Under section 101(1), after the Minister of Justice has authorised a person's extradition and decided not to suspend that extradition, a judge shall order either that (i) that person be placed in detention pending extradition or (ii) that person's preliminary detention be converted into detention pending extradition.

25. Under section 101(3), in conjunction with Article 71a of the Code of Criminal Procedure, the person detained may at any moment lodge an application to be released.

26. Under section 101(3), in conjunction with Article 73 of the Code of Criminal Procedure, detention pending extradition cannot be substituted by alternative measures, such as bail posted by a trustworthy person, supervisory probation, a preliminary measure or an undertaking not to abscond given by the detained person.

27. Section 101(5) provides that detention pending extradition may only last for a maximum period of three months. A person to be extradited must be released from such detention on the last day of this period at the latest. In the event of unforeseeable circumstances preventing the execution of extradition, a court, acting upon a request lodged by the Ministry of Justice, may extend that period by a further three months, at the maximum; however, the total length of a person's detention pending extradition may not exceed six months.

28. Under section 101(6)(a), the maximum permissible period of detention pending extradition does not include any period during which the person in detention is considered to be an asylum seeker.

II. LAW NO. 325/1999 ("THE ASYLUM ACT")

29. Under section 27(7), if there are ongoing extradition proceedings concerning an asylum seeker or if his or her extradition has already been allowed, the Ministry of Interior shall afford priority treatment to his or her asylum application. It shall render a decision in respect of the matter without

undue delay – within sixty days at the very latest. The same applies to (i) proceedings before (and a decision delivered by) a regional court in the event that an administrative action is brought against a decision of the Ministry of Interior, and (ii) a Supreme Administrative Court ruling regarding an appeal on points of law lodged by an asylum seeker.

30. Under section 32(4), the courts shall afford priority treatment to such a matter and proceed in its respect as swiftly as possible, giving a judgment at the very latest sixty days after the commencement of such proceedings.

III. THE CONSTITUTIONAL COURT'S PRACTICE

31. In the judgment no. Pl. ÚS 63/06 of 29 January 2008, the Constitutional Court emphasised, *inter alia*, that the detention pending extradition and its length cannot be justified by anything other than the carrying out of the extradition.

32. It also follows from the Constitutional Court's practice (see, for example, opinion of the plenary formation Pl. ÚS – st. 37/13 of 13 August 2013, judgments no. III. ÚS 665/11 of 10 September 2013 and no. I. ÚS 2211/13 of 18 June 2014) that extradition cannot be carried out before the asylum proceedings have ended.

IV. CASE-LAW OF THE SUPREME ADMINISTRATIVE COURT

33. According to the Supreme Administrative Court's case-law (see, among many authorities, judgments of 20 November 2008, No. 6 As 1/2008, of 12 August 2010, No. 9 Afs 20/2010, and of 12 August 2010, No. 9 Afs 21/2010, which are available to the public at www.nssoud.cz), a legal term "without undue delay" sets a time limit of days, or at most weeks, a shortest possible period of time, and at the same time in practice that term must be interpreted on a case-by-case basis depending on the purpose which those who drafted the law intended to achieve by means of that particular provision.

THE LAW

I. PRELIMINARY REMARKS

34. In his claims for just satisfaction, which he lodged with the Court on 25 May 2018, the applicant raised further grievances about the inappropriate conditions of his detention, including the opening of his correspondence by prison guards, his separation from his family and the absence of a normal parent-child contact.

35. The Government noted that the applicant's complaint regarding the conditions of his detention had never been raised by the applicant before, so it had accordingly been lodged belatedly.

36. First, the Court notes that, insofar as the applicant complained about having been separated from his family, that complaint is substantially the same as the one which was examined and rejected as inadmissible by the Court (see the relevant recital on page 1 above). It must therefore be rejected under Article 35 § 2 (b) of the Convention.

37. Second, as to the applicant's complaints about the inappropriate conditions of detention, they were raised for the first time in the applicant's submissions of 25 May 2018 made in reply to the Government's observations. The Court notes that these grievances do not constitute an elaboration or elucidation of the applicant's original complaints, on which the parties have already commented. The Court considers, therefore, that it is not appropriate now to examine these new complaints within the context of the present application (see, for example, *Korneykova and Korneykov v. Ukraine*, no. 56660/12, §§ 95-96, 24 March 2016).

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

38. The applicant complained under Article 5 § 1 (f) of the Convention that his detention pending extradition was excessively lengthy and that the domestic courts had not considered alternative measures to detention.

39. The relevant part of Article 5 § 1 (f) of the Convention reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

40. The Government accepted that the applicant had exhausted all domestic remedies (including that of lodging a constitutional appeal) in respect of the period of detention between 16 May and 13 December 2016, but contended that he had not done so in respect of his detention after 13 December 2016 when the Constitutional Court dismissed his appeal (see paragraph 15 above). The Government argued that the Constitutional Court had thoroughly examined the applicant's application for release, which he had lodged when he had been in detention for only seven months, and that it could not be excluded that the Constitutional Court might have reached

a different conclusion if the application had been lodged after a longer period of detention. In addition, the applicant had failed to lodge an application to be released from detention after the decision to place him in detention had become final. Moreover, he was also entitled to apply for release from detention every 30 days.

41. The applicant submitted that he had attempted to challenge the lawfulness of his detention again, on 23 May 2017 (see paragraph 17 above), but the Prague Municipal Court rejected all his arguments, citing similar reasoning to that given in previous decisions delivered by the domestic courts (including the Constitutional Court) in his case. Therefore, despite the fact that there had been a theoretical possibility of lodging a further appeal, such a step would have been futile given the standpoint of the domestic courts in respect of the circumstances of his case.

42. The Court considers the objection of non-exhaustion of domestic remedies to be closely linked to the merits of the applicant's complaint and therefore decides to join it to the merits. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The applicant submitted that the detention pending extradition was arbitrary as the time-limits prescribed by the domestic law for the processing of asylum applications had not been observed in his case and, thus, did not constitute any safeguard whatsoever against an excessively lengthy detention pending extradition. In addition, the domestic courts considered no alternative measures to detention.

44. The Government maintained that the applicant's detention pending extradition was lawful and not arbitrary and its overall length was adequate to the circumstances of the case, its complexity and the number of objections raised by the applicant. The simultaneously ongoing extradition and asylum proceedings were conducted with due diligence and with a view to the applicant's extradition itself, there being compelling reasons justifying the duration of the asylum proceedings beyond the statutory time-limits.

2. The Court's consideration

45. The general principles concerning detention pending deportation or extradition under Article 5 § 1 (f) of the Convention are set out in *Khlaifia and Others v. Italy* [GC] (no. 16483/12, §§ 88-92, 15 December 2016) and *Shiksaitov v. Slovakia* (nos. 56751/16 and 33762/17, §§ 53-56, 10 December 2020).

46. In considering length of detention pending extradition, the Court has drawn a distinction between two forms of extradition: first, where extradition is requested for the purpose of enforcing a sentence, and secondly, where extradition will enable the requesting State to try the person concerned. In the second situation, since the person being detained (a) must be presumed innocent; (b) cannot exercise defence rights at that stage; and (c) the requested State is not entitled to consider the merits of the complaint, the Court has found that the requested State is obliged to act with special diligence (see *Gallardo Sanchez v. Italy*, no. 11620/07, § 42, ECHR 2015).

47. Furthermore, the Court has, in a number of cases, unequivocally held that fixed time-limits are not a requirement of Article 5 § 1(f), and that it will deal with each complaint on a case-by-case basis in order to decide if detention has become unlawful (see *A.H. and J.K. v. Cyprus*, nos. 41903/10 and 41911/10, § 190, 21 July 2015; *Amie and Others v. Bulgaria*, no. 58149/08, § 72, 12 February 2013; *Auad v. Bulgaria*, no. 46390/10, § 128, 11 October 2011; and *Bordovskiy v. Russia*, no. 49491/99, § 50, 8 February 2005). In the case of *J.N. v. the United Kingdom* (no. 37289/12, § 77, 19 May 2016), the Court has considered that factors relevant to the assessment of the "quality of law" – which are referred to in some cases as "safeguards against arbitrariness" – will include the existence of clear legal provisions for ordering detention, for extending detention, and for setting time-limits for detention.

48. In the present case, the applicant was placed in detention pending extradition on 17 May 2016, following judicial approval of his extradition and its authorisation by the Minister of Justice of the Czech Republic. On the following day, the applicant lodged an asylum application which hindered his extradition. Consequently, the applicant was informed that the process of preparing for his extradition had been halted, pending the asylum proceedings (see paragraph 11 above). The Court therefore acknowledges that the applicant's detention pending extradition cannot as such be considered arbitrary, since it was due to the fact that his extradition had already been authorised (see paragraph 7 above) but could not be carried out before the proceedings on his asylum application have ended, as provided since 2013 by the Constitutional Court's practice (see paragraph 32 above) which the Court cannot but welcome.

49. For situations in which extradition and asylum proceedings run concurrently, the domestic law provides separate time-limits for the processing of the asylum application and the delivery of a decision by the relevant authorities. Either way, the decision must be taken "without undue delay", which according to the relevant Supreme Administrative Court's case-law is meant to be, on a case-by-case consideration, in the range of days or weeks (see paragraph 32 above), at the very latest sixty days for examination of the asylum application by an administrative body and sixty days for each of the two levels of jurisdiction, if the decision taken as a result

of the above examination is brought before the courts (see paragraphs 29-30 above). These time-limits have been greatly exceeded in the present case: the administrative decision to dismiss the applicant's asylum application was only issued after eight months – that is to say four times longer than the maximum permissible period stipulated by the domestic law; the periods during which the case was examined at two separate judicial instances exceeded the respective prescribed time-limits as well. Thus, the asylum proceedings took almost seventeen months, instead of six months as provided by the domestic law.

50. The Court reiterates that the existence or absence of time-limits is one of a number of factors which the Court might take into consideration in its overall assessment of whether domestic law was "sufficiently accessible, precise and foreseeable" (in other words, whether there existed "sufficient procedural safeguards against arbitrariness"). In and of themselves they are neither necessary nor sufficient to ensure compliance with the requirements of Article 5 § 1(f) of the Convention (see, for example, *Gallardo Sanchez*, cited above, § 39, and *Auad v. Bulgaria*, no. 46390/10, § 131, 11 October 2011, § 131, in which the Court made it clear that even if fixed time-limits were complied with, it would still find an applicant's detention to be in breach of Article 5 § 1(f) if deportation was not pursued with due diligence). The Court notes, however, where fixed time-limits exist, a failure to comply with them may be relevant to the question of "lawfulness", as detention exceeding the period permitted by domestic law is unlikely to be considered to be "in accordance with the law"

51. In the Court's view, in the present case the strict time-limits for examination of the asylum applications constitute an important safeguard against arbitrariness. Therefore, both under the domestic law and the Convention, the domestic authorities were under an obligation to demonstrate the required diligence. However, the domestic authorities neither acknowledged nor reacted to the serious delays in the proceedings, despite the applicant's complaints regarding those delays. In particular, the decision of the Constitutional Court of 13 December 2016 was rendered at a point when the applicant's asylum procedure had exceeded by more than three times the uttermost time-limit prescribed by the domestic law for the examination of asylum applications, and had even exceeded the total period of six months allowed for the examination of asylum appeals as the statutorily maximum permissible length (see paragraph 29 above). In such circumstances, the applicant could not be reproached for opting not to take the foregoing avenue again, as suggested by the Government.

52. In the light of the above considerations, the Court concludes that as a result of the delays in the asylum proceedings, the length of the detention pending extradition, which lasted eighteen months, was not in accordance with domestic law. In this context, there were two relevant elements: the time-limit for the detention pending extradition, and the time-limit for dealing

with the asylum claim (see paragraphs 27 and 29 above). They both are inextricably linked – the time-limit for consideration of the asylum claim is intended, in the circumstances of the case, to ensure that the overall length of detention is not excessive.

53. The Court therefore rejects the Government's preliminary objection and concludes that there has been a violation of Article 5 § 1 (f) of the Convention, in that the lawfulness requirement under that provision was not complied with. In view of that conclusion, it is not necessary to address the applicant's particular submissions concerning alternatives to detention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

55. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage with regard to a violation of his rights under Article 5 of the Convention.

56. The Government submitted that, if a violation were to be found, the amount of EUR 1,000 would constitute a reasonable amount.

57. Making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

58. Producing invoices in support of his claim, the applicant sought a total of 99,228 Czech korunas (CZK) (approx. EUR 3,800) in respect of the costs and expenses incurred before the domestic courts and the Court.

59. The Government considered that the claimed expenses were only partly relevant to the applicant's complaint under Article 5 of the Convention.

60. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,600 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 1 (f) of the Convention 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*
   (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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 3 February 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Síofra O'Leary
Registrar	President