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

FIFTH SECTION

CASE OF NOVIK v. UKRAINE

(Application no. 48068/06)

JUDGMENT

STRASBOURG

18 December 2008

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 Novik v. Ukraine,

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

Rait Maruste, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 48068/06) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Belarusian national, Mr Valeriy Valeryevich Novik ("the applicant"), on 4 December 2006.

2. The applicant was represented by Mr A. P. Bushchenko, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev, from the Ministry of Justice.

3. The applicant alleged, in particular, that his detention awaiting extradition was not lawful.

4. On 13 March 2007 the Court declared the application partly inadmissible and decided to communicate the complaint concerning unlawfulness of the applicant's detention to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Kyiv.

6. On 30 November 2006 the applicant was apprehended by the police in Kyiv under the international arrest warrant issued by the General Prosecutor's Office of Belarus.

7. On 1 December 2006 the Pechersky District Court of Kyiv ordered the applicant's detention for forty days pending an official request for his extradition to Belarus and in order to effect his transfer to the law enforcement authorities of Belarus.

8. On 4 December 2006 the applicant appealed against the decision of 1 December 2006. He contended that the first instance court had not taken into account his state of health and the fact that he, together with his wife and three minor children, had been residing in Ukraine for a long period of time, and that the court had not examined the applicant's submissions concerning his political persecution in Belarus.

9. On 7 December 2006 the Kyiv City Court of Appeal rejected the applicant's appeal against the decision of 1 December 2006. It held that the first instance court had duly taken into account the applicant's state of health. However, it took the view that his family situation was irrelevant for the case and that the applicant's allegations of political persecution in Belarus were unsubstantiated.

10. On 8 December 2006 the Deputy Prosecutor of the Republic of Belarus submitted an official request to the General Prosecutor's Office of Ukraine, seeking the applicant's extradition to Belarus.

11. By letter of 25 December 2006 the Deputy Prosecutor General of Ukraine informed the Belarusian Deputy Prosecutor General that the applicant would not be extradited on the ground that, under Ukrainian law, the charges against the applicant did not carry imprisonment.

12. On 27 December 2006 the applicant was released from detention.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. Relevant domestic law and practice is summarised in the case of Soldatenko (*Soldatenko v. Ukraine,* 2440/07, §§ 21-29 and 31, 23 October 2008).

THE LAW

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

14. The applicant complained about the unlawfulness of his detention. He referred to Article 5 § 1 (f) of the Convention, which 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

15. 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

16. The applicant complained that the domestic authorities did not act with due diligence in extradition proceeding against him and that Ukrainian law did not provide for clear and foreseeable procedure governing detention awaiting extradition, as required by Article 5 § 1 (f) of the Convention.

17. The Government maintained that the domestic authorities acted with due diligence, in particular, after receipt of the extradition request, it took them only seventeen days to decide that the applicant should not be extradited. They further contended that the clear and foreseeable procedure for the applicant's detention awaiting extradition was provided by the Constitution of Ukraine, the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993 ("the Minsk Convention"), the Code of Criminal Procedure and the Resolution no. 16 of the Plenary Supreme Court of 8 October 2004 on certain issues relating to the application of legislation governing the procedure and length of detention (arrest) of persons awaiting extradition.

18. The Court reiterates that any deprivation of liberty is justified under Article 5 § 1 (f) only for as long as deportation or extradition proceedings are in progress. If the proceedings are not executed with due diligence, the

detention will cease to be permissible under that provision (see *Chahal*, cited above, § 113; *Quinn v. France*, judgment of 22 March 1995, Series A no. 311, p. 19, § 48; and also *Kolompar v. Belgium*, judgment of 24 September 1992, Series A no. 235-C, p. 55, § 36).

19. Furthermore, it should be recalled that where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. The requirement of "quality of law" in relation to Article 5 § 1 implies that where a national law authorises a deprivation of liberty it must be sufficiently assessable, precise and foreseeable in application, in order to avoid all risk of arbitrariness (see *Baranowski v. Poland*, no. 28358/95, § 50-52, ECHR 2000-III, and *Khudoyorov v. Russia*, no. 6847/02, § 125, ECHR 2005-... (extracts)).

20. The Court considers that in the circumstances of the present case it cannot be said that during the twenty-eight days of the applicant's detention pending the extradition proceedings, the authorities did not act with due diligence. In particular, as the Government submitted, they resolved the applicant's legal status within seventeen days upon receipt of the extradition request.

21. Conversely, as regards the quality of national law governing detention awaiting extradition, the Court recalls that it has already faced a similar issue in the case of *Soldatenko v. Ukraine* (cited above, §§ 102, 112-114 and 126), in which the Government referred to the same domestic law and practice as a basis for the procedure for detention awaiting extradition, and found that Ukrainian legislation did not provide for a procedure that was sufficiently accessible, precise and foreseeable in its application to avoid the risk of arbitrary detention. In the present case, the Court does not find any reasons to deviate from the conclusions reached in the *Soldatenko* judgment and confirms that the relevant domestic legislation could not protect the applicant from arbitrariness.

22. There has therefore been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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."

24. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the unlawfulness of the applicant's detention admissible;

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

Done in English, and notified in writing on 18 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Rait Maruste
Registrar	President