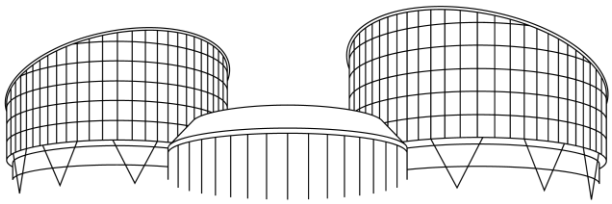

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KONONTSEV v. RUSSIA

(Application no. 19732/04)

JUDGMENT

STRASBOURG

29 July 2010

FINAL

29/10/2010

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

In the case of Konontsev v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 19732/04) 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 a Kyrgyz national, Valeriy Konontsev ("the applicant"), on 7 June 2004.

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

3. The applicant alleged, in particular, that, with a view to extradition to Kyrgyzstan, his detention had been unlawful.

4. On 14 January 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background information and proceedings in Kyrgyzstan

5. The applicant was born in Kyrgyzstan in 1966. It appears that he currently lives in Kyrgyzstan.

6. On 21 August 1996 the Investigation Department of the Ministry of National Security of Kyrgyzstan ("the Investigation Department") indicted the applicant on serious fraud charges. According to the decision on indictment, the applicant had failed to pay for 150 TV sets which he had received under a consignment agreement with a joint stock company. On the same date the Investigation Department ordered the arrest of the applicant. On 27 August 1996 the applicant's name was put on a wanted list.

B. Proceedings in Russia

1. Extradition proceedings

7. On 9 July 2003 the applicant was arrested in Russia (see paragraph 13 below).

8. On 29 August 2003 the General Prosecutor's Office of Russia received a request from their counterpart in Kyrgyzstan for the extradition of the applicant.

9. On 6 April 2004 the Deputy Prosecutor General of Russia authorised the extradition of the applicant to Kyrgyzstan. The applicant challenged the extradition order in court.

10. On 13 May 2004 the Moscow City Court upheld the extradition order as lawful and justified. The applicant appealed.

11. On 29 July 2004 the Supreme Court of Russia ("the Supreme Court") upheld the decision of 13 May 2004 on appeal.

12. From the submitted materials, it appears that, on an unspecified date after 29 July 2004, the applicant was extradited to Kyrgyzstan.

2. Detention pending extradition of the applicant

13. On 9 July 2003 the applicant was arrested in Russia and held in custody, first at the Moscow-Paveletskiy temporary detention facility and then at remand prison no. 77/4 in Moscow.

14. On 14 October 2003 the Babushkinskiy District Court of Moscow authorised the detention pending extradition of the applicant under

Article 466 § 1 of the Code of Criminal Procedure ("the CCP") without providing a time-limit for his detention.

15. On 9 June 2004 the applicant appealed against the decision of 13 May 2004 to the Supreme Court (see paragraph 10 above). In his appeal, he also stated that his detention from 9 July to 29 August 2003 had been unlawful because he had been detained without a court order and that the overall length of his detention had been excessive.

16. In its decision of 29 July 2004 the Supreme Court (see paragraph 11 above) left without examination the complaints concerning the lawfulness of the applicant's detention.

II. RELEVANT DOMESTIC LAW

17. For a summary of domestic law provisions on detention on remand, see *Nasrulloyev v. Russia* (no. 656/06, §§ 48-56, 11 October 2007).

THE LAW

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

18. The applicant complained under Article 5 § 1 of the Convention that his detention with a view to extradition had been unlawful. 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. Submissions of the parties

19. The applicant argued that his detention had been unlawful because the authorities had not complied with the procedure prescribed by domestic and international legislation. He also stressed that the proceedings had not been conducted with the requisite diligence, which had led to their protraction and had contributed to the length of his detention.

20. The Government submitted that the applicant's detention had been duly authorised on 14 October 2003 by the Babushkinskiy District Court. They further noted that on 4 April 2006 the Constitutional Court of Russia had issued a decision on a complaint similar to that submitted by the

applicant and therefore the provisions of domestic legislation concerning extradition had been sufficiently clear, foreseeable and precise. They also submitted that the domestic authorities had demonstrated requisite diligence in the applicant's case and that the length of his detention had not been excessive.

B. The Court's assessment

1. Admissibility

21. The Court notes that the applicant's complaint under Article 5 § 1 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

22. The Court has previously noted 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 accessible, 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-X (extracts)).

23. In a number of its recent judgments, the Court has already found that the provisions of the 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 (see, for example, *Nasrulloyev*, cited above, § 77; *Ismoilov and Others v. Russia*, no. 2947/06, § 140, 24 April 2008; *Ryabikin v. Russia*, no. 8320/04, § 130, 19 June 2008; *Muminov v. Russia*, no. 42502/06, § 122, 11 December 2008; and *Khudyakova v. Russia*, no. 13476/04, § 73, 8 January 2009).

24. Turning to the circumstances of the present case, the Court notes that the applicant was detained in Russia pursuant to an arrest warrant issued by a prosecutor's office in Kyrgyzstan. His detention was not confirmed by a Russian court, contrary to the provisions of Article 466 § 1 of the CCP, which requires such authorisation unless the detention in the country seeking extradition has been ordered by a court. Therefore, the applicant's detention pending extradition between 9 July and 14 October 2003 was not in accordance with a "procedure prescribed by law" as required by Article 5 § 1 of the Convention.

25. Furthermore, as to the Government's argument that the applicant's detention in view of his extradition was eventually authorised on 14 October 2003 by the Babushkinskiy District Court, the Court notes that, apart from authorising his detention as of that date, the domestic court did not order or take steps to ensure that the applicant was released or otherwise remedy the violation of his right to liberty and security.

26. The Court upholds the findings made in the above-mentioned cases (see paragraph 23 above) and finds that, in the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to extradition and setting time-limits for such detention, the deprivation of liberty to which the applicant was subjected was not circumscribed by adequate safeguards against arbitrariness. In particular, the Court observes that the detention order of 14 October 2003 did not set any time-limit for the applicant's detention. Under the provisions governing the general terms of detention (Article 108 of the CCP), the time-limit for detention pending investigation was fixed at two months. A judge could extend that period to up to six months. Further extensions could only be granted by a judge if the person had been charged with serious or particularly serious criminal offences. However, upon the expiry of the maximum initial two-month detention period (Article 109 § 1 of the CCP), no extension was granted by a court in the present case. The applicant was in detention pending extradition for more than one year, at least until 29 July 2004, when the extradition order against him was finalised by the Supreme Court. During that period, no requests were lodged for his detention to be extended. Thus, the national system has failed to protect the applicant from arbitrary detention, and his detention cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention. In these circumstances, the Court does not need to separately consider whether the extradition proceedings were conducted with due diligence.

27. In view of the above, the Court finds that the applicant's detention during the period in question was unlawful and arbitrary, in violation of Article 5 § 1. There has therefore been a violation of Article 5 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

28. The Court has examined another complaint submitted by the applicant under Article 3 of the Convention alleging that his extradition to Kyrgyzstan would subjected him to a real risk of ill-treatment. However, having regard to all the material in its possession, it finds that this complaint does not disclose any 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 §§ 3 and 4 of the Convention.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed 57,600 euros (EUR) in respect of non-pecuniary damage.

32. The Government submitted that the amount claimed was excessive and that finding a violation of the Convention would be adequate just satisfaction in the applicant's case.

33. The Court, making an assessment on an equitable basis, awards EUR 10,000 to the applicant in respect of non-pecuniary damage plus any tax that may be chargeable on that amount.

B. Costs and expenses

34. The applicant did not submit a claim under this heading.

C. Default interest

35. 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 applicant's complaint under Article 5 § 1 admissible and the remainder of the application inadmissible;

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

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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 29 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President