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

FIRST SECTION

CASE OF EMINBEYLI v. RUSSIA

(Application no. 42443/02)

JUDGMENT

STRASBOURG

26 February 2009

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

In the case of Eminbeyli 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 5 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 42443/02) 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 stateless person of Azeri ethnic origin, Mr Gunduz Aydin ogly Eminbeyli ("the applicant"), on 23 August 2002.

2. The applicant, who has been granted legal aid, was represented before the Court by Ms O. Tseytlina, a lawyer practising in St. Petersburg. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged in particular that he had been detained unlawfully, that he had not been informed of the reasons for his deprivation of liberty and that the judicial review available to him in respect of his detention had been ineffective.

4. On 2 September 2005 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 § 3).

5. The applicant and the Government each submitted written observations. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1956 and lives in Sweden.

7. On 26 February 1996 the applicant arrived in Russia from Azerbaijan. In April 2001 he asked the St. Petersburg City Representation of the United Nations High Commissioner for Refugees to grant him refugee status. Four months later refugee status was granted and the applicant was informed of his right to move to Sweden.

8. On 10 September 2001 the acting chief of the Gyandzha Town police department of the Republic of Azerbaijan faxed a letter to the chief of the St. Petersburg City police department asking him to arrest the applicant. The letter read as follows:

> "[We] seek your order to arrest a criminal, [the applicant], wanted by us for having committed a crime (theft of State property) under Article 88-1 of the Criminal Code of the Azerbaijan Republic... criminal case no. 10/295. The arrest warrant and order for transport were issued on 29 May 1995 by the first deputy military prosecutor of the Azerbaijan Republic."

A translation of the arrest warrant of 29 May 1995 was attached to the letter.

9. On 13 September 2001 the Prosecutor General of the Russian Federation received a letter from the Moscow Regional Representation of the United Nations High Commissioner for Refugees, informing him about the applicant's refugee status. The letter read as follows:

> "The Regional Representation of the United Nations High Commissioner for Refugees in the Russian Federation applies to you in connection with the case of Mr Gunduz Eminbeyli, which was examined by the UNHCR in July 2001, as a result of which [the applicant] was granted refugee status and was considered in need of international protection under the UNHCR mandate in the territory of the Russian Federation.
>
> In August 2001 Sweden accepted [the applicant] as a refugee with permanent leave to remain, in support of which he was given a travel document and issued with an entry visa for that country.
>
> As it follows from the information obtained by us, a federal search warrant was issued in respect of [the applicant] on the basis of the fact that the Azeri authorities accused him of having committed criminal actions; the [accusation] prevents him from leaving the Russian Federation.
>
> Due to the fact that [the applicant] is a proxy of the former Prime Minister of Azerbaijan, Mr S. Guseynov, who subsequently became a leader of the opposition to the Government of Mr G. Alieyev in Azerbaijan, and due to the fact that he worked with an Azeri national, Mr Z. Ismaylov, whose case was examined by the Prosecutor General's office last summer, the UNHCR has grounds to conclude that the true

reasons for the warrant issued by the Azeri authorities are [the applicant's] work with and close ties to the above-mentioned Azeri political figures.

As we were informed by the St. Petersburg City Department of Visas and Registration where [the applicant] lives and with whom he lodged his application for a visa, the Azeri authorities lodged a request for [the applicant's] extradition.

The UNHCR is concerned that if [the applicant] is expelled to Azerbaijan, there will be a danger of a violation of Article 33 § 1 of the UN Convention relating to the Status of Refugees... and of the Russian Law of 25 October 1999... by the Russian Federation. Article 33 of the Convention relating to the Status of Refugees forbids an expulsion of persons to a country where their lives and freedom will be threatened by a persecution on account of his race, religion, nationality, membership of a particular social group or political opinion."

The UNHCR Representation in Moscow sent a similar letter to the St. Petersburg City Prosecutor.

10. On 19 September 2001 police officers arrested the applicant pursuant to the faxed letter of 10 September 2001 and placed him in the temporary detention unit of the St. Petersburg City and Leningrad Region Department of the Interior (*ИВС при ГУВД города Санкт-Петербурга и Ленинградской области*). A police investigator issued a report on the applicant's arrest. The report represented a two-page printed template, in which the dates, the applicant's name, and the grounds for his arrest were filled in by hand. The relevant part read as follows (the pre-printed part in plain script and the part written by hand in italics):

"I, [*the police investigator*], ... on the basis of *the order of the prosecutor of the Republic of Azerbaijan Mr A. Aliyev.*, arrested *an individual,[the applicant], born on 9 April 1956,...*

Reasons for the arrest

Receipt of the prosecutor's arrest warrant

The arrested is brought to *the police station no. 78*

For that the present report is drawn up by [*the police investigator's signature*].

Signature of the arrested person [*the applicant's signature*]."

The second page of the report contained information on the applicant's body search.

11. The applicant insisted that he had not been informed about the reasons for his arrest and he had not been given a certified copy of the arrest warrant. He was later served with a translation of the warrant which was attached to the letter of 10 September 2001. The applicant further alleged that the conditions of his detention in the unit had been very poor.

12. On 20 September 2001 the Moscow Regional Representation of the UNHCR sent a letter, on the applicant's behalf, to the head of the

St. Petersburg police department, complaining about the applicant's arrest with a view to extradition and seeking additional information on the case.

13. On 24 September 2001 the UNHCR Representation retained a lawyer, Ms O. Tseytlina, to represent the applicant. On the same day Ms Tseytlina arrived at the detention unit for a meeting with the applicant, but she was not allowed to see him. Two days later Ms Tseytlina complained to the St. Petersburg City Prosecutor that she had been barred from seeing her client.

14. On 1 October 2001 Ms Tseytlina lodged an application with the Dzerzhinskiy District Court of St. Petersburg seeking the applicant's release and complaining that he had been unlawfully arrested and detained. A copy of the lawyer's complaint bears the stamp of the Dzerzhinskiy District Court showing that it received the complaint on the same day it had been sent. On the following day Ms Tseytlina was allowed to visit the applicant.

15. The Government, relying on a letter issued by the deputy President of the Dzerzhinskiy District Court, submitted that on 9 October 2001 the District Court had forwarded Ms Tseytlina's complaint to the St. Petersburg City prosecutor's office finding that the Prosecutor General had the exclusive jurisdiction to examine extradition matters. Ms Tseytlina complained to the St. Petersburg City Court about the transfer of her complaint to the prosecution authorities. The City Court forwarded that complaint to the Dzerzhinskiy District Court. The District Court decided to examine the merits of the application for release and the lawyer's complaints and fixed the first hearing for 20 December 2001.

16. On 5 October 2001 the Prosecutor General's Office received a request for the applicant's extradition from the Prosecutor General of the Azerbaijan Republic. The Azeri authorities stated that the applicant was suspected of having committed aggravated robbery with the aim of acquiring State property on 1 September 1993.

17. On 22 October 2001 the Prosecutor General of the Russian Federation, relying on Article 33 § 1 of the Convention relating to the Status of Refugees, dismissed the request for the extradition. The Prosecutor General stressed that the applicant had been granted refugee status and that he had been allowed to take up permanent residence in Sweden. The Prosecutor also noted that the St. Petersburg City Prosecutor's office had been given an order for the applicant's immediate release.

18. According to the Government, the Prosecutor General's order reached the prosecutor's office of the Tsentralniy District of St. Petersburg on 25 October 2001. The Tsentralniy District Prosecutor immediately authorised the applicant's release.

19. On 5 November 2001 the applicant moved to Sweden.

20. On 20 December 2001 the Dzerzhinskiy District Court adjourned for one week the proceedings concerning the examination of the lawfulness of the applicant's detention to allow the prosecutor to examine the case file.

The following hearing listed for 27 December 2001 was also rescheduled for 4 February 2002 to obtain additional documents from the parties.

21. On 8 February 2002 the Dzerzhinskiy District Court dismissed Ms Tseytlina's complaint concerning the applicant's detention. The District Court held that the detention was lawful. The applicant was detained at the request of the Azerbaijani authorities with a view to his extradition. Criminal proceedings were instituted against him in Azerbaijan, he absconded and his arrest was authorised. The Azerbaijani authorities requested the applicant's extradition in good time and submitted all necessary documents in compliance with the requirements of the Minsk Convention on Legal Assistance in Civil, Family and Criminal Cases of 22 January 1993. The applicant was released after the extradition request had been dismissed.

22. Mrs Tseytlina lodged an appeal statement. She complained that the applicant's arrest had not been authorised as required by domestic law, that the faxed letter from the chief of the police department could not have served as the legal basis for the arrest, that the Russian authorities had not issued any detention order in respect of the applicant, that he had not been promptly informed about the reasons for his arrest and that there had been no legal grounds for the applicant's detention between 22 and 25 October 2001.

23. On 26 February 2002 the St. Petersburg City Court upheld the decision of 8 February 2002. The City Court held:

> "... [The applicant], having permanent residence in the territory of Azerbaijan, was placed on the inter-State wanted persons' list by the law-enforcement organs of the above-mentioned State as a person who had absconded from investigation. His remand in custody was authorised (the detention order of 29 May 1995).
>
> On 20 September 2001 [the applicant] was arrested on the basis of the warrant issued by the Republic of Azerbaijan with the view to his extradition in accordance with the Minsk Convention of 22 January 1993 on Legal Assistance in Civil, Family and Criminal Cases (thereafter – the Convention)...
>
> The Azerbaijani officials had submitted the request for the [applicant's] arrest... on 10 September 2001 and, thus, the court correctly held that the [applicant's] detention was lawful.
>
> ...the period of [the applicant's] detention in the temporary detention unit of the St. Petersburg City and the Leningrad Region Department of Interior amounts to thirty-five days (between 20 September and 25 October 2001) and conforms to the requirements of Article 62 § 1 of the Minsk Convention, which indicates that a person arrested pursuant to Article 61 § 1 of the Minsk Convention shall be released if no request for extradition is received within one month of the arrest. The request of the Prosecutor General of Azerbaijan for [the applicant's] extradition was received by the Prosecutor's General office on 5 October 2001, fifteen days after [the applicant's] arrest in St. Petersburg.

[The applicant] was released on 25 October 2001 after the Prosecutor General of the Russian Federation ordered his release in connection with the decision refusing the request of the Prosecutor General of the Republic of Azerbaijan for his extradition."

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. The Russian Constitution

24. The Constitution guarantees the right to liberty (Article 22):

"1. Everyone has the right to liberty and personal integrity.

2. Arrest, placement in custody and detention are only permitted on the basis of a judicial decision. Prior to a judicial decision, an individual may not be detained for longer than forty-eight hours."

B. The 1993 Minsk Convention

25. The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (signed in Minsk on 22 January 1993 and amended on 28 March 1997, "the 1993 Minsk Convention"), to which both Russia and Azerbaijan are parties, provides as follows:

Article 8. Order of execution [of a request for legal assistance]

"When executing a request for legal assistance the requested authority should implement domestic legal norms. The State Party which seeks legal assistance may ask the other Party to use the legal norms of the requesting Party, if those norms do not contradict legal norms of the State Party providing legal assistance..."

Article 56. Obligation of extradition

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

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

Article 58. Request for extradition

"1. A request for extradition shall include the following information:

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

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

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

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

2. A request for extradition for the purpose of criminal persecution shall be accompanied by a certified copy of a detention order....”

Article 60. Retrieval and detention with a view to extradite

“After a request for extradition is received, the requested Contracting Party immediately takes measures to retrieve and detain a person whose extradition is sought save for those cases when the person cannot be extradited.”

Article 61. Arrest or detention before the receipt of a request for extradition

“1. The person whose extradition is sought may also be arrested before receipt of a request for extradition, if there is a related petition. The petition shall contain a reference to a detention order ... and shall indicate that a request for extradition will follow. A petition for arrest ... may be sent by post, wire, telex or fax.

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

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

Article 61-1. Search for a person before receipt of the request for extradition

“1. The Contracting Parties shall ... search for the person before receipt of the request for extradition if there are reasons to believe that this person may be in the territory of the requested Contracting Party....

2. A request for the search ... shall contain ... a request for the person’s arrest and a promise to submit a request for his extradition.

3. A request for the search shall be accompanied by a certified copy of ... the detention order....

4. The requesting Contracting Party shall be immediately informed about the person’s arrest or about other results of the search.”

Article 62. Release of the person arrested or detained

"1. A person arrested pursuant to Article 61 § 1 and Article 61-1 shall be released ... if no request for extradition is received by the requested Contracting Party within 40 days of the arrest.

2. A person arrested pursuant to Article 61 § 2 shall be released if no petition issued pursuant to Article 61 § 1 arrives within the time established by the law concerning arrest."

Article 67. Surrender of the person being extradited

"The requested Party shall notify the requesting Party of the place and time of surrender. If the requesting Party does not accept the person being extradited within fifteen days of the scheduled date of surrender, that person shall be released."

Article 80. Particular order of relations

"Relations concerning extradition issues and criminal prosecution are performed by Prosecutor Generals (prosecutors) of the State Parties."

C. The European Convention on Extradition

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

Article 3. Political offences

"1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.

2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons."

Article 16 – Provisional arrest

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

...

4. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article 12. It shall not, in any event, exceed 40 days from the date of

such arrest. The possibility of provisional release at any time is not excluded, but the requested Party shall take any measures which it considers necessary to prevent the escape of the person sought."

D. The UN Refugee Convention

27. The United Nations Convention relating to the Status of Refugees, adopted on 28 July 1951, provided as follows:

Article 33. Prohibition of expulsion or return ("refoulement")

"1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

E. Russian Refugee Law

28. The Federal Law "On refugees" (no. 4528-I of 19 February 1993) provided as follows:

Section 1. Basic definitions

"1. The following basic definitions are applied for the purposes of the present Federal Law:

1) A refugee is a person who is not a national of the Russian Federation and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, ethnic origin, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it...

Section 10. Guarantees of the rights of a person

"1. A person... who is granted refugee status...cannot be expelled against his will to the territory of the State of his nationality (of his former permanent residence) if the conditions described in Article 1 § 1 (1) of the present Federal Law are still in force in that State..."

F. The 1992 Treaty between the Russian Federation and the Republic of Azerbaijan

29. Article 4 of the Treaty between the Russian Federation and the Republic of Azerbaijan on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases ("the 1992 Treaty"), adopted on 22 December 1992 (in force since 20 January 1995) provides that the State Parties effect legal relations through their respective Ministers of Justice and the offices of the Prosecutors General.

30. By virtue of Article 8 of the Treaty, each State Party applies its own law in order to carry out the other Party's request for legal assistance. Only on an explicit request of another Party may a State Party to the Treaty apply another Party's law in so far as it does not contradict the law of the latter Party.

31. Article 67 § 1 of the Treaty sets out the requirements for an extradition request. The request should contain the name of the requesting authority, an extract from the requesting Party's law according to which an imputed act or omission constitutes a crime, the name of the person whose extradition is sought, information on his or her nationality, whereabouts, his photo and/or fingerprints where possible, and a reference to the estimation of the damage caused by the criminal offence. A certified copy of a decision on taking the person into custody with the statement of facts should be attached to the request.

G. The RSFSR Code of Criminal Procedure

32. Under Article 1 of the RSFSR Code of Criminal Procedure (the CCrP – in force at the material time) wherever a crime is committed, proceedings conducted on Russian territory are always governed by the Russian law on criminal procedure.

33. A decision to order detention can only be taken by a prosecutor or a court (Articles 11, 89 and 96 of the CCrP).

34. A prosecutor's order or court decision ordering detention must be reasoned and justified (Article 92). The accused must be informed of the detention order and must have the procedure for lodging an appeal explained to him or her (Article 92).

35. An investigating authority should issue a report pertaining to each arrest. The report should include the following information: the grounds and reasons for the arrest, its date, time and place, the arrestee's explanations, and the time when the report was drawn up. The investigating authority should transmit the report to a prosecutor within twenty-four hours. Within forty-eight hours following the receipt of the report, the prosecutor should authorise the person's detention or release him (Article 122 of the CCrP).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (f) OF THE CONVENTION

36. The applicant complained under Article 5 § 1 (f) of the Convention that he had been unlawfully held in custody from 19 September to 25 October 2001. 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 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. Submissions by the parties

37. The Government submitted that the Russian police had lawfully arrested the applicant on the basis of the faxed request received from the Azerbaijani authorities on 10 September 2001. That request contained the necessary information pertaining to the criminal proceedings against the applicant and the arrest warrant issued in Azerbaijan. In accordance with the requirements of the RSFSR Code of Criminal Procedure the police investigator drew up a report on the applicant's arrest. The legal basis for the applicant's detention from 19 September to 25 October 2001 was paragraph 1 of Article 61 of the 1993 Minsk Convention. On 5 October 2001, that is within fifteen days of the arrest, the Prosecutor General's office received a request for the applicant's extradition to Azerbaijan. Relying on Article 33 of the UN Refugee Convention, the Prosecutor General dismissed the extradition request, having regard to the applicant's refugee status. The applicant's detention did not exceed the forty-day period allowed by the 1993 Minsk Convention and therefore it was lawful.

38. The applicant argued that his detention had been *ab initio* unlawful, because he could not be expelled to Azerbaijan having been granted refugee status. The applicant pointed out that on 13 September 2001, that is almost a week prior to his arrest, the Moscow Representation of the UNHCR had informed the Prosecutor's General office about his refugee status.

39. The applicant also disputed that his arrest was in compliance with the requirements of the Russian law. In particular, he submitted that the faxed request for his arrest had not contained all necessary information as

required by the 1993 Minsk Convention and the 1992 Treaty between the Russian Federation and the Republic of Azerbaijan. For instance, no certified copy of the arrest warrant was attached to the faxed letter of 10 September 2001 and the petition did not state the Azerbaijani authorities' intention to apply for the applicant's extradition. The petition should also have been sent to the Prosecutor General's office of the Russian Federation by the Prosecutor General of the Republic of Azerbaijan. Furthermore, after the report on his arrest had been drawn up in the police station, the Russian authorities did not issue any order authorising his detention in violation of the requirements of Article 122 of the CCrP.

40. The applicant further submitted that the provisions of the Russian criminal law on detention of persons with a view to extradition fell short of the requirement of legal certainty and the Convention principles. He also noted that his detention after 22 October 2001, when the extradition request had been dismissed, had lacked any grounds whatsoever. The applicant found it unexplainable that it took three days to deliver the Prosecutor General's decision of 22 October 2001 from Moscow to St. Petersburg.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

42. Paragraph 1 of Article 5 of the Convention circumscribes the circumstances in which individuals may be lawfully deprived of their liberty. Seeing that these circumstances constitute exceptions to a most basic guarantee of individual freedom, only a narrow interpretation is consistent with the aim of this provision (see *Čonka v. Belgium*, no. 51564/99, § 42 *in limine*, ECHR 2002-I, and *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 396, ECHR 2005-III). The Court notes that it is common ground between the parties that the applicant was detained with a view to his extradition from Russia to Azerbaijan. Article 5 § 1 (f) of the Convention is thus applicable in the instant case. This provision does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary, for example to prevent his committing an offence or absconding. In this connection, Article 5 § 1 (f) provides a different level of protection from

Article 5 § 1 (c): all that is required under sub-paragraph (f) is that "action is being taken with a view to deportation or extradition" (see *Čonka*, cited above, § 38, and *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, § 112). However, any deprivation of liberty under Article 5 § 1 (f) will be justified only for as long as extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (ibid., p. 1863, § 113).

43. The Court further reiterates that it falls to it to examine whether the applicant's detention was "lawful" for the purposes of Article 5 § 1 (f), with particular reference to the safeguards provided by the national system. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, § 50). Thus, the notion underlying the term in question is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary (see *C. v. Germany*, no. 0893/84, Commission decision of 2 December 1985). The words "in accordance with a procedure prescribed by law" do not merely refer back to domestic law; they also relate to the quality of this law, requiring it to be compatible with the rule of law, a concept inherent in all Articles of the Convention. Quality in this sense implies that where a national law authorises deprivation of liberty, it must be sufficiently accessible and precise, in order to avoid all risk of arbitrariness (see *Dougoz v. Greece*, no. 40907/98, § 55, ECHR 2001-II, citing *Amuur v. France*, cited above, pp. 850-51, § 50).

44. The Court observes that as the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 refer back to national law, it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with the domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Benham v. the United Kingdom*, 10 June 1996, §§ 40-41, *Reports of Judgments and Decisions* 1996-III, and *Shukhardin v. Russia*, no. 65734/01, § 74, 28 June 2007).

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

45. Turning to the facts of the present case, the Court reiterates that on 10 September 2001 the St. Petersburg City police department received a

faxed letter from the acting chief of the Gyandzha Town police department seeking the applicant's arrest for a criminal offence he had allegedly committed in Azerbaijan. Nine days later, pursuant to that faxed letter, the applicant was arrested and placed in the temporary detention unit in St. Petersburg. The Court notes the applicant's arguments that the faxed petition was not transmitted through the formal channels, the Prosecutor Generals' offices, as required by Article 80 of the 1993 Minsk Convention and Article 4 of the 1992 Treaty (see paragraphs 25 and 29 above), that it did not contain certain required information and that a certified copy of the arrest warrant was not enclosed. However, the Court does not consider it necessary to examine this part of the applicant's submissions in detail. It will review the authorities' compliance with the more general provisions of the Russian law on deprivation of liberty.

46. The Court reiterates that for the detention to meet the standard of "lawfulness", it must have a basis in domestic law. The Court observes, and the parties did not dispute this assertion, that the applicant's detention pending extradition was governed by Russian law, in particular the RSFSR Code of Criminal Procedure in force at the material time. This conclusion is also supported by Article 8 § 1 of the 1993 Minsk Convention (see paragraph 25 above), Article 16 § 1 of the European Convention on Extradition (see paragraph 26 above), Article 8 of the 1992 Treaty (see paragraph 30 above) and Article 1 of the CCrP itself (see paragraph 32 above) which provide that issues of legal assistance, including those pertaining to provisional arrest and detention with a view to extradition, are governed by the domestic law of a State providing such an assistance (see, for similar reasoning, *Shchebet v. Russia*, no. 16074/07, § 67, 12 June 2008 and *Soldatenko v. Ukraine*, no. 2440/07, § 112, 23 October 2008). The Court further observes that the RSFSR Code of Criminal Procedure did not contain separate legal provisions governing detention of a person with a view to his extradition. However, it was uncontested by the parties, and the Court therefore finds it established, that the general provisions of the CCrP thus applied to the authorisation of the detention of such a person.

47. Turning to the domestic law, the Court observes that under the Russian Constitution and rules of criminal procedure the power to authorise the detention was vested in prosecutors and courts (see paragraphs 24, 33 and 35 above). In particular, by virtue of Article 122 of the RSFSR Code of Criminal Procedure after the report on the applicant's arrest had been drawn up, a police investigator should have submitted it to a prosecutor authorised to take a decision on the applicant's detention or his release (see paragraph 35 above). No exceptions to the rule were permitted or provided for. There is no argument between the parties that between the date of the applicant's arrest on 19 September 2001 and the Tsentralniy District Prosecutor's decision of 25 October 2001 on the applicant's release there was no decision – either by a Russian prosecutor or a judge – authorising the applicant's

detention. It follows that the applicant was in a legal vacuum that was not covered by any domestic legal provision. Therefore the applicant's detention pending extradition was not in accordance with a "procedure prescribed by law" as required by Article 5 § 1.

48. In addition, the Russian legislation excludes in non-ambiguous terms the expulsion or return of a refugee to a State where his life or freedom will be threatened (see paragraphs 27 and 28 above). The information on the applicant's refugee status had been made available to the Russian competent authorities almost a week before the applicant's arrest when the Moscow Representation of the UNHCR sent letters both to the Prosecutor General's office in Moscow and the St. Petersburg City Prosecutor (see paragraph 9 above). The Court also does not lose sight of the fact that the Prosecutor General dismissed the request for the applicant's extradition precisely on the ground of his refugee status (see paragraph 17 above). The Court reiterates that it has already examined a similar situation in the case of *Garabayev v. Russia* (no. 38411/02, § 89, 7 June 2007, ECHR 2007). In that case the Court held that the detention of the applicant, a Russian national, with a view to his extradition, had been arbitrary and unlawful from the outset, on the ground that Russian law prohibited the expulsion of Russian nationals. Having regard to the similar protection Russian law affords against expulsion both to Russian nationals and refugees, the Court does not consider that the conclusion reached in the *Garabayev* case is altered in the present case. The Court therefore finds that the flaw in the very act of the applicant's arrest was so fundamental as to render it arbitrary and *ex facie* invalid from the outset (see also, *mutatis mutandis*, *Khudoyorov v. Russia*, no. 6847/02, § 165, ECHR 2005-X (extracts)).

49. Furthermore, although the Court has found that the entire period of the applicant's detention was unlawful and arbitrary, it is worth noting that on 22 October 2001 the Prosecutor General examined and dismissed the extradition request. However, it was not until 25 October 2001 that the Tsentralniy District Prosecutor authorised the applicant's release. The Court reiterates that some delay in implementing a decision to release a detainee is understandable and often inevitable in view of practical considerations relating to the running of the courts and the observance of particular formalities. However, the national authorities must attempt to keep it to a minimum (see *Quinn v. France*, judgment of 22 March 1995, Series A no. 311, p. 17, § 42; *Giulia Manzoni v. Italy*, judgment of 1 July 1997, *Reports* 1997-IV, p. 1191, § 25 *in fine*; *K.-F. v. Germany*, judgment of 27 November 1997, *Reports* 1997-VII, p. 2675, § 71; and *Mancini v. Italy*, no. 44955/98, § 24, ECHR 2001-IX). The Court reiterates that administrative formalities connected with release cannot justify a delay of more than a few hours (see *Nikolov v. Bulgaria*, no. 38884/97, § 82, 30 January 2003). It is for the Contracting States to organise their legal system in such a way that their law-enforcement authorities can meet the

obligation to avoid unjustified deprivation of liberty. The Court finds it striking that in the instant case it took the domestic authorities three days to communicate the Prosecutor General's decision to a prosecutor in St. Petersburg and to release the applicant. Having regard to the prominent place which the right to liberty holds in a democratic society, the respondent State should have deployed all modern means of communication of information to keep to a minimum the delay in implementing the decision to release the applicant as required by the relevant case-law. The Court is not satisfied that the Russian officials complied with that requirement in the present case.

50. To sum up, the Court finds that the applicant's detention from 19 September to 25 October 2001 was unlawful and arbitrary, in violation of Article 5 § 1 (f).

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

51. The applicant complained that he had not been promptly informed of the reasons for his arrest in breach of Article 5 § 2 of the Convention which provides as follows:

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

A. Submissions by the parties

52. The Government submitted that an investigator of police department no. 78 in the Tsentralniy District of St. Petersburg had drawn up a report on the applicant's arrest. The applicant signed both pages of the report. Therefore he was informed of the reasons for his arrest.

53. The applicant insisted that the authorities had failed to fulfil the obligation imposed on them by Article 5 § 2. The report drawn up immediately after his arrest included a reference to the arrest warrant issued by a prosecutor of the Republic of Azerbaijan. No further information on the criminal charges against him and their legal characterisation and factual basis, or a copy of that arrest warrant, was provided to the applicant.

B. The Court's assessment

1. General principles

54. The Court reiterates that Article 5 § 2 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection

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

55. The Court also reiterates that when a person is arrested on suspicion of having committed a crime, Article 5 § 2 neither requires that the necessary information be given in a particular form, nor that it consists of a complete list of the charges held against the arrested persons (see *Bordovskiy v. Russia*, no. 49491/99, § 56, 8 February 2005). The above reasoning applies, *mutatis mutandis*, to the arrest of persons with a view to their extradition, the meaning of Article 5 § 2 being that a person should know why he is arrested by the police. While it is true that insufficiency of information of the charges held against an arrested person may be relevant for the right to a fair trial under Article 6 of the Convention for persons arrested in accordance with Article 5 § 1 (c), the same does not apply to arrest with a view to extradition, as these proceedings are not concerned with the determination of a criminal charge (see *K. v. Belgium*, no. 10819/84, Commission decision of 5 July 1984, Decisions and Reports (DR) 38, p. 230).

56. In the case of *K. v. Belgium* (cited above), the former Commission considered that the indication in the arrest warrant that the applicant was suspected of fraud and that his arrest was ordered for the purpose of extradition to the United States constituted sufficient information concerning the reasons for his arrest and the charge held against him for the purposes of Article 5 § 2. In the case of *Bordovskiy v. Russia* (cited above, §§ 57-59), the Court found that the fact that in the course of the arrest for a purpose of extradition the applicant had been told that he was wanted by the Belarus authorities was sufficient to satisfy the requirement of Article 5 § 2 of the Convention.

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

57. The Court observes that in the present case the applicant did not dispute that at the time of his arrest he had been told that he was wanted by the Azerbaijani authorities. The Court notes that the report on the arrest which was signed by the applicant contained a direct reference to the arrest warrant issued by the prosecutor of the Republic of Azerbaijan (see paragraph 10 above). The Court also does not lose sight of the fact that on the day following the applicant's arrest the Moscow Representation of the

UNHCR complained on the applicant's behalf to the head of the St. Petersburg police department about his arrest with a view to extradition. It therefore appears that, being aware that his arrest had been effected for the purpose of extradition to Azerbaijan, the applicant was merely dissatisfied that he was not provided with the full information on the criminal proceedings pending against him in Azerbaijan, including the factual basis for the charges and their legal characterisation. Although the Court considers it regrettable that at the time of his arrest the applicant was not served with a copy of the arrest warrant issued by the prosecutor of the Republic of Azerbaijan, the information provided to the applicant by Russian authorities was sufficient to satisfy their obligation under Article 5 § 2 of the Convention (see *Day v. Italy*, no. 34573/97, Commission decision of 21 May 1998, and *Bordovskiy*, cited above, §§ 57). In reaching this conclusion, the Court also takes into account the fact that, as it appears, shortly after the arrest the applicant was served with a translation of the arrest warrant (see, for similar reasoning, *Eid v. Italy* (dec.), no. 53490/99, 22 January 2002).

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

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

59. The applicant further complained that he had not been able to obtain effective judicial review of his detention. He relied on Article 5 § 4 of the Convention which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Submissions by the parties

60. The Government confirmed that on 1 October 2001 the Dzerzhinskiy District Court had received the applicant's lawyer's application for release. The application was forwarded to the St. Petersburg City prosecutor's office. Following the lawyer's complaint to the St. Petersburg City Court about the transfer, the case file was sent back to the Dzerzhinskiy District Court which, on 8 February 2002, examined the initial application for release and additional complaints and dismissed them, finding that the detention had been lawful. The decision was upheld on appeal on 26 February 2002.

61. The applicant submitted that it had taken the domestic courts more than four and a half months to examine his complaints of unlawful detention. He further argued that while examining his complaints the domestic courts had committed various procedural violations.

B. The Court's assessment

1. Admissibility

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

2. Merits

63. The Court reiterates that the purpose of Article 5 § 4 is to secure to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, § 76). A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading, where appropriate, to his or her release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see, *mutatis mutandis*, *Stoichkov v. Bulgaria*, no. 9808/02, § 66 *in fine*, 24 March 2005, and *Vachev v. Bulgaria*, no. 42987/98, § 71, ECHR 2004-VIII (extracts)). The accessibility of a remedy implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy (see, *mutatis mutandis*, *Čonka*, cited above, §§ 46 and 55).

64. Turning to the facts of the present case, the Court considers, firstly, that the fact that the applicant was released on 25 October 2001 before his application for release came up for hearing before the District Court does not render the complaint devoid of purpose, since the deprivation of liberty in issue lasted thirty-seven days (see *Čonka*, cited above, § 55, with further references).

65. The Court further notes that in the case of *Bordovskiy v. Russia* (cited above, §§ 66-67) it found that the judicial review of detention pending extradition was in principle available in Russia under the provisions of the RSFSR Code of Criminal Procedure. The Court observes that the domestic courts which had received the application for the applicant's release held hearings and issued decisions, finding that the

detention had been lawful. In the Court's opinion, the issue is consequently not so much whether there was a judicial review of the lawfulness of the applicant's detention, since the parties did not dispute that there was one, as whether it was conducted speedily and effectively (see, by contrast, *Nasrulloyev v. Russia*, no. 656/06, §§ 88-89, 11 October 2007 and *Ryabikin v. Russia*, no. 8320/04, §§ 138-141, 19 June 2008).

66. The Court will therefore first assess the speediness of the judicial review, viewed as a gauge of the authorities' determination not to subject persons to prolonged and arbitrary detention (see *Reinprecht v. Austria*, no. 67175/01, § 39, ECHR 2005-XII). The Court observes that the issues submitted to a domestic court in the context of such challenges of the "lawfulness" of a deprivation of liberty as are the subject of this case, are often of a more complex nature than those which have to be decided when a person detained in accordance with Article 5 § 1 (c) is brought before a judge or other judicial officer as required by paragraph 3 of that Article (see *E. v. Norway*, 29 August 1990, § 64, Series A no. 181-A). The notion of "promptly" in the latter provision indicates greater urgency than that of "speedily" in Article 5 § 4 (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 59, Series A no. 145-B). Even so, a period of approximately five months from the lodging of the application for release to the final judgment does appear, prima facie, difficult to reconcile with the notion of "speedily". However, in order to reach a firm conclusion, the special circumstances of the case have to be taken into account (see *Sanchez-Reisse v. Switzerland*, 21 October 1986, § 55, Series A no. 107).

67. The Court observes that eleven weeks elapsed between the lodging of the application for judicial review on 1 October 2001 and the date of the first hearing on 20 December 2001. The Government explained that the delay was caused by the transfer of the case file to the prosecution authorities and back to the District Court. In this connection, the Court reiterates that Article 5 § 4 of the Convention imposes on Contracting States the duty to organise their judicial system in such a way that their courts can meet the obligation to examine detention matters speedily (see *E. v. Norway*, cited above, § 66). The Court notes with concern the conflicting decisions of the domestic courts on the issues of avenues of review to be followed by those detained with a view to extradition (see paragraph 15 above). In these circumstances, the Court considers that the entire delay of eleven weeks is attributable to the conduct of the domestic authorities. The Court also finds peculiar a further delay of one week afforded to the prosecution authorities for the purpose of studying the case file, taking into account that the file had been in the possession of the same prosecution authorities for the previous ten weeks. The Court is also unconvinced that the domestic authorities tried to keep to a minimum possible delays in the proceedings by affording the parties an additional five weeks for provision of information. Although, it appears that no further delays occurred in the

examination of the detention matter after 4 February 2002, in all the circumstances the Court concludes that the domestic courts failed to comply with the requirement of speediness.

68. Furthermore, the Court cannot overlook the fact that the first hearing in the present case was held on 20 December 2001 and the final decision was taken on 26 February 2002, that is approximately two and four months respectively, after the applicant's release on 25 October 2001. The Court finds that the issue of the speediness of review in the present case overlaps with the issue of its effectiveness. The Court considers that in the circumstances of the case the authorities' failure to review without a delay the lawfulness of the applicant's detention, in principle, deprived the review of the requisite effectiveness (see *Sabeur Ben Ali v. Malta*, no. 35892/97, § 40, 29 June 2000 and *Galliani v. Romania*, no. 69273/01, §§ 61-62, 10 June 2008; and, *mutatis mutandis, Kolanis v. the United Kingdom*, no. 517/02, § 82, ECHR 2005-V).

69. The Court therefore finds that there has been a violation of Article 5 § 4 of the Convention.

70. The applicant also alleged certain procedural irregularities in the court proceedings relating to the review of his detention. However, in view of its conclusions above the Court does not find it necessary to examine these complaints made under Article 5 § 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. Lastly, the applicant complained under Articles 3, 6 and 13 of the Convention that the conditions of his detention had amounted to inhuman treatment and that his lawyer had not been allowed to see him for several days after his arrest.

72. However, having regard to all the material in its possession, the Court finds that they do 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

75. The Government averred that no compensation should be awarded.

76. The Court considers that the sufficient just satisfaction would not be provided solely by finding a violation and that compensation has thus to be awarded. Making an assessment on an equitable basis, it awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

77. The applicant also claimed EUR 800 for legal costs incurred in the proceedings before the Court. The amount claimed represented sixteen hours work by Ms Tseytlina at the hourly rate of EUR 50. Furthermore, the applicant, without indicating the sum, claimed legal costs incurred in the domestic proceedings. He stressed that Ms Tseytlina had represented him before the domestic courts and her hourly rate had been EUR 50.

78. The Government submitted that the claims were unsubstantiated.

79. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the amount of EUR 850 has already been paid to the applicant by way of legal aid. Taking into account the sum claimed by the applicant for legal representation before the Court and the Court's inability on the basis of the applicant's submissions to assess the legal expenses incurred in the domestic proceedings, the Court does not consider it necessary to make an award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the lawfulness of the applicant's deprivation of liberty and the judicial review of his detention admissible and the remainder of the application inadmissible;

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

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

4. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 26 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President