ΚΥΠΡΙΑΚΗ ΔΗΜΟΚΡΑΤΙΑ
ΝΟΜΙΚΗ ΥΠΗΡΕΣΙΑ ΤΗΣ ΔΗΜΟΚΡΑΤΙΑΣ

Γ.Ε. 88(Γ)/1989/Υ463/2
Γ.Ε. 12.03.293.002
Τηλ. 22308965
Φαξ. 22889230
E-mail: agregoriou@law.gov.cy

26 Απριλίου 2024

Τομέας Ατομικών Δικαιωμάτων/Ελευθεριών
Νομικής Υπηρεσίας
(διεθνής πτυχή)

Πρόεδρο Παγκύπριου Δικηγορικού Συλλόγου
Πρόεδρο Κοινοβουλευτικής Επιτροπής Ανθρωπίνων Δικαιωμάτων
Πρόεδρο Κοινοβουλευτικής Επιτροπής Νομικών

Θέμα: Απόφαση Ευρωπαϊκού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων στην ατομική προσφυγή – Khokhlov v. Cyprus (no. 53114/20)

Στις 13 Σεπτεμβρίου 2023 κατέστη τελεσίδικη η επισυναπτόμενη απόφαση του Ευρωπαϊκού Δικαστηρίου Ανθρωπίνων Δικαιωμάτων (από τούδε «το Δικαστήριο») στην ανωτέρω ατομική προσφυγή. Η υπόθεση αφορά παραβίαση των Άρθρων 5 §4 και 5 §1 της Ευρωπαϊκής Σύμβασης Ανθρωπίνων Δικαιωμάτων (από τούδε «η Σύμβαση»).

I. Το αντικείμενο της υπόθεσης

Η αίτηση στην ατομική προσφυγή αφορά το κατ' ισχυρισμό παράνομο της κράτησης του αιτητή, ο οποίος είναι Ρώσος υπήκοος, εκκρεμούσης της έκδοσής του, λόγω μεταξύ άλλων της αδικαιολόγητης της διάρκειας ενάντια στο Άρθρο 5 §1 της Σύμβασης και λόγω της αποτυχίας των εσωτερικών δικαστηρίων να συμμορφωθούν με την απαίτηση «ταχύτητας» που προβλέπει το Άρθρο 5 §4 της Σύμβασης.[1]

[1] Βλ. παρ. 1 της απόφασης.

II. Τα γεγονότα της υπόθεσης

Τα γεγονότα της υπόθεσης καταγράφονται λεπτομερώς στην απόφαση. Εν συντομία, πρόκειται για την κράτηση του αιτητή από τις 22.10.2018 όταν κατέφθασε στην Κύπρο μέχρι τις 6.12.2020 όταν εκδόθηκε στη Ρωσία. Κατά την εν λόγω περίοδο είχαν μεσολαβήσει η προσωρινή του σύλληψη (στις 22.10.2018),[2] η διαδικασία έκδοσης αίτηση αρ. 5/2018 στο Επαρχιακό Δικαστήριο Λάρνακας (από 23.10.2018 μέχρι 20.5.2019 όταν το Επαρχιακό ενέκρινε την αίτηση έκδοσης, διέταξε την κράτηση του αιτητή μέχρι την παράδοση του στις Ρωσικές αρχές και τον ενημέρωσε για το δικαίωμά του δυνάμει του Άρθρου 10 του Περί Εκδόσεως Φυγοδίκων Νόμου 97/1970 να προσβάλει την απόφαση με αίτηση habeas corpus στο Ανώτατο Δικαστήριο εντός 15 ημερών),[3] οι αιτήσεις habeas corpus με αρ. 94/2019 (4.6.2019-4.7.2019)[4] και αρ.118/2019 (9.7.2019-3.10.2019)[5] ενώπιον του Ανώτατου Δικαστηρίου, η πολιτική έφεση του αιτητή με αρ. 364/2019 στο Ανώτατο Δικαστήριο (καταχωρήθηκε στις 7.10.2019) η οποία αμφισβητούσε τα ευρήματα του Ανώτατου Δικαστηρίου στην απόφαση ημερ. 3.10.2019 στην αίτηση habeas corpus αρ. 118/2019,[6] η αναστολή των δικαστικών διαδικασιών και περαιτέρω προώθηση όλων των υποθέσεων με εξαιρέσεις λόγω της πανδημίας Covid-19 και των περιορισμών που επιβλήθηκαν από το Κράτος όταν εκκρεμούσε η πολιτική έφεση αρ. 364/2019,[7] το γραπτό αίτημα ημερ.14.9.2020 για άδεια απόσυρσης της έφεσης από μέρους του αιτητή και για έκδοση του στη Ρωσία οικειοθελώς το συντομότερο δυνατόν και η απόρριψη της έφεσης από το Ανώτατο Δικαστήριο στις 16.9.2020,[8] καθώς και οι μετέπειτα εξελίξεις στο Υπουργείο Δικαιοσύνης σε σχέση με την αναστολή της παράδοσής του.[9]

---

[2] Βλ. παρ. 5-9 της απόφασης.
[3] Βλ. παρ. 10-30 της απόφασης.
[4] Βλ. παρ. 31-33 της απόφασης.
[5] Βλ. παρ. 34-38 της απόφασης.
[6] Βλ. παρ. 39 της απόφασης.
[7] Βλ. παρ. 47-49 της απόφασης.
[8] Βλ. παρ. 50-53 της απόφασης.
[9] Βλ. παρ. 54-69 της απόφασης.

III. Το σκεπτικό του Δικαστηρίου

A. Ως προς το Άρθρο 5 §4 της Σύμβασης

Ο αιτητής παραπονείτο ότι η διαδικασία της έφεσης στο Ανώτατο Δικαστήριο ήταν υπερβολικά μακρά και δεν συμμορφωνόταν με την απαίτηση «ταχύτητας» που προβλέπεται από το Άρθρο 5§4 της Σύμβασης.[10]

Το Δικαστήριο σημείωσε ότι το εύρος του παραπόνου του αιτητή περιορίζεται στην αποτελεσματικότητα της διαδικασίας της έφεσης και ως εκ τούτου περιόρισε την αξιολόγηση του κάτω από αυτό το κεφάλαιο μόνο σε εκείνη τη διαδικασία.[11] Επίσης, χωρίς να τις επαναλαμβάνει, παρέπεμψε στις γενικές αρχές οι οποίες βρίσκονται στις αποφάσεις: *Ilnseher v. Germany* [GC] (nos. 10211/12 and 27505/14, §§ 251-256, 4 Δεκεμβρίου 2018); *Khlaifia and Others v. Italy* [GC] (no. 16483/12, § 128-131, 15 Δεκεμβρίου 2016); και *Kučera v. Slovakia* (no. 48666/99, § 107, 17 Ιουλίου 2007) οι οποίες αφορούσαν το Άρθρο 5§4 της Σύμβασης και, συγκεκριμένα, την απαίτηση «ταχύτητας».[12]

Το Δικαστήριο στην παρούσα υπόθεση σημείωσε ότι η διαδικασία έφεσης στο habeas corpus διήρκησε 11 μήνες και 10 μέρες, η έφεση δεν ήταν ιδιαίτερα περίπλοκη (απαιτούσε πρώτα μια αξιολόγηση της προκαταρκτικής ένστασης σχετικά με το αν η αίτηση habeas corpus αρ. 118/2019 είχε καταχωρηθεί εκπρόθεσμα· μόνο αν η εν λόγω προκαταρκτική ένσταση γινόταν δεκτή θα έπρεπε το Ανώτατο Δικαστήριο να εξετάσει την ουσία των υπόλοιπων λόγων έφεσης του αιτητή (σύγκρινε *Ilnseher*, ανωτέρω, § 262).[13]

Το Δικαστήριο αποδέχτηκε ότι η αναστολή των δικαστικών ακροάσεων λόγω Covid-19 διήρκησε από 16.3.2020 μέχρι 5.6.2020, όμως ανέφερε ότι δεν ήταν ξεκάθαρο γιατί στις 3.12.2019, όταν εκείνα τα μέτρα δεν βρίσκονταν σε ισχύ, το Ανώτατο Δικαστήριο έδωσε και στα δύο μέρη 60 μέρες για να καταχωρήσουν περιγράμματα αγορεύσεων παρόλο που δεν ζητήθηκε παράταση τέτοιας έκτασης από τα μέρη. Επίσης, το Δικαστήριο σημείωσε ότι ενώ οι 3 μήνες καθυστέρησης στις δικαστικές διαδικασίες λόγω της πανδημίας ίσως ήταν κατανοητοί (δες, *mutatis mutandis, Fenech v. Malta* (dec.), no. 19090/20, 23 Μαρτίου 2021), οι διαδικασίες της υπόθεσης του αιτητή επανάρχισαν στις 11.9.2020 παρόλο που τα μέτρα κατά του Covid-19 είχαν λήξει στις 5.6.2020 (3 επιπρόσθετοι μήνες επιτράπηκε να περάσουν χωρίς ουσιαστική πρόοδο στις

[10] Βλ. παρ. 72 της απόφασης.
[11] Βλ. παρ. 76 της απόφασης.
[12] Βλ. παρ. 77 της απόφασης.
[13] Βλ. παρ. 78 της απόφασης.

διαδικασίες).[14] Το Δικαστήριο σημείωσε ότι παρόλο που το Ανώτατο Δικαστήριο χρησιμοποίησε τις καλοκαιρινές διακοπές για να ασχοληθεί με υποθέσεις που αναβλήθηκαν τον Μάρτιο και Απρίλιο 2020, η υπόθεση του αιτητή που δεν είχε δει πρόοδο από τον Φεβρουάριο 2020 δεν είχε τύχει αντιμετώπισης κατά τις καλοκαιρινές διακοπές παρόλο που ο αιτητής ήταν υπό κράτηση και η έκδοση του εμποδιζόταν από τις διαδικασίες. Το Δικαστήριο, επίσης, σημείωσε ότι παρόλο που οι περισσότερες διαδικασίες αναβάλλονταν λόγω Covid-19, μερικές επείγουσες αιτήσεις (περιλαμβανομένων εφέσεων) συνέχιζαν να εξετάζονται αλλά η Κυβέρνηση δεν ισχυρίστηκε ότι η υπόθεση του αιτητή δεν μπορούσε να θεωρηθεί επείγουσα, δεδομένου του σκοπού της κράτησης του και του χρόνου που κρατείτο μέχρι τη στιγμή που οι επείγουσες υποθέσεις ξεκίνησαν να εξετάζονται ξανά παρά την συνεχιζόμενη επιδημία.[15] Επίσης, παρόλο που ο αιτητής δεν ενέστη, δεν είναι ξεκάθαρο γιατί στις 11.9.2020 το Ανώτατο Δικαστήριο επέτρεψε το αίτημα του Κράτους για επιπρόσθετες 45 μέρες για την προετοιμασία και παρουσίαση του περιγράμματος αγόρευσης του ενώ αναγνώρισε ότι ο αιτητής κρατείτο μέχρι τότε για μεγάλη χρονική περίοδο. Αυτοί οι παράγοντες είχαν κατ' ισχυρισμό οδηγήσει τον αιτητή να αποσύρει την έφεση του.[16]

Το Δικαστήριο δεν μπόρεσε να αγνοήσει τις μεγάλες παρατάσεις των 60 ημερών και 45 ημερών που επέτρεψε το Ανώτατο Δικαστήριο όπως επίσης και τους 3 μήνες και 7 μέρες που παρήλθαν μεταξύ 5.6.2020 και 11.9.2020 (σύγκρινε π.χ. *Mamedova v. Russia*, no. 7064/05, § 96, 1 Ιουνίου 2006). Η συμπεριφορά του αιτητή κατά τη διάρκεια μιας διαδικασίας είναι μόνο ένας παράγοντας που λαμβάνεται υπόψη από το Δικαστήριο. Το Δικαστήριο μπορεί να ανεχθεί μεγαλύτερες περιόδους αναθέωρησης ενώπιον δευτεροβάθμιων δικαστηρίων (δες *Ilnseher,* ανωτέρω, § 255), ωστόσο, κατ' αρχήν, όταν διακυβεύεται η ελευθερία του ατόμου το Κράτος πρέπει να διασφαλίσει ότι οι διαδικασίες γίνονται όσο το δυνατόν πιο γρήγορα (δες *Khlaifia and Others ανωτέρω*, § 131; δες, *mutatis mutandis, Ilnseher,* ανωτέρω, § 256).[17] Επομένως, δεδομένων των πιο πάνω καθυστερήσεων, έκρινε ότι οι διαδικασίες έφεσης στο habeas corpus δεν διεξήχθησαν με «ταχύτητα» εντός της έννοιας του Άρθρου 5§4 της Σύμβασης και έκρινε ότι υπήρξε παραβίασή του.[18]

---

[14] Βλ. παρ. 79 της απόφασης.
[15] Βλ. παρ. 79 της απόφασης.
[16] Βλ. παρ. 80 της απόφασης.
[17] Βλ. παρ. 81 της απόφασης.
[18] Βλ. παρ. 82-83 της απόφασης.

Β. Ως προς το Άρθρο 5 §1 της Σύμβασης:

Ο αιτητής παραπονέθηκε για την παρανομία και την μη εύλογη διάρκεια της κράτησής του εκκρεμούσης της έκδοσής του και υπέβαλε ότι υπήρξε παραβίαση του Άρθρου 5 §1 της Σύμβασης.[19]

Γενικές αρχές

Οι γενικές αρχές που αφορούν την κράτηση εκκρεμούσης απέλασης ή έκδοσης σύμφωνα με το Άρθρο 5 §1(στ) της Σύμβασης ορίζονται στις αποφάσεις *Khlaifia and Others*, πιο πάνω, §§ 88-92, και *Shiksaitov v. Slovakia*, nos. 56751/16 και 33762/17, §§ 53-56, 10 Δεκεμβρίου 2020.[20]

Το Δικαστήριο στην παρούσα υπόθεση επανέλαβε ότι εάν οι διαδικασίες έκδοσης δεν επιδιωχθούν με τη δέουσα επιμέλεια, η εν λόγω κράτηση θα πάψει να είναι επιτρεπτή. Ως εκ τούτου, το Δικαστήριο έχει ως αποστολή όχι να εκτιμήσει εάν η διάρκεια των εν λόγω διαδικασιών έκδοσης ήταν εύλογη στο σύνολό της (όπως θα συνέβαινε στις υποθέσεις που αφορούν τη διάρκεια των διαδικασιών σύμφωνα με το άρθρο 6), αλλά να διαπιστώσει – ανεξάρτητα από τη συνολική διάρκεια των διαδικασιών – εάν η διάρκεια της κράτησης υπερέβη την εύλογα απαιτούμενη για τον επιδιωκόμενο σκοπό (βλ. *Saadi v. the United Kingdom* [GC], αρ. 13229/03, §§ 72-74, ECHR 2008). Όπου υπήρξαν περίοδοι αδράνειας εκ μέρους των αρχών (και συνεπώς έλλειψη επιτάχυνσης/αποστολής-lack of expedition) η διατήρηση της κράτησης θα πάψει να δικαιολογείται. Εν κατακλείδι, το Δικαστήριο πρέπει να αξιολογήσει, κατά περίπτωση, εάν, κατά τη διάρκεια της εν λόγω περιόδου κράτησης, οι εγχώριες αρχές παρέμειναν ανενεργές οποιαδήποτε στιγμή (βλ. *Gallardo Sanchez v. Italy*, αρ. 11620/07, § 41, ECHR 2015).[21]

Εξετάζοντας τη διάρκεια της κράτησης εκκρεμούσης της έκδοσης, το Δικαστήριο κάνει διάκριση μεταξύ δύο μορφών έκδοσης: πρώτον, όταν ζητείται η έκδοση με σκοπό την εκτέλεση ποινής (enforcing a sentence) και, δεύτερον, όταν η έκδοση θα επιτρέψει στο αιτούν κράτος να δικάσει το ενδιαφερόμενο πρόσωπο. Στη δεύτερη περίπτωση, δεδομένου ότι (i) το πρόσωπο που κρατείται πρέπει να τεκμαίρεται αθώο και δεν μπορεί να ασκήσει τα δικαιώματά υπεράσπισης του σε εκείνο το στάδιο, και (ii) το Κράτος προς το οποίο απευθύνεται η αίτηση δεν δικαιούται να εξετάσει την ουσία του παραπόνου, το

[19] Βλ. παρ. 84 της απόφασης.
[20] Βλ. παρ. 88 της απόφασης.
[21] Βλ. παρ. 89 της απόφασης.

Δικαστήριο έχει διαπιστώσει ότι το Κράτος προς το οποίο απευθύνεται η αίτηση υποχρεούται να ενεργήσει με ειδική επιτάχυνση (ibd., § 42).[22]

Κατά πόσο η κράτηση δεν ήταν νόμιμη βάσει εσωτερικού δικαίου

Η ανάλυση του Δικαστηρίου σε αυτό το ζήτημα εκτίθεται στις παραγράφους 91-94 της απόφασης. Καταλήγει το Δικαστήριο ότι ο σκοπός των εσωτερικών διαδικασιών ήταν να διαπιστωθεί η συμμόρφωση με τις πρόνοιες του Περί Εκδόσεως Φυγοδίκων Νόμου Ν.97/1970 και της Ευρωπαϊκής Σύμβασης Έκδοσης Φυγοδίκων (Σύμβασης Έκδοσης) και ότι δεν βλέπει λόγο να αμφισβητήσει τα ευρήματα των εσωτερικών δικαστηρίων.[23] Όσον αφορούσε την κράτηση του αιτητή από τις 16.9.2020 (όταν το Ανώτατο Δικαστήριο αποδέχτηκε την απόσυρση της έφεσης του αιτητή), το Δικαστήριο σημείωσε ότι το Άρθρο 12(1)(α) του Περί Εκδόσεως Φυγοδίκων Νόμου 97/1970 και λαμβάνοντας υπόψη τις επεξηγήσεις που έδωσε η Κυβέρνηση στις Ρωσικές αρχές και τον αιτητή στις επιστολές ημερ. 30.10.2020, το Κράτος θα έπρεπε να είχε παραδώσει τον αιτητή εντός 60 ημερών από τότε που είχε γίνει τελική η απόφαση του Επαρχιακού Δικαστηρίου (δηλαδή, μέχρι τις 16.11.2020). Ο αιτητής δεν είχε αμφισβητήσει την προθεσμία των 60 ημερών που προβλέπεται στο Άρθρο 12(1)(α) του Περί Εκδόσεως Φυγοδίκων Νόμου 97/1970 αλλά θεώρησε ότι η κράτηση του δεν ήταν σύμφωνη με τον εσωτερικό νόμο αφού η προθεσμία των 60 ημερών δεν είχε τηρηθεί. Το Δικαστήριο αποδέχτηκε ότι μέχρι τις 16.11.2020 η κράτηση του αιτητή ήταν νόμιμη από πλευράς εσωτερικού δικαίου, σημειώνοντας επιπλέον ότι το διάταγμα απόδοσης που εκδόθηκε στις 29.10.2020 ήταν εντός του χρονικού πλαισίου που καθορίζεται στο Άρθρο 12(1)(α) του Περί Εκδόσεως Φυγοδίκων Νόμου 97/1970.[24] Όσον αφορά την συνεχιζόμενη κράτηση του αιτητή μετά τις 16.11.2020 και τον ισχυρισμό της Κυβέρνησης ότι ήταν σύμφωνη με το Άρθρο 18 § 5 της Σύμβασης Έκδοσης όπως μεταφέρθηκε με τον κυρωτικό νόμο Ν. 95/70 δεν υπήρξαν ισχυρισμοί από μέρους του αιτητή και επομένως το Δικαστήριο ενόψει του ότι υπήρξε εύρημα παραβίασης του Άρθρου 5 § 1 της Σύμβασης για άλλους λόγους όπως θα επεξηγηθεί πιο κάτω, δεν θεώρησε απαραίτητο να εξετάσει περαιτέρω το ζήτημα.[25]

---

[22] Βλ. παρ. 90 της απόφασης.
[23] Βλ. παρ. 91-92 της απόφασης.
[24] Βλ. παρ. 93 της απόφασης.
[25] Βλ. παρ. 94 της απόφασης.

Κατά πόσο η κράτηση του αιτητή δεν ήταν νόμιμη λόγω μη συμμόρφωσης με άλλες απαιτήσεις του Άρθρου 5 § 1

Ολόκληρη η κράτηση του αιτητή με σκοπό την έκδοσή του διήρκησε 2 χρόνια , 1 μήνα και 15 μέρες, από 22.10.2018 (ημερομηνία της προσωρινής κράτησης) μέχρι 6.12.2020 (ημερομηνία έκδοσης) και για το μεγαλύτερο μέρος της κράτησής του (22.10.2018-16.9.2020 – 1 χρόνος, 10 μήνες και 25 μέρες) κρατείτο σε σχέση με τις δικαστικές διαδικασίες με τις οποίες αμφισβητούσε την έκδοσή του.

Παρόλο που η πρώτη απόφαση επί της ουσίας δόθηκε στις 20.5.2019 (6 μήνες και 27 μέρες μετά την μέρα που τέθηκε υπό κράτηση εκκρεμούσης της έκδοσης), το Δικαστήριο αποφάσισε ότι η πρωτόδικη διαδικασία είχε διεκπεραιωθεί με τη δέουσα ταχύτητα. [26] Παρόμοια, το Δικαστήριο ανέφερε ότι δεν μπορεί να κατηγορήσει την Κυβέρνηση για τον χρόνο που παρήλθε μεταξύ 4.6.2019 και 4.7.2019 λόγω της απόσυρσης του habeas corpus αρ. 94/2019 επειδή δεν είχε δικογραφηθεί ορθά.[27]

Όμως, το Δικαστήριο ανέφερε ότι δεν μπορεί να ειπωθεί το ίδιο για τις διαδικασίες που ακολούθησαν, σχετικά με τις οποίες υπήρξαν καθυστερήσεις αρκετής διάρκειας σε διάφορα στάδια ώστε να καταστεί η διάρκεια των διαδικασιών υπερβολική (δες *Quinn v. France*, 22 Μαρτίου 1995, § 48, Series A no. 311).

- Αρχικά το Δικαστήριο σημείωσε ότι η αίτηση habeas corpus αρ. 118/2019 ορίστηκε για οδηγίες για πρώτη φορά πάνω από ένα μήνα μετά που είχε καταχωρηθεί. Ακολούθως σημείωσε ότι στις 8.9.2020 ζητήθηκε παράταση μιας βδομάδας από την Κυβέρνηση μια μέρα πριν την ακρόαση επειδή από λάθος δεν είχε καταχωρήσει την ένστασή της στην ώρα της.
- Όσον αφορά την έφεση το Δικαστήριο επανέλαβε τα ευρήματά του κάτω από το άρθρο 5§4 της Σύμβασης (παρ.78-82 της απόφασης).
- Το Δικαστήριο σημείωσε σχετικά ότι λόγω των καθυστερήσεων που σημειώθηκαν ενώπιον του Ανωτάτου Δικαστηρίου, δεν μπορεί να ειπωθεί ότι η διαδικασία habeas corpus (αρ. 118/19) και η διαδικασία της έφεσης έγιναν με τη δέουσα επιμέλεια.[28]
- Το Δικαστήριο εξεπλάγη που χρειάστηκαν 23 μέρες (από 16.9.2020 μέχρι 9.10.2020) για να συνταχθεί το διάταγμα του Ανώτατου Δικαστηρίου, το οποίο απλώς ανέφερε ότι το Ανώτατο Δικαστήριο αποφάσισε να απορρίψει την έφεση του αιτητή, σύμφωνα με αίτημα του αιτητή ημερ. 14.9.2020. Η απόρριψη της έφεσης από το Ανώτατο Δικαστήριο

[26] Βλ. παρ. 95-96 της απόφασης.
[27] Βλ. παρ. 97 της απόφασης.
[28] Βλ. παρ. 98 της απόφασης.

φαίνεται ότι χρειαζόταν για την μετέπειτα υπογραφή (σύμφωνα με το Άρθρο 11 του Περί Εκδόσεως Φυγοδίκων Νόμου 97/1970) του διατάγματος απόδοσης του Υπουργού Δικαιοσύνης. Η Κυβέρνηση δεν προσκόμισε κανένα στοιχείο ικανό να δικαιολογήσει αυτές τις καθυστερήσεις, οι οποίες δεν ήταν σύμφωνες με το καθήκον των Κρατικών αρχών να επιδιώξουν την έκδοση με τη δέουσα επιμέλεια.[29]

- Μετά την απόρριψη της έφεσης στις 16.9.2020 η κράτηση του αιτητή συνεχίστηκε για ακόμη 2 μήνες και 20 μέρες μέχρι τις 6.12.2020.[30] Κατά την περίοδο αυτή δεν φαίνεται να υπήρξαν περίοδοι αδράνειας, όμως το Δικαστήριο ανησυχεί που στις 29.10.2020 οι Κυπριακές αρχές ανέστειλαν την διαδικασία έκδοσης του αιτητή χωρίς να υπάρχει σαφής κατανόηση για το πότε η παράδοση του στη Ρωσία θα μπορούσε να επιτευχθεί. Μάλιστα, οι Ρωσικές αρχές ζήτησαν την αναβολή της παράδοσης του αιτητή μέχρι το τέλος της πανδημίας και την επανέναρξη των πτήσεων μεταξύ Κύπρου και Ρωσίας και στο μεταξύ ο αιτητής να κρατηθεί όσο το δυνατόν περισσότερο (δες παρ. 56 της απόφασης). Οι Κυπριακές αρχές απάντησαν ότι η παράδοση του αιτητή είχε αναβληθεί με βάση το Άρθρο 18 § 5 της Σύμβασης Έκδοσης λόγω ανωτέρας βίας (Covid-19) και ότι θα ξανάρχιζαν τις συζητήσεις σχετικά με την έκδοσή του «όταν τα περιοριστικά μέτρα θα αίρονταν κατά τρόπο που θα καθιστούσαν δυνατή την παράδοση του αιτητή» (δες παρ. 59 της απόφασης). Κανένα από τα Κράτη δεν είχε συγκεκριμένη ιδέα για το πότε θα τελείωνε η πανδημία ή πότε θα ξανάρχιζαν οι πτήσεις και σε σχέση με αυτό το Δικαστήριο επανέλαβε ότι οι εσωτερικές αρχές έχουν υποχρέωση να εξετάσουν αν η απομάκρυνση/απόδοση είναι ρεαλιστική προοπτική και κατά πόσον η κράτηση συνεχίζει να δικαιολογείται (δες *Amie and Others v. Bulgaria*, no. 58149/08, §77, 12 Φεβρουαρίου 2013, και *Louled Massoud v. Malta*, no. 24340/08, § 68, 27 Ιουλίου 2010). Σε τέτοιες περιπτώσεις η ανάγκη για διαδικαστικές διασφαλίσεις καθίσταται καθοριστική. Χωρίς να λάβει θέση για την καλή πίστη του καθ' ου η αίτηση Κράτους, το Δικαστήριο αμφισβητεί την απόφασή του Κράτους να αναστείλει την έκδοση μέχρι νεωτέρας, αφού ελλείψει συμφωνημένης ημερομηνίας παράδοσης για αρχή – όπως απαιτείται από το άρθρο 18 § 3 της Σύμβασης Έκδοσης– η απόφαση αυτή στέρησε από τον αιτούντα τις διαδικαστικές εγγυήσεις που του παρέχονταν βάσει του άρθρου 18 § 4 της Σύμβασης Έκδοσης (βλ. *mutatis mutandis, Kim v. Russia, αρ. 44260/13,* § 53, 17 Ιουλίου 2014). Η Κυβέρνηση, επίσης, δεν έχει επισημάνει καμία άλλη διασφάλιση διαθέσιμη στον αιτητή σχετικά με αυτό, και ούτε έχει εγείρει ισχυρισμό μη εξάντλησης εσωτερικών ένδικων μέσων σχετικά με τα παράπονα του αιτητή στο κεφάλαιο αυτό.[31]

---

[29] Βλ. παρ. 99 της απόφασης.
[30] Βλ. παρ. 100 της απόφασης.
[31] Βλ. παρ. 101 της απόφασης.

Για αυτό το Δικαστήριο αποφάσισε ότι η κράτηση του αιτητή εκκρεμούσης της έκδοσής του δεν ήταν σύμφωνη με το Άρθρο 5§ 1(στ) της Σύμβασης και βρήκε παραβίαση του Άρθρου 5 §1 της Σύμβασης.[32]

IV. . Εύλογη αποζημίωση

Τέλος, το Δικαστήριο επιδίκασε στον αιτητή αποζημίωση για μη χρηματική ζημιά ύψους 26,000 ευρώ, καθώς και 4,800 ευρώ για έξοδα.[33]

Α. Γρηγορίου

Αφροδίτη Γρηγορίου

Δικηγόρος της Δημοκρατίας

Για Γενικό Εισαγγελέα της Δημοκρατίας

[32] Βλ. παρ. 102-103 της απόφασης.
[33] Βλ. παρ. 110 και 114 της απόφασης.

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

THIRD SECTION

CASE OF KHOKHLOV v. CYPRUS

(Application no. 53114/20)

JUDGMENT

This version was rectified on 4 July 2023
under Rule 81 of the Rules of Court.

Art 5 § 4 • Speediness of review • Habeas corpus appeal proceedings reviewing lawfulness of detention pending extradition lasting over eleven months • Unjustified delays despite ending of Covid-19-measures • Lengthy extensions for parties' submissions
Art 5 § 1 • Extradition • Unjustified delays in habeas corpus and appeal proceedings • Decision to suspend extradition until further notice, in absence of agreed surrender date, deprived applicant of procedural guarantees under the European Convention on Extradition

STRASBOURG

13 June 2023

FINAL

13/09/2023

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

In the case of Khokhlov v. Cyprus,

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

Pere Pastor Vilanova, *President*,
Jolien Schukking,
Georgios A. Serghides,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd, *judges*,
and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 53114/20) against the Republic of Cyprus 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 Iurii Khokhlov ("the applicant"), on 25 November 2020;

the decision to give notice to the Cypriot Government ("the Government") of the complaints concerning Article 5 § 1 and 5 § 4 and to declare inadmissible the remainder of the application;

the decision of the Government of the Russian Federation not to avail themselves of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

the parties' observations;

Having deliberated in private on 23 May 2023,

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

INTRODUCTION

1. The application concerns the alleged unlawfulness of the applicant's detention pending extradition on account of, *inter alia*, its unjustified duration, contrary to Article 5 § 1 of the Convention, and the failure of the domestic courts to comply with the "speediness" requirement under Article 5 § 4 of the Convention.

THE FACTS

2. The applicant was born in 1970. He was represented by Mr Y.L. Boychenko, a lawyer practising in Strasbourg.

3. The Government were represented by their Agent, Mr George L. Savvides, Attorney General of the Republic of Cyprus.

4. The facts of the case may be summarised as follows.

I. PROVISIONAL ARREST

5. The applicant was sought within the context of an investigation in Russia into a case of large-scale fraud.

6. On 8 December 2017 Interpol issued through the National Central Bureau of Interpol for Russia, in connection with the above-mentioned investigation, a Red Notice in respect of the applicant, requesting that he be located and provisionally arrested pending his extradition. According to the wording of the Red Notice, the Presnenskiy District Court of Moscow had issued, on 24 August 2017, a warrant for the arrest of the applicant, who was suspected of having conspired to misappropriate property belonging to a third party and who had been charged with large-scale fraud, a crime punishable by up to ten years' imprisonment.

7. The applicant arrived in Cyprus on 22 October 2018 at 1.30 p.m. While his passport was being checked, his name was flagged up on the domestic "Stop List". He was transferred to the arrivals section of Larnaca International Airport's passport control office, where the existence of an arrest warrant issued by the Russian authorities was confirmed.

8. On the same day at 6.25 p.m., the President of the Larnaca District Court issued a provisional warrant for the arrest of the applicant under sections 8(1)(b) and 8(2) of the Extradition Law (L. 97/1970) and the European Convention on Extradition ("the Extradition Convention"), as ratified by the European Convention on Extradition (Ratification) Law (L.95/1970) ("Ratification Law 95/70). The provisional arrest warrant was issued on the basis of an affidavit sworn by a police officer, to which was attached a "diffusion and notice request" issued by Interpol's Russian National Central Bureau in Moscow. The applicant was arrested at 7 p.m. at the offices of Larnaca International Airport's passport control office.

9. By a letter of 23 October 2018, the police informed the Ministry of Justice and Public Order ("the Ministry of Justice") that the applicant was wanted by the Russian authorities, who had confirmed on 22 October 2018 that all necessary documents and that the official request for his extradition would be sent *via* diplomatic channels. The letter further stated that the applicant had been arrested on 22 October 2018, was being detained at Aradippou police station and would be brought before the Larnaca District Court on 23 October 2018.

II. EXTRADITION PROCEEDINGS (APPLICATION No. 5/2018)

10. On 23 October 2018, following the execution of the provisional arrest warrant, the applicant was brought before the Larnaca District Court within the context of application no. 5/2018 for his extradition. The government's lawyer requested the extension of the applicant's detention until such time as

the Russian authorities lodged a formal request for the applicant's extradition (together with supporting documents). The applicant objected.

11. On 24 October 2018 the court delivered an interim decision (that was based on section 9 of the Extradition Law and Article 16 § 4 of the Extradition Convention) ordering the extension of the applicant's detention; it further instructed the authorities to submit, within twenty days, authorisation for the initiation of extradition proceedings from the Minister of Justice and Public Order. The court approved the extension of the applicant's detention having first considered the fact that the applicant had been accused of a serious crime and had no family in (or other ties with) Cyprus; it deemed that the chance of his absconding would be therefore high if his detention were not extended.

12. On 8 November 2018 the Russian authorities lodged an official request with the Cypriot authorities for the applicant's extradition. The Ministry of Justice received the request on 9 November 2018.

13. On 12 November 2018 the Cypriot authorities requested the Russian authorities for better translations of certain documents that had accompanied the request for the applicant's extradition. The Russian authorities provided those translations on 14 November 2018.

14. On 15 November 2018 the Minister of Justice authorised the initiation of extradition proceedings.

15. On 16 November 2018 the Cypriot authorities presented the Minister's authorisation and the above-mentioned accompanying documents to the Larnaca District Court and the applicant's lawyer. The applicant's lawyer requested that the application be listed for further directions on 21 November 2018 in order that he might (in the meantime) have time to study the relevant documents. The court granted that request. The Cypriot authorities' lawyer requested that the applicant remain in detention. The applicant's lawyer did not raise any objection.

16. On 21 November 2018 the case was scheduled for hearings on 14 and 19 December at the request of the applicant's lawyer.

The applicant's lawyer further requested that the applicant be released on bail. The Cypriot authorities' lawyer argued that (i) the amount that the applicant offered as bail – 50,000 euros (EUR) cash, together with a letter of guarantee from his bank for EUR 100,000 – was very low, and did not cover the amounts that he was accused of having appropriated (300,000 United States dollars (USD)), and (ii) there remained a large risk that, in order to avoid facing a trial, he might flee *via* those areas of Cyprus that were not under the control of the Republic of Cyprus. The lawyer therefore requested that the applicant remain in detention pending extradition proceedings. The court ordered that the applicant remain in detention, as no new circumstances had come to light to justify his release.

17. On 14 December 2018 the applicant asked that he be permitted to change his lawyer for another one. The court stressed the importance of bringing the case to a speedy conclusion in view of the applicant's detention.

On the same day, at the request of the applicant's new lawyer, the case was "adjourned for planning" (*για προγραμματισμό*), allowing the new lawyer to confirm receipt of the case files and to prepare for the (as yet unscheduled) hearing. The court stated that the applicant's continued detention was still justified.

18. On 19 December 2018 the applicant's new lawyer requested the applicant's release from detention on account of the adjournment of the previous hearing in respect of the case, arguing that the applicant had been willing, *inter alia,* to pay EUR 100,000 in cash as bail. The court dismissed the request, finding that the adjournment had been requested by the applicant's lawyer and that in any event, the reasons for holding the applicant in detention (see paragraph 11 above) remained valid. The court then scheduled hearings for 9 January and 11 January 2019, requesting the government to conclude the presentation of its arguments by the end of the 9 January proceedings, in order to allow the defence to begin presenting its arguments on 11 January 2019.

19. On 9 January 2019 the court heard one witness for the government. The case was then adjourned until 11 January 2019, when the last witness for the government would be heard. The applicant's lawyer did not object.

20. On 11 January 2019 the government requested that the hearing be adjourned, as its last witness (the Ministry of Justice employee who had overseen arrangements for the issuance of the Minister's authorisation) had fallen ill. The government submitted to the court a medical certificate attesting to that fact. The applicant's lawyer objected to such an adjournment and requested that the applicant be released on bail, on condition that he be subject to certain restrictions. The court expressed its dissatisfaction and concern regarding the delay that would be caused by the adjournment; however, it eventually decided to allow the adjournment in view of, *inter alia,* the fact that up until that point, a significant part of the responsibility for previous adjournments had lain with the applicant. As a result, it ordered that the proceedings be continued on 21 January 2019 and the applicant remain in detention until that date.

21. On 21 January 2019 the last witness called by the government testified in court. The applicant's lawyer requested an adjournment of one week to allow for the translation into English of certain exhibits (material evidence) submitted by the Russian authorities, as he intended to further cross-examine the witness; he argued that the translation of the documents had been inaccurate and inadequate and that a certain document in Russian dated 24 August 2017 entitled "Decision on the choice of a preventive measure in the form of arrest" had not constituted an arrest warrant, as required by the Cypriot extradition law and the European Convention on Extradition. The court allowed the request.

22. On 29 January 2019 the cross-examination of the government's last witness was concluded. Hearings were scheduled for 11, 22 and 25 February 2019 for the hearing of the witnesses called by the applicant.

23. On 11 February 2019 the applicant gave his testimony in the examination-in-chief. His cross-examination was then adjourned until 22 February 2019 to allow time for the government to seek clarification from the Russian authorities regarding the content of the evidence that had been submitted by the applicant, which indicated that the criminal proceedings against him in Russia had been halted. The applicant's lawyer did not object to the adjournment but requested that he be released from detention. The court refused the request, holding that the reasons for holding him in detention (see paragraph 11 above) still applied.

24. On 22 February 2019 the applicant's cross-examination was completed. The next hearings were rescheduled for 27 and 28 February at the request of the applicant's lawyer in order to allow time for two witnesses to be brought from Russia.

25. On 27 and 28 February 2019 a lawyer from Russia testified as a defence witness. On 28 February the applicant informed the court that he had no further witnesses. Subsequently, the government requested leave to call witnesses to rebut the testimony given by the applicant and the above-mentioned defence witness, both of whom had (i) fervently questioned whether legal proceedings were indeed still pending against the applicant in Russia, and (ii) the validity (under the Extradition Convention – see paragraph 71 below) of the arrest warrant issued against him. A hearing was therefore scheduled for 5 March 2019, on which date the parties gave their views regarding the request.

26. On 12 March 2019 having heard the parties, the court decided to allow the government's request, considering, *inter alia,* that clarifying the above-noted points would be both in the interests of justice and necessary under extradition law.

27. On 19 March 2019 the head of the International Legal Cooperation Unit of the Ministry of Justice gave his testimony in court and was cross-examined by the applicant. The applicant's lawyer requested that a hearing be scheduled for 11 April 2019 at which the parties could make their final observations in writing (*τελικές αγορεύσεις*). The District Court pointed out to the applicant's lawyer that the applicant would have to remain in detention in the meantime, but the lawyer nevertheless insisted that adequate time was required for him and his client to prepare their observations. The court eventually granted the request of the applicant's lawyer.

28. On 11 April 2019 the parties submitted their written observations. The final judgment of the court was scheduled to be given on 8 May 2019 but was later postponed until 20 May 2019.

29. On 20 May 2019 the Larnaca District Court confirmed the conformity of the extradition request with the Extradition Convention and its compliance

with the double-criminality principle (which stipulates that the alleged crime for which extradition is being sought must be criminal in both the demanding and the requested countries) and the *ne bis in idem* principle and ruled out the possibility that the proceedings had been brought for any discriminatory or political reasons.

The court dismissed, *inter alia,* the applicant's assertion that no criminal case was pending against him in Russia. After considering the evidence provided by the Russian authorities and produced in court, it held that the applicant had been charged on the basis of the facts ascertained by a criminal investigation (no. 11602450047000081). That investigation had resulted in the conviction of four other persons with whom the applicant was accused of having conspired to commit the offence of fraud. However, according to the evidence provided by the Russian authorities, that did not mean that proceedings in respect of the applicant's prosecution had been terminated. As the applicant had fled the country, the charges against him had continued to be pursued in separate proceedings (no. 41702450048000049). Accordingly, the court concluded that active proceedings were pending against the applicant before the Russian courts.

30. The court further dismissed the applicant's assertion that the arrest warrant issued by the Presnenskiy District Court of Moscow on 24 August 2017 was not (given that *inter alia*, allegedly no proceedings were pending against him in Russia) a valid one under the Extradition Convention. Having examined all the available evidence the court concluded that the Russian courts – on the basis of evidence indicating that the offence had indeed been committed – had decided that the applicant would be detained for two months once he had been extradited back to Russia. The court approved the application for extradition and ordered the applicant's detention until his surrender to the Russian authorities. The applicant was also informed of his right under section 10 of the Extradition Law to challenge that judgment by lodging a habeas corpus application with the Supreme Court within fifteen days.

III. HABEAS CORPUS APPLICATIONS

A. Habeas corpus application no. 94/2019

31. On 4 June 2019 the applicant – represented by a lawyer – lodged a habeas corpus application (no. 94/2019) with the Supreme Court.

32. On 2 July 2019 when the case was first listed for directions (*οδηγίες*), the court informed the applicant that his application had not been correctly pleaded, as it constituted in essence an appeal against the judgment of 20 May 2019, instead of an application for a prerogative order (*προνομιακό ένταλμα* – that is, a writ of habeas corpus) concerning the lawfulness of his detention.

Nonetheless, the applicant's lawyer insisted on continuing, so a hearing was scheduled for 4 July 2019.

33. On 4 July 2019 the applicant withdrew his application.

B. Habeas corpus application no. 118/2019

34. On 9 July 2019 the applicant lodged a new habeas corpus application (no. 118/2019) with the Supreme Court.

35. On 20 August 2019, when the new habeas corpus application was first listed for directions, the lawyer acting for the government requested three weeks in which to submit its objection to the applicant's application. The applicant did not object. The court scheduled a hearing for 9 September 2019.

36. On 8 September 2019 the government's lawyer informed the court that she had mistakenly thought that the hearing had been scheduled for 19 September (rather than 9 September) and requested another week in which to submit a written objection. The applicant agreed to the request in order to follow the procedure correctly and the court rescheduled the hearing for 26 September 2019.

37. On 26 September 2019 a hearing was held. The court informed the parties that it would deliver its decision on 3 October 2019.

38. On 3 October 2019 the Supreme Court dismissed the application as having been lodged out of time, given that it had been submitted forty-nine days after the District Court's judgment (as opposed to the fifteen-day deadline provided by the law). Nonetheless, the court still considered the application on its merits, finding that none of the conditions for the release of a person to be extradited from detention, as laid out in section 10(3) of the Extradition Law, had been fulfilled.

IV. APPEAL PROCEEDINGS AND THE APPLICANT'S REQUEST FOR EXTRADITION

39. On 7 October 2019, without the assistance of a lawyer, the applicant lodged civil appeal no. 364/2019 with the Supreme Court (appellate jurisdiction) challenging the court's findings in its judgment of 3 October 2019 in habeas corpus application no. 118/2019. He submitted a notice of appeal by filling in the form used for appeals against criminal court decisions.

40. On 18 October 2019 the applicant's lawyer submitted a notice of appearance (*σημείωμα εμφάνισης*).

41. On 4 November 2019, when the appeal was first listed for directions, the applicant informed the court that he no longer wished to be represented by a lawyer and that he would thenceforth represent himself. The court informed him that the form that he had submitted on 7 October 2019 was not the correct form with which to lodge an appeal; it ordered him to submit the correct form by 14 November 2019.

42. On 14 November 2019 the applicant appeared in court with a new lawyer, who requested a fifteen-day extension to the deadline for amending the appeal submitted by the applicant. The court allowed the extension and scheduled 3 December 2019 as the date on which the case would be listed for directions.

43. On 3 December 2019 the court noted that the appeal had been correctly lodged. It gave directions for the submission of the written outlines of the arguments that the parties would make to the court, extending the deadline for submission to sixty days for each party.

44. On 10 January 2020 the applicant's lawyers lodged an application for leave to amend the appeal by adding an extra ground of appeal.

45. On 4 February 2020, when the case was listed for directions in respect of the above-mentioned application, the State's lawyer did not object to the addition of an extra ground of appeal and requested that the State be given the same amount of time in which to prepare their written outlines. The Supreme Court allowed the application for leave to add an extra ground of appeal and ordered the applicant's lawyers to submit their amended grounds of appeal within thirty days; a new court date would then subsequently be scheduled.

46. On 21 February 2020 the applicant submitted the amended grounds of appeal.

47. On 16 March 2020 the plenary Supreme Court announced that it had decided to suspend judicial proceedings and the further promotion (that is, the continuation) of all cases at all levels and jurisdictions until 30 April 2020 on account of the Covid-19 pandemic and the resulting restrictions imposed by the State, with the following exceptions:

> "...
>
> (iii) habeas corpus applications;
>
> (iv) procedures for the extradition of fugitives or wanted persons;
>
> (v) prerogative orders of an urgent nature, at the discretion of the court; and ...
>
> (vii) appeals of an urgent nature, at the discretion of the court."

48. On 14 April 2020 the Supreme Court announced that it would use the summer break to deal with cases whose conduct had been delayed in the months of March and April 2020.

49. On 30 April 2020 the Supreme Court announced its decision to resume the normal functioning of registries on 4 May 2020; it stated that the president of each bench would decide on the adjudication of each of the cases that that bench had been examining before the onset of the Covid-19 epidemic and that the respective interested parties would be informed accordingly.

50. On 11 September 2020 the appeal was listed for directions; the parties were instructed to submit their written outlines following the amendment of the grounds of the applicant's appeal. On the same day, the Supreme Court

emphasised the fact that the applicant had been in detention for a long time and asked the parties how long they would require to submit their written outlines. The State's lawyer requested forty-five days in which to prepare and submit its written outlines on account of the volume of work she had at the time. The applicant did not object and the Supreme Court granted the request lodged by the State's lawyer.

51. On 14 September 2020 the applicant lodged a written request with the Prison Department of the Ministry of Justice and Public Order of the Republic of Cyprus ("the Prison Department") – which forwarded the request to the Supreme Court – that he be allowed to withdraw his appeal and that he be voluntarily extradited to Russia "as soon as possible"; he stated that the conditions of his detention had been "very good" and that he had "no claims against the Prison Department", but that his decision was based solely on "personal motives".

52. On 15 September 2020 the Prison Department forwarded the applicant's request to the Supreme Court.

53. On 16 September 2020 the Supreme Court decided to dismiss the appeal in the light of the applicant's request. An order dismissing the appeal was drawn up on 9 October 2020.

V. SUBSEQUENT DEVELOPMENTS AND THE APPLICANT'S EXTRADITION

54. On 13 October 2020 the Law Office of the Republic of Cyprus informed the Ministry of Justice of the applicant's request for the withdrawal of his appeal and that his surrender to the Russian authorities had been allowed as of that date.

55. The next day internal directions were given for the briefing of the Minister of Justice and for the preparation of the order for the applicant to be surrendered to the Russian authorities.

56. On 16 October 2020 the police informed the Ministry of Justice of a request lodged on 15 October 2020 by the Russian authorities for the applicant's surrender to be postponed. The Russian authorities informed the Cypriot authorities that since 27 March 2020 all regular flights between the two countries had been suspended as a result of the Covid-19 pandemic. The Russian authorities had therefore asked that the applicant's extradition be postponed until the end of the pandemic and regular flights between the two countries were resumed. They had further requested to be informed of the maximum length of time that the extradition could be postponed and had asked that the applicant be kept in detention for as long as possible.

57. On 29 October 2020 the Minister of Justice signed an order for the applicant's surrender, in accordance with section 11 of the Extradition Law (L. 97/70) (see paragraph 71 below).

58. By a letter dated 29 October 2020, the General Director of the Ministry of Justice informed the director of the Prison Department of the following:

> "I have been instructed to refer to the above-mentioned subject matter and to forward to you, in duplicate, the attached order of surrender in respect of KHOKHLOV Yuri Aleksandrovich, dated 29 October 2020, duly signed by the Minister of Justice and Public Order.
>
> 2. In accordance with the decision [taken] by the Minister on the basis of an earlier relevant opinion issued by the Attorney General, in view of the emergency situation that exists as a result of the decree on decontamination (determining measures to prevent the spread of the coronavirus COVID-19), Decree No. 3 of 2020 – and taking into account the deadline set by the [Extradition Law], as well as the expressed inability of the Russian authorities to receive the fugitive immediately owing to the temporary suspension of flights from the Russian Federation to the Republic of Cyprus that is in force as a result of the coronavirus – the delivery [of the applicant to Russia] is suspended. The provisions of Article 18, paragraph 5 of the [Extradition Convention] – which was ratified by means of Ratifying Law 95/1970 – will apply; [those provisions] stipulate that in the event of *force majeure* preventing extradition, the two States shall come to an agreement determining another delivery date.
>
> 3. In order to implement the above, please inform the fugitive and the requesting country immediately."

59. By a letter dated 30 October 2020, the Ministry of Justice informed the Prosecutor General's Office of the Russian Federation that the Larnaca District Court had delivered a decision on 20 May 2019 (see paragraph 29 above). The Ministry also explained that under section 12(a) of the Extradition Law, a fugitive had to be surrendered to the requesting State within sixty days of the relevant district court's decision becoming final (see section 12(a) of the Extradition Law, paragraph 71 below). However, the Ministry explained that owing to the Covid-19 pandemic and Russia's expressed inability (as a result of the suspension of flights) to receive the applicant within the timeframe set by the law, the Minister of Justice had decided to postpone the surrender of the applicant and to apply the provisions of Article 18 § 5 of the Extradition Convention. The Ministry further explained that it would liaise with the Prosecutor General's Office of the Russian Federation again to agree a new date of surrender "once the restrictive measures are lifted in a manner that renders the surrender [of the applicant] possible".

60. A similar letter was sent by the Ministry to the applicant on the same day, explaining that even though he should under normal circumstances be surrendered to the requesting State within sixty days of the date of the District Court's decision becoming final (that is to say within sixty days of 16 September 2020, when his appeal had been dismissed), owing to the Covid-19-related restrictive measures, and in the light of the Russian authorities' inability to receive him within the timeframe set by the law, the Minister of Justice had decided (applying the provisions of Article 18 § 5 of

the Extradition Convention) to suspend his surrender. The Ministry further informed the applicant that it had been in communication with the Russian authorities regarding "the setting of a new date".

61. By a letter dated 4 November 2020 to the Ministry of Justice, the applicant's lawyers requested the Ministry to take all necessary measures to extradite the applicant. The applicant informed the Ministry that a flight was scheduled for 6 November 2020 from Cyprus to Russia, and he requested that he be placed on the said flight; he added that he was willing to pay the cost of a ticket himself. The applicant further emphasised that there was no longer any barrier to his extradition.

62. On 5 November 2020 the Ministry of Justice informed the Russian authorities of the above-noted request and asked them to consider agreeing on a new surrender date.

63. By means of an email dated 13 November 2020 the Ministry of Justice requested Interpol's Nicosia office to forward their letter of 5 November 2020 to the "corresponding authorities" in Russia and called for arrangements to be made immediately for the applicant's surrender.

64. By a letter of 13 November 2020 (received on 16 November 2020) the applicant informed the Ministry of Justice that Aeroflot Airlines had scheduled regular flights from Cyprus to Russia (to begin running from 22 November 2020); the applicant reiterated his wish to be extradited as soon as possible.

65. By means of an email of 17 November 2020 the Ministry of Justice informed the Prosecutor General's Office of the Russian Federation of the applicant's letter.

66. On 23 November 2020 the police informed the Ministry of Justice of a letter dated 20 November 2020 sent to it by the Russian authorities stating their readiness to receive the applicant on 6 December 2020.

67. On the same day the applicant's lawyer requested the applicant's immediate release, informing the Ministry of Justice that the applicant's continued detention had been in violation of, *inter alia*, his rights under the Convention.

68. On 1 December 2020 the Ministry of Justice replied to the above-mentioned letter, denying any unlawfulness and any delays on the part of the Cypriot authorities. The Ministry further informed the applicant that his surrender was scheduled for 6 December 2020.

69. On 6 December 2020 the applicant was extradited to Russia.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT INTERNATIONAL LAW

70. The relevant provisions of the European Convention on Extradition, signed in Paris on 13 December 1957 and ratified by Cyprus by the European Convention on Extradition (Ratification) Law 95/1970, provide:

Article 1 – Obligation to extradite

"The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order."

Article 2 – Extraditable offences

"1. Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.

2. ...."

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. ...."

Article 9 – *Non bis in idem*

"Extradition shall not be granted if final judgment has been passed by the competent authorities of the requested Party upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the requested Party have decided either not to institute or to terminate proceedings in respect of the same offence or offences."

Article 12 – The request and supporting documents

"1. The request shall be in writing and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between two or more Parties.

2. The request shall be supported by:

a. the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the arrest warrant or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;

b. a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and

c. a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality."

Article 13 – Supplementary information

"If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Convention, the latter Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof."

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."

Article 18 – Surrender of the person to be extradited

"1. The requested Party shall inform the requesting Party by the means mentioned in Article 12, paragraph 1, of its decision with regard to the extradition.

2. Reasons shall be given for any complete or partial rejection.

3. If the request is agreed to, the requesting Party shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.

4. Subject to the provisions of paragraph 5 of this article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The requested Party may refuse to extradite him for the same offence.

5. If circumstances beyond its control prevent a Party from surrendering or taking over the person to be extradited, it shall notify the other Party. The two Parties shall agree a new date for surrender and the provisions of paragraph 4 of this article shall apply."

II. RELEVANT DOMESTIC LAW

71. The relevant provisions of the Extradition Law of 1970 (97/1970), as amended, provide that (unofficial translation from Greek):

Section 8 – Arrest for the purpose of extradition

"1. A warrant may be issued for the arrest of a person being prosecuted for a crime in respect of which extradition may be possible, or in respect of a person required to serve a sentence imposed on him after his conviction for a crime:

(a) if authorisation to start the extradition procedure is [given by] a judge of the district court in the jurisdiction of which the said person is (or is believed) to be;

(b) [however,] without such authorisation from the president of a district court, then in the event that a complaint (*καταγγελία*) is received alleging that the person in question is in the Republic or is believed to be in the Republic or is on his/her way to the Republic, and a warrant is issued pursuant to subsection (b) of this Law, it shall be referred to as a 'temporary warrant'.

2. An arrest warrant may be issued on the basis of this section upon presentation of proof that, in the opinion of the judge or president of the district court, justifies the issuance of an arrest warrant ...

..."

Section 9 – Extradition proceedings

"1. Every person who may have been arrested following a warrant issued on the basis of section 8 shall be brought, as soon as possible (unless he/she has in the meantime been released on the basis of subsection 3 of the said section), before the judge of the district court named on the warrant (hereinafter referred to as 'the district court in charge of the extradition').

2. With regard to proceedings carried out pursuant to this section, the district court in charge of the extradition shall, as closely as possible, [follow] the same procedure and [acquire] the same powers as a judge conducting a preliminary investigation – including the power to remand in custody or release on bail the person concerned by the extradition.

3. With regard to proceedings carried out pursuant to this section, the ... court [which is overseeing the extradition proceedings] shall acquire the same powers [as those of a judge conducting a preliminary investigation] – including the power to adjourn a trial, and in the meantime to order the pre-trial detention or the release on bail of the person arrested pursuant to an [arrest] warrant, and the trial shall be conducted in the same manner, as far as possible, as if it were a summary trial of an offence alleged to have been committed by the person in question.

..."

Section 10 – Habeas corpus application etc

"1. The court, [in the event that] it orders the detention of the person to be extradited on the basis of section 9 – shall immediately inform the interested person, in a language that he understands, of his right to lodge a habeas corpus application with [the Supreme Court], and shall notify without undue delay the Minister [of Justice] of that decision.

2. A person whose detention has been ordered under section 9 cannot, under the present law, be surrendered to a State that requests his extradition

(a) in any event, until fifteen days from the day on which the extradition order was issued; [or]

(b) in any event, where a habeas corpus application has been lodged, for as long as its examination is pending.

3. The Supreme Court (which shall deal with such a request) can/may, without affecting its jurisdiction, order the release of the person to be extradited if it considers that:

(a) owing to the insignificant nature of the offence for which the person is being prosecuted or has been convicted; or

(b) owing to the fact that a long time has elapsed since the offence [in question] was committed, or (depending on the circumstances) since the person has been sought in order that he might serve his sentence following his conviction; or

(c) owing to the fact that the relevant charges were not brought in good faith or in the interests of justice;

the surrender of the person shall constitute, taking into account all the circumstances, an unfair or repressive measure.

4. ...

5. For the purposes of this section, the procedure in respect of the examination of a habeas corpus application shall be considered to be ongoing until the adjudication of any appeal against it, or in the event that the deadline within which such an appeal should be lodged passes without any action being taken ..."

Section 11 – Order of extradition

"1. In the event that an order is made for the detention of a person for the purpose of his surrender to the State that requested his extradition, and that person is not [subsequently] released on the basis of an order made by the Supreme Court, the Minister may order his surrender to the said State or country, unless his extradition is forbidden ... on the basis of the provisions of section 6 or of this section, or if the Minister decides not to proceed with issuing an extradition order in the said case. ... .

...

6. The person who is to be extradited shall immediately be notified of the issuance of an [extradition] order made on the basis of this section."

Section 12 – Release in the event of delay in extradition

"1. Anyone who is being held in the Republic for the purpose of his extradition on the basis of the present Law may – by lodging an application with the Supreme Court – ask to be released once the following deadlines pass ...:

(a) in any event, when two months have elapsed after the first day on which, taking into account subsection 2 of section 10, it would have been possible to effect his surrender to the requesting State;

(b) after the passage of one month ... following the issuance under section 11 of an order for surrender, [calculated] from the day on which the order for surrender was issued.

2. Once such an application is lodged, the Court – upon being satisfied that the Minister has had sufficient warning – may order the release of the applicant and the annulment of any order issued under section 11, unless sufficient justification to the contrary is provided."

THE LAW

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

72. The applicant complained that the appeal proceedings before the Supreme Court had been excessively long and had failed to comply with the "speediness" requirement provided by Article 5 § 4 of the Convention, which reads as follows:

> "4. 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. Admissibility

73. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

74. The applicant argued that the appeal proceedings, which had lasted from 7 October 2019 until 16 September 2020 without a hearing taking place, had not been conducted with "speediness"; this had led him to withdraw his appeal and agree to his extradition. The applicant pointed out that there had been significant periods of inactivity that could not be justified by the Covid-19 pandemic, as the courts had been allowed to examine urgent cases during that period; in any event, the courts had resumed their work on 5 June 2020 and even (in some cases) 4 May 2020, while the examination of his case had only been scheduled for 11 September 2020. On that date the court had adjourned the case for another forty-five days to allow the government to submit its written outlines. The applicant argued that the said delays had led him to withdraw his appeal in order to bring to an end his indefinite detention in Nicosia Central Prisons.

75. The Government submitted that the European Court of Human Rights should be less concerned with the "speediness" of the proceedings before the appeals' court given that the applicant's detention had been the result of a court judgment delivered in respect of application no. 5/2018; that decision had been reviewed in habeas corpus proceedings no. 118/2019. In any event, the applicant's conduct had caused substantial delays in the proceedings (four and a half months – from 7 October 2019 until 21 February 2020), and he had not objected to the extension of the deadlines set by the Supreme Court. Any other delays had been attributed to the need to tackle the Covid-19 pandemic. In this regard the Government provided the Court with a letter dated 10 September 2021 and written by the Registrar of the Supreme Court to the

agent representing the Government before the Court, stating that from 16 March 2020 until 5 June 2020 all cases had been suspended (with the exception of urgent cases), while the applicant's appeal had been listed for directions during the first session of the Supreme Court in September right after the end of the summer vacation (*αμέσως μετά το τέλος της καλοκαιρινής ανάπαυσης*). The Government further argued that the forty-five days allowed for the submission of the parties' written outlines had not delayed the proceedings, since on 14 September 2020 (that is, three days after the case had been listed for directions) the applicant had withdrawn his appeal.

76. The Court notes at the outset, that the scope of the applicant's complaint, as raised in the application form, is limited to the effectiveness of the appeal proceedings. The Court will therefore limit its assessment under this head to those proceedings only.

77. The Court refers to the general principles set out in *Ilnseher v. Germany* [GC] (nos. 10211/12 and 27505/14, §§ 251-256, 4 December 2018); *Khlaifia and Others v. Italy* [GC] (no. 16483/12, § 128-131, 15 December 2016); and *Kučera v. Slovakia* (no. 48666/99, § 107, 17 July 2007), which all concerned Article 5 § 4 and, in particular, the requirement of "speediness".

78. The Court notes that the habeas corpus appeal proceedings lasted eleven months and ten days. The applicant's appeal was not particularly complex: it required, firstly, an assessment of the preliminary objection regarding whether habeas corpus application no. 118/2019 had been lodged out of time; only if that preliminary objection were upheld would the Supreme Court need to examine the merits of the remaining grounds for the applicant's appeal (compare *Ilnseher*, *cited above*, § 262).

79. In reply to the Government's argument regarding the effects of the Covid-19 pandemic, the Court accepts that the Covid-19-related suspension of all hearings lasted from 16 March 2020 until 5 June 2020; likewise, the applicant does not question the validity of the Supreme Court registrar's letter of 10 September 2021 conveying this information (see paragraph 75 above). Nonetheless, the Court notes, firstly, that it is unclear why on 3 December 2019 – when those measures were not yet in place – the Supreme Court gave both parties sixty days in which to submit their written outlines (see paragraph 43 above) – even though an extension to the relevant time-limit had not been requested by the parties. Secondly, the Court notes that while a three-month delay in court proceedings on account of the Covid-19 pandemic may be understandable (see, *mutatis mutandis, Fenech v. Malta* (dec.), no. 19090/20, 23 March 2021), proceedings in respect of the applicant's case only resumed on 11 September 2020, despite the fact that Covid-19 measures had come to an end on 5 June 2020; an additional three months was therefore allowed to pass without substantial progress being made in the proceedings. The Court also observes that, despite the fact that the Supreme Court used the summer break to deal with cases that had been postponed in March and April

2020 (see paragraph 48 above), the applicant's case (which had seen no progress since February 2020) was not dealt with during the summer break – even though the applicant remained in detention and his extradition had been hindered by the proceedings. The Court further notes that although most proceedings were postponed owing to Covid-19, certain urgent applications (including appeals) continued to be examined (see paragraph 47 above). The Government have not argued that the applicant's case could not have been considered to constitute an urgent case, bearing in mind the purpose of his detention and the length of the period that he had spent in detention by the time that urgent cases began to be examined again (despite the ongoing Covid-19 epidemic).

80. Moreover, while it is true that the applicant did not object, it is nevertheless unclear why on 11 September 2020 (when the proceedings finally resumed) the Supreme Court allowed a request lodged by the State's lawyer for an additional forty-five days in which to prepare and present its written submissions, while at the same time acknowledging the fact that the applicant had by that time already been held in detention for a lengthy period. These factors allegedly had led the applicant to withdraw his appeal (see paragraphs 51 and 74 above).

81. It is indeed a fact that the applicant – who changed lawyers, amended the grounds for his appeal and failed to object to the adjournment of the case – contributed to the duration of the appeal proceedings. Nonetheless, the Court cannot ignore the lengthy extensions of sixty and forty-five days allowed by the Supreme Court, as well as the three months and seven days which elapsed between 5 June 2020 and 11 September 2020 (compare, for example, *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006). The applicant's behaviour during the proceedings is only one factor to be taken into consideration by the Court. It is true that the Court is prepared to tolerate longer periods of review during proceedings before a second-instance court (see *Ilnseher,* cited above, § 255). Nevertheless, in principle, where the liberty of an individual is at stake, the State must ensure that proceedings are conducted as quickly as possible (see *Khlaifia and Others,* cited above, § 131; see also, *mutatis mutandis, Ilnseher,* cited above, § 256).

82. Accordingly, given the above-noted delays, the Court concludes that the habeas corpus appeal proceedings were not conducted "speedily" within the meaning of Article 5 § 4 of the Convention.

83. There has therefore been a violation of Article 5 § 4 of the Convention.

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

84. The applicant complained of the unlawfulness and the unreasonable length of his detention pending extradition. He submitted that there had been a violation of Article 5 § 1 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

85. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' observations

86. The applicant reiterated the arguments raised before the domestic courts that his detention had not been lawful, as the requirements of the Extradition Law had not been fulfilled (see paragraphs 21 and 23 above). He further argued that his detention had been arbitrary in the light of its length, and that it had been prolonged "quasi-automatically" (even though the length of the extradition proceedings had been unreasonable) through no fault of his own, and without any alternative means of detention being considered. In addition, he argued that the appeal proceedings had not been pursued with expedition: there had been long periods of inactivity, as the Supreme Court had given the parties sixty days in which to submit their written outlines and another thirty days in which to prepare their submissions (the respective deadlines being 3 December 2019 and 4 February 2020), while the hearing had only commenced on 11 September 2020. Lastly, the applicant argued that despite his having agreed to be extradited, he had remained in detention for an additional two months and twenty days (even though there had been flights available between Cyprus and Russia). He considered that he had not been detained for reasons related to Covid-19, but simply in order that the two States could arrange his surrender at a date convenient for them, despite the resultant breach of domestic procedure and the sixty-day time-limit provided by the Extradition Law.

87. The Government submitted that the deprivation of the applicant's liberty had been justified, as it had lasted only for as long as the extradition proceedings had been in progress. The proceedings had been pursued with due expedition and had been lawful (as all the substantive and procedural rules provided by the domestic law and by the Extradition Convention had been followed). In addition, according to the Government, the applicant's detention had been free from arbitrariness, as it had been implemented in

good faith, had been reviewed several times, and had been closely connected to the grounds of his detention (namely his impending extradition), while the place and conditions of his detention had been appropriate. The length of the detention had not exceeded that reasonably required for the purpose pursued – especially in view of the fact that the applicant had in various ways delayed or contributed to the postponement of the proceedings, had not objected to the allegedly protracted deadlines set by the appeal court, and had not requested that shorter deadlines be specified. At the same time, the State had had to adjust to the unprecedented pandemic, and the applicant's continued detention following the issuance of the surrender order on 29 October 2020 had been the result of the pandemic and of Russia's inability to immediately receive the applicant. His surrender had been suspended on the basis of Article 18 § 5 of the Extradition Convention, and throughout that period, the Government had maintained continuous and prompt communication with the Russian authorities in order to be able to arrange the applicant's surrender as soon as possible.

2. The Court's assessment

(a) General principles

88. The general principles concerning detention pending deportation or extradition under Article 5 § 1 (f) of the Convention are set out in *Khlaifia and Others,* cited above, §§ 88-92, and *Shiksaitov v. Slovakia,* nos. 56751/16 and 33762/17, §§ 53-56, 10 December 2020.

89. The Court reiterates that if extradition proceedings are not pursued with due diligence, the detention in question will cease to be permissible. The Court thus has the task not of assessing whether the length of the extradition proceedings in question was reasonable as a whole (as it would in length-of-proceedings cases under Article 6), but of establishing – regardless of the overall duration of the proceedings – whether the length of the detention exceeded that reasonably required for the purpose pursued (see *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 72-74, ECHR 2008). Where there have been periods of inaction on the part of the authorities (and therefore a lack of expedition) the maintaining of the detention measure will cease to be justified. In conclusion, the Court must assess, on a case-by-case basis, whether or not, during the detention period in question, the domestic authorities remained inactive at any time (see *Gallardo Sanchez v. Italy*, no. 11620/07, § 41, ECHR 2015).

90. In considering the length of detention pending extradition, the Court draws a distinction between two forms of extradition: firstly, 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 (i) the person being detained must be presumed innocent and cannot exercise his or her defence rights at that stage, and (ii)

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 expedition (ibid., § 42).

(b) Application to the present case

(i) Whether the detention was unlawful as a matter of domestic law

91. The President of the Larnaca District Court confirmed the applicant's provisional arrest on 22 October 2018 and ordered his preliminary detention. On 24 October 2018 the District Court extended the applicant's preliminary detention pending receipt from the Russian authorities of a request for the applicant's extradition. The Ministry of Justice received such a request on 9 November 2018, and on 15 November 2018 (that is to say within the relevant time-limits laid down by Article 16 § 4 of the Extradition Convention – see paragraph 70 above) the Minister of Justice authorised the initiation of the extradition procedure.

92. The Court notes that on several occasions the applicant's detention was reviewed by the Larnaca District Court (see paragraphs 11, 16, 17, 18, 20 and 23 above), which considered that it was justified. In so far as the applicant is understood to be arguing that the risk of absconding or hindering his deportation was a condition of domestic law, the Court notes that it was for the domestic authorities to verify whether that risk existed (see *Mefaalani v. Cyprus*, nos. 3473/11 and 75381/11, § 83, 23 February 2016), and the Larnaca District Court did so, providing sufficient justification. Despite habeas corpus application no. 118/2019 being lodged out of time, the applicant's detention was also reviewed by the Supreme Court (see paragraph 38 above). Moreover, the Larnaca District Court dedicated significant efforts to reviewing and verifying the validity and conformity of the documents provided by the Russian authorities for the purpose of the applicant's extradition, as required by both the Extradition Law and the Extradition Convention. The court also allowed the hearing of witnesses, demonstrating additional caution in this regard (even though, within the context of an extradition procedure, a requested State should be able to presume the validity of legal documents issued by the requesting State on the basis of which deprivation of liberty is requested) (see *Stephens v. Malta (no. 1)*, no. 11956/07, § 52, 21 April 2009). Overall, the true aim of the domestic proceedings was to establish compliance with the provisions of the Extradition Law and the Extradition Convention, and the Court sees no reason to question the domestic courts' findings.

93. Concerning the applicant's detention from 16 September 2020 (when the Supreme Court accepted the withdrawal of the applicant's appeal – see paragraph 53 above), the Court notes the following. Under section 12(a) of the Extradition Law (see paragraph 71 above) – and also bearing in mind the explanations provided by the Government to the Russian authorities and the

applicant in letters of 30 October 2020 (see paragraphs 59 and 60) – the State should have surrendered the applicant within sixty days of the District Court's decision becoming final (that is, by 16 November 2020). The Court further understands that the applicant did not challenge the sixty-day deadline stipulated by section 12(a) of the Extradition Law; rather, he considered that his detention had not complied with domestic law, as the sixty-day deadline had not been respected (see paragraph 86 above). The Court thus accepts that until 16 November 2020 the applicant's detention was lawful as a matter of domestic law, noting in addition that the surrender order was issued on 29 October 2020 within the time-limits set by section 12(a) of the Extradition Law.

94. Concerning the applicant's continued detention beyond 16 November 2020 and the Government's assertion that it had been in accordance with Article 18 § 5 of the Extradition Convention, as transposed through Ratification Law 95/70, the Court notes that no arguments have been advanced in this respect by the applicant. In view of the fact that a violation of Article 5 § 1 of the Convention has been found on other grounds (as set out below), the Court does not consider it necessary to examine this matter further.

(ii) Whether the applicant's detention was unlawful for failure to comply with other requirements set out by Article 5 § 1

95. The applicant's overall detention in view of his extradition lasted two years, one month and fifteen days, from 22 October 2018 (the date of his provisional detention) until 6 December 2020 (the date of his extradition). For the greater part of the applicant's detention – namely from 22 October 2018 until 16 September 2020 (one year, ten months and twenty-five days) – he was detained in connection with the judicial proceedings through which he contested his extradition.

96. The Court notes that while the first decision on the merits was given on 20 May 2019 (that is, six months and twenty-seven days after the day on which the applicant was placed in detention pending extradition), it cannot be said that the proceedings were not pursued with due expedition. In this connection, it is noted that the applicant contributed to the delay in the proceedings by lodging various requests for adjournments (see paragraphs 15, 16, 17, 21, 24 and 27 above); despite warnings given by the court that the applicant would continue to be held in detention, the applicant's lawyer insisted that extra time was required in order for him to prepare the applicant's arguments properly (see paragraph 27 above). In addition, the case had a certain level of complexity, as the applicant and a Russian lawyer (who appeared at the hearing as a witness) strongly contested that any active criminal proceedings were ongoing against the applicant in Russia. This necessitated the above-mentioned request to the Russian authorities for clarification (see paragraph 23 above) and the presentation of further

evidence and witnesses in court in order that the matter could be clarified (see paragraph 26 above). Therefore, the court's task in verifying that the extradition request had been submitted in accordance with the relevant laws was not straightforward. In addition, the court made sure to schedule successive hearing dates and set tight deadlines for the examination of witnesses (see, for example, paragraphs 18, 22, 24 above). As a result, the Court considers that the first-instance proceedings were pursued with due expedition.

97. Similarly, the Court cannot blame the Government for the time that elapsed between 4 June 2019 and 4 July 2019 as a result of the applicant's withdrawal of habeas corpus application no. 94/2019 owing to the fact that it had not been properly pleaded (see paragraphs 31-33 above).

98. However, the same cannot be said for the ensuing proceedings, regarding which there were delays of sufficient length at various stages as to render the duration of those proceedings excessive (see *Quinn v. France*, 22 March 1995, § 48, Series A no. 311). The Court notes, firstly, that the application concerning habeas corpus proceedings no. 118/2019 was listed for directions for the first time over a month after it had been lodged (see paragraphs 34 and 35 above). Subsequently, on 8 September 2020 – one day before a scheduled hearing in respect of the case – the Government requested an extension of one week, as they had mistakenly failed to submit their observations on time (see paragraph 36 above). As regards the way in which the appeal proceedings were pursued, the Court reiterates its findings in paragraphs 78-82 above. The Court notes in this regard that on account of the delays that occurred before the Supreme Court, it cannot be said that the habeas corpus (no. 118/19) proceedings and the appeal proceedings were pursued with due diligence.

99. The Court also finds striking the fact that it took twenty-three days (from 16 September 2020 until 9 October 2020) for the Supreme Court's order – which had merely stated that the Supreme Court had decided to dismiss the appeal, pursuant to the applicant's request of 14 September 2020 (see paragraph 53 above) – to be drawn up; the Supreme Court's dismissal of the appeal appears to have been necessary for the subsequent signing (in accordance with section 11 of the Extradition Law – see paragraph 71 above) of the extradition order by the Minister of Justice. The Government did not adduce any evidence capable of justifying these delays, which were not in line with the duty of the State authorities to pursue the extradition with due diligence.

100. Lastly, the Court notes that after the dismissal of the applicant's appeal on 16 September 2020, his detention continued for a further two months and twenty days, until 6 December 2020.

101. During that period there do not seem to have been any periods of inactivity. Nonetheless, the Court is concerned by the fact that on 29 October 2020 the Cypriot authorities suspended the applicant's extradition

proceedings without a clear understanding as to when the surrender to Russia of the applicant would be possible. In fact, the Russian authorities asked for the surrender to be postponed until the end of the pandemic and the resumption of flights between Cyprus and Russia and in the meantime for the applicant to be kept in detention for as long as possible (see paragraph 56 above); the Cypriot authorities replied that the applicant's surrender had been postponed and that they would resume deliberations regarding his requested extradition "once the restrictive measures [were] lifted in a way that [rendered] the surrender [of the applicant] possible" (see paragraph 59 above). Neither State had a concrete idea as to when the pandemic would end, or when flights would resume. In this connection, the Court reiterates that the domestic authorities have an obligation to consider whether removal is a realistic prospect and whether detention continues to be justified (see *Amie and Others v. Bulgaria,* no. 58149/08, §77, 12 February 2013, and *Louled Massoud v. Malta,* no. 24340/08, § 68, 27 July 2010). In such circumstances the necessity of procedural safeguards becomes decisive. Without taking a stance on the respondent State's good faith, the Court takes issue with its decision to suspend the extradition until further notice, as in the absence of an agreed surrender date to begin with – as required by Article 18 § 3 of the Extradition Convention – this decision deprived the applicant of the procedural guarantees that were available to him under Article 18 § 4 of the Extradition Convention (see, *mutatis mutandis, Kim v. Russia,* no. 44260/13, § 53, 17 July 2014). The Government have also not pointed to any other safeguards available to the applicant in this regard, and nor have they raised a non-exhaustion plea concerning the applicant's complaints under this head.

(c) The Court's conclusion on the merits of the applicant's complaint under Article 5 § 1 of the Convention

102. In the light of the above-noted considerations the applicant's detention pending his extradition cannot be considered to have been in line with Article 5 § 1 (f) of the Convention.

103. There has accordingly been a violation of Article 5 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. 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

1. Pecuniary damage

105. The applicant claimed EUR 227,325 in respect of pecuniary damage for loss of income in respect of salary, as well as "prison expenses". In this connection, he submitted to the Court a letter, signed by the CEO of a certain company stating that the applicant had begun working for the said company, under a contract of indefinite duration, on 18 February 2017, with a monthly salary of USD 10,000; however, he had been dismissed from his position in the light of his disappearance in Cyprus in November 2019. The applicant also provided the Court with proof of receipt issued by the Prison Department in respect of sums of money amounting to EUR 1,650 paid by various persons into the applicant's bank account at the prison.

106. The Government submitted that the financial losses in respect of the applicant's salary had not been causally related to the alleged violation. Additionally, the Government disputed the EUR 1,650 claimed by the applicant in respect of the expenses that he had incurred during his stay in Nicosia Central Prisons, as his everyday necessities, nutrition, hygiene requirements and entertainment had been provided by the prison for free; therefore, his claim for EUR 1,650 in respect of pecuniary damage could not be justified. That amount concerned the money that the applicant had spent in the prison canteen on personal items such as snacks, non-alcoholic drinks and cigarettes.

107. The Court notes that the applicant has not substantiated his claim for the pecuniary damage allegedly incurred by him in the form of lost salary; the applicant has not provided the Court with any payslips or bank account statements indicating that the amounts mentioned in the CEO's letter had indeed been paid to the applicant by way of his monthly salary prior to his detention. In addition, the Court does not discern any causal link between the violation found and the personal expenses that the applicant incurred in prison, given the fact that that everyday necessities were provided to the applicant by the prison authorities. The claim under this head must therefore be rejected.

2. Non-pecuniary damage

108. The applicant claimed EUR 100,000 in respect of non-pecuniary damage.

109. The Government submitted that that claim was excessive and not reasonable as to quantum; it further submitted that the applicant could not claim damages in respect of the alleged failure of the Supreme Court to speedily review the lawfulness of his detention through the habeas corpus proceedings, as he only complained of a violation of Article 5 § 4 in relation to the appeal proceedings (no. 364/19).

110. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the violations of Articles 5 § 1 and 5 § 4. Making its assessment on an equitable basis, as required by Article 41, the Court awards the applicant EUR 26,000 in respect of non-pecuniary damage in relation to both violations, plus any tax that may be chargeable.

B. Costs and expenses

111. The applicant also claimed EUR 113,118 for the costs and expenses that he had incurred before the domestic courts. He provided various letters, invoices and receipts in this regard. The applicant also claimed EUR 4,800 for the costs and expenses incurred before the Court.

112. The Government contested the applicant's claims. They submitted that the costs had not been actually and necessarily incurred in an attempt to prevent or gain redress for any breach of the Convention; in any event, they considered the amounts claimed to be excessive and not reasonable as to quantum. Concerning specifically the letters, invoices and other receipts provided by the applicant, the Government submitted, *inter alia,* that they did not contain an itemised breakdown of the work undertaken and did not specify whether the work in question had actually concerned the domestic proceedings; moreover, they were not addressed or made out to the applicant.

113. 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. Rule 60 of the Rules of Court further requires that an applicant submit itemised particulars of all claims, together with any relevant supporting documents. Concerning the claims made by the applicant in respect of the domestic proceedings, the Court notes that the applicant has failed to provide itemised bills or invoices substantiating his claim (Rule 60 §§ 1 and 2 of the Rules of Court). The applicant has, however, provided itemised bills and invoices substantiating his claim concerning costs arising from the proceedings before the Court.

114. In this respect, regard being had to the documents in its possession and the above-noted criteria, the Court rejects the applicant's claim for costs and expenses incurred during the domestic proceedings and considers it reasonable to award the sum of EUR 4,800 for the costs incurred during the proceedings before the Court, plus any tax that may be chargeable to the applicant. These sums are to be paid to the bank account indicated by the applicant's representative.[1]

[1] Rectified on 4 July 2023: "These sums are to be paid to the bank account indicated by the applicant's representative." was added.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 5 § 1 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, the following amounts:
      (i) EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be deposited directly to the bank account indicated by the applicant's representative, Mr Y.L. Boychenko, in France[2];
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above-mentioned amounts 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 13 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Pere Pastor Vilanova
President

[2] Rectified on 4 July 2023: "..., to be deposited directly to the bank account indicated by the applicant's representative, Mr Y.L. Boychenko, in France" was added.