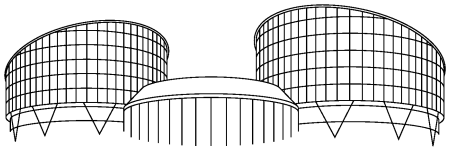

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF KHADZHIEV v. BULGARIA

(Application no. 44330/07)

JUDGMENT

STRASBOURG

3 June 2014

FINAL

03/09/2014

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

In the case of Khadzhiev v. Bulgaria,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 13 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 44330/07) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkmen and Russian national, Mr Annadurdy Karlievich Khadzhiev ("the applicant"), on 28 September 2007.

2. The applicant was represented by Mrs M. Ilieva, a lawyer practising in Sofia, and the Bulgarian Helsinki Committee. The Bulgarian Government ("the Government") were represented by their Agents, Mrs M. Dimova and Mr V. Obretenov, of the Ministry of Justice.

3. The Russian Government, having been informed of their right to intervene in the case (Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court), did not avail themselves of that opportunity.

4. The applicant alleged, in particular, that his second detention pending extradition was unlawful and arbitrary.

5. On 21 February 2011 that complaint was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background information

6. In the period between 5 August 1992 and 15 August 1998 the applicant worked as deputy chair of the Central Bank of Turkmenistan. In 2000 he became a member of the political movement "Watan", which broadly criticised the political regime in Turkmenistan.

7. In October 2001 the applicant, his wife and children moved to Bulgaria. The applicant set up his own business in the field of construction development and obtained permanent residency. In 2003 he became a co-founder and an executive member of the Turkmen Helsinki Foundation, an organisation which was founded in Varna and was engaged in human rights protection in Turkmenistan.

8. It appears that because of his political activity members of the applicant's family were subjected to persecution in Turkmenistan. In 2006 his sister was tortured and murdered in prison.

9. On 10 March 2004 the Bulgarian authorities granted humanitarian status to the applicant under the Asylum and Refugees Act 2002.

B. First set of extradition proceedings and ensuing proceedings for damages

1. The extradition proceedings and the applicant's detention pending extradition

10. On 22 October 2002 the Turkmen authorities charged the applicant with aggravated embezzlement of public funds amounting to 40,000,000 United States dollars (USD). The crime had allegedly been committed between 25 July and 3 September 2002. According to the charges, the applicant had acted in his capacity as an official at the Central Bank of Turkmenistan and together with his accomplices had used the standard system for bank-to-bank payments, SWIFT, to illegally transfer the above amount from the Turkmen bank to banks in Germany, Latvia, the Russian Federation and Hong Kong. On 10 February 2003 those charges were supplemented by an additional charge of forging documents. In relation to those charges, the Turkmen prosecutor also ordered the applicant's detention.

11. Since at that time the applicant resided in Bulgaria, on 22 October 2002 the Turkmen Prosecutor's Office filed a request with the Bulgarian authorities for his extradition.

12. In relation to the extradition request, on 4 December 2002 the applicant was taken into custody for twenty-four hours by virtue of a police order. The applicant sought judicial review of the order and on 5 December 2002 the Varna Regional Court set it aside. The court ruled that the order was flawed because it did not indicate any legal ground for the applicant's detention. On 18 June 2003 the Supreme Administrative Court upheld the decision of the lower court.

13. On his release from police custody on 5 December 2002, the applicant was served with a prosecutor's decree which ordered his detention for seventy-two hours in relation to the extradition proceedings. The decree relied on the 1974 Code of Criminal Procedure ("the 1974 Code") and Article 65 of the 1975 Treaty between the Republic of Bulgaria and the former USSR for Legal Aid in Civil, Family and Criminal Cases ("the 1975 Treaty").

14. On 6 December 2002 the Varna Regional Court extended the applicant's detention for a period of thirty days on the basis of Article 68 of the 1975 Treaty. On an appeal by the applicant, in a decision of 17 December 2002 the Varna Court of Appeal lifted the detention order and the applicant was released on bail.

15. On 23 January 2003 the prosecutor brought the extradition request to the Varna Regional Court for examination.

16. In a final decision of 22 May 2003 the Varna Regional Court refused the extradition request. The court applied the 1975 Treaty and the relevant provisions of the 1974 Code. The court found, in particular, that in the period during which he had allegedly committed the crime, the applicant had not been employed at the bank, could not have acted in an official capacity and could not have used the SWIFT network to carry out the impugned transactions. The court further found that the criminal proceedings against the applicant were connected to his political activities and the extradition request had been made with the aim of persecuting and punishing the applicant for his political beliefs. The court also specifically referred to a potential violation of Article 3 of the Convention in the event of the applicant's extradition.

17. The court's decision was not challenged on appeal and became final on 30 May 2003.

2. The proceedings under the 1988 State and Municipalities Responsibility for Damage Act ("the 1988 Act")

18. On 17 September 2003 the applicant lodged claims for damages in the amount of 100,000 Bulgarian levs (BGN), (the equivalent of approximately 51,000 euros (EUR)), under the 1988 Act with the Varna Regional Court against the police and the Chief Prosecutor's Office. The applicant stated that as a result of the actions of the police and the prosecuting authorities, more specifically, the fifteen-day period of

detention and the extradition proceedings, he had sustained non-pecuniary damage. In a judgment of 17 September 2004 the court dismissed all the claims.

19. Upon appeal, in a judgment of 12 January 2005 the Varna Court of Appeal granted the applicant's claim against the Chief Prosecutor's Office for the unlawful arrest and dismissed the remainder of the claims. In a judgment of 21 June 2006 the Supreme Court of Cassation quashed (*обезсилва*) the judgment in respect of the granted claim against the Chief Prosecutor's Office and returned the case to the lower court in that part, finding that the claim should have been directed against the Prosecutor's Office as a whole. The court upheld the remainder of the judgment with final effect.

20. In a judgment of 2 October 2006 the Varna Court of Appeal dismissed the applicant's claim against the Prosecutor's Office. It also delivered a ruling regarding one of the claims against the police, the judgment about which had become final by virtue of the Supreme Court of Cassation's ruling of 21 June 2006.

21. Upon appeal, in a final judgment of 14 November 2007 the Supreme Court of Cassation dismissed the applicant's claim for damages for unlawful detention against the Prosecutor's Office. The court found that the Prosecutor's Office had acted in accordance with the international obligations of the State. The court noted that the prosecutor was bound by virtue of Article 65 of the Treaty which, in the court's view, provided for compulsory detention in the event of an extradition request. The court further held that the applicant's detention did not fall within the scope of the 1988 Act as it had not been ordered by the prosecutor but stemmed from the State's international obligations. As regards the claim against the police, the court quashed that part of the court of appeal's ruling. It also held that in the quashed part the judgment was subject to a further review by a five-member panel of the Supreme Court of Cassation.

22. The applicant's appeal against that ruling was rejected as inadmissible on 22 July 2008 by a five-member panel of the Supreme Court of Cassation. The court held that the judgment of the Supreme Court of Cassation of 14 November 2007 had become final in its entirety on delivery.

23. In relation to the proceedings, the applicant was ordered to pay a State fee of BGN 8,000 (the equivalent of approximately EUR 4,100).

C. Criminal proceedings against the applicant

24. Meanwhile, in an order of 11 September 2003 a prosecutor from the Varna Prosecutor's Office laid charges against the applicant for aggravated money laundering allegedly committed in Varna in the period between December 2001 and November 2002. The applicant was accused, in particular, of having transferred a significant amount of money, acquired as

a result of criminal conduct, to a bank account in Dubai on 21 November 2002. The alleged criminal conduct was the embezzlement of USD 40,000,000 from the Central Bank of Turkmenistan in the period between 25 July and 3 September 2002 by means of the standard system for bank-to-bank payments, SWIFT, that is, the same offence for which extradition had been denied a few months earlier (see paragraph 16 above).

25. On 26 January 2004 the prosecutor discontinued the proceedings for lack of evidence. The prosecutor found, as did the extradition court, that since in the period between 25 July and 3 September 2002 the applicant had not worked at the Central Bank of Turkmenistan (at that time he was already residing in Bulgaria) and therefore could not possibly have used the system for bank-to-bank payments, SWIFT, it was objectively impossible for him to have committed the said crime. Thus, there was insufficient evidence that the amount in question had been acquired as a result of criminal conduct and the criminal proceedings for money laundering should be discontinued.

26. On an appeal by the applicant, in a decision of 16 February 2004 the Varna Regional Court amended the prosecutor's order and terminated the proceedings because no crime had been committed. The court found it established, on the grounds of the prosecutor's findings as well as the decision on the extradition request, that at the time of the alleged criminal conduct by virtue of which the amount had allegedly been obtained the applicant had not been employed at the Central Bank of Turkmenistan and therefore could not have committed the crime. It also based its conclusions on the findings of the extradition court, namely, that the accusations against the applicant had been politically motivated and were aimed at his persecution.

D. Second set of extradition proceedings

1. The extradition proceedings

27. On 28 February 2006 Interpol Ashgabat, apparently at the request of the Turkmen authorities, announced by way of a red notice that the applicant was wanted by the Turkmen authorities. According to the red notice the applicant was charged with the embezzlement of USD 40,000,000 committed in the period between 25 July and 3 September 2002. The notice also referred to the same arrest warrant issued by the Turkmen authorities in 2002.

28. On 19 February 2007 the National Police Service informed the Supreme Cassation Prosecutor's Office that the applicant had been arrested. On 20 February 2007 a prosecutor from that office ordered the applicant's provisional detention on the basis of Article 65 of the 1975 Treaty with reference to section 13(5) of the 2005 Extradition and European Arrest

Warrant Act ("the 2005 Act") and gave instructions on how to proceed with the case.

29. On 9 March 2007 the Supreme Cassation Prosecutor's Office received a request for extradition from the Turkmen authorities through the intermediary of Interpol. The request referred to the charges raised against the applicant on 22 October 2002 and 10 February 2003, which had been the subject matter of the first extradition request, namely, that in the period between 25 July and 3 September 2002 the applicant had embezzled USD 40,000,000. The request did not contain any new information or evidence with respect to the charges.

30. On 29 March 2007 the prosecutor brought the case before the Varna Regional Court. The court declined extradition in a judgment of 12 April 2007. Based on the findings of the investigative authorities and the court in the criminal proceedings against the applicant, the Varna Regional Court held that the alleged criminal conduct did not constitute a crime under Bulgarian law. Pursuant to Article 61(г) of the 1975 Treaty that circumstance was an absolute procedural impediment to extradition. The court further found that extradition would violate Article 3 of the Convention as the applicant had been granted humanitarian status, the political environment in Turkmenistan had not changed, and the applicant's life and limb would be put at risk if he were extradited. Those circumstances also constituted procedural obstacles for extradition pursuant to section 7(4) and (5) of the 2005 Act.

31. In a final ruling of 3 May 2007 the Varna Court of Appeal upheld the lower court's judgment. The court stated that the request for extradition had been identical to the one examined in 2003. The court further held that the judgment of 22 May 2003 refusing extradition was binding with regard to all individuals, legal entities and authorities. In view of that and without entering into its merits, the court stated that the case could not be reexamined.

2. The applicant's detention pending extradition

32. On 19 February 2007 the applicant was taken into custody for twenty-four hours by virtue of a police order for his detention in relation to his possible extradition. On the next morning he was released.

33. Later that day the applicant's lawyer received a prosecutor's decree ordering the applicant's provisional detention under the 1975 Treaty (see paragraphs 49-50 below), pending the receipt of an official request for his extradition. The decree referred to the exigency of the situation, the risk of the applicant absconding and the arrest warrant issued by the Turkmen authorities in 2002.

34. The applicant was summoned to appear at the police station. On the same day he was placed in detention.

35. On 22 February 2007 the applicant was brought before the Varna Regional Court. He argued that his detention was unlawful as it stemmed from an identical request for extradition and that the criminal proceedings against him in Bulgaria had been terminated in 2004 on the grounds that no crime had been committed. The court reiterated the details of the criminal charge against the applicant and emphasised its seriousness. It also noted that an arrest warrant had been issued by the Turkmen authorities in 2002. On the basis of that, the court concluded that there was a real danger of the applicant absconding or reoffending. The court also found that it was not bound by the earlier refusal for extradition and held that there had been no evidence that the applicant had been persecuted in Turkmenistan on account of his political views. As a result the court ordered the applicant's provisional detention for a period of forty days pursuant to section 13(7) of the 2005 Act.

36. On an appeal by the applicant, in a decision of 27 February 2007 the Varna Court of Appeal upheld the detention order. The court stated that it could not review whether sufficient evidence had been collected to prove the applicant's guilt or whether the alleged crime was identical to the one examined during the extradition proceedings in 2003. However, in its view, the fact that the applicant was wanted by Interpol was sufficient to justify his detention. As a result, the court upheld the regional court's judgment.

37. On an unspecified date the applicant sought judicial review of his detention again. As before, he drew attention to the identical nature of the two charges. On 21 March 2007 the regional court dismissed the request, stating that the applicant had failed to show any new facts which could justify his release and, moreover, that there was no evidence to rebut the finding that there was a real risk of the applicant absconding or committing another crime.

38. Meanwhile, on 9 March 2007 the Turkmen authorities sent an extradition request and the prosecutor lodged a request with the Varna Regional Court for the applicant's detention for the period of the extradition proceedings. In a decision of 30 March 2007 the court extended the applicant's detention for the course of the extradition proceedings. The court held that in view of the seriousness of the offence, there was a real risk that he would abscond or reoffend.

39. In a hearing on 3 April 2007 the Varna Court of Appeal examined appeals against the decisions of 21 and 30 March 2007. The court upheld the order for the applicant's detention. It stated, relying on section 14 of the 2005 Act and the 1975 Treaty, that the applicant's detention was mandatory for the course of the extradition proceedings. The court again dismissed the applicant's arguments that an identical extradition request had already been examined by a court.

40. On no occasion did the prosecutor or the courts examine whether extradition was possible, as required by Article 65 of the 1975 Treaty (see paragraph 49 below).

41. The applicant was released on 12 April 2007 after the Varna Regional Court refused extradition.

3. Conditions of the applicant's detention

42. The applicant submitted that during his detention pending extradition he was accommodated in a cell in Varna Prison which was small and overcrowded. He was allowed to leave his cell three times a day and was entitled to a half-hour walk outside. The cell was not equipped with a toilet or a sink and the inmates had to use a bucket. Hygiene in the toilets, ventilation and heating were poor. The food was of poor quality.

43. The applicant went on to claim that he had to spend some time in a cell in the Varna Regional Court, awaiting hearings. He submitted that the court cell was very cold and damp and that as a result his health significantly deteriorated. He claimed that the medical treatment in prison was inadequate.

E. Further developments

44. On 15 September 2007 the State Agency for Refugees granted refugee status to the applicant. The agency based its decision on the situation in Turkmenistan, the political activity of the applicant and the two dismissed requests for extradition.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Extradition proceedings

45. Extradition proceedings between Bulgaria and Turkmenistan are governed by the Treaty between the People's Republic of Bulgaria and the former USSR for Legal Aid in Civil, Family and Criminal Cases 1975 ("the 1975 Treaty"), considered applicable to Turkmenistan apparently by virtue of the Almaty declaration of 21 December 1991, creating the Commonwealth of Independent States and guaranteeing the fulfilment by, *inter alia*, Turkmenistan of the international obligations stemming from the treaties and agreements of the former USSR.

46. In addition to that, at the time of the first extradition request the Code of Criminal Procedure 1974 ("the 1974 Code"), Articles 435-441, regulated in more detail the conditions and the procedure to be followed in cases of extradition. At the time of the second request, the Extradition and European Arrest Warrant Act 2005 ("the 2005 Act") had superseded the

relevant provisions of the 1974 Code. Section 4(1) of the 2005 Act provides that where the Republic of Bulgaria is party to an international treaty, the 2005 Act supplements that treaty for non-regulated matters.

47. Under the relevant provisions, extradition can be allowed only for offences which are crimes under the legislation of both the Republic of Bulgaria and the requesting State (Article 60 § 2 of the Treaty and section 5(1) of the 2005 Act). Extradition must be declined, in particular, when a conviction has been pronounced or the criminal proceedings have been discontinued in the requested State (Article 61(r) of the Treaty) and with regard to, *inter alia*, individuals who have been granted asylum (section 6(1)(2) of the 2005 Act). Extradition must also be denied when it aims at the persecution or punishment of the individual on the grounds of, *inter alia*, his political beliefs, when, if extradited, the individual will be subjected to cruel, inhuman or degrading treatment or if his procedural rights within the criminal proceedings will not be respected (section 7(4) and (5) of the 2005 Act).

48. A request for extradition must be sent to the Ministry of Justice by the competent authority of the requesting Party or by Interpol (section 9(1) and (2) of the 2005 Act). Once received, the request must be sent to the Supreme Cassation Prosecutor's Office. The Supreme Cassation Prosecutor's Office transmits the extradition request to the competent regional prosecutor, who brings the case to the relevant regional court (sections 12 and 14 of the 2005 Act).

B. Detention pending extradition

1. Detention following receipt of an extradition request

49. According to Article 65 of the 1975 Treaty, which, as explained above, has priority over the 2005 Act, following the receipt of an extradition request, the requested State must take immediate measures for the arrest of the person except in cases where extradition cannot be carried out under the 1975 Treaty. The provisions of the 2005 Act are stricter, providing that once the request for extradition is transmitted to the Supreme Cassation Prosecutor's Office, a prosecutor must order the detention of the person for a period of seventy-two hours (section 14(2) of the 2005 Act).

50. After the regional prosecutor receives the extradition file, he submits a request for the individual's detention to the relevant regional court, which examines it immediately (section 14(4)(4) of the 2005 Act). There are no specific rules which regulate the preconditions for detention pending extradition. Section 66 of the 2005 Act refers in general terms to the 2005 Code of Criminal Procedure with respect to non-regulated matters. It appears that as a rule the court examines solely whether there are pending extradition proceedings and whether there is a risk of the individual

absconding (опр. № 256 от 10.12.2013 г. по в.ч.н.д. № 1175/2013 на Апелативен съд-София, Наказателна колегия; опр. от 27.9.2013 г. по н.д. № 900/2013 г. на Окръжен съд-Бургас; опр. № 7 от 13.01.2009 г. на Апелативен съд-София по в.н.ч.д. № 12/2009, НО, 3-ти с-в; опр. № 253 от 2.06.2011 г. на Окръжен съд-Пазарджик по ч.н.д. № 348/2011). The regional court's decision can be challenged before the relevant court of appeal (section 15(3) of the 2005 Act).

2. Provisional detention

51. In exigent circumstances the requesting State may ask the Supreme Cassation Prosecutor's Office to order the provisional detention of the individual before the submission of the extradition request (Article 67 § 1 of the 1975 Treaty and section 13(1) of the 2005 Act). The request for provisional detention should contain, *inter alia*, information about the crime allegedly committed (Article 67 of the 1975 Treaty and section 13(1) and (2) of the 2005 Act).

52. As regards whether the prosecutor has discretion to order such detention, the wording of the two acts differs. Pursuant to Article 67 § 1 of the Treaty the authorities *may* order the individual's detention whereas the 2005 Act provides that in this situation the Supreme Cassation Prosecutor's Office orders the individual's detention and sends the extradition file to the relevant regional prosecutor (section 13(5)). The regional prosecutor then brings a request for the applicant's provisional detention to the relevant regional court. The court may order detention or apply another restrictive measure (section 13(7)). Pursuant to Article 68 of the Treaty detention can be ordered for no more than thirty days. The 2005 Act provides for a maximum forty-day period of detention. The individual may request the lifting of the detention order within this period (section 13(10)).

C. State liability for damage caused to private persons

53. The general rules of the law of tort are set out in sections 45 to 54 of the Obligations and Contracts Act 1950 (*Закон за задълженията и договорите* – "the 1950 Act"). Section 45(1) provides that everyone is obliged to make good the damage which they have, through their fault, caused to another. Specific rules regulating the State liability for damage are set out in the State and Municipalities Responsibility for Damage Act (*Закон за отговорността на държавата и общините за вреди* – "the 1988 Act"). Section 2 of the 1988 Act provides provides that the State is liable for damage caused by the investigating or prosecuting authorities and by the courts in connection, *inter alia*, with unlawful detention, if the detention order has been set aside for lack of lawful grounds. According to the case-law of the Supreme Court of Cassation, liability of the

investigation and prosecution authorities and the courts may arise only in respect of the exhaustively listed instances under section 2 of the 1988 Act and not under the general rules of tort (реш. № 1370 от 16.12.1992 г. по гр.д. № 1181/92, IV г.о., Тълк. реш. № 3 от 22.04.2005 г. по т.гр.д. № 3/ 2004, ОСГК на ВКС).

THE LAW

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

54. The applicant complained that his second detention pending extradition (from 19 February 2007 to 12 April 2007) was unlawful and arbitrary. He relied on Article 5 § 1 (f) of the Convention, which, in so far as relevant, 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

55. The Government submitted that the applicant had not exhausted the relevant domestic remedies because he had failed to bring a tort action against the Bulgarian prosecution authorities and courts under section 45 of the 1950 Obligations and Contracts Act. They also submitted that he could bring a tort action against the Turkmen authorities.

56. The applicant contested that statement. He claimed that the 1950 Act was not applicable to tort actions against public authorities and that an action under the 1988 State and Municipalities Responsibility for Damage Act would not have had any prospect of success as his detention had not been illegal under domestic law.

57. The Court notes that according to the relevant domestic case-law judicial authorities are only liable in respect of the exhaustively listed instances under section 2 of the 1988 Act and not under the general rules of tort (see paragraph 53 above). The 1950 Act does not therefore appear applicable to the applicant's situation and the Government's assertion that the applicant could have brought a claim for damages under the that Act is in any event not substantiated by any reference to case-law. As regards an action under the 1988 Act, in respect of which the Government did not raise an objection, it does not appear that that Act would apply either as, in order

for the State responsibility to be engaged, the detention order must be set aside as unlawful which is not the situation in the present case. Lastly, as regards a tort action against the Turkmen authorities, the Government do not specify the legal basis on which the liability of the Turkmen State could be engaged. The Government's objection must therefore be dismissed.

58. The Court further considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

59. The Government submitted that the applicant's provisional detention, which had transformed into detention pending the outcome of the extradition proceedings, was prompted by the obligations the Bulgarian State had undertook under the 1975 Treaty and had been in line with the applicable legislation, the 2005 Act. In the Government's view, the detention ordered by the prosecutor for a period of seventy-two hours had been mandatory under the 2005 Act. The domestic courts had assessed the necessity of the detention and taken the applicant's arguments into account. The Government further argued that the national authorities had correctly applied the national legislation, which contained sufficient safeguards against arbitrariness. Lastly, the Government stated that the only authority competent to decide if the extradition request had been identical to an older one had been the court which examined the extradition request. Such an assessment had only been possible at the end of the extradition proceedings.

60. The applicant submitted that under the 1975 Treaty and the 2005 Act his detention pending extradition had not been mandatory. The authorities had been in a position to decide whether or not to detain him. However, by not taking into account his arguments concerning the identical nature of the two extradition requests and the outcome of the discontinued criminal proceedings against him, the authorities had acted arbitrarily. The applicant went on to argue that the authorities' approach may have prompted a chain of extradition requests on the part of the Turkmen authorities, and, accordingly, his repeated detention, which in itself had been a measure of repression and a means of persecuting him for his political activities. Lastly, the applicant stated that since he had always cooperated with the authorities and showed no intention of absconding, the domestic court could and should have imposed a less restrictive measure, as it had done in the first set of extradition proceedings.

2. The Court's assessment

61. Article 5 of the Convention enshrines a fundamental human right, namely, the protection of the individual against arbitrary interference by the State with his or her right to liberty. Subparagraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which persons may be deprived of their liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds. One of the exceptions, contained in subparagraph (f), permits the State to control the liberty of aliens in the immigration context (see, as recent authorities, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008-..., and *A. and Others v. the United* Kingdom [GC], no. 3455/05, §§ 162-63, 19 February 2009).

62. In the present case the applicant's detention was ordered in the frame of a procedure for his extradition, which, in principle, falls within one of the permissible grounds of Article 5 § 1, namely, its subparagraph (f).

63. The Court further reiterates that any deprivation of liberty must be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down, as a minimum, the obligation to conform to the substantive and procedural rules of that law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see, among other authorities, *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III; *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 130, 22 September 2009; and *Nasrulloyev v. Russia*, no. 656/06, § 70, 11 October 2007). It follows that the Court can and should exercise a certain power to review whether this law has been complied with (see *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports* 1996-III, and *Steel and Others v. the United Kingdom*, 23 September 1998, § 56, *Reports* 1998-VII).

64. The Court notes in this connection that on several occasions the applicant's detention was reviewed by the domestic courts, which justified it by the danger of him absconding and the seriousness of the charges. The Court observes that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention "incorporates" the rules of that law: the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection (see *Kemmache v. France* (no. 3), 24 November 1994, § 37, Series A no. 296-C). Also, Article 5 § 1 (f) does not require that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his committing an offence or fleeing (see *Čonka v. Belgium*, no. 51564/99, § 38, ECHR 2002-I).

65. The Court notes, however, that the second request for the applicant's extradition to Turkmenistan, made in 2007, was based on the exact same

charges as the first one and that no new information was provided by the Turkmen authorities (see paragraph 29 above). The only difference between the first and the second requests was the date on which they were sent to the Bulgarian authorities. The order for the applicant's detention of 22 October 2002 issued by the Turkmen authorities was also the same. In this connection, it cannot be overlooked that the first extradition request had been rejected by a final judicial decision in May 2003 on the ground that the applicant could not have committed the alleged offence and that the criminal proceedings against him in Turkmenistan had been brought with a view to persecuting him for his political activities (see paragraph 16 above). Furthermore, under Article 65 of the 1975 Treaty, the main legal instrument governing the applicant's extradition and detention (see paragraph 46 above), the requested Party could take measures for the detention of the person concerned except in cases when extradition was not possible. The Court notes that under Article 61(г) of that Treaty, if criminal proceedings for the same offence had been brought in the requested Party and discontinued, that circumstance constituted an impediment to extradition. In the applicant's case, criminal proceedings had been brought in Bulgaria in relation to the same facts and discontinued on 16 February 2004 on the ground that no offence had been committed.

66. All of that shows that at the time of the second request for the applicant's extradition in 2007 there were strong indications that that extradition would be precluded under Article 61(г) of the 1975 Treaty. In the Court's view, when the authorities received the extradition request on 9 March 2007 and had to decide whether or not to extend the period of the applicant's detention, they were duty-bound by those provisions to assess whether extradition would be possible. However, neither the prosecutor nor the relevant courts appear to have carried out such an assessment. The Court finds that their failure to do so could not be considered compatible with the requirement of lawfulness and with the purpose of Article 5 of the Convention to protect individuals against arbitrariness.

67. Moreover, being based on a matter examined on two previous occasions by the Bulgarian authorities – once in the course of the first extradition proceedings and once again in the course of the Bulgarian criminal proceedings against the applicant – it appears that the second extradition proceedings were from their very beginning devoid of any purpose. Therefore, the applicant's detention with a view to his extradition was not justified from the outset. As a result of that, that detention could not be regarded as having being imposed with a view to his extradition and thus justified under Article 5 § 1 (f) of the Convention.

68. Therefore there has been a violation of Article 5 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

69. The applicant also complained under Article 3 about the conditions of his second detention, under Article 5 §§ 1 and 5 that his first detention pending extradition had been unlawful and that the authorities had failed to grant him compensation, and under Article 6 § 1 that the high amount of the state fee in the proceedings under the 1988 Act had obstructed his right to access to a court.

70. The Court has examined these complaints as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

71. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 2,650 euros (EUR) in respect of the non-pecuniary damage suffered as a result of his second detention pending extradition.

74. The Government contested that claim as exorbitant.

75. The Court considers that the applicant must have suffered anxiety and frustration as a result of the violation found. Accordingly, deciding on an equitable basis, it awards him the whole amount requested, that is, EUR 2,650.

B. Costs and expenses

76. The applicant also claimed EUR 2,050 in lawyer's fees for forty-one hours of work by his legal representatives, at EUR 50 per hour. He submitted a contract for legal representation and a time-sheet and requested that any amount awarded under this head be made directly payable to his legal representative, the Bulgarian Helsinki Committee.

77. The Government contested that claim as excessive.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads to be paid directly into the bank account of the Bulgarian Helsinki Committee.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 5 § 1 of the Convention concerning the applicant's detention pending extradition for the period from 19 February to 12 April 2007 admissible and the remainder of the application inadmissible;

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

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 2,650 (two thousand six hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account of the Bulgarian Helsinki Committee;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 3 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President