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CASES OF BELARUSIAN NATIONALS AT THE EUROPEAN COURT OF HUMAN RIGHTS

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Summary

Belarus is the only country in Europe which is not a member state of the Council of Europe; accordingly, it is not subject to the jurisdiction of the European Court of Human Rights (ECtHR, the judicial authority of the Council of Europe, established in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 1950). Yet the nationals of our country may lodge complaints with the Strasbourg Court against the governmental agencies of the 47 member countries of the Council of Europe. And they do exercise this right. For example, the ruling of the ECtHR on the complaint lodged by the public activist Igor Koktysh against Ukraine got widely publicized in the media, as well as the ruling on the complaint of one of the key figures in the Belarusian customs corruption case, Pavel Molotchko[1], lodged by him also against Ukraine.

Studying the practice of the ECtHR is of strategic importance, first, because at present the rulings of the ECtHR set the standards for the national courts in the European countries, including all the states neighbouring Belarus. And second, because Belarus will, sooner or later, have to refer to the practice of the ECtHR.

This research study systematizes all the decisions and judgments of the ECtHR in the cases of the nationals of Belarus. According to the findings, two thirds of their complaints were lodged against the Governments of Ukraine and Russia. 82% of the Belarusians' complaints to the ECtHR (23 out of 28) challenged the intention of the foreign governments to deport/ extradite/ expat the complainant to Belarus. The applicants in this case category refer to a violation of Article 3 of the ECHR, namely, to the probability of being subjected to torture or to inhuman or degrading treatment or punishment.

1 Pavel Molotchko has a double citizenship – both of Belarus and Germany. He filed his complaint application with the ECtHR as a national of Germany.

However, the standards of proof, applied by the ECtHR when considering a violation of Article 3, are rather strict. The ECtHR found a probable violation of that Article, in case the applicant is returned to Belarus, only in two cases related to the extradition or deportation (*Koktysh v. the Ukraine* and *Y.P. and L.P. v. France*). Besides, in 12 more cases filed by the nationals of Belarus, the ECtHR found some violations of the ECHR provisions on the part of the governmental agencies of the Council of Europe member states.

The analysis of the civil and political rights in Belarus, carried out by the ECtHR while hearing several cases involving the Belarusian nationals, and the precedents created while considering such complaints, actually mean that the nationals of Belarus able to provide the proves of their political activities and of the pressure of the authorities, to the extent satisfying the interpretation of Article 3 of the ECHR, in fact, cannot be deported or extradited by any of the 47 member countries of the Council of Europe.

Introduction

The self-isolation of Belarus and the non-participation of the country in the European integration processes is most evidently exemplified by the practice of the Council of Europe. Belarus is the only European country[2], which has neither joined the Council of Europe, nor signed the European Convention for the Protection of Human Rights and Fundamental Freedoms. Due to that fact, the Belarusian nationals, unlike the nationals of all the neighbouring countries[3], may not file their complaints against the public authorities with the European Court of Human Rights. The natural consequence of this unfortunate fact is the very low number of complaints lodged with the ECtHR by the Belarusian nationals, since the nationals of Belarus are enabled to complain only against the governments of the Council of Europe member countries.

Nevertheless, the former head of the Constitutional Court, Mr. G. Vasilevich, acknowledged the existence of the legal possibilities for the Belarusian judicial system to apply the provisions of the ECHR even without the membership of Belarus in the Council of Europe[4]. Besides, officially, until recently Belarus worked in cooperation with the international organizations on the implementation of the human rights standards. Thus, within the international project *"Promotion of a wider application of international human rights standards in the administration of justice in Belarus"*[5], the Belarusian judges, lawyers, prosecutors, representatives of the legislative and executive authorities and public organizations were provided with the four-volume collections of the international standards on human rights, which include, among other things, the decisions of the ECtHR and the UN Committee on Human Rights.

We should note that, in contrast to the complaints filed by the nationals of Belarus with the UN Committee on Human Rights, until recently the complaints lodged by the nationals of Belarus with the ECtHR remained out of the sight of the researchers[6].

This study systematizes all the cases of the Belarusian nationals, considered by the ECtHR. The texts of the relevant decisions and rulings were obtained from the ECtHR database[7]. The analysis mostly focuses on the largest category of the cases, challenging the deportation or extradition. The study explores the criteria which should be met by the complaint for the ECHR to recognize a violation of Article 3 (Prohibition of torture and inhuman or degrading treatment or punishment) if the Belarusian applicant is facing the threat of expulsion/extradition.

2 Excluding the Vatican and Kosovo (Kosovo is not a member of the UN; about a half of the sovereign states in the world have recognized the independence of Kosovo).

3 For comparison, only in 2011, the ECtHR issued 133 rulings in the cases of the nationals of Russia and 105 rulings in the cases of the nationals of the Ukraine. As of January 1, 2012, there were 151,600 claims in the pending lists of the ECtHR, 26% of which were filed by the Russian nationals. Russia is followed by Turkey (10.5%), Italy (9.1%), Romania (8.1%), the Ukraine (6.8%), Serbia (4.5%), Poland (4.2), Moldova (2.8%). See more detailed info: The Court of Human Rights in Facts and Figures, 2011, http://bit.ly/zAYe8A

4 Григорий Василевич. Возможности реализации Европейской конвенции о защите прав человека и основных свобод в практике Конституционного суда Республики Беларусь и национальных судов // Белорусский журнал международного права и международных отношений, 2000 - №3. (Grigoriy Vasilevich. Feasibility of implementation of European Convention for Protection of Human Rights and Fundamental Freedoms in practice of Constitutional Court of Belarus and national courts // Belarusian Journal of International Law and International Relations, 2000, #3.) Internet access (in Russian): http://evolutio.info/index.php?option=com_content&task=view&id=502&Itemid=53

5 The project was completed in September of 2009. It had been financed by the European Union and implemented by the UN Development Programme (UNDP), the UN Children's Fund (UNICEF) and the Ministry of Justice of Belarus.

6 Review of the most complaints filed by the nationals of Belarus with the ECtHR, without a more detailed classification and legal analysis, was published in 2010 in the publications at the legal portal prava-by.info. See eg: Елiсееў А. Агляд скаргаў грамадзянаў Беларусі ў Эўрапейскі суд па правах чалавеку, датычных экстрадыцыі (I). (A. Yeliseyeu. Review of complaints against extradition filed by nationals of Belarus with European Court of Human Rights (I)). Internet access (in Belarusian): http://prava-by.info/archives/5340

7 HUDOC database, http://www.echr.coe.int/ECHR/EN/HUDOC/

Section One, **Classification of Cases Filed by Nationals of Belarus with ECtHR,** categorizes the complaints of the nationals of Belarus.

Section Two, **Non-Refoulement Principle and Article 3 of European Convention on Human Rights,** explains the meaning of the non-refoulement principle in the international refugee law; briefly reviews the ECtHR practice in the field of extradition and deportation and the criteria applied for the evaluation of violations of Article 3 in the legal proceedings related to the deportation/ extradition.

Section Three, **ECHR Case Precedents in Cases of Nationals of Belarus Related to Article 3**, contains a brief analysis of the most significant cases challenging the extradition/ deportation.

The **Conclusion** contains the main findings of the study.

1. Classification of Cases Filed by Nationals of Belarus with ECtHR

Only 4 out of the 28 complaints, filed by the nationals of Belarus with and examined by the ECtHR, did not address the issues of deportation/ extradition[8] - *Markevich v. Poland*[1], *Fedorov v. Russia*[2], *Poyuta v. the Ukraine*[3], Yutov v. Moldova[4].

In one more case the repatriation of a minor to Belarus was considered (Giusto and others v. Italy")[5].

The rest of the cases, filed by the nationals of Belarus and considered by the ECtHR, can be categorized as follows.

Case Category	Recognized inadmissible due to being ill-founded	Struck out of list of pending cases	Examined on merits, judgement made
Deportation cases filed by nationals of Belarus with ECtHR	*V.Matsiukhina and A.Matsiukhin v. Sweden*[6]	*Mostachjov and others v. Sweden* [7]; *S. v. Finland*[8]; *V.B. v. France*[9]	*Y.P. and L.P. v. France*[10]
Extradition cases filed by nationals of Belarus with ECtHR	*Gordyeyev v. Poland*[11]; *Dobrov v. Ukraine*[12]	*Kulikovskiy v. Ukraine*[13]; *Stankevich v. Ukraine*[14]; *Bochkov v. Russia*[15]; *Angelova v. Russia*[16]	*Svetlorusov v. Ukraine*[17] *Bordovskiy v. Russia*[18] *Dubovik v. Ukraine*[19] *Kamyshev v. Ukraine*[20] *Kreydich v. Ukraine*[21] *Puzan v. Ukraine*[22] *Shchebet v. Russia*[23] *Novik v. Ukraine*[24] *Galeyev v. Russia*[25] *Koktysh v. Ukraine*[26] *Kozhaev v. Russia*[27] *Molotchko v. Ukraine*[28]

All the complainants, disputing their deportation, challenged the intention of the immigration authorities of the Council of Europe member countries to extradite them to Belarus on the basis of their fear of being subjected to cruel or inhuman treatment (Article 3, ECHR). The removal from the list of the pending cases was, in all of the cases, associated with successfully obtaining the legal status in the country of stay.

8 ***Deportation*** is the expulsion of a person or a class of persons to another State.
Extradition is the transfer of a person suspected or accused of committing a crime, or of a convicted criminal, by one State to another State (at the request of the latter).

In 11 out of the 12 complaints, examined on the merits and concerning the complainant's extradition (except for the case *Shchebet v. Russia*, in which Article 3 referred not to the fear of the complainant to be extradited to Belarus, but to the detention conditions), the Belarusian nationals claimed the risk of being subjected to inhuman treatment in the event of their extradition to their home country.

In all of the cases, except for the case *Bordovsky v. Russia*, the ECtHR found a violation of the certain paragraphs of Art. 5 (the circumstances and conditions of the detention for further extradition). However, only in one case (*Koktysh v. Ukraine*), the ECtHR found proven the special risk of inhuman treatment for the complainant in case of his extradition to the Belarusian authorities.

In the rest of the cases, the Court either recognized the arguments in favour of the complainant's personal circumstances to be ill-founded (*Kamyshev v. Ukraine, Puzan v. Ukraine, Galeyev v. Russia, Kozhaev v. Russia*), or did not consider the complaint under Art. 3 due to the cancelation of the extradition process or denial of extradition.

Thus, only in the two cases related to the deportation/extradition of the nationals of Belarus (*Y.P. and L.P. v. France* and *Koktysh v. Ukraine*), the ECtHR found that the return of the complainants to the country of origin would be a violation of Article 3.

Out of all the complaints, filed by the nationals of Belarus with and considered by the ECtHR, 12 were filed against the Ukraine, 7 against Russia, by 2 complaints against Poland, France and Sweden, by 1 complaint against Finland, Moldova and Italy.

Table: Distribution of complaints filed by nationals of Belarus with ECtHR against Council of Europe member countries

Country	***Number of complaints considered by ECtHR***
Ukraine	12
Russia	7
Poland	2
Sweden	2
France	2
Finland	1
Italy	1
Moldova	1

2. Non-refoulement Principle and Article 3 of European Convention on Human Rights

According to the international law, countries have the right to control their borders and decide whether to admit or deport the foreigners. However, while deciding on the extradition and deportation of the refugees, countries may not allow violations of their rights, which implies the absolute prohibition of torture and cruel, inhuman or degrading treatment.

The cornerstone of the refugee protection is the principle of **non-refoulement**. It means a ban on a forced return of a refugee to the country where he or she faces persecution or a potential threat of persecution. In this case, the legal or immigration status of the asylum seeker is not decisive. That is, it is not important for applying of the non-refoulement principle, whether the person has been exposed to the jurisdiction of the state legally or not, whether the person has the formal refugee status or not. [29]

In the certain international instruments this principle began to appear in the early XX century. After the Second World War, it was elaborated in full and included in the UN Convention relating to the Status of Refugees of 1951 . The principle of non-refoulement is fixed in a number of other international agreements, declarations and resolutions.[30]

According to Paragraph 1 of Article 32 of the UN Convention relating to the Status of Refugees, 1951, the States Parties undertake not to expel the refugees. But the non-refoulement principle is immediately followed by an exception: "…save on grounds of national security or public order".

In contrast to the UN Convention, while interpreting Article 3 of the European Convention on Human Rights (hereinafter *the Convention*), the European Court of Human Rights do not make any exceptions: the article is formulated in the absolute and conclusive terms. The *non-refoulement* principle applies even to the persons who have committed serious crimes or threaten the national security.

In their landmark judgment in the case ***Soering v. United Kingdom***[31], the ECtHR established the principle, according to which a State is in breach of its obligations under the Convention, if it extradites a person to another State where the person is likely to be subjected to inhuman or degrading treatment or torture in violation of Article 3. It reads as follows: *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment".*

The Great Britain intended to deport the national of Germany, Jens Soering, to the United States, where he was charged with premeditated double murder, for which he could face the death penalty in Virginia. The European Court considered that the likelihood of him being subjected to the death penalty in this case is a violation of Article 3.

> *"It would hardly be compatible with the underlying values of the Convention, that "common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed."*[32]

The ECtHR confirmed the applicability of the Soering precedent in the extradition cases while considering another landmark case: ***Chahal v. the United Kingdom***.[33] The case concerned the possible deportation to India of the Sikh nationalist, Singh Chahal, who was accused of the terrorist activities in the UK. The Court ruled that the UK is not entitled to extradite Singh Chahal, despite the assurances provided by Delhi that the terrorist would not be subjected to torture, even in spite of the severity of the crimes for which he was charged.

The UK Government claimed that the publicity of Chahal guarantees him the proper treatment. However, the Court found that Singh Chahal is particularly vulnerable to the possible torture and ill-treatment, since he appeared as a terrorist for the public opinion in Britain, and the Indian government failed to hold sufficient control over the actions of their security forces in the state of Punjab.[34]

In their decision in this case, the ECtHR, for the first time, articulated the absolute and unconditional ban on the return to the country of origin. The ECtHR found that the guarantees provided for in Article 3 are absolute in their nature and do not allow for exceptions.[35] However undesirable or dangerous the activity of the person was, it could not be taken as the essential fact in that case. In their subsequent decisions, the Court reaffirmed their commitment to the principles adopted in the Chahal judgment.[36]

In 1991, in their judgment in the case *Cruz Varas and others v. Sweden*[37] related to the deportation of the Varas family to Chile, the Court, for the first time, held that Article 3 applies also to the deportation cases:

> *Although the present case concerns expulsion as opposed to a decision to extradite, the Court considers that the above principle also applies to expulsion decisions and a fortiori to cases of actual expulsion.*[38]

In the same verdict, the Court voiced the rule, according to which, in order to comply with Article 3, the treatment must attain the minimal level of severity.[39] The relative nature of the evaluation of the minimal severity level [40] depends on all the circumstances of the particular case: the duration of this treatment, its effect on the physical and mental state of the person, and in some cases, on the sex, age and state of health of the complainant.[41] The judicial practice of applying Article 3 of the Convention led to the development of other specific standards and criteria used by the ECtHR[9].

To determine whether there is a risk of ill-treatment in the country of destination, the ECtHR examines the foreseeable consequences of the extradition or deportation for the complainant on the basis of the two criteria: the overall situation in the country and the personal circumstances of the complainant.

In assessing the overall situation in the country, the European Court of Human Rights have accepted the approach which calls into question the effectiveness of the "diplomatic assurances" given by the governments. When considering the complaints concerning the extradition and deportation, the ECtHR rather entrusts the monitoring of the international human rights organizations than to the diplomatic assurances. This specific feature of the ECtHR proceedings is also clearly visible in the cases of the Belarusian nationals who fear being returned to their home country.

Thus, the ECtHR have essentially examined the human rights situation in Belarus in the cases *Koktysh v. Ukraine*[42], *Puzan v. Ukraine*[43], *Y.P. and L.P. v. France*[44], and partly in the case *Kozhaev v. Russia*[45]. The first case focused on the application of the death penalty in Belarus, and the scope of abuse in the criminal justice system, for the complainant, Igor Koktysh, was charged with a crime for which in Belarus he was threatened with the capital punishment. The case of ***Puzan v. Ukraine*** primarily dealt with

9 For example, a violation of Article 3 in respect of seriously ill persons is recognized in the presence of the following three criteria: (a) the complainant is in the terminal phase of the disease, (b) the lack of support from the family or friends in the host country, and (c) no access to the appropriate health treatment in the host country. The decision of the Grand Chamber of the Court in the case of *N. v. the United Kingdom* is illustrative in this respect (N. v. The United Kingdom. Grand Chamber judgment, application no. 26565/05, judgement of 27 May 2008). A national of Uganda, infected with HIV and undergoing treatment for AIDS in the UK, filed an application for asylum. The British authorities denied the request, noting that the main drugs to treat AIDS in Uganda are provided at the prices subsidized by the state. 14 of the 17 judges of the Grand Chamber agreed with the conclusions of the British House of Lords (which serves as the highest appellate court of the country). Any violation of Article 3 was not found.

the political rights situation in the country. The protection of the civil and political rights, especially those of the powers' political opponents, was analyzed even more thoroughly in the verdict of the case of ***Y.P. and L.P. v. France***.

According to the law case of the ECtHR, the fact that the individual's conditions in the country of origin will be less favourable, is not sufficient to recognize a violation of Article 3. The complainant must provide the proves of him/her being personally imposed to a greater risk than an average national of the country or a representative of his\her social group.

For example, in the case of ***Vilvarajah and others v. The United Kingdom***[46] the ECtHR investigated whether the removal of the complainant to Sri Lanka will be in violation of Article 3. In the late 1980's, in that country there was a full-scale war between the government troops and the Tamil separatist groups [47] .

The Court found that the situation in Sri Lanka really remained unsettled. Although in the beginning of 1991 it improved, some sporadic fighting's still took place there. However, the complainants failed to have proved any particular risk for them personally:

> *"The evidence before the Court concerning the background of the applicants, as well as the general situation, does not establish that their personal position was any worse than the generality of other members of the Tamil community or other young male Tamils who were returning to their country… A mere possibility of ill-treatment, however, in such circumstances, is not in itself sufficient to give rise to a breach of Article 3."*[48]

As a result, then Court did not find a violation of Article 3 in the event of extradition.

As a rule, the Court takes into consideration the fact that the complainant belongs to the most vulnerable groups of the population in the certain country. Often, the certain population groups, such as the minorities, political opponents, journalists, human rights defenders are facing the most likely risk of being subjected to ill-treatment.

A brief analysis of the most iconic cases of the ECtHR examining the complaints of the nationals of Belarus about their deportation/extradition, is given in the following section.

3. ECtHR precedent cases of Belarusian nationals based on Article 3

Gordyeyev v. Poland

That was the first complaint filed by a national of Belarus with the ECtHR on the basis of Article 3 of the Convention[49]. In June of 1997, the Brest Region Prosecutors issued a warrant for the arrest of Vladimir Gordyeyev based on the charges of forgery and resale of stolen cars. A month later, he was arrested in Warsaw and appeared before the district court, which decided to detain him, while pending a decision on extradition.

Vladimir Gordyeyev filed a number of appeals to the competent authorities of Poland, presenting the report of the Belarusian Helsinki Committee about the human rights violations in Belarus for the period from December, 1997 to January, 1998. He claimed that his prosecution is the revenge on the part of the authorities for his opposition activities, that the charges had been fabricated on the basis of the false testimony given by a former KGB officer. The Belarusian said that he had been a member of the Belarusian National Front for many years and had received a silver medal for his work in that party. The Polish Foreign Ministry held the appropriate investigation and found no evidence to that effect.

The ECtHR noted that the risk of being subjected to treatment which contradicts Article 3, is assessed not only on the basis of the overall situation in the country, but also through the presence of the personal reasons to fear such treatment. The statements of being involved in the political opposition, as it turned out, were not unveracious: Gordyeyev did not know even the basic information about the party (BNF), to which he claimed to belong.

The Court also found non-substantiated the complaints of Gordyeyev on violation of Articles 5, §§ 1 and 3 (claiming that his detention had been illegal and had exceeded a reasonable time) and 8 (claiming that the correspondence had been opened and delayed by the Polish authorities). As a result, having examined the allegations made in the complaint, the Court found no violation of the Convention articles and acknowledged the complaint inadmissible.

Koktysh v. Ukraine

The case *Koktysh v. Ukraine* [50] is the only extradition case, in which the ECtHR found a violation of Article 3 of the Convention in case of the complainant's extradition to Belarus.

In December of 2001, the Brest Regional Court acquitted Igor Koktysh (YOB 1980), who was accused of the murder and robbery, for which he was facing the punishment up to the death penalty. The Belarusian court found that during the investigation the methods of physical and psychological pressure had been applied against him in order to secure false confessions. In February of 2002, the Supreme Court of Belarus upheld this decision.

However, in May, during the emergency procedure handling the prosecutorial protest, the Presidium of the Supreme Court overturned the previous decisions, and the criminal investigation was resumed. In the same year, Igor Koktysh moved to the Ukraine, where he later got married.

In June of 2007, he was arrested by the Ukrainian police on the warrant issued by the Belarusian side. Since the end of the June, he was detained in the temporary detention in Sevastopol. The conditions were very bad there: there were about 20 people there, kept in a small dirty cell, without the adequate ventilation and lighting, with only two beds. Although most of them were smoking, Igor was not provided with any medicines for his asthma. In early July, he was transported to the Sevastopol jail. The conditions there were not much better.

On October 8, Igor Koktysh filed a complaint with the European Court, complaining of violation of the right for liberty and security (Article 5 §§ 1, 4, 5), Articles 3 and 6 (the conditions of detention and transportation). He also claimed, that if extradited to Belarus,

he could be subjected to the death penalty in violation of Article 2 of the Convention. This would also cause a violation of Articles 3 and 6 (the risk of an unfair trial.)

The Court analyzed the human rights situation in Belarus and came to the conclusion that the torture and ill-treatment were documentally proved, and moreover there were serious problems related to the international cooperation of Belarus in the field of human rights. The Court noted that they are not in a position to assume the possible outcome of the trial for the complainant in Belarus, but even the Belarusian courts had already found the evidences of the improper treatment of Igor Koktysh.

> *"…the mere possibility of the imposition of capital punishment together with the prospect of an unfair trial, given the quashing of a final decision in the applicant's case, is sufficient in the Court's view to conclude that such situation generates for the applicant a sufficient anguish and mental suffering to fall within the ambit of Article 3".*[51]

The Court considered that there was no need to consider the abuses under Articles 2 and 6.

The Court also found a violation of Articles 3 and 13 related to the conditions of detention and transportation, proceeding from the reports provided by the Ukrainian Commissioner for Human Rights and the Committee for the Prevention of Torture of the Council of Europe. Also a violation of Article 5 §§ 1, 4 and 5 was found, since in the Ukrainian legislation does not contain the provisions on detention for the subsequent extradition procedures and the review of the detention legality. Neither does Ukrainian legislation provide for the right for compensation for such violations. The Court ruled that the Ukrainian government was to pay 7,000 Euros to Igor Koktysh for the non-pecuniary damage.

Puzan v. Ukraine

One more extradition case, in which the complaint against the violation of Article 3 was considered acceptable (but, unlike in the case of *Koktysh v. Ukraine*, not proven) was the case of *Puzan v. Ukraine*[52].

After his arrest in September of 2008 in the Crimea, Dmitry Puzan (YOB 1980) was detained in the Sevastopol jail, awaiting the extradition to Belarus. He was accused of purchasing psychotropic drugs illegally. And before that, in Belarus, Dmitry had already been twice convicted of the crimes related to drugs. In 2004, he was sentenced to four years and three months in prison, served a part of the sentence and was released under an amnesty.

In October of 2008, he filed a complaint with the European Court of Justice, and the Court, pursuant to Rule 39 of the Rules[10], instructed the Ukraine to postpone the extradition until the proceedings in the Court.

Dmitry Puzan complained under those same articles of the Convention, as Igor Koktysh did: 3, 6 §1, 13 in case of extradition, and 5 §§1(f) and 4 (the right to liberty and security). He claimed that he had been illegally detained and had had no opportunity to challenge the lawfulness of his detention. In addition, Dmitry Puzan complained under Article 34 on the interference with his right to appeal (allegedly, the assistant prosecutor had prevented him from filing a complaint with the European Court).

In contrast to the case of Igor Koktysh, Dmitry Puzan presented no evidence of the improper treatment on the part of the judicial or prison authorities of Belarus. He also failed to prove his belonging to any vulnerable social group. The Court pointed out that the available international instruments indicate the serious problems in the sphere of human

10 The preliminary measures provided for in Article 39 of the Rules of the Court, are applied primarily in the expulsion and extradition cases to prevent the departure of the complainant to a country where he or she may be subjected to treatment contrary to Article 2 or 3 of the Convention. The preliminary measures of ECtHR mean that the countries should refrain from any action that could affect the examination of the complaint by the Court.

rights in Belarus (see the next subsection), but considered unproven the presence of any personal circumstances:

> *«[R]eference to a general problem concerning human rights observance in a particular country cannot alone serve as a basis for refusal of extradition. In this regard, the Court notes that the applicant does not claim that he belongs to the political opposition, which is widely recognised as a particularly vulnerable group in Belarus, or to any other similar group. Nor did he refer to any individual circumstances which could substantiate his fears of ill-treatment and unfair trial.*[53]

The Court found no evidence of a violation of Article 34 of the Convention, but found a violation of Article 5 §§1 and 4 due to the imperfection of the Ukrainian legislation as regards detention for further extradition. Dmitry Puzan was awarded EUR 5,000 for non-pecuniary damage and EUR 523 for the legal costs.

Kamyshev v. Ukraine

One more case related to the extradition of a national of Belarus, in which the complaint under Article 3 was considered ill-founded, was the case of *Kamyshev v Ukraine*[54]. Oleg Kamyshev (YOB 1960) claimed that in 2004, the Belarusian investigators pressed him, so that he would give a false testimony against the deputy head of the Customs Committee who had been arrested a year earlier.

He went to his family to Zhitomir (the Ukraine), and in early 2005, received a residence permit in the Ukraine. That summer, in Belarus, a criminal case was opened against him based on the charges of abuse of power in 2002 – 2003., for which he could be imprisoned for up to 10 years. The Ukrainian authorities detained Oleg Kamyshev, and the court made a decision about his detention in custody, while pending a decision on his extradition.

In his appeal to the Ukrainian authorities, this Belarusian said that the charges against him are a part of the political campaign against a number of the high-ranking officials in the customs authorities, the aim of which is to demonstrate the success of the "fight against corruption". During his detention, Oleg Kamyshev suffered two heart attacks. In January of 2006, he complained to the European Court.

Regarding the human rights situation in Belarus, the Court referred to in the analysis in the case of *Puzan v. Ukraine.* As for the complainant's personal risk to undergo undue treatment, the Court stated as follows:

> *«The applicant's allegations that any criminal suspect in Belarus runs a risk of ill-treatment are too general and there is no indication that the human rights situation in Belarus is serious enough to call for total ban on extradition to that country. The applicant's allegations that the customs officers under suspicion of corruption constitute a separate vulnerable group is not supported by any evidence either. Therefore, it cannot be said that the applicant referred to any individual circumstances which could substantiate his fears of ill-treatment.»*[55]

Thus, the part of Oleg Kamyshev's complaint which fell under Articles 3 and 6 (and therefore 13) was found to be unsubstantiated. At the same time, the Court found violations of Article 5 §§ 1 and 4. The Court did not consider the question of awarding a compensation, since the complaint did not contain such a request.

Y.P. and L.P. v. France

The only deportation case on a complaint filed by a national of Belarus, in which the ECtHR took the decision on the merits (and found a violation of Article 3 in case of expulsion) was the case of *Y.P. and L.P. v. France*[56].

The member of the Belarusian National Front, Yuri Pchelnikov (YOB 1966) and his wife (YOB 1967), beside from a violation of Article 3 of the Convention, complained also about the living conditions in France and the denial of the local authorities to grant asylum under a large number of the articles (Articles 1, 2, 6, 13 and 14 of the Convention; Articles 1 and № 2 of Protocol 7), but only a part of their complaint under Article 3 was recognized as admissible.

The Pchelnikovs family left Belarus in late 2004 with their two young children, trying to escape the persecution by the Belarusian authorities for the political activities of the husband, Yuri Pchelnikov. In 1999 – 2004 he was repeatedly arrested, detained and beaten by the Belarusian law enforcement officers. Some of these cases were recorded in the periodical press and the excerpts from the reports of the Human Rights Centre "Viasna."

His son, born in 1990, who took part in the activities of the Young Front (the youth wing of the Belarusian National Front), was also was arrested and intimidated. For his participation in the action on May 1, 2004, he was arrested and beaten by the police in the Department for Internal Affairs. The doctors diagnosed the brain injury and concussion.

In February of 2005, on their arrival in France, the family petitioned for asylum to the French Office for the Protection of Refugees and Stateless Persons (OFPRA). The French authorities denied the petition, having found that it had not been adequately justified. Yuri witnessed the signs of being beaten, and his wife proved the state of anxiety and depression, associated with the psychological trauma received in Belarus. But the Commission for the Refugee Appeal left the OFPRA's decision in force.

The repeated petitions were unsuccessful. In March of 2008, the French authorities once again issued a deportation order for the family. The family filed a complaint with the European Court of Human Rights, and the Court instructed France to suspend the deportation.

The ECtHR analyzed the human rights situation in Belarus (with an emphasis on the civil and political rights and the position of the political opposition members), on the basis of the international documents and reports. The analysis confirmed that the political opposition in Belarus is a particularly vulnerable group, and that the state authorities continue practicing harassment and intimidation of their political opponents.

The Court also considered to be proved the fear of Yuri Pchelnikov to be subjected to the treatment contrary to Article 3 of the Convention, if deported to Belarus, because during his active political work as a member of the opposition party, he was repeatedly arrested, threatened and assaulted by the Belarusian authorities.

Referring to the international legal standards, the Court did not exclude the risk for the wife of Yuri, as a close relative of a political opponent, to be also subject to intimidation, coercion or abuse, if she returned to Belarus.

As a result, the Court held, unanimously, that the deportation of the complainants to Belarus would be a violation of Article 3 of ECHR. However, the complainants were not awarded any compensation for the pecuniary and non-pecuniary damage.

Conclusion

To date, the European Court of Human Rights have considered 28 complaints filed by the nationals of Belarus against the Governments of the Council of Europe member countries. Most of them (23) refer challenged the deportation to Belarus or extradition to the Belarusian law enforcement authorities. In this complaint category, the complainants allege the violation of Article 3 of the Convention, namely, the probability of being subjected to torture or to inhuman or degrading treatment or punishment.

The criteria, developed by the ECtHR, as regards the application of Article 3, are strict enough. Only in one case, contesting the deportation (*Y.P. and L.P. v. France*), the ECtHR found a violation of Art. 3 in the case of the complainant's return to Belarus. The Court considered proven the complainant's belonging to a particularly vulnerable population group – the political opposition. The analysis of the situation with the human rights in Belarus, conducted by the European Court, found that the political activists constitute a vulnerable group of people with the most probable risk of being mistreated.

As for the rest of the complaints challenging the deportation, the ECtHR have either declared them inadmissible due to being unjustified, or removed them out of list of the pending cases in connection with legal status in the host country obtained by the complainants.

In one case concerning the extradition (*Koktysh v. Ukraine*), the ECtHR found a violation of Article 3 in the case of the complainant's extradition to Belarus, taking into account the facts that called into question the objectivity of the Belarusian justice in relation to the applicant, and the principle of non-extradition of a person to a country where he could face the death penalty. In all other cases on extradition of the nationals of Belarus, the ECtHR did not see violation of Article 3 of the Convention, either due to the termination of the extradition proceedings, or in connection with the failure to prove the individual circumstances. However, in most of the cases ECtHR found a violation of Art. 5 related to the detention procedures.

Three of the four cases, involving the nationals of Belarus, which did not relate to the complainants' deportation or extradition, were removed from the list of the pending cases, and only one of those four cases was considered on the merits (*Nikolai Fyodorov v. Russia*), and the resolution was adopted. The Court found to be proved the violation of Art. 3 related to inhuman and degrading treatment of the complainant in detention and the lack of a proper investigation of such facts by the public authorities.

In a number of the complaints, the nationals of Belarus provided misrepresenting information about their alleged opposition activities, which were debunked by the ECtHR (*V. Matyukhin and A. Matyukhin v. Sweden, Gordyeyev v. Poland*).

The provision contained in Article 3 of the ECHR actually makes it impossible for Belarus (and other countries where the death penalty is applied) to make the Council of Europe extradite persons facing the death penalty. This principle, along with the other complainant's personal circumstances, was followed by the ECtHR in the case of *Koktysh v. Ukraine*. At the same time, the very existence of a certain likelihood of imposition of the death penalty on the claimant in the case of re-qualification of the charges (*Kozhayev v. Russia*) is not a basis for finding a violation of Article 3 in the case of the complainant's extradition.

The analysis of the civil and political rights in Belarus, carried out by the ECtHR while considering a number of complaints from the nationals of Belarus, the cases of *Puzan v. Ukraine*, and *Y.P. and L.P. v. France*, and the precedent in case of *Y.P. and L.P. v. France* actually mean that the nationals of Belarus able to provide the proves of their political activity and the pressure on the part of the authorities to the extent satisfying the

interpretation of Article 3 of ECHR, in fact, cannot be deported or extradited by any of the 47 member countries of the Council of Europe.

It seems that, until the human rights situation in Belarus is actually improved, the Belarusians' complaints lodged with the European Court of Human Rights will still mostly concern the deportation and extradition. Within the scope of Article 3 of the European Convention, the European Court, on the basis of the previous case law, will take decisions in favour of the political activists and members of other vulnerable groups who are under pressure at home.

Annex 1.
Non-deportation/non-extradition ECHR cases involving Belarus nationals.

Case title, Date of decision / judgment	Brief description of the complaint and facts of the case	Decision or judgment on the case
Aleksandr and Tatyana Poyuta v. Ukraine 11.12.2006	Belarusian nationals Aleksandr and Tatyana Poyuta complained about the inaction of the authorities in the execution of a court sentence (Article 6 §1 and Article 1 of Protocol 1, as well as Article 1, 4, 5 and 8). The municipal court of the city of Torez issued a decision in June 2002 for state enterprises of the city to pay the applicants agreed amounts of money as arrears in wages. The verdicts were executed as late as August 2005.	Struck out of the list of cases, because there was no response from the applicants required to continue the legal proceedings.
Mihail Jutov v. Moldova 18.11.2008 (lodged on 26.10.2004)	The complaint under Article 6 §1 with respect to a violation of the right to fair trial in connection with the non-execution of sentence, as well as Article 1 (responsibility of the state in the death of his daughter). In 1991, the applicant's daughter died as a result of an accident due to the fault of a tractor driver. In 1994, a district court ordered the state farm, which owned the tractor, to pay the applicant a fixed amount of money (about 940 euros) in respect of non-pecuniary damage. For various reasons, the sentence was not executed as of the date the case was heard by the ECHR.	The application is struck out of the list of reviewed cases because of the applicant's failure to respond
Markevich v. Poland 01.06.2010	A complaint lodged by a Belarusian citizen arrested on suspicion of drug trafficking in an organized criminal group. He remained in detention throughout the period of investigation; charges were brought only 2.5 years later. During the more than five years of his detention (February 2002 through October 2007), court sessions were held only twice. He complained under Article 5 §3 (duration of pre-trial detention), Article 6 §1 (inadequate duration of criminal proceedings), Article 6 §1 (a) (absence of translation when charges were brought), and Article 8 (limited private meetings during his pre-trial detention).	Struck out of the list list of cases following the partial satisfaction of the applicant's claims by the Government of Poland and because the complaint was partially ungrounded.
Nikolay Fedorov v. Russia 05.04.2011 (lodged on 30.01.2004)	The applicant was arrested on suspicion of armed robbery and was subsequently sentenced to seven years in prison. He was brutally beaten by the officers of the detention center during the investigation. The medics registered beating, but the prosecutor's office held that the use of physical force was justified and lawful. He complained about inhuman and degrading treatment in the detention center and absence of proper investigation into his complaint in this respect (Articles 3 and 13 of the Convention), as well as the lack of an independent tribunal and passing of sentence based upon insufficient evidence (Article 6).	The ECHR found a violation of Article 3: inhuman and degrading treatment and absence of proper investigation into the use of force against the applicant. The ECHR awarded him 9,000 euros in respect of non-pecuniary damage.

Annex 2.
Deportation-related ECHR cases involving Belarus nationals.

Case title, Date of decision / judgment	Brief description of the complaint and facts of the case	Decision or judgment on the case
Vasilina Matsiukhina and Aliaksandr Matsiukhin v. Sweden 21.06.2005	The applicants challenged the decision of the Swedish immigration service on their deportation and complained under Article 3 of the Convention in case of their extradition. Vasilina Matsiukhina maintained that as a staff member in one of the Belarusian Republican Youth Union (BRSM) offices she had learnt about illegal economic activities of the organization. In this connection she allegedly filed a report with law-enforcement agencies. Then she received a court summons and was threatened by unidentified people. The second applicant, her spouse Aliaksandr Matsiukhin, claimed that he had lost his business because of the pressure of the authorities.	The ECHR held that the complaint was inadmissible, because it found that the facts submitted by the applicants were unreliable.
Dmitrij Aleksandrevich Mostachjov and others v. Sweden 17.01.2006	Dmitrij Mostachjov, his spouse Tatiana (a Russian national) and their son complained that in case of their deportation to Belarus, the Swedish authorities would violate Article 3 of the Convention. Mostachjov claimed that he had been a member of the Party BPF and had been fired because of his political activity. He was allegedly beaten by the police and unidentified men, who threatened him. The Swedish immigration service believed that the information was unreliable.	The application was struck out of the list of reviewed cases, because the Swedish authorities annulled their deportation decision and granted the applicants permanent residency on humanitarian grounds (the son's medical condition).
S. v. Finland 26.02.2008	Applicant S. complained about the decision of the Finnish migration service on his deportation. Apart from Article 3 of the Convention, the complaint was lodged under Article 6 (denial of the right to fair legal examination of his application for refugee status). He claimed that he had worked for the Belarusian KGB in 1985-1995, but then resigned for political reasons. He later became member of the United Civil Party (UCP), where he was responsible for confidentiality, "*collected and distributed information about the activitis of the Lukashenko regime*." In 2000-2001, he was allegedly arrested, tortured, survived an assassination attempt, and the assets of his company were confiscated.	The application was struck of the list of reviewed cases, because the Finnish authorities granted S. refugee status and issued a temporary residence permit. The Finnish Directorate of Immigration originally considered the data provided by the applicant to be unreliable.
V. B. v. France 09.09.2008	V.B. complained about the decision of the French migration service on his deportation. Apart from Article 3, he referred to a violation of Article 8 (right to respect for private and family life), Article 10 (right to freedom of expression). The complaint under Article 8 was in respect to his separation from his spouse and daughter, who lived in France, and that under Article10 was in respect to the barriers to free political activities in Belarus. He claimed that he had left Belarus because of the persecution by the authorities caused by his political activity.	Struck out of the list of reviewed cases, because the applicable French authorities annulled the original decision of the migrations service and granted V.B. refugee status.

Y.P. and L.P. v. France 02.09.2010	Apart from Article 3 of the Convention, member of the Party BPF Yury Pchelnikau and his spouse complained about the living conditions in France and refusal of the local authorities to grant them refugee status based upon a number of articles of the Convention (Articles 1, 2, 6, 13, 14 and Articles 1 and 2 of Protocol 7). The Pchelnikaus left Belarus in late 2004 with two minor children fleeing from persecution by the authorities for Yury's political activity. During 1999-2004, he was repeatedly arrested, detained and beaten by the Belarusian law-enforcement agencies. His son, born in 1990, a member of Molodoi Front movement, was also arrested and intimidated.	The ECHR found that the deportation of the applicants to Belarus would violate Article 3, because the applicant had been assaulted for his political activity. No sum was awarded in respect to pecuniary or non-pecuniary damage.

Annex 3.
Extradition-related ECHR cases involving Belarus nationals.

Case title, Date of decision / judgment	Brief description of the complaint and facts of the case	Decision or judgment on the case
Gordyeyev v. Poland 03.05.2005 (lodged in 1998)	Gordyeyev, a Belarusian national, was arrested in Poland in July 1997 based upon a request from the Belarusian side on charges of forgery of documents and sale of a stolen vehicle. The applicant claimed that the evidence was faked-up and was the revenge of the authorities for his activity as a member of the opposition. The ECHR found the statements about the applicant's being an opposition activist to be unreliable, and complaints about violations of Article 5 §§1 and 3 (the arrest was unlawful and his detention was unreasonably long) and Article 8 (his letters were allegedly opened up and withheld by the Polish authorities) were considered ungrounded.	The Court found no violations of any of the articles of the Convention and declared the application inadmissible.
Dobrov v. Ukraine 14.06.2011	Dobrov, a Belarusian entrepreneur providing financial assistance to the opposition, complained about the pressure from the authorities. Following his arrest in March 2006 he allegedly started receiving anonymous threats and suffered attempts of extortion by financial agencies that demanded a large bribe. In December 2008, he left Belarus for Ukraine and applied for refugee status in June 2009. He was put on the wanted list by the prosecutor's office of Belarus in connection with charges of illegal entrepreneurship. In July 2009, he was arrested four times by the Ukrainian police based upon a request of the Belarusian side, but was released every time. He complained that, if extradited to Belarus, he would be subjected to torture and unfair trial, which runs counter to Articles 3 and 6 §1 of the Convention, and would not have access to adequate legal instruments (Article 13).	The complaint was found inadmissible, because as of the date the complaint was considered by the ECHR, the Ukrainian applicable authorities did not decide on his extradition to Belarus. Also, by the time the complaint was reviewed, amendments had been introduced to the Criminal Code introducing the possibility of appealing against the decision on extradition made by the prosecution authorities.
Kulikovkiy v. Ukraine 04.11.2008	The Belarusian entrepreneur left Belarus in December 2006, claiming that he had been constantly threatened by the authorities because of his activity as an opposition member. He submitted a copy of a letter from the chairman of the United Civil Party, which confirmed his involvement in rallies and efforts to finance printing of opposition literature. In January 2007, the Belarusian State Control Committee accused the applicant of submitting misleading information in order to take a bank loan. In November 2007, he was arrested in Kyiv based upon a warrant issued by the Minsk prosecutor's office. As of the date the decision was made by the ECHR, he remained in the detention center, appealing against the lawfulness of his arrest in a local court. He complained under Articles 3, 6, 13, 5 §§1, 4 and 5 of the Convention.	In July 2008, he informed the ECHR that he withdrew his complaint. He did not provided reasons. Kulikovskiy's lawyers also confirmed his intention to withdraw his complaint. The ECHR struck it out of the list of cases for further review.

Stankevich v. Ukraine 26.05.2009	The applicant was arrested by Ukrainian law-enforcement agents in July 2007 following a request filed by the Prosecutor General of Belarus on suspicion of smuggling and illegal entrepreneurship. In late August, the Prosecutor General's Office of Ukraine decided in favor of his extradition. The appeals against the extradition decision were rejected by local courts. In August 2008, the applicant died; his brother decided to continue the proceedings in the ECHR on his behalf. The applicant complained that in case of extradition he was running the risk of torture and unfair trial (Articles 3 and 6), about the absence of adequate legal instruments (Article 13) and under Article 5 §§1, 4 and 5 (unlawful arrest and absence of compensation).	The ECHR found that the death of the applicant suspended the extradition procedure in his regard; therefore, the complaint under Articles 3, 6 and 13 of the Convention were inadmissible. The ECHR also found that the rights in the framework of Article 5 are so closely linked to the person of the original applicant that they cannot be regarded as transferable, including to a close relative. As a result, the application was struck out of the list of the Court cases.
Bochkov v. Russia 03.07.2008	In March 2003, the applicant was arrested in Moscow based upon a request by the General Prosecutor's Office of Belarus on suspicion of armed robbery. The applicant resorted to services of a translator into the Belarusian languages while in a district court of Moscow. In June 2003, he was extradited to Belarus. He complained under Article 5 §§1-4 and Article 6 about the poor quality of translation during the hearings in the Moscow court and violations of the extradition procedure. The applicant also complained about the absence of effective legal instruments with respect to his arrest (Article 13) and national origin discrimination (Article 14). Bochkov also claimed that he had been extradited prior to the date on which his appeal was considered, and had been unable to attend the hearing in the highest courts of Russia (Article 1 of Protocol 7).	The applicant failed to submit his written remarks to the ECHR and did not respond to the repeat notice. The ECHR decided that the applicant had no plans to continue the trial and struck the application out of its list of cases.
Angelova v. Russia 11.12.2008	In January 2001, the applicant, who worked for the marketing department of Minsk Tractor Works, was sent on a business trip to Egypt for two years. In February 2002, the prosecutor's office of Belarus instituted criminal proceedings on suspicion of bribery; the applicant was recalled from the trip. On her way back she was administered to hospital in Moscow. In April 2002, she was arrested in Moscow upon the request of the Belarusian side and placed in a detention center; in May 2002, she was extradited to Belarus. In June, she was released from detention; In April 2004, the criminal proceedings were terminated for absence of elements of crime in her acts. She complained about violations of Article 5 §§1, 3 and 4 (unlawful detention, failure to give reasons for the arrest, failure of a Moscow court to consider her complaint about the arrest).	The application was struck out of the list of cases for further review, because the applicant did not provide her remarks concerning the comments made by the Russian government in due time.

Svetlorusov v. Ukraine 12.03.2009	In December 2004, the applicant was arrested in Ukraine on the basis of the arrest warrant of the Grodno Prosecutor's Office (extortion charges). He complained to the ECHR and simultaneously appealed against his arrest with a view to eventual extradition in local courts, and requested for refugee status. The migration service declared the application warranted and noted that Grigoriy Svetlorusov's friends, Y. Kravtsov and A. Klimov, businessmen linked to the opposition, had had an unfair trial and had been subjected to torture in Belarus. In September 2005, Grigoriy Svetlorusov was granted refugee status by the State Migration Committee; he was released in November 2005. The applicant complained about violations of Articles 3, 6 (1), 5 §§1 [2] (unlawful arrest and detention), Article 4 (inability to appeal against his arrest and detention) and Article 5 (inability to receive compensation for unlawful arrest) of the Convention.	The Court deemed consideration of complaints under Articles 3 and 6 (1) irrelevant, because by the time of the proceedings the Belarusian side had been denied extradition, which effectively removed the risk of the applicant under the declared articles. The Court reiterated that the Ukrainian legislation failed to ensure sufficiently accessible, precise and foreseeable procedures in order to avoid all risks of arbitrariness in the process of arrest with a view to further extradition. The Court unanimously found violations of Article 5 §§1, 4 and 5 of the Convention and awarded the applicant 3,000 euros in respect of non-pecuniary damage and 100 euros in respect of costs and expenses.
Bordovskiy v. Russia 08.02.2005 (lodged in October 1998)	In July 1998, the applicant was arrested by the Russian police in St. Petersburg based upon a warrant issued by the Belarusian side (criminal proceedings were instituted back in 1996; the applicant was suspected of large-scale fraud and embezzlement). He was placed in a temporary detention unit. According to the applicant, the policemen did not inform him of the reasons for his arrest and failed to produce any documents justifying it. In his application to the ECHR Bordovskiy claimed that he had learnt about the nature of the accusation from a senior investigator of the Belarusian General Prosecutor's Office, who had come for this purpose from Minsk. In November 1998, he was handed over to the Belarusian authorities. One year later, a District Court of Gomel convicted Igor Bordovskiy and sentenced him to three years' suspended imprisonment with compulsory community work. Besides Articles 3, 6 §§2 and 3 and Article 13, he complained that his arrest in Russia for further extradition was unlawful, that he had not been properly informed about the reason for the arrest and was unable to appeal against his arrest in a court of law (Articles 5 §§1, 2, 3, 4).	The Court did not find violations of the domestic extradition procedure. It also held that Bordovskiy had been informed of the reasons for his arrest, as he had been told that he was wanted by the prosecutor's office. The ECHR did not establish whether Bordovskiy's lawyer had really appealed against his arrest in Russian courts. The copies of documents produced by the applicant had no dates or signatures. As a consequence, the Court held that there were no violations of any of the Article 5 paragraphs, under which the applicant's complaints had been declared admissible.

Dubovik v. Ukraine 15.10.2009	In June 2007, the applicant was apprehended by Ukrainian law-enforcers under an arrest warrant issued by the General Prosecutor's Office of Belarus (on suspicion of human trafficking and organized crime). The local court ordered the applicant's detention pending an official decision on her extradition. In July 2007, the applicant applied for refugee status in Ukraine. By March 2012, she had been granted refugee status, but her lawyer's application for her release was rejected. The General Prosecutor's Office and State Migration Committee filed numerous appeals against each other's decisions with Ukraine's highest judicial agency. In February 2009, the Ukrainian General Prosecutor's Office ordered to release the applicant based upon a request from the General Prosecutor's Office of Belarus to suspend the extradition procedure because of the expiration of the maximum 18-month time-limit for the applicant's pre-trial detention. On this ground the applicant was released on the same day.	The Court found that the complaints under Articles 3 and 6 were no longer relevant, as there was no longer any risk of extradition. Consequently, there was no need to consider the applicability of Article 13 of the Convention. At the same time, the ECHR found violations under Article 5 §§1, 4 and 5 and awarded the applicant 5,000 euros in respect of non-pecuniary damage.
Kamyshev v. Ukraine 20.05.2010	In July 2005, the applicant was apprehended by the Ukrainian police (he moved to Ukraine in 2004). Criminal proceedings were instituted against the applicant in Belarus for abuse of power. The applicant claimed that the case was part of a politically motivated campaign against some senior custom officers in order to demonstrate that there was an ongoing successful "fight against corruption". The Belarusian citizen indicated that in 2004 the investigating authorities put pressure on him to testify against Deputy Chief of the Belarusian Customs Committee who had been arrested one year earlier. A Ukrainian court decided that the applicant should remain in detention awaiting the decision on the extradition to Belarus; however, the extradition decision was later annulled. It turned out later that the court committed a serious legal error, because only the General Prosecutor's Office of Ukraine is entitled to annul an extradition decision. Kamyshev, released by court order, has since then been in hiding, and his whereabouts are not known to the Ukrainian authorities. Nevertheless, this did not prevent the ECHR from considering the case.	When considering the application under Article 3, the ECHR found that the personal risk run by the applicant fell short of the established criteria. As a result, a part of the application under Articless 3 and 6 (and, consequently, Article 13), was found inadmissible. At the same time, the ECHR found a violation of Article 5 §§1 and 4.The Court did not award the applicant any sum, as Kamyshev had not submitted a claim for just satisfaction.
Kreydich v. Ukraine 10.12.2009	In mid-2006, Kreydich left Belarus as he had been invited to work as a coach for the national free-style wrestling team of Ukraine. In June 2007, the General Prosecutor's Office of Belarus instituted criminal proceedings against the applicant for aiding and abetting bribery. Since his whereabouts were unknown, a warrant for his arrest was issued. Subsequently the General Prosecutor's Office of Belarus brought additional charges against Kreydich. The applicant was arrested in Ukraine and remained in detention pending a decision on his extradition. In November 2007, the General Prosecutor's Office of Ukraine authorized the applicant's extradition to Belarus. Extradition was postponed upon the request of the ECHR. In April 2008, the applicant was granted refugee	Because as of the day the case was considered the applicant was released and the extradition procedure was halted, the application under Articles 3, 6 §1 and 13 of the Convention was found inadmissible. The Court found a violation of a nnumber of paragraphs of Article 5 and awarded Kreydich 3,500 euros in respect of non-pecuniary damage.

	status in Ukraine by the State Migration Committee. Legal proceedings between the State Migration Committee and the General Prosecutor's Office followed. In November 2008, the Ukrainian General Prosecutor's Office refused to extradite Kreydich to Belarus. He was released on the same day. The applicant complained to the ECHR under Articles 3, 6 §1 and 13, as well as Article 5 §§1, 3 and 4 (was unable to appeal against his arrest, detention and subsequent decision on his extradition in national courts and was denied his right to have compensation for the time spent in detention).	
Puzan v. Ukraine 18.02.2010	In September 2008, the applicant was arrested by the Ukrainian police. He was then detained in Simferopol pre-trial detention centre awaiting his extradition to Belarus. Criminal proceedings were instituted against the applicant on suspicion that he had illegally purchased a psychotropic substance. The applicant had already been convicted twice in Belarus for drug-related offences. In October 2008, he applied to the ECHR, which instructed Ukraine to postpone the extradition decision until the case was considered. The applicant complained under Articles 3, 6 §1, 13 in case of extradition, and Article 5 §§1 (f) and 4 (right to liberty and security). He claimed that he was arrested unlawfully and had no possibility to appeal against the lawfulness of his detention. Furthermore, Puzan complained about a violation of Article 34 of the Convention in respect to his right to appeal to the Court (the assistant prosecutor allegedly deterred him from applying to the ECHR).	The ECHR found that there was not sufficient evidence of the applicant's belonging to any of the vulnerable groups in Belarus. Neither did it find any individual circumstances, which could substantiate the applicant's fears of ill-treatment by judicial or penitentiary bodies of Belarus. The Court found that Ukraine had not failed to comply with its obligations under Article 34 of the Convention, but found violations of Article 5 §§1 and 4 in respect to the general flaws of the Ukrainian legislation when it comes to detention for subsequent extradition. The applicant was awarded 5,000 euros in respect of non-pecuniary damage and 523 euros in respect of costs and expenses.

Shchebet v. Russia 12.06.2008	Shchebet lived in Austria. In February 2007, she was arrested at Domodedovo airport in Moscow based upon a warrant issued by the Belarusian side (she was suspected of human trafficking). No official arrest record was compiled. Furthermore, the detention order was issued by a court thirty-four days after her placement in custody, instead of 48 hours, under the applicable Russian legislation. Numerous appeals against the unlawfulness of the arrest and detention were filed, including with the Supreme Court, but were all rejected. The conditions of her detention in the cell for detention of administrative offenders on the premises of the duty station of the Domodedovo transport police department were extremely poor. The cell lacked the amenities indispensable for prolonged detention: it did not have a window and offered no access to natural light or air, it had no toilet or sink. Also, the lack of privacy in the cell was mentioned, because of the constant presence of male police officers in the office.	The ECHR found the detention unlawful and held that there was a violation of Article 5 §1 of the Convention, indicating that "*the absence of an arrest record must in itself be considered a most serious failing*." Because the applicant had no access to legal instruments to file a complaint to a court about the unlawfulness of her detention, the Court found a violation of Article 5 §4. The ECHR held that there was a violation of Article 3 of the Convention on account of the inhuman and degrading conditions of the applicant's detention and ruled that the respondent State was to pay the applicant 10,000 euros in respect of non-pecuniary damage.
Novik v. Ukraine 18.12.2008	In November 2006, the applicant was apprehended by the police in Kyiv under the international arrest warrant issued by the General Prosecutor's Office of Belarus. A district court of Kyiv ordered Valeriy Novik's detention for forty days pending an official request for his extradition to Belarus. In his appeal Novik contended that the court had not taken into account his state of health and the fact that he, together with his wife and three minor children, had been residing in Ukraine for a long period of time. Furthermore, he claimed that the court had not examined the applicant's submissions concerning his political persecution in Belarus. The city court rejected the appeal, though. In December 2006, the applicant was released from detention despite an official request to the General Prosecutor's Office of Ukraine, seeking the applicant's extradition to Belarus. The Ukrainian Prosecutor General's Office informed the Belarusian counterpart that the applicant would not be extradited on the ground that, under Ukrainian law, the charges against the applicant did not carry imprisonment.	The ECHR reiterated that the Ukrainian legislation failed to ensure accessible, precise and foreseeable procedure of detention for further extradition in order to avoid all risks of arbitrariness. The Court held that there was a violation of Article 5 §1 of the Convention, but did not award the applicant any sum, as he had not submitted a claim for just satisfaction.
Galeyev v. Russia 03.06.2010	The applicant was born in the Minsk Region; from 1993 to 1996 and from 1998 to 2004 he served prison sentences in Belarus. He had a Soviet passport; in 2004, the applicant was issued with a Russian passport. In August 2005, criminal proceedings were instituted against Galeyev on extortion charges. In December 2006, the applicant was arrested in Moscow; however, extradition was denied based upon a decision of the Russian Federal Migration Service (FMS). Later the Samara District Court found that the applicant had been unlawfully granted Russian citizenship since he had concealed the fact that he was a	In the applicant's case there is no claim that his fears of ill-treatment are based on his political views. The ECHR decided that his claims in this respect are generally very vague and not supported by any available evidence. The Court declared his complaints of the unlawful revocation of citizenship (Article 6) and the

	national of another state and ordered the FMS to revoke its decision to grant Dmitriy citizenship. A lawsuit followed, including that considered by the Supreme Court, in respect to the lawfulness of Dmitriy Galeyev's extradition to Belarus. Finally, the Samara Regional Court in September 2009 refused to extend the applicant's custody until March 2010, and the applicant was released. The applicant complained under Articles 3 and 5 of the Convention (the risk of inhuman treatment if extradited and allegedly unlawful detention in Russia for further extradition), and Article 6 (unlawful revocation of citizenship).	conditions of his detention pending extradition (Article 3) inadmissible. At the same time, the Court found that there was lack of lawfulness during the period of the applicant's detention between November 2008 and April 2009, which violates Article 5 §1 of the Convention.
Koktysh v. Ukraine 10.12.2009	In December 2001, the Brest Regional Court of Belarus acquitted the applicant of murder and robbery charges, with the death penalty originally foreseen, inter alia, as a sanction for murder. The court found that during their interrogations the applicant had been subjected to physical and psychological pressure and had been forced to confess. In February 2002, the Supreme Court of Belarus upheld this decision. In May 2002, these decisions were quashed by the Presidium of the Supreme Court of Belarus under the extraordinary review procedure upon an application lodged by a prosecutor, and the criminal proceedings were resumed. Also in 2002, the applicant moved to Ukraine, where he got married. In June 2007, the applicant was arrested by the Ukrainian police based upon a warrant issued by the Belarusian side. He was kept in the Sevastopol Temporary Detention Centre and the SIZO in extreme conditions. He complained about violations of Article 5 §§ 1, 4 and 5 (right to liberty and security) and under Articles 3 and 6 of the Convention (conditions of detention and transportation). He also claimed that if extradited to Belarus, he could be subjected to capital punishment contrary to Article 2 of the Convention. The same would violate Articles 3 and 6 (risk of an unfair trial).	The ECHR held that there would be a violation of Article 3 of the Convention in the event of the applicant's extradition to Belarus, given the quashing of a final decision in the applicant's case by the Belarusian judicial authorities and possibility of an unfair trial and risk of the death penalty. The Court found violations of Articles 3 and 13 in respect of the conditions of detention and transportation, as well as Article 5 §§ 1, 4 and 5. The Court held that the respondent State was to pay Koktysh 7,000 euros in respect of non-pecuniary damage.
Kozhayev v. Russia 05.06.2012	The applicant was arrested in Moscow in November 2009 based upon a warrant of the Belarusian prosecutor's office (criminal proceedings were instituted for escape from a detention facility and for being an accomplice to an attempted murder by a group of people). The applicant appealed against the extradition decision in Russian courts citing the possibility of being subjected to inhuman treatment and capital punishment in Belarus and because he was a follower of the Hare Krishna movement. He was denied refuge on religious grounds. The applicant complained to the ECHR under Article 3 (risk of being subjected to inhuman treatment in Belarus because of his religious affiliation and risk of being sentenced to the death penalty), as well as under Article 5 §1 (unlawful arrest and detention procedures).	The ECHR ruled that the applicant provided no reliable evidence of the individual risk of ill-treatment because of his religious beliefs apart from the general references to the human rights situation in Belarus. Furthermore, the charges against the applicant were brought under an article of the Criminal Code that does not carry the death penalty as a possible punishment. As a result, the Court held that the applicant's extradition to Belarus would not be in breach of Article 3 of the Convention. However, the Court found a violation of

		Article 5 §1 of the Convention as to the applicant's detention. The court granted no award.
Molotchko v. Ukraine 26.04.2012	The applicant has a dual citizenship of Belarus and Germany and carried out business in both countries. The application to the ECHR was considered to have been filed by a German citizen (Molotchko was granted German citizenship in 2004). Previously, in 1991, he obtained refugee status in Germany on the ground that he was of Jewish origin and, because of this, risked persecution in Belarus. In 2007, criminal proceedings were instituted against the applicant, accusing him of organized crime, bribery and smuggling. The case is connected with the high-profile case of investigator Baykova with the General Prosecutor's Office. The applicant was arrested in Ukraine in February 2010 based upon an arrest warrant issued by Belarusian law-enforcement agencies. Following a lengthy trial in Ukrainian courts, the applicant was released on bail, but disallowed to leave Ukraine; after the decision to refuse the request for the applicant's extradition, he left for Germany. The applicant complained about violations of Articles 3, 6 and 13 in case of his extradition to Belarus, conditions of his stay in the temporary detention center and the SIZO, as well as Article 5 §§1, 3, 4 (lawfulness of his arrest and detention).	The complaints about the violation of Articles 3, 5 and 6 of the Convention were declared inadmissible, because extradition was denied. The ECHR found violations of Article 5 §§1 and 4 of the Convention about the procedure of the applicant's arrest and lawfulness of his detention. The Court awarded the applicant 15,000 euros in respect of non-pecuniary damage and 15,000 euros for costs and expenses.

References

[1] Markevich v. Poland. Application no. 20920/04, decision of 1 June 2010.

[2] Nikolay Fedorov v. Russia. Application no. 10393/04, judgement of 5 April 2011.

[3] Aleksandr and Tatyana Poyuta v. Ukraine. Application no. 24499/04, decision of 11 December 2006.

[4] Mikhail Jutov v. Moldova. Application no. 2275/05, decision of 18 November 2008.

[5] Giusto and others v. Italy, application n. 38972/06, decision of 15 May 2007.

The complaint was lodged by the Italian couple (Alessandro Giusto and Maria Chiara Bornachin) on behalf of the Belarusian girl, Vika Maroz, who was born in 1996. Among other things, the applicants complained of a violation of Article 3 in the case of the repatriation of Vika to Belarus.

Vika, who lived in the orphanage in the town of Vileyka, regularly stayed at the Italian family within the health improvement programme intended for the children originating from the territories affected by the Chernobyl accident. The relationships, developing between Vika and the Italian couple, were close to parental. The adoption routine took a very long time and was stopped several times due to the decision of Belarus to freeze the international adoption procedures.

Meanwhile, during the next visit of the girl to Italy in 2006, her body showed the signs of violence, including sexual violence. This fact was confirmed by the independent expertise. The Italian couple refused to return Vika to the Belarusian guardianship authorities and kept hiding the girl from the Italian police for some time. The story got a lot of publicity in the Belarusian and international media.

[6] Vasilina Matsiukhina and Aliaksandr Matsiukhin against Sweden. Second section final decision as to the admissibility. Application no. 31260/04, decision of 21 June 2005.

[7] Dmitrij Aleksandrevich Mostachjov and others against Sweden. Application no. 44891/04, decision of 17 January 2006.

[8] S. against Finland decision. Application no. 48736/06, decision of 26 February 2008.

[9] V.B. contre la France. Requête no 42975/07, décision le 9 septembre 2008.

[10] Y.P. et L.P. c. France. Requête no 32476/06, décision le 02 septembre 2010, définitif 21/02/2011.

[11] Decision as to the admissibility of the case Gordyeyev v. Poland. Applications nos. 43369/98 and 51777/99, 3 May 2005.

[12] Decision as to the admissibility of the case Dobrov v. Ukraine. Applications nos. 42409/09, on 14 June 2011 .

[13] Kulikovkiy v. Ukraine, application no. 50063/07, decision of 4 November 2008.

[14] Stankevich v. Ukraine, application no. 48814/07, decision of 26 May 2009. The applicant died before the consideration of the complaint on the merits by the Court.

[15] Bochkov against Russia, application no. 25102/03, decision of 03 July 2008. The applicant failed to have send his comments on the case in due time. He did not claim a violation of Art. 3 of the Convention.

[16] Angelova against Russia, application no. 37912/02, decision of 11 December 2008. The applicant failed to have send her comments on the case in due time. She did not claim a violation of Art. 3 of the Convention.

[17] Svetlorusov v. Ukraine, application no. 2929/05, judgement of 12 March 2009. The complaint under Art. 3 was found to be unsubstantiated, since the Ukrainian authorities refused to extradite the complainant to the Belarusian counterparts. At the same time, the Court found a violation of Art. 5 §§ 1 (f), 4 and 5.

[18] Bordovskiy v. Russia, application no. 49491/99, judgement of 8 February 2005. The complaint on a violation of Article 3 was recognized to be ill-founded and was not considered on the merits. The Court found also no violations of Article 5 §§ 1 (f), 4 and 5.

[19] Dubovik v. Ukraine, applications nos. 33210/07 and 41866/08, judgement of 15 October 2009. The part of the complaint claiming a violation of Art. 3 was found unsubstantiated due to the halt of the extradition proceedings by the Ukrainian authorities. At the same time, the Court found a violation of Article 5 §§ 1 (f), 4 and 5.

[20] Kamyshev v. Ukraine, application no. 3990/06, judgement of 20 May 2010. The part of the complaint claiming a violation of Art. 3 was found unsubstantiated due to the fact that the applicant did not belong to the political opposition and failed to have proved the special personal risk for him to be subjected to inhuman treatment if extradited. At the same time, the Court found a violation of Articles 5 §§ 1 (f), 4.

[21] Kreydich v. Ukraine, application no. 48495/07, judgement of 10 December 2009. The part of the complaint claiming a violation of Art. 3 was found unsubstantiated due to the halt of the extradition proceedings by the Ukrainian authorities. At the same time, the Court found a violation of Article 5 §§ 1 (f), 4 and 5.

[22] Puzan v. Ukraine, application no. 51243/08, judgement of 18 February 2010.The part of the complaint claiming a violation of Art. 3 was found unsubstantiated due to the fact that the applicant did not belong to the political opposition and failed to have proved the special personal risk for him to be subjected to inhuman treatment if extradited. At the same time, the Court found a violation of Articles 5 §§ 1 (f), 4.

[23] Shchebet v. Russia, application no. 16074/07, judgement of 12 June 2008. The Court found a violation of Art. 3, related, however, not to the risk of inhuman treatment, if extradited to Belarus, but to the detention conditions. The Court also found a violation of Article 5 §§ 1 and 4.

[24] Novik v. Ukraine, application no. 48068/06, judgement of 18 December 2008. The part of the complaint claiming a violation of Art. 3 was found unsubstantiated due to the denial of the extradition proceedings by the Ukrainian authorities for the Belarusian counterparts. The Court found a violation of Article 5 §§ 1.

[25] Galeyev v. Russia, application no. 19316/09, judgement of 3 June 2010. The part of the complaint claiming a violation of Art. 3 was found unsubstantiated due to the fact that the applicant did not belong to the political opposition and failed to have proved the special personal risk for him to be subjected to inhuman treatment if extradited. At the same time, the Court found a violation of Articles 5 §§ 1.

[26] Koktysh v. Ukraine, application no. 43707/07, judgement of 10 December 2009. The Court found violations of Articles 3, 5 §§ 1, 4 and 5, 13.

[27] Kozhaev v. Russia, application no. 60045/10, judgement of 5 June 2012. The Court did not find a violation of Art. 3, if extradited to Belarus, but acknowledged a violation of Art.5 §1.

[28] Molotchko v. Ukraine, application no. 12275/10, judgement of 26 April 2012. The Court did not consider the part of the complaint claiming a violation of Articles 3, 5 and 6 of the Convention, if extradited to Belarus, due to the denial by the Ukrainian authorities to extradite the claimant to Belarus. The Court found a violation of Articles 5 § 1 (f) and 5 § 4, and awarded the applicant EUR 15,000 for the non-pecuniary damage and 15,000 in compensation of the legal costs.

[29] Note that the law "On Refugees" of the Republic of Belarus, as of 1999, had the major gaps in the field of the non-refoulement principle provision.

See, eg., Виталий Масловский. Эволюция принципа невысылки в международном праве и проблемы его закрепления в законодательстве Республики Беларусь // Белорусский журнал международного права и международных отношений, 2002 — № 1 (Vitaly Maslovski. The evolution of the non-refoulement principle in the international law and the problems of establishing it in the law of the Republic of Belarus // Belarusian Journal of International Law and International Relations, 2002, #1)

Some positive changes took effect with the new wording of the Law of 2009. It simplified the procedure for obtaining the refugee status, established the issuance of the temporary residence permits in Belarus up to 1 year with the possibility of extension. In the new Law, the refugees are equated to the foreigners residing in Belarus.

For more details see the publications by the Head of the Refugees and Asylum unit of the Nationalship and Migration Department of the Ministry of Internal Affairs of Belarus, Tatiana Tumashik:

Тумашик Т. Нормативное регулирование отдельных правовых отношений в контексте реализации закона Республики Беларусь "О предоставлении иностранным гражданам и лицам без гражданства статуса беженца, дополнительной и временной защиты в Республике Беларусь" // Журнал международного права и международных отношений 2009 — №4 (T.Tumashik. Normative regulation of certain legal relations in context of implementation of law of Belarus "On granting of refugee status, additional and temporary protection to foreign nationals and stateless persons in Republic of Belarus" // Journal of International Law and International Relations, 2009, # 4)

Тумашик Т. Правовое обеспечение реализации закона Республики Беларусь "О предоставлении иностранным гражданам и лицам без гражданства статуса беженца, дополнительной и временной защиты в Республике Беларусь" // Журнал международного права и международных отношений 2009 — №2 (T.Tumashik. Legal Implementation of Law of Republic of Belarus "On granting of refugee status, additional and temporary protection to foreign nationals and stateless persons in Republic of Belarus" // Journal of International Law and International Relations, 2009, #2)

[30] 1967 Protocol relating to the Status of Refugees; Declaration on Territorial Asylum, adopted by Resolution 2312 (XXII) of the General Assembly on December 14, 1967 (it is believed that since that time there appeared a reason there to consider the non-refoulement principle to be a principle of the international humanitarian law); 1984 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3); Geneva Convention of 12 August 1949 Relative to the protection of Civilian Persons in time of War (Article 45), the International Covenant on Civil and political Rights (Article 7); Cartagena Declaration on Refugees, 1984.

[31] Soering v. the United Kingdom, application no. 14038/88, judgment of 7 July 1989.

[32] Ibid, paragraph 35.

[33] Chahal v. the United Kingdom, application no. 70/1995/576/662, judgement of 15 October 1996.

[34] Most of the people living in the north-western Indian state of Punjab are the followers of Sikhism. In the 1970-s, due to the "green revolution", the economic situation in the region improved. At the same time the polarization increased between the central Indian government and the Sikh political party Shiromani Akali Dal.

The centralization measures taken by the Indian government and the discriminating actions against Punjab made the Akali party to unanimously adopt the resolution calling for the maximal autonomy of Punjab and reduction of the role of the central government. A part of the Sikh separatists supported the establishment of the independent state of Khalistan.

In June of 1984, the government troops stormed the Golden Temple in the town of Amritsar, the main Sikh shrine, where a number of the separatist fighters were hiding. The operation had been poorly planned and resulted in thousands of innocent victims. The bodies of the pilgrims were loaded onto the trucks and illegally cremated before the arrival of the foreign journalists. Later almost all the Akali party leaders were imprisoned, as well as thousands of the Sikh pilgrims. As a result, the situation in Punjab worsened remarkably. By the early 1990-s, the struggle for the independent Khalistan had lost the support of the population, and the remaining resistance units went underground.

The human rights groups point out to the massive violations of the Sikhs' rights by the central government during the escalation of the conflict.

[35] Chahal v. the United Kingdom, para 78.

[36] In the case *Ramzi v. The Netherlands* (application no. 25424/05, judgement of 20 July 2010), Ramzi Mohammed lodged a complaint challenging the intention of the Dutch government to extradite him to Algeria. Ramsay was accused of the participation in the activities of the group encouraging the young Muslims to become suicide bombers.

The governments of Italy, Lithuania, Portugal, Slovakia and the United Kingdom intervened in the process, trying to revise the decision for the Chahal case and reduce the scope of Article 3 on the national security grounds. The reasoning was as follows: *"Why, when deciding whether to equate the deportation to inhuman and degrading treatment, we should not take into account the fact that the person subjected to the real risk the lives of the nationals of the country which is a signee to the Convention?"*

The same applied to the case *Saadi v. Italy* (application no. 37201/06, Grand Chamber judgment of 28 February 2008.). Nassim Saadi, who was accused of the crimes related to terrorism, was to be extradited to Tunis. He cited the documented facts, confirming the cases of torture and ill-treatment of those accused of terrorism. The Grand Chamber of the Court unanimously held that the expulsion of Saadi by Italy will violate Article 3.

All the 17 judges stressed that the positive obligation of the state to protect its nationals from terroristic violence should not call into question the absolute nature of Article 3.

[37] Cruz Varas and others v. Sweden, application no. 15576/89, judgement of 20 March 1991.

[38] Ibid, para 70.

[39] Ibid, para 83.

[40] Note: The risk of ill-treatment does not have to come from the government. Thus, in the case of *N. v. Finland* (application no. 38885/02, judgement of 26 July 2005), the applicant is a national of the Democratic Republic of Congo, who was an officer at the security unit of the ousted President Mobutu. The Court noted that the applicant belonged to the small circle close to Mobutu, and the relatives of the Congolese dissidents may try to avenge the applicant for his past activities during the service for the autocrat Mobutu.

[41] *Ireland v. The United Kingdom*, application no. 5310/71, judgement of 18 January 1978, para 162.

[42] *Koktysh v. Ukraine*, §§ 37-38. The Court quoted the following international documents and reports: PACE Resolution 1606 (2008) and 1671 (2009); the Report of the UN Special Rapporteur on the human rights situation in Belarus, Adrian Severin; the UN General Assembly Resolution "Situation of human rights in Belarus" (A/RES/62/169); the Country Report of the U.S. State Department on the human rights situation in Belarus in 2008; the Amnesty International report on human rights in 2009.

[43] The court used the following sources: the Country Report by the U.S. State Department on the human rights situation in Belarus in 2007; the Report of the UN Special Rapporteur on the human rights situation in Belarus, Adrian Severin; Resolution of the Parliamentary Assembly of the Council of Europe 1671 (2009); Amnesty International Concerns in 2006, Report on Human Rights in the OSCE in 2006 by the International Helsinki Federation for Human Rights.

[44] In the case of *Y.P. and L.P. v. France*, the ECtHR analyzed the extracts from the Criminal Code of Belarus, Resolution of the Parliamentary Assembly of the Council of Europe #1671 (2009), PACE Recommendation #1874 (2009), the Report of the Special Rapporteur on the human rights situation in Belarus, Adrian Severin; the report on the situation in Belarus by the PACE Rapporteur in Belarus, the reports by the international human rights organizations and the governments of the U.S., UK and Canada.

[45] Kozhayev v. Russia, § 59. Conclusion, 2011, UN Committee against Torture for Belarus (CAT/C/BLR/CO/4).

[46] Vilvarajah and others v. The United Kingdom, application no. 13163/87; 13164/87; 13165/87; 13447/87; 13448/87, judgement of 30 October 1991.

[47] From 1983 to 2009, in Sri Lanka, the civil war renewed periodically between the government and the Liberation Tigers of Tamil Elam, the separatist militaristic organization, fighting for the independent state of Tamil Elam in the north and east of the island.

[48] Ibid, paragraph 111.

[49] Decision as to the admissibility of the case Gordyeyev v. Poland, Applications nos. 43369/98 and 51777/99, 3 May 2005.

[50] Koktysh v. Ukraine, application no. 43707/07, judgement of 10 December 2009.

[51] Ibid, para 62.

[52] Puzan v. Ukraine, application no. 51243/08, judgement of 18 February 2010.

[53] Ibid, para 34.

[54] Kamyshev v. Ukraine, application no. 3990/06, judgment of 20 May 2010.

[55] Ibid, para 44.

[56] Y.P. et L.P. c. France, no 32476/06, 2 septembre 2010.