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

FIFTH SECTION

DECISION

Application no. 26838/22
Ernesto Luis QUINTERO MENDEZ
against Spain

The European Court of Human Rights (Fifth Section), sitting on 1 October 2024 as a Chamber composed of:

Mattias Guyomar*, President*,
Stéphanie Mourou-Vikström,
María Elósegui,
Mykola Gnatovskyy,
Stéphane Pisani,
Úna Ní Raifeartaigh,
Artūrs Kučs*, judges*,

and Victor Soloveytchik, *Section Registrar,*

Having regard to the above application lodged on 24 May 2022,

Having regard to the decision to give notice to the respondent Government of the complaints under Article 5 of the Convention and declare the remainder of the application inadmissible,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Ernesto Luis Quintero Méndez, is a Venezuelan national, who was born in 1980 and lived in Arganda del Rey at the relevant time. He was represented before the Court by Mr I. Oliver Romero, a lawyer practising in Madrid.

2. The Spanish Government ("the Government") were represented by Mr L. Vacas Chalfoun, co-Agent of Spain to the European Court of Human Rights.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Proceedings relating to the applicant's extradition and detention pending his surrender

1. Extradition request and decision to extradite the applicant

4. On 27 February 2019 the applicant was arrested in Spain (where he had been residing since 2018) pursuant to a Red Notice issued by the Interpol National Central Bureau in Venezuela. The next day he was granted provisional release (*libertad provisional*).

5. In July 2019 the Venezuelan authorities requested the extradition of the applicant from Spain so that he could face charges of fraud, misappropriation of funds and securities, money laundering and membership of a criminal organisation (offences punishable by imprisonment for a period of two to fifteen years under Venezuelan law).

6. In the meantime, the applicant lodged his first request for asylum in Spain, which was refused on 28 January 2020. His appeal against that decision was unsuccessful.

7. On 6 October 2020 the *Audiencia National* granted the extradition request. The court found, among other things, that the provisions of Venezuelan criminal legislation, with reference to which the applicant's extradition had been sought, corresponded to the relevant provisions of the Spanish Criminal Code, and that the relevant offences were punishable in Spain by a maximum period of imprisonment exceeding two years (the domestic court referred to Articles 248, 250 § 5 and 570 *bis* of the Spanish Criminal Code). On 1 December 2020 the Plenary of the Criminal Division of the *Audiencia National* upheld the decision.

8. The decision to extradite the applicant became final on 12 January 2021, once it had been confirmed by the Council of Ministers.

2. Detention order and two applications for release

9. On 2 February 2021 the *Audiencia Nacional* ordered the applicant's provisional detention in order to secure his surrender by Interpol to the Venezuelan authorities. The decision, which set no time-limit for detention, referred to Articles 503 and 539 of the Code of Criminal Procedure (see paragraph 37 below) and sections 8 and 12 of Law no. 4/1985 of 21 March 1985 on Passive Extradition ("the Extradition Act", see paragraphs 39 and 41 below).

10. By a final decision of 10 February 2021 the *Audiencia Nacional* dismissed an appeal lodged by the applicant against the detention order. On the same date he was arrested and placed in detention pending surrender.

11. On 26 February 2021 the *Audiencia Nacional* rejected the first application for release lodged by the applicant, finding, in essence, that his continued detention was crucial to secure his extradition. On the same date the same court (a) disallowed the applicant's subsequent challenge of the

detention order as inadmissible; and (b) rejected, by way of a final decision, the applicant's request to suspend the surrender proceedings pending his *amparo* appeal against the extradition order. On 23 March 2021 the *Audiencia Nacional* disallowed the applicant's further challenge of that latter refusal, finding that it was not amenable to appeal.

12. On 30 March 2021 the applicant lodged his second application for release. After hearing the applicant, by a detailed decision (*auto*) of 9 April 2021 (as upheld on appeal on 17 May 2021) the *Audiencia Nacional* dismissed his application. The domestic court found that a detailed assessment of the applicant's situation from the standpoint of the Code of Criminal Procedure and the Extradition Act had been crucial, given that in the meantime he had applied for asylum (see paragraph 13 below), and the period of consideration of that application could not be foreseen. The court noted certain inconsistencies in the information he had provided to demonstrate that he had developed stable ties with Spain, as well as the seriousness of the charges he was facing in Venezuela, and found, in essence, that the risk of his absconding had increased with the extradition order's entry into force. In the domestic court's view, there was no evidence that the ties he had developed with Spain since 2018 were sufficient to mitigate the risk of his absconding.

3. Asylum request of March 2021 and suspension of the surrender proceedings

13. On 24 March 2021 the *Audiencia Nacional* received a notification from a prison authority that the applicant had lodged a new application for asylum in Spain. On 29 March 2021 the *Audiencia Nacional* suspended the surrender proceedings while the request was examined.

14. On 22 July 2021 his asylum request was dismissed. On 27 July 2021 the *Audiencia Nacional* resumed the proceedings with a view to his surrender. His appeal (*incidente de nulidad de actuaciones*) against the decision to resume proceedings was dismissed by the same court on 11 August 2021.

4. The third application for release and subsequent proceedings

15. On 4 November 2021 the applicant lodged a new application for release arguing, notably, that the length of his detention had become excessive and unreasonable; that the domestic decisions pertaining to the risk of his absconding had lacked reasoning; and that there was no such risk in his case. He further argued that, in the absence of any relevant time-limits for detention pending surrender, he was unable to foresee, on the basis of the Extradition Act or the Code of Criminal Procedure, the length of his subsequent detention, given, in particular, that the Venezuelan authorities had remained inactive for nine months, that they could further protract the surrender proceedings and that Venezuelan prisons were overcrowded. He

submitted that his continued detention was in breach of the principles of lawfulness, foreseeability, proportionality and of exceptional nature of provisional detention.

16. A public prosecutor, in his submissions to the domestic court, stressed the need to set a date for the applicant's handover to the Venezuelan authorities, so that the time-limits set out both in Article 18 of the 1989 Extradition Treaty between Spain and Venezuela ("the bilateral treaty") and in section 19 of the Extradition Act (see paragraphs 42 and 44 below) could start to run in due course.

17. On 15 November 2021 the *Audiencia Nacional* examined the application for release as an appeal against the extradition order and found, by a final decision *(auto*), that the applicant should remain in detention, referring to the risk of his absconding. The applicant lodged an appeal (*recurso de súplica*), on the basis of, among other things, the domestic court's allegedly erroneous examination of his application for release as an appeal against the extradition order, and the authorities' alleged failure to properly apply Article 18 §§ 3 and 4 of the bilateral treaty (see paragraph 44 below; that is, either to surrender him within thirty days from the final decision to extradite, or to release him). He also maintained his initial arguments (see paragraph 15 above) including those pertaining to his inability to foresee the length of his detention pending surrender. His appeal was disallowed by the same court on 26 November 2021, as the decision of 15 November 2021 was not amenable to appeal.

18. The applicant lodged an *amparo* appeal with the Constitutional Court, accompanied by a request for a provisional measure to suspend his extradition pending the Constitutional Court's examination of the *amparo* appeal. Alleging violations of the right to liberty and the right to effective judicial protection, he emphasised, among other things, the domestic court's failure to examine his appeal in a due procedure and by reasoned decisions; excessive and unreasonable length of his detention; and the *Audiencia National*'s failure to act in compliance with Article 18 §§ 3 and 4 of the bilateral treaty in his case. In that regard he argued that, in the absence of any domestic legal provision setting out the time-limit within which the surrender date was to be agreed upon, Article 18 §§ 3 and 4 of the bilateral treaty had to be applied. According to him, the thirty-day period provided therein for either surrender or release was to be counted from the final decision ordering his extradition. Otherwise, in his view, the overall duration of his detention pending surrender could not be foreseen.

19. On 1 February 2022 the Constitutional Court rejected his *amparo* appeal, on grounds of a manifest lack of a violation of a fundamental right.

5. Proceedings between December 2021 and February 2022

(a) Applications for release and proceedings concerning access to information

20. On 1 December 2021 the applicant again asked to be released, as the thirty-day time-limit set out in Article 18 §§ 3 and 4 of the bilateral treaty had expired. The public prosecutor objected, stating that the time-limit had not yet started to run. On 13 December 2021 the *Audiencia Nacional* dismissed that application for release, referring to the risk of his absconding.

21. On 21 January 2022 the applicant asked the court to discontinue the extradition proceedings and release him, arguing that the thirty-day time-limit set out in the bilateral treaty (which, in his view, was to be calculated from the date of the decision to extradite him) had expired. By a reasoned decision (*auto*) of 7 February 2022 the *Audiencia Nacional* dismissed the applicant's request. The domestic court noted that it had received information stating that the applicant's surrender was being planned for 13 February 2022 (see paragraph 31 below), and, therefore, the time-limits set out in Article 18 §§ 3 and 4 of the bilateral treaty and section 19(3) of the Extradition Act had not yet started to run and would apply only from the surrender date, once it was set. The court ruled that the applicant should remain in detention, referring to the risk of his absconding.

22. In the meantime, by a notification signed by the court clerk (*diligencia de ordenación*) of 31 January 2022 the *Audiencia Nacional* informed the applicant, in reply to his request for information, that measures were being taken by the authorities of the requesting State and Interpol to organise his surrender, with a preliminary range of dates being proposed, but the court did not know whether a specific date had been agreed upon. The applicant challenged the notification, referring to the domestic court's failure to provide him, in a timely manner, with accurate and up-to-date information on the planned date of his surrender. In his view, that failure led, among other things, to a breach of his rights as set out in section 19(3) of the Extradition Act and Article 18 §§ 3 and 4 of the bilateral treaty, and, notably, to his inability to verify whether the time-limit set out in section 19(3) of the Extradition Act had been, or would be, complied with. On 7 February 2022 the *Audiencia Nacional* dismissed his challenge, having noted that his surrender was being planned for 13 February 2022 (see paragraph 31 below), and the time-limits set out in the provisions referred to by the applicant had not yet started to run.

23. By a decision (*providencia*) of 9 February 2022 the *Audiencia Nacional* disallowed the appeals by the applicant (*recurso de súplica* and *recurso de revisión* respectively) against both decisions of 7 February 2022 (see paragraphs 21 and 22 above) in a summary fashion.

24. The applicant lodged an *amparo* appeal against the decisions of 7 and 9 February 2022 in so far as they concerned the alleged refusal to provide him with information about the surrender date (see paragraph 22 and 23 above). He reiterated, in essence, that the lack of access to information concerning

the surrender date was detrimental to his defence rights, as it meant he was unable to verify whether the time-limit set out in section 19(3) of the Extradition Act had been, or would be, complied with. On 28 February 2022 the Constitutional Court rejected his *amparo* appeal on grounds of a manifest lack of a violation of a fundamental right.

(b) Latest asylum request

25. At some point between 2 and 8 February 2022the applicant lodged a new asylum request, which was dismissed on 11 February 2022. On 10 February 2022 the *Audiencia Nacional* rejected his requests for provisional measures to suspend the extradition and surrender proceedings, lodged in connection with the above-mentioned asylum application.

6. Further applications for release between March and June 2022

26. As the applicant's surrender – provisionally planned in the meantime for 12 February 2022 – did not take place for the reasons set out in paragraph 32 below, in March 2022 he asked to be released, and for the extradition proceedings to be discontinued, owing to the expiry of the thirty-day time-limit set out in section 19(3) of the Extradition Act (he considered that 12 February 2022 was a fixed surrender date for the purposes of that provision). On 18 March 2022 the *Audiencia Nacional* replied, without giving reasons, that the impugned time-limit had not started to run. The applicant challenged that reply. A public prosecutor submitted to the court that the time-limits set out in both section 19(3) of the Extradition Act and Article 18 §§ 3 and 4 of the bilateral treaty had not yet started to run, as his surrender had been suspended on 10 February 2022 (because the applicant had been ill with COVID-19, see paragraph 32 below), and only a new fixed date for his surrender would trigger their application. On 7 April 2022 the *Audiencia Nacional* rejected the applicant's appeal as the time-limit set out in section 19(3) of the Extradition Act had not yet started to run.

27. Between 30 May and 17 June 2022 the applicant again asked the domestic court to release him, suspend his surrender and discontinue the extradition proceedings. By decisions of 1 and 28 June 2022 (as rectified on 4 and 11 July 2022), the *Audiencia Nacional* rejected his requests, referring to the risk of his absconding.

B. Measures taken to organise the applicant's surrender

28. On 10 February 2021 the *Audiencia Nacional* instructed Interpol to take measures to ensure the applicant's surrender to the Venezuelan authorities.

29. Once the surrender proceedings resumed in July 2021 (see paragraph 14 above), on 30 July 2021 Interpol and the Ministry of Foreign

Affairs asked the Venezuelan authorities to take charge of the applicant in Madrid as soon as possible and, as no reply followed, submitted the request again in November 2021.

30. In December 2021 Interpol informed the *Audiencia Nacional* that they were working on the logistical arrangements for the applicant's transfer to Venezuela. According to the material in the case file, including letters from the International Legal Cooperation Division of the Spanish Ministry of Justice to the *Audiencia Nacional*, two *notes verbales* from the Embassy of Venezuela in Spain (dated 16 December 2021 and 14 January 2022) and official letters from the Venezuelan authorities, those authorities: (i) in November 2021 were working on logistical arrangements to ensure the applicant's surrender between 13 and 17 December 2021; (ii) had been unable to come up with a flight itinerary "due to logistical reasons and the spread of a new variant of COVID-19 (Omicron)" and proposed to "send a delegation" to Spain between 17 and 21 January 2022; and (iii) had later postponed their arrival to 7 February 2022. On 17 January 2022 Interpol specified that the provisional date agreed upon by the authorities was 12 February 2022.

31. With reference to a *note verbale* dated 25 January 2022 from the Embassy of Venezuela in Spain, on 31 January and 7 February 2022 International Legal Cooperation Division of the Spanish Ministry of Justice informed the *Audiencia Nacional* that the applicant would be handed over to the Venezuelan authorities on 13 February 2022.

32. On 10 February 2022 Interpol informed the *Audiencia Nacional* that the applicant's surrender scheduled for 12 February 2022 (see paragraph 30 above) could not take place, as the applicant had tested positive for COVID-19. The *Audiencia Nacional* urged Interpol to immediately start working on new arrangements for his surrender. Once the applicant had tested negative for COVID-19, on 16 February 2022 Interpol in Spain asked the Interpol bureau in Caracas and their contact in the Venezuelan embassy in Madrid to propose a new travel itinerary at their earliest convenience.

33. On 10 March, 26 April and 4 May 2022 the *Audiencia Nacional* asked Interpol to obtain information about the new flight date as a matter of urgency. Each time (including, most recently, on 5 May 2022) Interpol replied that they had resubmitted their request highlighting its urgency and that no proposal had been received from the Venezuelan authorities.

34. On 8 June 2022 the *Audiencia Nacional* asked the Venezuelan embassy in Madrid, through Interpol, to inform the court, within one week, of the date of the applicant's surrender to the Venezuelan authorities. On 14 June 2022 Interpol informed the court, and on 5 July 2022 the applicant, that the Venezuelan authorities had proposed a flight itinerary between 11 and 14 July 2022.

35. On 14 July 2022 the applicant was handed over to the Venezuelan authorities.

C. Complaint to the UN Human Rights Committee

36. On 28 January 2022 the applicant informed the *Audiencia Nacional* that he had lodged an application with the United Nations Human Rights Committee (the "UNHRC") about "his arbitrary detention", in particular, and provided the domestic court with a copy of the complaint dated 20 January 2022. He complained, among other things, that Spain had violated his rights set out in Article 9 of the International Covenant on Civil and Political Rights (right to liberty), as he had spent one year in detention, whereas Spanish law did not provide for detention for "instrumental purposes" in the absence of a risk of absconding. He did not inform the Court of the complaint to the UNHRC, and a copy of the complaint was sent to the Court by the Government.

RELEVANT LEGAL FRAMEWORK

A. Domestic law and practice

1. Code of Criminal Procedure

37. Article 503 of the Code of Criminal Procedure sets out the conditions which must be satisfied before provisional detention (*prisión provisional*) is ordered. In particular, it may be ordered to the participation of a suspect or an accused in the proceedings where a risk of his or her absconding can be reasonably assumed (Article 503§ 3(a)). Under Article 504 provisional detention cannot exceed two years if the term of the applicable sentence is greater than three years, and, under certain circumstances, can be further extended for another two years. Under Article 528, provisional detention may last for only as long as the original reasons remain valid. Article 539 of the Code of Criminal Procedure provides that measures including detention and provisional release may be altered throughout the proceedings and sets out the relevant procedure.

2. Extradition Act

38. Provisions of Law no. 4/1985 of 21 March 1985 on Passive Extradition ("the Extradition Act") governing the extradition procedure are summarised in *Carvajal Barrios v. Spain* ((dec.), no. 13869/22, §§ 51-56, 4 July 2023, and *Scott v. Spain* (18 December 1996, §§ 38-40, *Reports of Judgments and Decisions* 1996-VI).

39. Under section 8(1) and (2) of the Act, the detention of a person with a view to his or her extradition may in certain circumstances be sought by a State even before a formal request for extradition is lodged, where the requesting State confirms that the request will be made within the following forty days. The detention shall end if after forty days the requesting State does

not make the extradition request. In paragraph 3 it states that a judge may, at any time and in view of the circumstances of the case, order the release of the detainee, adopting one or several measures to prevent his or her escape (home surveillance, an order not to leave a specific place without judicial authorisation, or to report periodically to an authority designated by the judge, the withdrawal of a passport or payment of bail). Release, with or without alternative measures, is not an obstacle to either a new detention order or extradition, should the extradition request arrive after the expiry of the above-mentioned forty-day time-limit.

40. Under section 10(3) of the Extradition Act, the maximum term of provisional detention (*prisión provisional*) and the relevant rights of the requested person detained for the purpose of extradition (*por causa de extradición*), if not provided for in that law, are governed by the corresponding provisions of the Code of Criminal Procedure.

41. Section 12 of the same Act provides for a judge's competence to order detention pending the determination of the extradition request and sets out the relevant procedural safeguards.

42. Under section 19(3) of the Extradition Act, if the requested person has not been taken over by the requesting State on the date and at the place decided upon for his or her surrender, he or she may be released fifteen days later, and shall be released thirty days later.

3. Constitutional Court's ruling no. 5/1998

43. By a ruling of 12 January 1998 (no. 5/1998) in a case concerning, notably, the lawfulness of detention pending extradition, the Constitutional Court found, in particular, as follows:

> "The precautionary deprivation of liberty granted [in the appellant's case] ... has legal basis in the Extradition Act. [Its section] 8 provides for preventive detention for the purposes of extradition, which may be judicially transformed into what the law also calls 'provisional detention', with the maximum time periods established in the law itself and in the international conventions signed by Spain. ..."

B. International material

44. Paragraph 1 of Article 18 of the 1989 Extradition Treaty between the Kingdom of Spain and the Republic of Venezuela[1] states that the requested party should notify the requesting party of its decision on extradition. Under paragraph 3 of the same Article, "[i]f extradition is granted, the parties shall agree on the surrender of the requested person, which must take place within the time-limit set out in the laws of the requested State or, failing that, within thirty days". Under paragraph 4 of the same Article, "[i]f the person claimed

[1] UN Treaty Series, Vol. 1591, 1991, no. 27848

is not received within the applicable time-limit, he shall be released, and the requesting party may not repeat the request for the same reason".

45. Under Article 18 § 3 of the Council of Europe 1957 European Convention on Extradition (surrender of the person to be extradited), if the extradition request is agreed to, the requesting party shall be informed of the place and date of surrender. Subject to an exception set out in paragraph 5 of the same Article (dealing with circumstances beyond the parties' control), if the person claimed has not been taken over on the appointed date, he or she may be released after the expiry of fifteen days and shall in any case be released after the expiry of thirty days (paragraph 4 of the Article). According to the Explanatory Report to the Convention, Article 18 § 4 concerns a situation in which an individual whose surrender is sought is not taken over by the requesting party on the date indicated by the requested party.

COMPLAINTS

46. The applicant complained under Article 5 of the Convention that the domestic courts had failed to correctly interpret and apply Article 18 §§ 3 and 4 of the bilateral treaty which, according to the applicant, imposed on the authorities an obligation to either surrender him to Venezuela within thirty days from the date the extradition had been granted, or to release him. Owing to the fact that neither of those steps had been taken, nor had domestic law (including Article 19 § 3 of the Extradition Act) provided for any time-limits, either for his detention pending extradition or for the States to reach an agreement on the surrender date, the overall length of his detention pending extradition had been unforeseeable, and his detention was arbitrary.

47. Lastly, in his observations dated 1 September 2023, he alleged a breach of Article 5 § 4 of the Convention, as his applications for release – as well as an appeal against the decisions dismissing those applications – had been examined by the same judicial body which had ordered the initial detention, and that an *amparo* appeal had not been an effective remedy.

THE LAW

48. The applicant complained that his detention pending surrender was in breach of the requirements of Article 5 of the Convention. Relevant parts of that provision read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) ... the lawful arrest or detention of ... a person against whom action is being taken with a view to ... extradition.

...

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

A. The parties' submissions

49. The Government argued that the applicant had submitted the matter to another procedure of international investigation or settlement (the UNHRC) and had failed to inform the Court about his complaint to the UNHRC, which amounted to an abuse of the right of application. In addition, he had failed to properly exhaust domestic remedies in respect of his complaint. Notably, he had not formulated a complaint about the alleged failure to correctly apply Article 18 of the bilateral treaty in his application for release of 4 November 2021 (see paragraph 15 above), and only raised it in his appeal against the *auto* of 15 November 2021 which had not been amenable to appeal (see paragraph 17 above). In any event, the applicant's interpretation of Article 18 §§ 3 and 4 of the bilateral treaty had been correctly rejected by the courts; should his reading of that provision be accepted, that would illogically mean that the thirty-day time-limit for an individual's surrender would start to run before the final approval of extradition by the Council of Ministers (an indispensable part of the proceedings), irrespective of, for instance, any application for asylum an individual might wish to lodge, and leaving the authorities virtually no time to organise his or her surrender. As to section 19(3) of the Extradition Act, it mirrored Article 18 of the European Convention on Extradition (see paragraph 45 above). Time-limits for detention with a view to extradition were governed by section 10 of the Extradition Act, which referred to the relevant provisions of the Code of Criminal Procedure – that is, Articles 503, 528 and 504 setting out the maximum time-limit for provisional detention (see paragraphs 37 and 40 above), with all the relevant safeguards applicable to it, including the principle of reasonable duration (as also confirmed by the case-law of the Constitutional Court, see paragraph 43 above). The application of provisional detention was subject to review, and a person was to be released should the circumstances leading to the detention cease to exist. The applicant's detention pending extradition had not been arbitrary, the authorities had acted with due diligence and had taken measures to accelerate the surrender proceedings, even though their task had been complicated by the COVID-19 pandemic. Although the emergence of the Omicron variant of COVID-19 had affected air traffic, and it had become increasingly difficult for the Venezuelan authorities to organise the applicant's surrender, no delay could be attributed to Spain.

50. The applicant conceded that he had complained to the UNHRC but argued that the procedure before it did not constitute "another procedure of

international investigation or settlement", and that the subject matter of his two complaints was not the same, as the crux of his application to the Court was, specifically, the allegedly erroneous application by the domestic courts of the provisions of the bilateral treaty between Spain and Venezuela. He maintained his complaint (see paragraph 46 above), arguing that his detention had been arbitrary and unlawful, that no domestic law provisions contained time-limits applicable to his detention, and that in the absence of applicable domestic provisions, Article 18 §§ 3 and 4 of the bilateral treaty had had to be applied, and he had had to be released within thirty days from the date the extradition had been granted on 12 January 2021. He stressed that the Spanish authorities had been passive, had acted with multiple unexplained delays and had failed to take timely action to organise his surrender. In particular, their reference to the COVID-19 pandemic had been irrelevant, as the state of alert declared in Spain in response to the spread of the coronavirus infection had ended as early as May 2021.

B. The Court's assessment

51. The Court is in possession of a copy of the complaint to the UNHRC, signed by the applicant and dated 20 January 2022, but has no information as to whether or when the complaint was sent and/or received by the UNHRC.

52. The Court has no doubt that a complaint to the UNHRC constitutes a procedure of international settlement within the meaning of Article 35 § 2 (b) of the Convention (see, among other authorities, *Leoncio Calcerrada Fornieles and Luis Cabeza Mato v. Spain*, no. 17512/90, Commission decision of 6 July 1992, Decisions and Reports 73, p. 214; *Hill v. Spain* (dec.), no 61892/00, 4 December 2001; and *Vojnovic v. Croatia* (dec.), no. 4819/10, §§ 31-32, 26 June 2012).

53. The Court further notes the common features between the application lodged under the Convention in Strasbourg and the communication allegedly filed under the UN Covenant in Geneva (see *Folgerø and Others v. Norway* (dec.), no. 15472/02, 14 February 2006). The Court observes, however, that the applicant's complaint to the UNHRC is largely based on the alleged absence of the risk of his absconding (see paragraph 36 above) – an aspect immaterial for the Court's own analysis, as Article 5 § 1 (f) of the Convention does not require that the detention of a person against whom action is being taken with a view to extradition be reasonably considered necessary to prevent that person's absconding (see *Ismoilov and Others v. Russia*, no. 2947/06, § 135, 24 April 2008 and, *mutatis mutandis, Chahal v. the United Kingdom*, 15 November 1996, § 112, *Reports* 1996-V). In any event, having had regard to the scope of the complaint before it (see paragraphs 46 and 50 above), the Court further notes, most importantly, the lack of information as to whether the applicant's complaint to the UNHRC has been received by that body (see, *mutatis mutandis*, *Gharibashvili*

v. Georgia, no. 11830/03, § 43, 29 July 2008) and, accordingly, whether the matter "has already been submitted" to another procedure of international investigation or settlement. Further, with regard to the applicant's failure to refer in the application form to his complaint to the UNCHR, the Court reiterates that the submission of incomplete and thus misleading information may indeed amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information (see, among others, *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references), and where the applicant's intention to mislead the Court is established with sufficient certainty (ibid.). However, the Court considers that it does not need to examine the objections pertaining to the alleged duplication of the proceedings based on the applicant's complaint to the UNHRC, or to the alleged abuse of the right of application in this case (see, *mutatis mutandis*, *Galić v. the Netherlands* (dec.), no. 22617/07, § 50, 9 June 2009, and *Hill* (dec.), cited above), as the application is in any event inadmissible for the following reasons.

1. Article 5 § 1 (f) of the Convention

(a) Relevant principles

54. The Court reiterates that any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified only as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with "due diligence", the detention will cease to be permissible under Article 5 § 1 (f) (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 90, 15 December 2016), and *Chahal v. the United Kingdom*, 15 November 1996, § 113, *Reports* 1996-V).

55. The deprivation of liberty must also be "lawful". Where the "lawfulness" of detention is in issue, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of that law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009, and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008). To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see *Saadi*, cited above, § 74, and *A. and Others*, cited above, § 164).

56. Where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly

defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Khlaifia and Others*, cited above, §§ 91-92, with further references). The Court has held, in the context of deportation, that Article 5 § 1 (f) of the Convention does not lay down maximum time-limits for detention pending deportation; on the contrary, it has stated that the question whether the length of deportation proceedings could affect the lawfulness of detention under this provision will depend solely on the particular circumstances of each case (*J.N. v the United Kingdom*, no. 37289/12, § 83, 18 May 2016, with further references).

(b) Whether the detention was lawful

57. The Court will now apply the above general principles emerging from its abundant and well-established case-law to the circumstances of the present case. The Court considers it important to note the precise nature of the applicant's complaint under that provision concerning the lawfulness of his detention. His grievance specifically concerned the length of his detention prior to his surrender to the Venezuelan authorities. The crux of his complaint was that the length of this detention had been such as to render the detention itself unlawful, as the domestic courts had allegedly failed to apply correct time-limits for detention. Turning to the applicant's key argument before the Court – that is, the allegedly erroneous application of Article 18 §§ 3 and 4 of the bilateral treaty by the domestic courts – the Court notes that the public prosecutor drew the *Audiencia Nacional*'s attention to the need to swiftly obtain a surrender date, upon which the time-limit set out in that Article could then start to run (see paragraph 16 above), and that the applicant raised the matter in his appeal against the decision of 15 November 2021 and in the *amparo* appeal (see paragraphs 17-18 above). Thus, contrary to the Government's submissions, the domestic courts had an opportunity to address the matter (see, among many others, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 117, 20 March 2018). The Court further notes that, in response to the applicant's submissions, the *Audiencia Nacional* interpreted the time-limit set out in the impugned bilateral treaty provision in various domestic proceedings referred to by the parties (see paragraph 21, 22 and 26 above). The Court does not find the *Audiencia Nacional*'s consistent interpretation of Article 18 §§ 3 and 4 of the bilateral treaty as being applicable from a specific fixed surrender date – rather than from the decision to extradite, as suggested by the applicant – to be arbitrary or unreasonable.

58. Otherwise, and bearing in mind that fixed time-limits are not as such a requirement of Article 5 § 1 (f) of the Convention (see *J.N.,* cited above, § 83; and, in the context of the surrender proceedings, *Matthews and Johnson*

v. Romania, nos. 19124/21 and 20085/21, § 125, 9 April 2024, and *Lazăr v. Romania*, no. 20183/21, § 97, 9 April 2024), the Court finds nothing in the applicant's observations or in the case material to cast doubt on the Government's submission that the applicant's provisional detention was governed by the provisions of the Code of Criminal Procedure setting out the maximum time-limit for detention (contrast *Louled Massoud v. Malta*, no. 24340/08, § 71, 27 July 2010, and *Muminov v. Russia*, no. 42502/06, § 122, 11 December 2008). The Court has already noted in *Scott* (cited above, § 60 *in fine*), in the context of provisional detention post-dating the final extradition order, that the domestic courts were competent under section 10(3) of the Extradition Act to keep an individual in detention applying the principles governing pre-trial detention.

59. Lastly, the Court notes that the applicant's detention was reviewed by the domestic courts on several occasions and at reasonable intervals in the context of his applications for release. In so far as it is competent to deal with the matter pursuant to the application of the four-month rule, the Court observes that, being better placed than the Convention organs to verify compliance with domestic law, the domestic courts found, when called upon by the applicant, that the decision to continue with the precautionary measure was justified, as the original reasons for ordering it remained valid (see, *mutatis mutandis*, *Gallardo Sanchez v. Italy*, no. 11620/07, § 37, ECHR 2015).

60. In sum, there is no evidence in the instant case that could prompt the Court to conclude that the applicant's detention was unlawful by reason of its length, or that it was in breach of national law, or that domestic law was not sufficiently accessible, precise and foreseeable in its application, or that there existed inadequate procedural safeguards against arbitrariness (see, *mutatis mutandis, J.N.,* cited above, § 99).

(c) Whether the authorities acted with due diligence and whether the detention was arbitrary

61. The Court notes at the outset that the applicant's detention between 10 February 2021 and 14 July 2022 was not on account of the need to wait for the courts to determine a legal challenge, the extradition having been granted before his detention (see, *mutatis mutandis*, *Louled Massoud*, cited above, § 66); the applicant was placed in detention pending his surrender to Venezuela.

62. As regards the initial period of his detention, the Court notes that the applicant made use of several legal remedies to challenge his surrender or obtain its stay, whether by reason of appeals or applications for asylum (see paragraphs 11 and 13 above). Although he clearly made use of his procedural rights, the authorities cannot be blamed for certain delays in the proceedings triggered by his above requests. The Court notes that the domestic courts were not inactive during the relevant period, in so far as they swiftly replied to his

complaints by reasoned decisions, undoubtedly relevant for the progress of the surrender proceedings. The Court further notes that between 29 March and 27 July 2021 the extradition proceedings were suspended pending the examination of the applicant's asylum request, and that the outcome of the asylum proceedings could have been decisive for the question of the applicant's extradition (see, among other authorities, *Rustamov v. Russia*, no. 11209/10, § 165, 3 July 2012 and, in so far as relevant, *Chahal*, cited above, § 115).

63. As regards the remaining period of detention between 27 July 2021 and 14 July 2022, the Court finds that "action" was clearly taken "with a view to [the applicant's] extradition" within the meaning of Article 5 § 1 (f) of the Convention, and his surrender remained a realistic prospect throughout the impugned period (see *S.Z. v. Greece,* no. 66702/13, § 54, 21 June 2018, with further references; and contrast *Louled Massoud,* cited above, § 69; *Garabayev v. Russia,* no. 38411/02, § 89, 7 June 2007; *Eminbeyli v. Russia,* no. 42443/02, § 48, 26 February 2009; and *Dubovik v. Ukraine,* nos. 33210/07 and 41866/08, §§ 61-62, 15 October 2009; contrast further *Khokhlov v. Cyprus*, no. 53114/20, §§ 59 and 101, 13 June 2023, in so far as the applicant's surrender in the present case was not suspended "until further notice", on account of the COVID-19 pandemic or otherwise).

64. Even though certain delays can be observed, in the absence of further information the Court takes the view that they were mostly due to the lack of either a reply from the Venezuelan authorities (see paragraphs 29 and 33 above) or any other traceable action on the part of the requesting State, which cited unspecified logistical constraints and referred to the spread of the new variant of COVID-19 to justify the delay in taking the applicant over (see paragraph 30 above). On one occasion, the applicant's surrender was scheduled for early February 2022 but was postponed as he had contracted COVID-19. Once he tested negative, the Spanish authorities' efforts to set a date for his surrender swiftly resumed (see paragraph 32 above). Up until July 2022 the Spanish authorities took measures to arrange the applicant's surrender to Venezuela and also took the initiative of accelerating that process (see paragraphs 32-34 above; and contrast *Kim v. Russia*, no. 44260/13, § 54, 17 July 2014, and *Louled Massoud*, cited above, § 66).

65. Overall, the Court does not consider that there were significant unjustified periods of inaction attributable to the respondent State (see, *mutatis mutandis*, *Rustamov*, cited above, § 166).

66. Lastly, it was not argued, and the Court finds no indication, that the Spanish authorities acted in bad faith, that the applicant was detained in unsuitable conditions or that his detention was arbitrary for any other reason (see *Saadi,* cited above, § 74).

67. In the light of the above considerations, the Court finds that this part of the application discloses no appearance of a violation of the applicant's rights under Article 5 § 1 (f) of the Convention. It follows that it is manifestly

ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

2. Article 5 § 4 of the Convention

68. The Court observes that the applicant only raised his arguments under Article 5 § 4 of the Convention in his observations of 1 September 2023, that is, more than four months after 28 June 2022, the date of the latest known domestic court decision concerning the application of the custodial measure (see paragraph 27 for details).

69. It follows that this part of the application was lodged out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 October 2024.

Victor Soloveytchik Registrar	Mattias Guyomar President