

409
20.05.2010

Press release issued by the Registrar

Chamber judgment
Not Final¹

[Khaydarov v. Russia](#) (application no. 21055/09)

EXTRADITING THE APPLICANT TO TAJIKISTAN WOULD VIOLATE THE CONVENTION

Unanimously

Violation of Article 3 (prohibition of inhuman or degrading treatment) if applicant extradited to Tajikistan

Violation of Article 5 § 1 and 5 § 4 (right to liberty and security) of the European Convention on Human Rights.

Principal facts

The applicant, Mamurdzhon Khaydarov, is an ethnic Uzbek and a Tajikistani national who was born in 1958 and lives in Dushanbe, Tajikistan. He is currently detained in a remand prison in Moscow with a view to his extradition to Tajikistan.

In 1992 a civil war erupted in Tajikistan which, by June 1997 alone, had cost the lives of between 50,000 and 100,000 people. In an August 1997 fighting, government forces drove the armed opposition, comprised mainly of ethnic groups different from the ruling elite, to seek sanctuary in Uzbekistan. According to the applicant, he fled to Uzbekistan after his village, largely populated by ethnic Uzbeks, was attacked during that period. In 1998 the applicant moved to Russia.

Criminal proceedings were brought against him by the Tajik Prosecutor General's Office in January 2006 in relation to his alleged involvement with an illegal armed group in 1997. In April 2006, the applicant was put on an international wanted list, however, in July 2006, the investigation was suspended because his whereabouts were unknown.

On 17 April 2008, Mr Khaydarov was arrested in Moscow as a person wanted by the Tajik authorities. Then he learned for the first time that there had been criminal proceedings against him. He was first detained by the police and, two days later, a court placed in custody on the basis of the Russian Code of Criminal Procedure. On 18 June 2008, the

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

court again ordered his detention for an unspecified period of time, and on 14 May 2009 the Supreme Court ordered his continued detention. Starting from 6 October 2008, the applicant's lawyer applied several times for his release which was systematically refused by the domestic courts. Mr Khaydarov's lawyer also complained unsuccessfully of the prosecutor's failure to request, as required by domestic law, an extension of the applicant's detention.

On 20 November 2008, the Russian Prosecutor General's Office ordered the applicant's extradition upon a request by the Tajik Prosecutor General made in April the same year. Mr Khaydarov challenged the extradition order in court, alleging that he was being persecuted in Tajikistan for political reasons related to the civil war. The courts heard staff from the Russian Ombudsman's office who stated that torture and ill-treatment were frequently practised in Tajikistan. Mr Khaydarov's appeals were ultimately unsuccessful, the domestic courts having found no evidence that he would be persecuted for political reasons and having relied in particular on assurances given by the Tajik Prosecutor General that the applicant will not be ill-treated and on the fact that Tajikistan had ratified most major international human-rights treaties.

In June 2008, Mr Khaydarov applied for political asylum which was refused by the immigration authorities in October the same year. He appealed against the refusal before the domestic courts, however, his appeals were dismissed. In May 2009, the United Nations High Commissioner for Refugees (UNHCR) declared the applicant a person requiring international protection, yet in September that year the immigration authorities rejected his application for temporary asylum. In November 2009, the Russian Office of the UNHCR submitted to the immigration authorities a report supporting the applicant's request for temporary asylum stating that he ran a real risk of being ill-treated if extradited to Tajikistan.

Complaints, procedure and composition of the Court

Relying in particular on Articles 3 and 5, Mr Khaydarov complained of a serious risk of him being ill-treated if extradited to Tajikistan, as well of various breaches of his right not to be arbitrarily detained.

The application was lodged with the European Court of Human Rights on 22 April 2009.

Judgment was given by a Chamber of seven, composed as follows:

Christos **Rozakis** (Greece), **President**,
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Sverre Erik **Jebens** (Norway)
Dean **Spielmann** (Luxembourg),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus) **judges**,

and Søren **Nielsen**, **Section Registrar**.

Decision of the Court

Ill-treatment (Article 3)

The Court examined first the general political climate in Tajikistan. It noted that information provided by many objective sources, such as the United Nations Committee Against Torture,

Human Rights Watch and the United States Department of State, undoubtedly illustrated that the over-all human rights situation in Tajikistan gave rise to serious concerns. In particular, detainees were often kept in unrecorded detention without access to a lawyer or medical assistance and interrogation methods were at odds with international legal standards. Rampant torture was wide-spread and State officials practising it were granted impunity. The fact that Tajikistan had ratified major international human rights documents was not in itself enough to exclude the risk of Mr Khaydarov being ill-treated there.

The Court also noted that cases of discrimination against ethnic Uzbeks in Tajikistan had been reported. Mr Khaydarov was wanted by the Tajik authorities in connection to events related to the civil war; the US Department of States had indicated that several hundred political prisoners who had fought in that war were held in Tajikistan. The Russian office of the UNHCR had concluded that the criminal charges against the applicant had been disguised persecution by the Tajik authorities for his political views since they had associated him with anti-government activities which had taken place in the August 1997.

The Tajik Prosecutor General's letter to the Russian authorities could not have been regarded as diplomatic assurances guaranteeing that the applicant would not be tortured as it had been clear from that letter that no such assurances had been given. In any event, diplomatic assurances were not in themselves sufficient to guarantee that ill-treatment would not take place. That conclusion was supported by numerous reliable sources reporting that practices contrary to the Convention were either tolerated or used by the Tajik authorities.

The Court finally noted that, when examining Mr Khaydarov's appeals against the extradition order, the Russian courts had not addressed duly his complaint that he was persecuted on political grounds in Tajikistan. The courts had failed to study carefully the documents produced in the applicant's extradition case and had made no attempt to examine the possibility that the criminal charges brought against him might have been a retaliation against a former political opponent.

The Court held therefore that extraditing Mr Khaydarov to Tajikistan would violate Article 3.

Detention (Article 5 § 1)

The Court noted that the request for the applicant's extradition had been accompanied by an arrest warrant issued by a Tajik investigator rather than by a decision of a Tajik court. Mr Khaydarov's detention was authorised twice, first on 19 April 2008 and again on 18 June 2008, by a Russian court. However, no further court decision to extend his detention had been made until 14 May 2009, when the Supreme Court had authorised the applicant's continued detention. Therefore, the domestic courts had taken ten months and twenty-five days to reconsider the applicant's detention pending extradition. Consequently, the Court concluded that, after 17 October 2008 (that was six months after his initial detention), the applicant had been detained in breach of the relevant domestic law which allowed a maximum of six months detention in the absence of a court decision extending it.

The Court therefore held that there had been a violation of Article 5 § 1.

Detention (Article 5 § 4)

The Court noted that it was not disputed between the parties that the applicant had spent more than two years in detention pending extradition. It further recalled that it had found earlier on numerous occasions that the Code of Criminal procedure did not allow those detained with a view to extradition to bring proceedings challenging the lawfulness of their detention if the prosecutor had not asked before that their detention be extended. Mr Khaydarov's lawyer had attempted unsuccessfully to complain of the prosecutor's failure

to request such an extension. In those circumstances, the Court was not satisfied that the domestic law provisions secured the applicant's right to bring proceedings before a court for the examination of the lawfulness of his detention. Consequently, the Court found that, throughout his detention pending extradition, Mr Khaydarov could not have had reviewed the lawfulness of his detention, in violation of Article 5 § 4.

The Court dismissed all the other complaints of the applicant.

Article 41

Under Article 41 (just satisfaction), the Court held that Russia was to pay Mr Khaydarov 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,240 for costs and expenses.

The judgment is available only in English. This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its website (<http://www.echr.coe.int>).

Press contacts

Kristina Pencheva-Malinowski (telephone : 00 33 (0)3 88 41 35 70) or

Stefano Piedimonte (telephone : 00 33 (0)3 90 21 42 04)

Tracey Turner-Tretz (telephone : 00 33 (0)3 88 41 35 30)

Céline Menu-Lange (telephone : 00 33 (0)3 90 21 58 77)

Frédéric Dolt (telephone : 00 33 (0)3 90 21 53 39)

Nina Salomon (telephone: 00 33 (0)3 90 21 49 79)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.