

Press release by the Registrar

CHAMBER JUDGMENT  
SHAMAYEV AND 12 OTHERS v. GEORGIA AND RUSSIA

The European Court of Human Rights has today notified in writing its judgment<sup>1</sup> in the case of *Shamayev and 12 Others v. Georgia and Russia* (application no. 36378/02).

Concerning Georgia

The Court held unanimously:

- that there had been **no violation of Article 2** of the European Convention on Human Rights (right to life) as regards Mr Aziev;
- that there had been **no violation of Article 3** of the Convention (prohibition of inhuman and degrading treatment) as regards the five extradited applicants;
- that there had been **no violation of Article 2** as regards the five extradited applicants;
- that there had been **no violation of Article 5 § 1** (right to liberty and security);
- that there had been a **violation of Article 5 § 2** (right to be informed promptly of the reasons for one's arrest) as regards all the applicants;
- that there had been a **violation of Article 5 § 4** (right to a speedy ruling on the lawfulness of detention) as regards all the applicants;
- that it was not necessary to examine Mr Khadjiev's complaint concerning Article 5 § 2 of the Convention under Article 6 § 3;
- that it was not necessary to examine Mr Khadjiev's complaint concerning the fact that he had been handed over to the Russian authorities without any court decision from the standpoint of Article 2 § 1 of the Convention and Article 4 of Protocol No. 4 (freedom of movement);

and by six votes to one:

- that there **would be a violation of Article 3** of the Convention if the decision to extradite Mr Gelogayev were to be enforced;
- that there had been a **violation of Article 3** as regards Mr Shamayev, Mr Aziev, Mr Khadjiev, Mr Vissitov, Mr Baimurzayev, Mr Khashiev, Mr Gelogayev, Mr Magomadov, Mr Kushtanashvili, Mr Issayev and Mr Khanchukayev on account of the treatment inflicted on them during the night of 3 to 4 October 2002;

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<sup>1</sup> Under Article 43 of the European Convention on Human Rights, 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.

- that there had been a **violation of Article 13** (right to an effective remedy) taken together with Articles 2 and 3 as regards Mr Shamayev, Mr Adayev, Mr Aziev, Mr Khadjiev and Mr Vissitov;
- that there had been a **violation of Article 34** (right of individual application) as regards Mr Shamayev, Mr Aziev, Mr Khadjiev and Mr Vissitov;

### Concerning Russia

The Court held:

- unanimously, that there had been a **violation of Article 38 § 1 (a)** (obligation to furnish all necessary facilities for the adversarial examination of the case) on account of the lack of cooperation by the Russian authorities;
- by six votes to one, that there had been a **violation of Article 34** as regards the five applicants extradited to Russia on 4 October 2002 and the two applicants arrested by the Russian authorities on 19 February 2004;
- unanimously, that it did not have jurisdiction to examine the complaints Mr Khadjiev made against Russia on 27 October 2003;
- unanimously, that it did not have jurisdiction to examine the other complaints under Article 2, Article 3 and Article 6 §§ 1, 2 and 3.

Under 41 (just satisfaction) the Court held by six votes to one that Georgia was to pay the 13 applicants, for non-pecuniary damage, the overall sum of 80,500 euros (EUR), in awards ranging from EUR 2,500 to EUR 11,000, and EUR 4,000 to the applicants jointly for costs and expenses. The Court also held unanimously that the finding of a potential violation of Article 3 provided Mr Gelogayev with sufficient just satisfaction for any non-pecuniary damage he might have sustained.

In addition, the Court held by six votes to one that Mr Shamayev, Mr Aziev, Mr Khadjiev, Mr Adayev, Mr Vissitov, Mr Khashiev, and Mr Baimurzayev should receive from Russia EUR 6,000 each for non-pecuniary damage, and EUR 2,000 jointly for costs and expenses.

Lastly, the Court held unanimously that Russia was to pay into the budget of the Council of Europe EUR 1,580.70 in respect of the Court's operational expenditure, that sum corresponding to the costs incurred by the Court for the planned fact-finding visit to Russia.

**(The judgment is available only in French.)**

### **1. Principal facts**

The applicants are 13 Russian and Georgian nationals of Chechen origin. Their names and years of birth are as follows: Abdul-Vakhab Shamayev, 1975; Rizvan (or Rezvan) Vissitov, 1977; Khusein Aziev, 1973; Adlan (or Aslan) Adayev (or Adiev), 1968; Khusein Khadjiev, 1975; Ruslan Gelogayev, 1958; Ahmed Magomadov, 1955; Hamzat Issayev, 1975; Robinzon Margoshvili, 1967; Giorgi Kushtanashvili (year of birth undisclosed), Aslambek Khanchukayev, 1981; Islam Khashiev *alias* Rustam Elihadjiev *alias* Bekkhan Mulkoyev, 1979 or 1980; and Timur (Ruslan) Baimurzayev *alias* Khusein Alkhanov qui est né en 1975.

Between 3 and 5 August 2002 the applicants were arrested by the Georgian border police at a checkpoint in the village of Guirevi and charged with crossing the border illegally, carrying

offensive weapons and arms trafficking. On 6 and 7 August 2002 the Tbilisi Court of First Instance remanded them in custody for three months.

On 6 August 2002 the Russian authorities applied to the Georgian authorities for their extradition, asserting that the persons detained were terrorist rebels who had taken part in the fighting in Chechnya. At the request of the Georgian procurator-general's office, the Russian authorities supplied their Georgian counterparts with additional documents on 12 and 19 August and on 30 September 2002. Having examined those documents and other evidence, the Georgian procurator-general's office identified, in the first place, five of the applicants. In the light of the gravity of the charges against the persons concerned in Russia, Georgia's deputy procurator-general decided to authorise their extradition on 2 October 2002.

In the night of 3 to 4 October 2002, while 11 of the applicants were in the same cell in Tbilisi no. 5 prison, Mr Adayev and Mr Margoshvili being at that time in the prison infirmary, the applicants learned from the television that the extradition of some of their number was imminent. Later that night, when prison officers asked them to leave their cell so that it could be disinfected, the applicants refused to comply. Violent clashes took place between them and about fifteen members of the special forces under the orders of the Georgian Ministry of Justice.

On 4 October 2002 Mr Shamayev, Mr Adayev, Mr Aziev, Mr Khadjiev and Mr Vissitov were extradited from Georgia to Russia. They were placed on 17 and 18 October 2002 in a remand prison ("*SIZO*") in A, a town in the Stavropol region. The place where they were detained between 4 and 17-18 October 2002 remains unknown. On 26 July 2003 Mr Shamayev, Mr Khadjiev, Mr Vissitov and Mr Adayev were transferred to a *SIZO* in town B in the Stavropol region; the Russian Government affirms that Mr Aziev was also transferred there on an unknown date. According to the Russian Government, at the end of the proceedings against them Mr Shamayev and Mr Khadjiev were sentenced to three years and six months' imprisonment, Mr Vissitov to ten years and Mr Adayev to one year and six months.

The applicants who had not been extradited continued to be detained in Georgia. Subsequently, Mr Margoshvili was released on his acquittal on 8 April 2003, Mr Gelogayev was released following a judgment of 6 February 2004, and Mr Khanchukayev, Mr Issayev, Mr Magomadov and Mr Kushtanashvili were released in January and February 2005. After disappearing in Tbilisi on 16 or 17 February 2004, Mr Khashiev and Mr Baimurzayev were arrested by the Russian authorities on 19 February 2004; they are apparently now detained in Russia, at the Essentuki remand prison.

## **2. Procedure and composition of the Court**

On 4 and 9 October 2002 the applicants sent to the European Court of Human Rights a preliminary application contesting their imminent extradition to Russia. Applying Rule 39 (interim measures) of its Rules of Court, the Court indicated to the Georgian Government that it was desirable, as an interim measure, not to extradite the applicants to Russia before the Chamber had had the opportunity to examine the application in the light of the information to be supplied by the Georgian Government. The Russian Government were notified of the application as a matter of urgency under Rule 40. On 26 November 2002 the Court decided not to extend the application of Rule 39 in the light of the undertakings given by Russia.

A hearing was held on 16 September 2003, following which the Chamber declared the application admissible. From 23 to 25 February 2004 a delegation of the Court took oral evidence in Tbilisi from six applicants who had not been extradited and 12 witnesses. A fact-finding visit due to be made to Russia had to be cancelled on 4 May 2004 on account of the uncooperative attitude of the Russian authorities.

Judgment was given by a Chamber of 7 judges, composed as follows:

Jean-Paul **Costa** (French), **President**,  
András **Baka** (Hungarian),  
Loukis **Loucaides** (Cypriot),  
Karel **Jungwiert** (Czech),  
Volodymyr **Butkevych** (Ukrainian),  
Mindia **Ugrekhelidze** (Georgian),  
Anatoli **Kovler** (Russian), **judges**,

and also Sally **Dollé**, **Section Registrar**.

### 3. Summary of the judgment<sup>1</sup>

#### Complaints

The applicants submitted that their extradition to Russia, where capital punishment had not been abolished, exposed them to a real danger of death or torture contrary to Articles 2 and 3 of the Convention. They further complained of the treatment inflicted on them in the night of 3 to 4 October 2002. Their lawyers also asserted that Mr Aziev had died while being extradited. The applicants complained in addition of violations of Article 5 §§ 1, 2 and 4, Article 13 and Article 6 §§ 1 and 3.

#### Decision of the Court

*AS REGARDS GEORGIA*

#### Articles 2 and 3 of the Convention

##### *The alleged death of Mr Aziev*

There was no evidence justifying the conclusion that Mr Aziev had died before, during or after his extradition. Moreover, he had lodged a further application in August 2003, directed solely against Russia, in which he had not made any complaint about alleged ill-treatment. That being so, the Court held unanimously that there had been no violation of Article 2 in respect of Mr Aziev.

##### *The alleged risks of being sentenced to death and of ill-treatment following extradition*

With regard to the five extradited applicants: the Court concluded that in the light of the material in its possession the facts of the case did not support “beyond a reasonable doubt” the assertion that at the time when the Georgian authorities took the decision there were serious and well-founded reasons to believe that extradition would expose the applicants to a

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<sup>1</sup> This summary by the Registry does not bind the Court.

real personal risk of suffering inhuman or degrading treatment, within the meaning of Article 3 of the Convention. There had accordingly been no violation of that provision by Georgia.

With regard to the applicants against whom no extradition order had been made: namely Mr Issayev, Mr Khantchukayev, Mr Magomadov, Mr Kushtanashvili and Mr Margoshvili, the Court declared their complaint inadmissible because to date there had been no decision to extradite them. Moreover, Mr Kushtanashvili and Mr Margoshvili were not at risk of extradition on account of their Georgian nationality.

With regard to the applicants against whom an extradition order had been made: namely Mr Baimurzayev, Mr Khashiev and Mr Gelogayev, the Court noted that Mr Baimurzayev and Mr Khashiev were currently detained in Russia after disappearing in Georgia and took the view on that account that it was not necessary to determine whether there would have been a violation of Articles 2 and 3 of the Convention if the extradition order made against them on 28 November had been enforced.

The extradition order made against Mr Gelogayev had been suspended but might be enforced when the proceedings concerning his refugee status ended. In order to determine whether his extradition could entail a violation of the Convention, the Court had to take account of the present circumstances.

Having regard to the material placed before it, the Court considered that the assessments on which the decision to extradite Mr Gelogayev had been founded two years before no longer sufficed to exclude all risk of ill-treatment prohibited by the Convention being inflicted on him. The Court noted in particular the new extremely alarming phenomenon of persecution and killings of persons of Chechen origin who had lodged applications with it. According to reports by human rights organisations, there had been a sudden rise in 2003 and 2004 in the number of cases of persecution of persons who had lodged applications with the Court, in the form of threats, harassment, detention, enforced disappearances and killings.

Consequently, the Court considered that if the decision of 28 November 2002 to extradite Mr Gelogayev were to be enforced on the basis of the assessments made on that date, there would be a violation of Article 3 of the Convention.

#### *The risk of extrajudicial execution*

The Court noted that governmental and non-governmental organisations had reported numerous cases of killings of persons of Chechen origin or their arbitrary detention followed by their disappearance in the Republic of Chechnya. However, in the present case there was nothing to justify the assertion that at the time when the Georgian authorities took the relevant decision there were serious and well-founded reasons to believe that extradition would expose the applicants to a real risk of extrajudicial execution, contrary to Article 2 of the Convention. Accordingly, there had been no violation of that provision.

#### *The events of the night of 3 to 4 October 2002*

The Court considered that it had been established that force had been used to make 11 applicants leave the cell in which they were all being held with a view to the extradition of some of their number and that that use of force had been preceded by peaceful attempts to persuade the prisoners to comply with the order to leave the cell. There was no doubt that the applicants had put up a hostile resistance to the prison officers and special forces, by arming

themselves with various objects. In those circumstances the Court considered that the intervention of 15 special forces officers, armed with truncheons, could reasonably be considered necessary to ensure the safety of the prison staff and prevent disorder spreading through the rest of the prison.

However, it appeared that the applicants had been informed only that the extradition of some of them was imminent, without being told which ones, that this information had not been given to them until 3 October 2002 in the middle of the night, and that a few hours later prison officers ordered them to leave their cell giving fictitious reasons. Such conduct on the part of the authorities amounted to attempted deception. In the Court's view the attitude of the Georgian authorities and the way in which they had managed the extradition enforcement procedure had incited the applicants to resist, so that the recourse to physical force had not been justified by the prisoners' conduct.

As a result of this confrontation the applicants received various wounds and fractures which were noted in a medical report dated 4 October 2002, as regards the non-extradited applicants at least. Four of the applicants had been found guilty of injuring members of the special forces and sentenced in Georgia to two years and five months' imprisonment. However, no inquiry had been conducted into the disproportionate nature of the intervention.

Having regard to the unacceptable circumstances of the procedure for the enforcement of the extradition orders against four applicants by the Georgian authorities, and in view of the injuries inflicted on some of the applicants by the special forces, followed by the lack of appropriate medical treatment in good time, the Court considered that the 11 applicants detained in Tbilisi no. 5 prison that night were subjected to physical and mental suffering of such a nature that it amounted to inhuman treatment. It accordingly held that there had been a violation of Article 3.

#### Article 5 of the Convention

##### *Lawfulness of the detention*

The Court considered that the detention of the applicants in Georgia from 3 August to 4 October 2002 was justified in principle by virtue of Article 5 § 1 (f) of the Convention and that there had accordingly been no violation of Article 5 § 1 of the Convention.

##### *The detention of Mr Khashiev and Mr Baimurzayev following their disappearance*

As the disappearance of these two applicants had occurred after it had delivered its admissibility decision in the case, the Court did not have jurisdiction to examine or comment on their arrest or detention by the Russian authorities.

*Alleged violation of Article 5§§ 2 and 4*

The Court noted that ten of the applicants had met trainee prosecutors from the Georgian procurator-general's office but had not received sufficient information about their detention pending extradition. It accordingly held that there had been a violation of Article 5 § 2. In the light of that finding, it did not consider it necessary to examine Mr Khadjiev's complaint under Article 5 § 2 of the Convention from the standpoint of Article 6 § 3 also.

As the applicants had not been informed that they were being detained pending extradition, and as they had not been given copies of any of the documents in the file, their right to appeal against their detention had been deprived of all substance. The Court accordingly held that there had been a violation of Article 5 § 4 of the Convention.

Article 13 taken together with Articles 2 and 3 of the Convention

The Court considered that the applicants extradited on 4 October 2002 and their lawyers had not been informed of the extradition orders made against them on 2 October 2002 and that the relevant authorities had unjustifiably hindered their exercise of the right to seek a remedy that should, at least in theory, have been available to them. In that connection, the Court made it clear that it found it unacceptable for a person to learn that he was to be extradited only moments before being taken to the airport, when his reason for fleeing the receiving country had been his fear of breaches of Articles 2 and 3 of the Convention.

The Court accordingly held that there had been a violation of Article 13 with regard to the five extradited applicants in that they had not had any opportunity of submitting to a national authority their complaints under Articles 2 and 3. In the light of that finding, it considered that it was not necessary to examine the same complaint by Mr Khadjiev under Article 2 § 1 and Article 4 of Protocol No. 4.

Article 34 of the Convention

On 4 October 2004, between 3.35 and 4.20 p.m. the Court received by fax from 11 of the applicants requests that it indicate interim measures to ensure that they would not be extradited. At 6 p.m. on the same day, and again at 7.59 p.m., the Court informed the Georgian Government that it had decided to indicate such measures in the case. However, at 7.10 p.m. the Georgian authorities extradited five of the applicants. Once extradited they had been held in isolation, without contact with their representatives. The Russian Government had even maintained that they did not wish to lodge an application against Russia and that examination of the case was impossible from the procedural point of view.

The principle of equality of arms, inherent in the effective exercise of the right of petition during the proceedings before the Court, had thus been unacceptably infringed. In addition, the Court itself had not been able to carry out the fact-finding visit to Russia it had decided to undertake by virtue of Article 38 § 1 (a) of the Convention, and, on the sole basis of a few written communications with the extradited applicants, had not been in a position to complete its examination of the merits of their complaints against Russia. The gathering of evidence had thus been frustrated. As a result, the applicants' exercise of their right of petition had therefore been seriously obstructed, and the Court concluded that Georgia had failed to discharge its obligations under Article 34 of the Convention as regards the extradited applicants.

## *AS REGARDS RUSSIA*

### Article 38 of the Convention

The Court reiterated the fundamental importance of the principle that Contracting States must cooperate with it. In addition to that obligation, the Russian Government had a duty to comply with the specific undertakings it had given the Court on 19 November 2002, notably the undertaking to allow the Court access without any hindrance to the extradited applicants, including the possibility of a fact-finding visit. On the basis of those undertakings the Court had decided to lift the interim measure indicated to Georgia and to hold an on-the-spot investigation in Georgia and Russia. However, it had been able to carry out only the Georgian part of the inquiry.

Faced with the refusal of access to the applicants, the Court had repeatedly urged the Russian Government to permit it to conduct the investigation in order to establish the facts and thus to discharge its obligations under Article 38 § 1 (a) of the Convention. The Russian Government had not responded favourably to those requests and none of the reasons it had given was capable of absolving the Russian State from its obligation to cooperate with the Court in its attempts to establish the truth.

By obstructing the Court's fact-finding visit and denying it access to the applicants detained in Russia the Russian Government had unacceptably hindered the establishment of part of the facts in the case and had therefore failed to discharge its obligations under Article 38 § 1 (a) of the Convention.

### Article 34 of the Convention

The Court observed that in addition to its obligations under Article 34 the Russian Government had a duty to comply with the specific undertakings it had given the Court on 19 November 2002, including the undertaking to ensure that all the applicants, without exception, would have unobstructed access to the Court. On the basis of those unequivocal undertakings the Court had lifted the interim measure indicated to Georgia.

Yet despite the Court's requests the applicants' representatives had not been able to enter into contact with them and even the Court had been refused permission to interview them. In addition, the Russian Government had several times expressed doubt as to the extradited applicants' intention to apply to the Court, and as to the authenticity of their applications and the authority they had given their representatives to act on their behalf. They had asserted in reply to one letter sent by the Court to the applicants' Russian lawyers that the applicants had complained about the Court's attempts to contact them. Moreover, the Russian Government had submitted at first that a letter sent by the Court to the extradited applicants directly in prison had not been received. They had also contended that those applicants had never sent the Court any complaint against Russia, an assertion which four of the persons concerned unequivocally denied later.

That being so, the Court considered that there was reason for serious doubt as to the freedom of the extradited applicants to correspond with it without hindrance and to put forward their complaints in greater detail, which they had been prevented from doing by the haste with which they had been extradited.

As regards Mr Baimurzayev and Mr Khashiev, the two respondent Governments had not yet supplied any convincing explanation of either their disappearance a few days before the arrival of the Court's delegation in Tbilisi or their arrest three days later by the Russian authorities.

In conclusion, the Court considered that the effective examination of the applicants' complaints against Georgia had been detrimentally affected by the conduct of the Russian Government, and examination of the admissible part of the application against Russia had been impossible. It considered that the measures taken by the Russian Government had hindered the effective exercise by Mr Shamayev, Mr Aziev, Mr Vissitov, Mr Khadjiev, Mr Adayev, Mr Khashiev and Mr Baimurzayev of the right to apply to the Court, as guaranteed by Article 34 of the Convention. There had therefore been a violation of that provision.

#### Other complaints

The Court considered that it did not have jurisdiction to examine the complaints under Articles 2, 3, and 6 §§ 1, 2 and 3 of the Convention.

Judge Kovler expressed a dissenting opinion which is annexed to the judgment.

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The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

#### **Registry of the European Court of Human Rights**

**F – 67075 Strasbourg Cedex**

**Press contacts: Roderick Liddell (telephone: +00 33 (0)3 88 41 24 92)**

**Emma Hellyer (telephone: +00 33 (0)3 90 21 42 15)**

**Stéphanie Klein (telephone: +00 33 (0)3 88 41 21 54)**

**Fax: +00 33 (0)3 88 41 27 91**

*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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.*