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

THIRD SECTION

DECISION

Application no. 37146/12
A.Y.
against Slovakia

The European Court of Human Rights (Third Section), sitting on 1 March 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
George Nicolaou,
Johannes Silvis,
Branko Lubarda,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 15 June 2012,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with,

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

Having regard to the comments submitted by the Government of the Russian Federation and the reply thereto by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

1. The applicant is a Russian national who was born in 1978 and is currently detained in Banská Bystrica. The President decided of his own motion to grant the applicant anonymity (Rule 47 § 3). He is represented before the Court by Kolíková & Partners s.r.o., a law firm with its registered office in Bratislava.

2. The Government of the Slovak Republic ("the Government") are represented by their Agent, Ms M. Pirošíková.

A. The circumstances of the case

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

1. Background

4. The applicant is of Ingush ethnic origin.

5. In March 2008 he left Russia for Ukraine, Slovakia, the Czech Republic and, ultimately, Germany, where he arrived in April 2008.

6. The applicant was subsequently returned to the Czech Republic and then to Slovakia, where he applied for asylum on 13 May 2008 under a different identity.

7. While the asylum proceedings in Slovakia were pending he left for Switzerland, where he remained, unsuccessfully seeking asylum, from November 2008 to March 2009.

8. The applicant's asylum request in Slovakia was dismissed on 1 August 2008 and then again on 12 May 2010, after the first decision had been quashed on administrative appeal. The applicant's subsequent administrative-law appeal was declared inadmissible as belated at two levels of jurisdiction. The dismissal of his asylum request thus became final and binding on 18 November 2010.

9. On an unspecified date in 2010 the applicant left Slovakia for Belgium, where he unsuccessfully applied for asylum in November 2010 and was ultimately returned to Slovakia on 9 December 2010.

10. After this the applicant applied for asylum in Slovakia and the Russian Federation applied for his extradition in order for him to be tried on charges related to acts of terrorism allegedly committed by the applicant with others on the territory of North Ossetia. This resulted in two sets of proceedings, which ran in parallel and are described below in turn.

2. Second request for asylum

11. On his return to Slovakia (see paragraph 9 above), on 9 December 2010, the applicant claimed asylum again, this time under his true identity.

12. The claim was examined at the first administrative level by the Migration Office of the Ministry of the Interior, which dismissed it on 6 September 2011, 28 June 2012 and 28 November 2013. However, all these decisions were quashed by administrative courts following administrative-law appeals by the applicant.

13. The last-mentioned decision was quashed by the Košice Regional Court on 14 April 2014 and the matter was remitted to the Migration Office for reconsideration.

The principal ground for this decision was that the Migration Office had failed to follow binding instructions issued by the court as part of its previous judgments quashing the Migration Office's decisions, namely to examine properly:

(i) the applicant's allegations that he was suffering from amnesia due to torture at the hands of Russian law-enforcement officers and resultant concussion;

(ii) the applicant's allegation that, in view of his Ingush origin and the political situation in North Ossetia where he was wanted, he would be in danger if extradited there, while these allegations were to be examined in the light of existing reports on the police and justice situation in North Ossetia;

(iii) the existing documentation concerning the situation of the individuals whose depositions had provided the basis for the charges against the applicant (see paragraphs 34 *et seq*. below);

(iv) the validity of the guarantees given by the Office of the Prosecutor General of the Russian Federation ("the OPGRF") to the Slovakian authorities as regards the applicant's treatment in the event of his extradition to Russia (in particular those specified in a letter of 2 February 2011); and

(v) reports by non-governmental organisations concerning the applicant's individual case and the situation in the requesting country in general.

14. On 5 May 2015 the Migration Office dismissed the applicant's second asylum request for the fourth time and decided not to grant him any subsidiary protection.

It observed that at various stages of the proceedings the applicant had given three different time references (August 2005, May 2006 and May 2007) to his allegation that he had been arrested and mistreated by the police in Ingushetia, that there had been inconsistencies as to the length of his ensuing hospitalisation, and that there were further incongruities between the time and scope of the offences imputed to him in the official extradition documentation and those referred to by the applicant himself.

Moreover, the applicant had never before relied on any of the statutory grounds for granting asylum, and his present allegations of persecution on political, religious and ethnic grounds were entirely novel, while his prosecution in the requesting state had no political or ideological connotations. The applicant's account of the facts was therefore found to be untrustworthy.

The Migration Office observed that the available documents confirmed that the applicant had been hospitalised in a traumatology department from 12 May to 14 June 2006 with a number of injuries. There was however no evidence showing that his injuries were in any way attributable to the State.

His present digestive problems could not be linked to those injuries, because the applicant had been suffering from them even before his alleged mistreatment. As to his alleged amnesia, by which he sought to explain the incongruities in his factual submissions, the Migration Office considered it improbable, because his recollection of other facts was clear and precise. Nevertheless, the Migration Office had obtained expert evidence concluding that the concussion he had sustained in 2006 could neither have produced amnesia, nor could it have had any permanent effects on his health.

Furthermore, the Migration Office observed that the requesting State, through the OPGRF, had provided assurances as to the applicant's treatment in the event of his extradition on 2 February 2011, and that these guarantees had been confirmed and amended on 12 October 2012 and 23 January 2013.

According to these guarantees, the applicant would have at his disposal all existing legal means of asserting his rights, including the assistance of a lawyer. He would not be exposed to torture or any other form of ill-treatment, and the death penalty would not be imposed on him. His prosecution was not motivated politically, racially, religiously or ethnically. He would not be prosecuted for any other offences than those for which his extradition was sought, and he would not be extradited further to another State without Slovakia's consent. Slovakian diplomatic representatives would also be free to monitor compliance with the guarantees given.

In its assessment of these guarantees the Migration Office took into account that they had been provided by the OPGRF and that there was no indication that they would not be effective in North Ossetia. Once the applicant's criminal proceedings were completed and any sentence served, he would be free to settle in any other place, not necessarily North Ossetia. There was no precedent for the Russian Federation not to comply with the diplomatic guarantees given to Slovakia in a similar context.

The Migration Office pointed out that the Russian Federation did not have a record of systematic human rights violations, that the guarantees were clear, specific and individualised, that they had also been confirmed by the requesting State as an intervening third party in the proceedings before the Court (see paragraph 47 below), that their observance was subject to diplomatic monitoring, and that their validity had been recognised by the Supreme Court in the extradition proceedings (see paragraph 23 below).

As to the various reports concerning the situation in Russia, the Migration Office considered them general in nature and in the circumstances not capable of prevailing over the specific and individual guarantees provided by the OPGRF.

Concerning the available material on the applicant's co-accused, which included their pre-trial depositions, the Migration Office found that it was general, contained no more than allegations, was flawed by inconsistencies, and did not constitute proof of the allegations that they had been mistreated. The applicant was mentioned only once, in one of the pre-trial depositions,

and this mention did not implicate him in any way. Moreover, when the applicant's co-accused changed their versions before the court, their submissions were properly examined in adversarial proceedings. Therefore, this material did not represent a probability that, in the event of his extradition, the applicant would himself be mistreated or that he would be denied a fair trial in the proceedings against him.

In sum, there was no trustworthy indication of the existence of any grounds for granting the applicant asylum. Moreover, with reference to his state of health as established in a report from a prison hospital of 15 October 2013, the Migration Office found no humanitarian reasons linked to the applicant's health or otherwise for providing him with subsidiary protection.

15. The applicant challenged the decision of 5 May 2015 by way of an administrative-law appeal, arguing in principle that the Migration Office had yet again completely ignored the binding instructions of the administrative court and had simply reaffirmed its previous line of decisions with all the errors therein.

That appeal is still pending before the Košice Regional Court.

3. Extradition proceedings

16. On 9 July 2010 a judge of the Lenin District Court of Vladikavkaz (Republic of North Ossetia-Alania) issued a warrant for the applicant's arrest on the charges of membership of an existing armed illegal group and of perpetration of assaults organised by it, illegal possession of firearms and explosives, terrorist acts, homicide of two or more persons, and other offences committed in the Republic of North Ossetia-Alania between 25 December 2005 and 21 July 2006.

17. On 20 and 21 January 2011 respectively the applicant was arrested and placed in preliminary detention in Slovakia.

18. On 2 February 2011 the Russian Federation asked for the applicant's extradition.

19. On 1 March 2011 the Trnava Regional Court remanded the applicant in custody pending his extradition to Russia.

20. On 27 March and 12 June 2012 respectively the Regional Court and, following the applicant's interlocutory appeal, the Supreme Court, ruled that the applicant's extradition was permissible.

The courts found that none of the statutory grounds preventing extradition had been given and, in particular, that the applicant's extradition was not precluded by his asylum claim of 9 December 2010 (see paragraph 11 above) as this was a repeated claim. In reaching that conclusion, they ascribed significant importance to the guarantees provided by the OPGRF as regards the applicant's treatment in the event of his extradition by the requesting State.

In addition, the courts took into account that the requesting State was a member State of the Council of Europe and a High Contracting Party to

the Convention. Moreover, they referred to the case-law of the Court, including its decision of 14 September 2010 in the cases of *Chentiev v. Slovakia* and *Ibragimov v. Slovakia* (nos. 21022/08 and 51946/08).

In so far as the applicant had argued that the case against him in Russia was concocted and based on evidence obtained by torture, these allegations were to be examined in the proceedings on the merits of his charges in Russia, the Slovakian authorities being by no means equipped to assess them, not least as they did not even have the relevant case files at their disposal.

Lastly, the courts observed that, in so far as the applicant's argument was based on generally worded reports by non-governmental organisations, these reports were outweighed by the individualised and specific guarantees of the requesting State, and there were no obstacles to the non-governmental organisations' monitoring the fairness of the applicant's proceedings in Russia.

21. On 23 August 2012 the Constitutional Court acceded to the applicant's request of 18 June 2012 by indicating an interim measure suspending the Supreme Court's decision of 12 June 2012. At the same time, it declared admissible the applicant's constitutional complaint that that decision was in violation of his rights under Article 3 of the Convention.

22. On 2 October 2013 the Constitutional Court found that the Supreme Court's decision of 12 June 2012 was in violation of the applicant's Article 3 rights, quashed it, remitted the case to the Supreme Court for a new examination of the applicant's interlocutory appeal against the decision of 27 March 2012, and awarded him costs. It found that the Supreme Court's assessment of the case was formalistic, superficial, and inadequate, in particular as regards (i) the available reports on the general situation with respect to human rights in Russia and especially in the North Caucasus region, (ii) the applicant's allegations that he and his co-accused had been ill-treated by the police and that his charges were based on evidence obtained by the ill-treatment of his co-accused, and (iii) the validity of the diplomatic guarantees of the requesting State in the light of the Court's case-law.

23. On 10 July 2014 the Supreme Court ruled again on the applicant's interlocutory appeal against the decision of the Regional Court 27 March 2012, as instructed by the Constitutional Court in its judgment of 2 October 2013. In its decision the Supreme Court again dismissed the interlocutory appeal. It did so having observed that the offences of which the applicant stood accused had taken place more than eight years ago, that the two consecutive asylum proceedings had together taken more than six years and were still not completed, that the applicant had been detained pending extradition for three and a half years, and that the maximum duration of such detention was not limited by statute. It held that the length of the asylum proceedings was unreasonable and that in the circumstances it was

inappropriate for the Supreme Court to await the ultimate resolution of the asylum proceedings.

The Supreme Court summarised the requesting State's guarantees (see paragraph 14 above) and concluded that they were sufficiently specific, individualised and reliable. As there had not been any specific instance of extradition from Slovakia to Russia, there was no concrete experience of or practice in monitoring compliance with guarantees given, nor was there any instance of failure to respect the guarantees.

The general reports on human rights situation in Russia were to be seen in the light of the applicant's specific circumstances.

Moreover, the Supreme Court referred to reports on the 2011 and 2013 visits of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") to Russia and the measures taken by the Russian authorities in response to the CPT's findings. In addition, the Supreme Court again referred to the Court's assessment of the guarantees provided by the Russian Federation in *Chentiev* and *Ibragimov* (both cited above) and other cases. Lastly, it considered that it was not the task of the courts in extradition proceedings to take a stance as regards the lawfulness of the prosecution for the purposes of which a person was to be extradited.

24. There was no appeal available against the Supreme Court's decision of 10 July 2014 and, accordingly, the ruling that the applicant's extradition was permissible became final and binding on that day.

25. The applicant subsequently contested the Supreme Court's decision by way of a constitutional complaint, which the Constitutional Court declared inadmissible without examining its merits on 24 November 2014, on the ground that it fell manifestly short of the applicable formal requirements.

26. The final decision on the applicant's extradition now lies with the Minister of Justice, who has discretion to allow or disallow extradition subject to various considerations under Article 510 § 2 of the Code of Criminal Procedure, including specifically those under Article 3 and 6 of the Convention.

4. Guarantees of the OPGRF

27. The request of the Russian Federation of 2 February 2011 for the applicant's extradition (see paragraph 18 above) was accompanied by guarantees from the OPGRF as regards the treatment to be accorded to the applicant in the event of his extradition.

28. In a letter of 12 October 2012 from the Representative of the Russian Federation before the Court to the Ministry of Justice of the Slovak Republic, the guarantees in question were confirmed and summarised as follows: the applicant would enjoy all the fair trial guarantees which existed in international law, would only be tried for the crimes for which he had

been extradited by Slovakia, would not be subjected to torture or inhuman or degrading treatment or punishment, would be free to leave the Russian Federation on the completion of his proceedings and after serving any sentence, and would not be extradited to a third country without Slovakia's consent.

29. In a letter of 3 October 2014 the OPGRF responded to Slovakia's request for an amendment of the guarantees in question by pledging that, in the event of his extradition, the embassy of Slovakia in Moscow would be informed of the place of his detention and officers of the embassy would be allowed to visit him and speak to him without the presence of a third person.

30. In a letter of 20 February 2015, in reply to a further request by Slovakia, the OPGRF confirmed the guarantees previously given.

5. Other facts and documents cited by the applicant

(a) The applicant's situation

31. The applicant claims that in September 2005 he was arrested and interrogated by police in Nzran (Republic of Ingushetia) on suspicion of involvement in terrorist activities. As he refused to confess, he was beaten and otherwise tortured for four days. He was subsequently provided with a lawyer, and it took a further six days until he was released and then immediately admitted to hospital, where he spent a month with concussion and multiple other traumas.

32. Once the applicant had learned of the arrests of his acquaintances on terrorist charges (see below), he went into hiding in Ingushetia, Chechnya and elsewhere.

33. His home was subsequently searched and his relatives interrogated as to his whereabouts. These included an uncle whose property was plundered and who was beaten during his interrogation before being released on the same day.

(b) The cases of R. Tsurov, A. Ozdoyev and U. Khadziyev

34. The applicant submits that in July 2006 three acquaintances of his, Messrs Rustam Yunusovich Tsurov, Alikhan Magomedovich Ozdoyev, and Umar Bagaudinovich Khadziyev, were arrested on charges of terrorist acts in North Ossetia; that they were taken to a police station in Vladikavkaz where they were interrogated, beaten and tortured into confessions; and that one of them had given the applicant's name.

35. The case-file contains documentation concerning these individuals, including expert reports on injuries suffered by U. Khadziyev in the night of 21 to 22 July 2006 and on the mental condition of A. Ozdoyev; what appears to be parts of transcripts of undated court hearings of a witness I.S. Kostolev, an accused R. Tsurov, Mr Tsurov's lawyer, U. Khadziyev, and Mr Tsurov's mother; and a statement issued by the mother of U. Khadziyev.

This documentation contains allegations of ill-treatment and coercion with regard to Messrs Tsurov, Ozdoyev, Khadziyev and Kostolev.

In so far as the applicant is concerned, in one of the transcribed submissions, Mr Tsurov stated that he had never seen A. Ozdoyev and the applicant together, admitted having seen the applicant once, but submitted that he had had no personal or telephone contact with him. In addition, in her statement concerning principally the convictions of her son and his associates, which according to her was based solely on self-incriminating evidence extracted from them by torture, the mother of U. Khadziyev stated that the convicts had been coerced into implicating other people, including the applicant.

36. Messrs Tsurov, Ozdoyev and Khadziyev introduced an application of their own under Article 34 of the Convention against the Russian Federation (no. 30444/08). It has been communicated to the Government of the Russian Federation for observations and is still pending.

(c) Various documents

37. Finally, in addition to the material referred to in the subsequent paragraph, the applicant relied on a number of international documents including from Amnesty International, the United Nations Committee against Torture, Human Rights Watch, a Special Rapporteur of the Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights of the Council of Europe, the United States Department of State, the United Kingdom Foreign and Commonwealth Office, Freedom House, the United Nations Special Rapporteur on the independence of judges and lawyers and the United Nations Special Rapporteur on the independence of judges and lawyers originating from or pertaining to the period between the years 2006 and 2013 and the year 2014.

B. Relevant international instruments and reports

38. A number of relevant international instruments and reports concerning the situation in Russia are summarised, for example, in the Court's judgments in the cases of *M.G. v. Bulgaria* (no. 59297/12, §§ 39-58, 25 March 2014), and *Chankayev v. Azerbaijan* (no. 56688/12, §§ 44-52, 14 November 2013, with further references).

COMPLAINTS

39. Relying on Articles 3 and 13 of the Convention, the applicant complained that he would be exposed to a serious risk of ill-treatment in the

event of his extradition and that he had no effective remedy at his disposal against it.

40. The applicant also complained under Article 6 of the Convention that the criminal charges against him in Russia were invented and based on statements obtained under torture and that he would not benefit from the guarantees of a fair hearing in the event of his extradition to Russia.

THE LAW

A. Article 3, alone and in conjunction with Article 13 of the Convention

41. The applicant alleged that extraditing him to Russia would violate Article 3 of the Convention and that he had no effective remedy against it contrary to Article 13 of the Convention.

Article 3 reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 13 provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

1. Arguments before the Court

42. The applicant argued that, if extradited, he would be ill-treated in the context of the criminal proceedings against him. In his submission, this was so because (i) he had already been ill-treated by agents of the requesting State in the past; (ii) Messrs Tsurov, Ozdoyev and Khadziyev, on the evidence from whom his charges were based, had been tortured into giving this evidence; (iii) he was of Ingush ethnic origin; (iv) he was facing charges for offences related to terrorism; and (v) the criminal proceedings against him on these charges were to take place in North Ossetia.

43. In addition, the applicant contended that the Slovakian authorities had prevented him from asserting his rights in the extradition proceedings effectively because they had restricted his access to the court file and had limited his opportunities to use his native language. Furthermore, the courts in the extradition proceedings had failed to await the outcome of the second asylum request, had entirely and wrongfully relied on the guarantees offered by the OPGRF, had failed to examine properly relevant aspects of the case, and had reached arbitrary conclusions.

44. At the same time, the applicant complained that there was no remedy with suspensive effect against both the Supreme Court's decision on the matter of permissibility of his extradition and the impending final decision of the Minister of Justice on his extradition. The applicant concluded that this amounted to a violation of his rights under Article 13 of the Convention, his extradition being prevented by nothing but the Court's interim measure, and that this situation had already persisted for some considerable time.

45. In their reply of 31 October 2012 the respondent Government pointed out that the proceedings on the applicant's second asylum request were still pending. In their course, the applicant was free to assert his Article 3 arguments and, depending on their outcome, further to assert these arguments by way of a fresh complaint to the Constitutional Court.

In addition, pointing out that his constitutional complaint against the Supreme Court's decision of 12 June 2012 was still pending, the Government concluded that the application was premature.

As to the extradition proceedings, the Government explained that they had been hindered by operation of law on account of the proceedings on the applicant's first asylum claim, which was however not the case as regards the proceedings on his repeated asylum claim. The Government pointed out that the applicant had failed to pursue the former proceedings properly, for which they could not be held responsible.

Moreover, the Government referred to the guarantees in respect of the applicant's treatment offered by the requesting State, considered that there were no grounds to doubt them, relied on the Court's case-law, including that in *Chentiev* and *Ibragimov* (both cited above), and concluded that the complaint under Article 3 of the Convention was manifestly ill-founded.

As regards the complaint under Article 13, the Government admitted that a constitutional complaint had no automatic suspensive effect. Nevertheless, they submitted that the applicant was free to request that his constitutional complaint be granted such an effect by the force of the Constitutional Court's decision and that, on the facts of the present case, the Constitutional Court had provided the applicant with a remedy compatible with the Article 13 requirements.

46. The applicant disagreed, and reiterated his complaints. In particular, he emphasised that it had taken the Constitutional Court from 18 June to 23 August 2012 to rule on his application that the effect of the Supreme Court's decision of 12 June 2012 be suspended (see paragraph 21 above). In his submission, this showed that the interim protection available from the Constitutional Court was in fact not genuinely effective.

In his view, the elements which he had previously submitted attesting to the risk of his ill-treatment if extradited to Russia were concrete and not abstract and that, either way, the Supreme Court of Slovakia had failed

to examine them and to provide adequate reasons for its decision concerning the permissibility of his extradition.

47. In their third-party submission, the Government of the Russian Federation fully endorsed the positon of the respondent Government. They emphasised the gravity of the offences with which the applicant had been charged, and submitted that not having him extradited might seriously impede the requesting State's ability to combat terrorism and organised crime.

They reaffirmed the guarantees previously given to the respondent Government as regards the treatment of the applicant in the event of his extradition to the Russian Federation, and repeated that the applicant would enjoy all the guarantees of a fair trial in accordance with international law, would not be tried for crimes other than those for which he had been extradited by Slovakia, would be free to leave the Russian Federation on the completion of his proceedings and after serving any sentence, would not be extradited to a third country without the consent of Slovakia, and would not be subjected to torture or inhuman or degrading treatment or punishment.

48. In a further reply, the respondent Government pointed out that they had recently obtained an amendment and confirmation of the guarantees provided by the OPGRF (see paragraphs 29 and 30 above) and referred to the Court's decision in *Ibragimov v. Slovakia* (no. 65916/10, 30 June 2015) and judgments in the cases of *Chankayev,* (cited above); *Zarmayev v. Belgium* (no. 35/10, 27 February 2014); and *Tershiyev v. Azerbaijan* (no. 10226/13, 31 July 2014), in which no violation of Article 3 was found in the context of those applicants' extradition to the Russian Federation.

2. The Court's assessment

49. The Court observes at the outset that a part of the applicant's initial complaints, in relation to the proceedings leading to the Supreme Court's decision of 12 June 2012 (see paragraph 43 above), have become moot by virtue of the Constitutional Court's judgment quashing that decision on 2 October 2013 (see paragraph 22 above).

50. It considers that it is not necessary to examine the admissibility of the application under the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention because, in any event, the application is inadmissible on other grounds as explained below.

51. In that regard, the Court reiterates that the applicable principles have recently been summarised in its decision in *Ibragimov* (no. 65916/10, cited above, §§ 51-55).

52. On the facts of the present case, the applicant is a Russian national of Ingush ethnic origin, who is detained in Slovakia with a view to his extradition to the Russian Federation for the purposes of criminal prosecution on charges linked to terrorism.

Referring to his origin and the fact that his prosecution is to take place in North Ossetia, in conjunction with the situation there and the nature of his charges, and claiming that he has already been ill-treated as his associates have been, the applicant contends that he would be exposed to the risk of ill-treatment in the event of his extradition and that the bilateral diplomatic assurances provided by the Government of the requesting State are not an adequate safeguard against that eventuality.

53. The Court notes that the applicant's claim is partly based on the general situation in the requesting State and partly on his specific circumstances. As to the former, the Court notes that the country reports for Russia still reflect a situation of danger and arbitrary abuse with regard to certain categories of people, such as (former) rebels and their relatives. Furthermore, there have been reports of physical abuse of suspects by police officers, usually occurring within the first few days after arrest. This situation has been established in particular with regard to the North Caucasus, including Ingushetia, with indications of occurrences of arbitrary violence, abductions, disappearances, impunity, and torture and ill-treatment in pre-trial detention centres and "unofficial" prisons. However, the general situation is not such as to conclude that any extradition to Russia would violate Article 3 of the Convention (see, for example, *Zarmayev*, cited above, § 67; *mutatis mutandis*, *Tershiyev*, cited above, §§ 53 and 55; *M.G. v. Bulgaria*, cited above, §§ 84-87; and *Chankayev*, cited above, § 70).

54. Accordingly, an assessment of the particular circumstances of each case is necessary. The applicant alleges before the Court that he himself was mistreated by law-enforcement authorities in Russia in September 2005; that so were his associates in July 2006; that the charges against him are invented and based on evidence obtained from others by torture; and that, following his departure, the authorities harassed his family, and in particular his uncle.

55. As to these allegations, it has so far been established by the national authorities in Slovakia at various levels (see paragraphs 14 and 23 above), including the Supreme Court, and on the basis of various evidence, including expert evidence, that the applicant's account of facts was untrustworthy; that there was no evidence showing that the injuries for which he had been treated in May and June 2006 were attributable to the State; that his current digestive problems could not be linked to those injuries; and that the material relied on in respect of other persons was general, contained no more than allegations, was flawed by inconsistencies, and did not implicate the applicant in any way.

56. In addition, the courts analysed the assurances provided by the OPGRF, taking into account the status and powers of the OPGRF in the requesting State, and concluding that the assurances were sufficiently specific, individualised and reliable.

57. The Court observes certain factual inconsistencies in the applicant's statements, as regards the time of his alleged ill-treatment as such and also with reference to the offences with which he has been charged

In particular, the Court notes that, at the domestic level, the applicant appears to have given three different time-references (August 2005, May 2006 and May 2007) to his allegation of having been arrested and mistreated in Ingushetia (see paragraph 14 above) and that, in his own submission before the Court, he claims to have been arrested and mistreated in September 2005 in connection with offences that he was alleged to have previously committed (see paragraph 31 above), while the official documentation refers to offences allegedly committed by him between 25 December 2005 and 21 July 2006 (see paragraph 16 above).

Moreover, as to the material before the Court reflecting the submissions of Messrs Tsurov, Ozdoyev and Khadziyev at the domestic level or otherwise concerning them, the Court observes that it does not appear to implicate the applicant in any concrete way, directly or indirectly.

58. With respect to the alleged risk of the applicant's being ill-treated in the event of his extradition, the Court notes that, as the experience shows, physical abuse of suspects by police officers usually occurs within the first few days after arrest (see, for example, *Tershiyev* (cited above), § 53), which is a different type of situation from that now prospectively faced by the applicant.

59. In any event, the Court reiterates that a mere possibility of ill-treatment in circumstances similar to those obtaining in the present case is not in itself sufficient to give rise to a breach of Article 3 (see *Ibragimov,* cited above, 65916/10, § 73).

60. The Court also notes that in addition to Slovakia the applicant has claimed asylum in Switzerland and Belgium, and that both of these claims were unsuccessful, which the Court finds to be of a certain indicative importance (see, *a contrario*, *M.G. v. Bulgaria*, cited above, § 88).

61. In addition, it is of the view that both the general situation in the requesting State and the applicant's individual situation in the present case are to be seen in the light of the assurances as regards his treatment in the event of his extradition provided by the OPGRF.

62. In that regard, the Court has to assess the quality and reliability of these assurances, taking into account: (i) whether the terms of the assurances have been disclosed to the Court; (ii) whether the assurances are specific or are general and vague; (iii) who has given the assurances and whether that person can bind the receiving State; (iv) if the assurances have been issued by the central government of the receiving State, whether local authorities can be expected to abide by them; (v) whether the assurances concerns treatment which is legal or illegal in the receiving State; (vi) whether they have been given by a Contracting State; (vii) the length and strength of bilateral relations between the sending and receiving States,

including the receiving State's record in abiding by similar assurances; (viii) whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers; (ix) whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible; (x) whether the applicant has previously been ill-treated in the receiving State; and (xi) whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State (see *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 188, ECHR 2012 (extracts), with further references).

63. As to the guarantees under assessment in the present case, the Court notes that they are similar in nature to those accepted by the Court in *Chentiev* (cited above) and *Ibragimov* (cited above, no. 51946/08 and, recently, no. 65916/10). The Court also notes that, in addition to their being given to the requested State, the validity of these guarantees has been confirmed by the requesting State to the Court (see paragraph 47 above).

64. Moreover, the Court observes that, in the present case, the respective authorities of the respondent Government have taken active steps in order to have the assurances in question extended and confirmed and that, as regards similar guarantees in the case of Mr Chentiev, they have acted upon them by visiting Mr Chentiev and establishing that the guarantees in question were in fact being respected (see *Ibragimov,* cited above, no. 65916/10, § 41).

65. In these circumstances, and to the extent that the application has been substantiated, the Court finds no grounds for doubting that the assurances of OPGRF would equally be respected.

66. Lastly, as regards the other material relied on by the applicant (see paragraph 37 above), the Court is of the opinion that its relevance is diminished by the fact that the major part of it refers to events which took place in 2013 and earlier, while the risk of ill-treatment in the present application, in which the applicant has not yet been removed from the respondent State, is to be assessed with reference to the circumstances obtaining at the present time (see *Ibragimov,* cited above, no. 65916/10, § 55, with further references).

67. In sum, the Court concludes that it has not been established in the applicant's case that there are substantial grounds for believing that he would be exposed to a real risk of ill-treatment in the event of his extradition to Russia.

68. The complaint under Article 3 of the Convention is therefore manifestly ill-founded. For similar reasons, it may not be considered "arguable" for the purposes of Article 13 of the Convention (see *Boyle and*

Rice v. the United Kingdom, judgment of 27 April 1988, Series A no. 131, § 52). The complaint under that provision is therefore likewise manifestly ill-founded.

69. It follows that the relevant part of the application must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Article 6 of the Convention

70. The applicant also complained that if extradited to Russia he would be denied a fair trial within the meaning of Article 6 § 1 of the Convention, the relevant part of which provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

71. In support of his claim, the applicant contended that his charges were based on evidence obtained from Messrs Tsurov, Ozdoyev and Khadziyev by torture, that they themselves had been unfairly tried and unjustly convicted, and that his entire prosecution was fabricated.

72. The respondent Government pointed out that the assurances provided by the requesting State extended also to the fairness of the proceedings for the purposes of which the applicant was to be extradited, and that the validity of his argument that those proceedings were based on evidence obtained by ill-treatment would be examined in those proceedings.

In addition, they emphasised the seriousness of the allegation that evidence for the purposes of the applicant's proceedings had been obtained by torture, and considered it illogical for them to take a stance in that regard without full knowledge of the relevant facts, which matter was in the domain of the authorities of the requesting State.

73. The applicant disagreed, and reiterated his complaint, and referred to the general situation with regard to respect for the guarantees of a fair trial in the requesting State.

74. In their third-party submission, in addition to the arguments summarised above, the Government of the Russian Federation reaffirmed the assurance that, in the event of his extradition, the applicant would enjoy all the guarantees of a fair trial in accordance with international law.

75. The Court has earlier admitted that an issue might exceptionally be raised under Article 6 by an extradition decision in circumstances where the fugitive suffered or risked suffering a flagrant denial of a fair trial in the requesting country (see, for example, *Soering v. the United Kingdom*, 7 July 1989, § 121, Series A no. 161; *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 90-91, ECHR 2005‑I; or *Othman (Abu Qatada)*, cited above, § 258).

76. The applicant in the present case has been charged with criminal offences in the Russian Federation and the proceedings against him are still pending there.

77. However, in view of all the evidence before it, including the specific, amended and renewed assurances provided by the requesting State to the respondent Government as well as to the Court itself, the Court has found no indication that the applicant risks suffering a flagrant denial of a fair trial in his proceedings in Russia in case of his extradition there. Moreover, the Court considers that this part of the application raises no issues under Article 13 of the Convention other than already addressed above in connection with Article 3 complaint.

It follows that the remainder of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention. The application of the interim measure under Rule 39 of the Rules of Court in the present case thus comes to an end.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 March 2016.

Stephen Phillips
Registrar

Luis López Guerra
President