

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

THIRD SECTION

DECISION

Application no. 65916/10
Anzor Chadidovich CHENTIEV and Ali Nurdinovich IBRAGIMOV
against Slovakia

The European Court of Human Rights (Third Section), sitting on 21 February 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Kristina Pardalos, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 15 November 2010,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court;

Having regard to its decision on the admissibility of applications no. 21022/08 and no. 51946/08 of 14 September 2010;

Having deliberated, decides as follows:

THE FACTS

1. The applicants are two Russian nationals of Chechen ethnic origin. Mr Anzor Chadidovich Chentiev (the first applicant), was born in 1983 and is detained in Leopoldov prison. Mr Ali Nurdinovich Ibragimov (the second applicant), was born in 1977 and is detained in Košice. They are represented

before the Court by Mr I. Ezheyev from the Goodwill Without Borders foundation and Ms H. Demeterová from the NGO Help A Man.

2. The facts of the case, as submitted by the applicants and established by the Court in the context of applications no. 21022/08 and no. 51946/08 lodged by the present applicants, may be summarised as follows.

A. The asylum and extradition proceedings covered by the Court's decision on the admissibility of applications no. 21022/08 and no. 51946/08

1. The case of the first applicant

3. The first applicant arrived illegally in Slovakia from Ukraine on 18 January 2006. He was arrested. He disclosed his identity to Slovakian authorities in April 2006, in the context of proceedings concerning his request for asylum. That request was dismissed by a decision which became final on 22 August 2007.

4. A second request for asylum lodged by the first applicant was also dismissed. The final decision on the issue was given by the Bratislava Regional Court on 8 April 2008.

5. In the meantime, on 20 April 2006 and 8 September 2006, the Office of the Prosecutor General of the Russian Federation applied for the first applicant's extradition. The request was based on the fact that he had been accused of several offences, in particular banditry with aggravating circumstances and attempt on the life of officials of a law-enforcement agency.

6. In particular, the first applicant was suspected of taking part, similarly as the second applicant and as a member of an organised group, in the killing of two agents of the Ministry of the Interior in Grozny in June 2001. In 2005 the applicant with the other members of the group had allegedly forced a government official and a different person to give them a firearm, money, gold items and mobile phones.

7. The letters indicated that the applicant would not be tried by the Special Court, would enjoy the guarantees of a fair trial including the assistance of counsel, and would not be subjected to treatment contrary to Article 3 of the Convention. As to the risk of the death penalty, the letter of 8 September 2006 indicated that there was a moratorium on that penalty in Russia, that the death penalty would not be imposed on the first applicant and that capital punishment was not provided for the offences imputed to him.

8. On 1 July 2008 the Trnava Regional Court concluded that the first applicant's extradition to Russia for the purpose of his criminal prosecution there was inadmissible. The public prosecutor appealed.

9. On 4 September 2008 the Supreme Court overturned that decision and held that the applicant's extradition was admissible.

10. The applicant lodged a constitutional complaint. The Fourth Chamber of the Constitutional Court, to which the case fell to be examined, had a different opinion on the issue from that which the Third Chamber had expressed in its decision of 17 December 2008 in the case of the second applicant (see point 2 below). It therefore submitted the matter to the plenary meeting of the Constitutional Court with a view to harmonising the positions.

11. In decision PLz ÚS 2/09 of 25 February 2009 the Constitutional Court (plenary meeting) did not accept the proposal by its Fourth Chamber to depart from the conclusion which the Third Chamber had reached on 17 December 2008.

12. On 26 February 2009 the Constitutional Court (Fourth Chamber) decided that the Supreme Court had violated the first applicant's right under Article 3 by allowing his extradition to Russia. The case was returned to the Supreme Court. In its decision the Constitutional Court (Fourth Chamber) stated that it did not, in principle, object to the way in which the Supreme Court had proceeded. However, there was a need for the case to be examined in the light of the most recent case-law of the European Court of Human Rights and all available information. The trustworthiness of the guarantees offered by the Russian Federation had also to be addressed in more detail. Reference was made to the fact that the Court had issued an interim measure in the case.

13. In an opinion of 4 March 2009 the Constitutional Court (plenary meeting) noted that in the above decision the Fourth Chamber had disregarded decision PLz ÚS 2/09 of 25 February 2009.

14. On 13 May 2009 the Supreme Court again found that the first applicant's extradition to the Russian Federation for the purpose of his criminal prosecution there was admissible.

15. In its decision the Supreme Court analysed the first applicant's case in the light of the Court's reasoning in the cases of *Shamayev and Others v. Georgia and Russia* (no. 36378/02, ECHR 2005-III), and *Gasayev v. Spain* (dec.), no. 48514/06, 17 February 2009). It also had regard to other cases, such as *Vilvarajah and Others v. the United Kingdom* (30 October 1991, Series A no. 215); *Čonka v. Belgium* (no. 51564/99, ECHR 2002-I); *Ismoilov and Others v. Russia* (no. 2947/06, 24 April 2008); and *Estamirov and Others v. Russia* (no. 60272/00, 12 October 2006).

16. The Supreme Court held that various data available internationally containing general information about the use of violence by Russian armed forces against the civilian population of Chechnya did not prove the existence of a specific risk that the first applicant would be ill-treated if extradited. The applicant himself had not provided any specific information about himself permitting a different conclusion.

17. With reference to the reasons set out in its decision of 4 September 2008 the Supreme Court again concluded that the guarantees offered by the Russian authorities were sufficient and that it had not been established that the first applicant ran a real risk of treatment contrary to Article 3. The Supreme Court also invoked the Constitutional Court's (Third Chamber) decision of 17 December 2008 in the case of the second applicant with the same factual background, and decision PLz ÚS 2/09 in which the Constitutional Court at its plenary meeting had refused to depart from that decision.

18. On 8 June 2009 the first applicant lodged a complaint with the Constitutional Court. He relied on Articles 3 and 6 of the Convention, on an UNHCR interim recommendation concerning international protection of persons of Chechen origin and on a Human Rights Watch report issued on 4 June 2009. He argued that the Supreme Court had disregarded the Constitutional Court's order that his case should be examined in the light of the Court's practice, that he would be subjected to inhuman and degrading treatment.

19. On 17 August 2009 the Constitutional Court (First Chamber) rejected the complaint as manifestly ill-founded. It found that the Supreme Court had duly considered the relevant facts and law, including the practice of the Court. The Constitutional Court accepted the Supreme Court's conclusion according to which it had not been established that the guarantees offered by the Russian authorities were not trustworthy and that the applicant ran a real risk of treatment contrary to Article 3 of the Convention in case of his extradition.

20. In a letter of 12 October 2009 addressed to the Slovakian authorities the Deputy Prosecutor General of the Russian Federation confirmed the guarantees previously given with regard to the first applicant, including respect for his physical and psychological integrity. The letter indicated that, in case of his conviction and imposition of a prison term, the second applicant would serve his sentence in a federal prison, where the Convention and the European Standard Minimum Rules for the Treatment of Prisoners are taken into account. The Embassy of Slovakia to Russia would be informed of the place of the applicant's detention and Slovakian diplomatic representatives would be able to visit the first applicant and speak to him without third parties present. The applicant would be provided with sufficient medical care. It was guaranteed that capital punishment would not be applied in respect of the first applicant. Finally, the Office of the Prosecutor General of the Russian Federation guaranteed that the first applicant would not be prosecuted for his political views or because of his race, religion or nationality.

2. The case of the second applicant

21. The second applicant was arrested by Slovakian border police on 18 January 2006. He had no valid travel document and gave his name as Alej Dzhamaldeyev.

22. On 15 February 2006 the second applicant applied for asylum in Slovakia. His request was ultimately dismissed. The final decision was given by the Supreme Court on 26 March 2008. The decision became final on 12 May 2008.

23. In the meantime, in April 2006, the identity of the second applicant was established as Ali Nurdinovich Ibragimov.

24. On 20 April 2006 the Office of the Prosecutor General of the Russian Federation applied for the second applicant's extradition. The request was based on the fact that he had been accused of several offences, namely banditry with aggravating circumstances and attempt on the life of officials of a law-enforcement agency. The second applicant was suspected of having participated, as a member of an organised group, in the killing of two agents of the Ministry of the Interior in Grozny in June 2001.

25. The above letter and another letter from the Office of the Russian Federation's Prosecutor General dated 19 September 2006 indicated that the applicant would not be tried by the Special Court, would enjoy the guarantees of a fair trial including the assistance of counsel and that he would not be subjected to treatment contrary to Article 3 of the Convention. As to the risk of the death penalty, the letters indicated that there was a moratorium on the death penalty in Russia, that the applicant would not face the death penalty if extradited and that, should the applicant be sentenced to death, the sentence would not be carried out. Reference was made to the fact that the Russian Federation had signed Protocol No. 6 to the Convention and that under Articles 18 and 26 of the Vienna Convention on the Law of Treaties of 1969 it had an obligation not to use the death penalty.

26. The second applicant was placed in preliminary detention with effect from 28 April 2006. On 23 May 2006 the Košice Regional Court remanded him in custody pending extradition.

27. On 3 September 2008 the Košice Regional Court found inadmissible the applicant's extradition to Russia.

28. On 29 October 2008 the Supreme Court overturned that decision and held that the second applicant's extradition was admissible. The Supreme Court established that the second applicant had been involved, as a member of an organised group, in the killing of two Russian servicemen in Grozny in 2001. That killing had taken place after the military conflict had ended and it was not therefore an exclusively political or military action within the meaning of the relevant provision of the Slovakian Code of Criminal Procedure, which prevented the extradition of foreigners in such cases. The Supreme Court further noted that Russia was a member State of the Council of Europe and that respect for human rights was permanently monitored.

29. Finally, the Supreme Court considered sufficient the guarantees offered by the Prosecutor General of the Russian Federation, which stated that the applicant would not face the death penalty and that such punishment was in any event not carried out in Russia, that he would not be tried by a Special Court as well as the undertaking that Articles 3 and 6 of the Convention would be respected in his case.

30. On 3 December 2008 the second applicant lodged a complaint with the Constitutional Court. He relied on Article 3 of the Convention and Article 1 of Protocol No. 6. The applicant referred to various reports on the situation in prisons in the Russian Federation. In particular, he invoked reports on treatment to which persons of Chechen origin suspected of fighting against Russian authorities were subjected. He also invoked the fact that the death penalty had not been formally abolished in Russia.

31. On 17 December 2008 the Constitutional Court (Third Chamber) dismissed the complaint as being manifestly ill-founded. It relied on the reasoning of the Supreme Court which it considered relevant and sufficient from the point of view of protecting the applicant's rights under the Convention and the Constitution.

32. In a letter of 12 October 2009 addressed to the Slovakian authorities the Deputy Prosecutor General of the Russian Federation confirmed the guarantees previously given with regard to the second applicant, including respect for his physical and psychological integrity. The letter indicated that, if he was convicted and given a prison sentence, the second applicant would serve his sentence in a federal prison, where the Convention and the European Standard Minimum Rules for the Treatment of Prisoners are taken into account. The Embassy of Slovakia to Russia would be informed of the place of the second applicant's detention and Slovakian diplomatic representatives would be able to visit the second applicant and speak to him without the presence of third persons. The second applicant would be provided with sufficient medical care. It was guaranteed that capital punishment would not be applied in respect of the second applicant. Finally, the Office of the Prosecutor General of the Russian Federation guaranteed that the second applicant would not be prosecuted for his political views or because of his race, religion or nationality.

B. Court's decision on the admissibility of applications no. 21022/08 and no. 51946/08 and subsequent developments in proceedings before the Court

33. On 14 September 2010 a Chamber of the Fourth Section of the Court declared inadmissible the above applications in which the present applicants complained that their extradition to the Russian Federation would amount to a breach of their rights under Articles 3 and 6 of the Convention and under

Article 1 of Protocol No. 6. The relevant part of the decision reads as follows:

> "In two letters of 12 October 2009 addressed to Slovakian authorities the Office of the Prosecutor General of the Russian Federation confirmed the guarantees previously given. The letters explicitly state that it has been guaranteed that capital punishment would not be applied in respect of the applicants.
>
> In assessing the credibility which the Slovakian authorities could have attributed to those assurances, the Court considers it important that they were issued under the authority of the Prosecutor General, who, within the Russian system, supervises the activities of all prosecutors in the Russian Federation, including the argumentation of the case for the prosecution before the courts (see also, *mutatis mutandis*, *Shamayev and Others v. Georgia and Russia,* cited above, § 344).
>
> The Court finds nothing in the materials before it which could reasonably have given the Slovakian authorities grounds to doubt the credibility of the assurance that capital punishment would not be applied in respect of the applicants. In addition, that assurance was later expressly confirmed in the third-party comments submitted by the Russian Government.
>
> The Court further notes that the Slovakian authorities, and in particular the Supreme Court, thoroughly examined whether the applicants risked ill-treatment if extradited to Russia. It held that a decision on the extradition of a particular person for the purpose of his or her criminal prosecution could not be exclusively based on the political situation existing in a part of the Russian Federation and the fact that the State's actions in that respect had been subjected to international criticism. Various internationally available data on the use of violence by Russian armed forces against the civilian population of Chechnya did not prove the existence of a specific risk that the applicants would be ill-treated if extradited. Furthermore, the Supreme Court held that there existed no specific information about the applicants' particular cases permitting a different conclusion. As to the witness Mukayev, whose statements had given rise to the applicants' prosecution, his alleged ill-treatment did not constitute proof that the present applicants would be subjected to treatment incompatible with Article 3 of the Convention.
>
> The Supreme Court's decision further stated that Russia was a member State of the Council of Europe and a Contracting Party to the Convention. All persons within its jurisdiction were therefore entitled to seek redress before the Court as regards any alleged breach of their Convention rights by the Russian authorities. A possible failure by Russian authorities to comply with the guarantees issued by them would undermine the trust of its partners and affect further processing of similar requests. Finally, the Supreme Court considered it relevant that a refusal to extradite the applicants would affect the rights of other persons, in particular the relatives of the officers who had been killed, who were entitled to have an effective investigation carried out.
>
> The Court does not find arbitrary or otherwise unacceptable the conclusion that the documents and facts to which the applicants referred did not establish that extradition would have imposed a personal threat on them. In proceedings before the Court the applicants have not submitted any document supporting their allegation that Mr Shakhayev was ill-treated following his extradition to Russia, nor does it appear from the documents submitted that such evidence was produced in the proceedings before Slovakian courts.

The Court reiterates that a mere possibility of ill-treatment in circumstances similar to the cases of the present applicants is not in itself sufficient to give rise to a breach of Article 3 (see also *Shamayev and Others v. Georgia and Russia,* cited above, § 352, with further references).

It also finds relevant the argument that the assurances protecting the applicants from treatment contrary to Article 3 if extradited were given by authorities of a member State of the Council of Europe and a Contracting Party to the Convention, and that a possible failure to respect such assurances would seriously undermine that State's credibility.

The Court has further noted that in additional letters of 12 October 2009 addressed to the Slovakian authorities the Deputy Prosecutor General of the Russian Federation confirmed the guarantees previously given in respect of the applicants including respect for their physical and psychological integrity. The letters indicate that, if convicted and sentenced to a prison term, the applicants would serve their sentence in a federal prison where the Convention and the European Standard Minimum Rules for the Treatment of Prisoners are taken into account. The Embassy of Slovakia to Russia would be informed of the place of the second applicant's detention and Slovakian diplomatic representatives would be able to visit the second applicant and speak to him without third persons present. The applicants would be provided with sufficient medical care.

In the case of *Gasayev v. Spain* ... the Court considered relevant a similar assurance allowing for monitoring, through diplomatic representation of the extraditing State, of the undertaking by the Russian authorities that Article 3 of the Convention would be respected following the applicant's extradition.

It is true that, unlike in *Gasayev*, diplomatic monitoring of compliance with the assurances given by the Russian authorities was not requested by the domestic courts. It is therefore admittedly within the discretionary power of Slovakian authorities to avail themselves, or not, of the opportunity to carry out such monitoring. Nevertheless, by offering that opportunity the Russian authorities undoubtedly gave additional weight to the guarantees previously given.

In view of the documents before it and the above considerations, the Court finds nothing which could reasonably have given the Slovakian authorities grounds to doubt the credibility of the guarantees provided by the Russian Prosecutor General during the decision-making process. In the light of all the material before it, the Court can accept the conclusion reached, namely that the facts of the case do not disclose substantial grounds for believing that the applicants, if extradited to Russia, face a real and personal risk of torture or of inhuman or degrading treatment or punishment within the meaning of Article 3 of the Convention."

34. In view of additional information submitted by the applicants' newly appointed representatives on 15 November 2010, the President of the Fourth Section decided to indicate to the respondent Government, under Rule 39 of the Rules of Court, that the applicants should not be extradited to Russia in the context of the present application until 23 November 2010. On the last-mentioned date a Chamber of the Fourth Section extended the interim measure by indicating to the Government of the Slovak Republic that the applicants should not be extradited until further notice. It was considered appropriate that they should have the possibility of having their cases

reviewed at domestic level with the benefit of the new material, and that they should not be extradited pending such review.

35. The case was later transferred to the Third Section of the Court, following the re-composition of the Court's sections on 1 February 2011.

C. Developments following the Court's decision to declare inadmissible applications no. 21022/08 and no. 51946/08 and additional relevant facts referred to by the applicants

1. Proceedings concerning the applicants' new asylum claims

36. On 10 November 2010 the applicants filed fresh asylum claims. They referred to the suffering which they had had to endure during the war in Chechnya and their state of health, and indicated that their relatives were being threatened. The applicants' arguments included those on which they rely in the context of the present application (see below).

37. The Migration Office refused the applicants' new asylum claims on 4 and 9 February 2011 respectively. It found no relevant new information which would justify granting asylum to the applicants. The decisions stated that all arguments put forward by the applicants had been taken into account. The applicants filed administrative appeals to the Ministry of the Interior.

38. By two decisions of 31 March 2011 the Minister of the Interior dismissed the applicants' administrative appeals and upheld the decisions of the Migration Office. The Minister's decisions stated that there had been no substantive change in the applicants' situation which would justify departing from the previous decisions on their earlier asylum claims.

39. On 25 and 27 May 2011 the applicants appealed against the decisions of the Minister of the Interior. They argued that the refusal of their asylum claims had been contrary to the law. They had relied in their claims on additional information and documents which the administrative authorities had failed to duly take into account. The first applicant had also relied on the decision of the Paris Court of Appeal of March 2009 in which it had dismissed the request for extradition to Russia of a person of Chechen origin who was suspected of involvement in the killing of Russian special forces officers in Dagestan in 1988. He had further referred to the Finnish Supreme Court's decision of 22 December 2010 refusing extradition to Russia of a Chechen person accused of involvement in an armed attack in which eight soldiers had died.

40. The proceedings are pending before the Bratislava Regional Court.

41. The applicants submitted a press release of 24 November 2010 indicating that the Minister of the Interior had stated, after a meeting of the Government, that Slovakia must not be a place where persons facing prosecution for serious criminal actions in one of the member States of the

Council of Europe could move freely. The Minister further indicated that the applicants' case had been sufficiently examined by the Supreme Court, the Constitutional Court and the European Court of Human Rights. The press release indicated that the Minister had refused to speculate as to whether the applicants would be extradited.

2. The applicants' situations

42. The first applicant was seriously injured in an air-force attack on his village. He is blind in the left eye and he still has fragments of automatic rifle ammunition in the front of his head, his ear and hand. During his detention in Slovakia he was once offered an eye examination but he declined the offer as he was ashamed to be taken to the ophthalmologist handcuffed by an armed escort.

43. The second applicant has suffered from stomach ulcers for fifteen years. He has also had psychological problems. While in prison in Slovakia he was kept alone in a cell for significant periods. In the course of 2011, in reply to letters from the applicants' representatives, the prison administration rebutted allegations that the second applicant had not been receiving appropriate medical treatment.

44. The second applicant had a fight on 9 June 2010 with another detainee in the course of which the latter suffered physical injury. In a different context, on 31 August 2010, a prison officer accused the second applicant of having attacked him. Criminal proceedings are pending against the second applicant in the two matters.

3. The case of A.M. Mukayev

45. The applicants maintained that the criminal proceedings against them had been instituted in Russia on the basis of statements by A.M. Mukayev which had been extracted under torture.

46. Mr Mukayev, while being questioned in Chechnya on 26 February 2006, had admitted his involvement in a number of offences which he had committed as a member of an organised group. Among those offences, reference was made to the killing of two members of the special units of the Ministry of the Interior. Those persons had been shot after members of the group had stopped their car on a road. Mr Mukayev had indicated the applicants as having been among the accomplices.

47. Subsequently Mr Mukayev, with the assistance of an advocate, had lodged a criminal complaint, arguing that his defence rights had been infringed after his extradition from Kazakhstan and that he had been subjected to treatment incompatible with Article 3 while he was being questioned and detained in Chechnya. The complaint was dismissed by the prosecuting authorities. On 3 October 2007 the Zavodskyi District Court of Grozny had quashed the above decision to dismiss Mr Mukayev's criminal

complaint. The court noted that the prosecuting authorities had not examined all the relevant facts and that the origin of several documented injuries sustained by Mr Mukayev had not been established. The court ordered the prosecutor to review the decision to dismiss Mr Mukayev's criminal complaint.

48. In 2008 Mr Mukayev lodged an application with the Court. The proceedings are pending (application no. 22495/08).

49. In the context of the present application the applicants submitted a copy of a handwritten statement by Mr Mukayev. It is dated 1 December 2006 and indicates that Mr Mukayev was repeatedly beaten and ill-treated in the course of the investigation.

4. The case of M. Gasayev

50. Mr M. Gasayev is a person of Chechen ethnic origin. He was detained in Spain pending the examination of an extradition request from the Russian authorities. The reason given for the request was the fact that Mr Gasayev faced criminal charges in Russia.

51. He introduced an application with the Court (no. 48514/06). An interim measure was applied by the Third Section to suspend his extradition to Russia. That measure was lifted following the receipt of assurances by the Russian Government that the applicant would not be condemned to the death penalty or to an irreducible life sentence, or detained in conditions which were contrary to Article 3 of the Convention. Assurance was also given that the Spanish diplomatic representation in Russia would monitor compliance with those guarantees. The Court (Third Section) declared the application inadmissible on 17 February 2009.

52. According to a press release by Human Rights Watch of 1 September 2009, Mr Gasayev, accused of taking part in an attack on government buildings in Ingushetia in June 2004, was released by the Russian authorities without charge on 28 August 2009, after ten months in pre-trial detention. The press release further stated that "according to Mr Gasayev, he was tortured for three days and then released without charge".

53. According to third-party comments by the Government of the Russian Federation submitted in the context of applications no. 21022/08 and no. 51946/08, the criminal proceedings against Mr Gasayev ended following an amnesty. Such action was permissible under the Russian law subject to the admission of guilt by the accused person.

54. The applicants further relied on Amnesty International materials according to which the family of Mr Gasayev reported having been harassed and threatened by men believed to be representatives of the Russian police and intelligence agencies. In July 2009 Mr Gasayev's brother had been briefly detained, interrogated and threatened, but subsequently released.

After the release of Mr Gasayev from custody, his family continued to fear for his and their own safety.

55. The Amnesty International press release of 19 July 2011 indicates that, in July 2011, Mr Gasayev left Russia fearing that the risk to his life was still high and wishing to be reunited with his wife and a young child, who had been living in France for four years. Mr Gasayev applied for asylum in France.

56. The applicants further indicate that the witness who had admitted having been forced by the Russian authorities to make statements against Mr Gasayev fled to Poland and applied for asylum after he had received threats.

5. The case of A. Shakhayev

57. The applicants submitted a written statement by Mr Adlan Shakhayev, who had arrived in Slovakia with them in January 2006 and who was escorted to Moscow after he had unsuccessfully applied for asylum.

58. The statement indicates that Mr Shakhayev was held in a prison in Moscow for a week and that he was tortured and ill-treated on the ground that he was of Chechen ethnic origin. Subsequently he was transferred to Grozny and held on the premises of ORB-2 (operations and search bureau of the Ministry of the Interior) and in prison. The ORB-2 officers humiliated and tortured Mr Shakhayev repeatedly. He was refused medical treatment and was not permitted to see his relatives.

59. Ultimately, with the help of his relatives and the payment of a sum of money he received a four-year suspended prison term and was released. The statement is accompanied by a copy of a medical certificate indicating that on 12 May 2007 he was treated as an out-patient at a hospital traumatology department for numerous bruises and haematomas on his back.

6. The case of Z. Zubairayev

60. The applicants also cited the case of their friend of Chechen origin, Mr Zubair Zubairayev, who had voluntarily returned to Russia to visit his ill mother. The applicants' representative, Mr I. Ezheyev, had participated, at the request of Members of the European Parliament, in an investigation into his case. After his conviction for an offence, Mr Zubairayev was subjected to torture in prison. His health was irreparably damaged. Several high-ranking officials were dismissed from their posts as a result of the intervention. Mr I. Ezheyev submitted photographs showing the injuries sustained by Mr Zubairayev.

61. The Amnesty International appeal for action of 7 March 2011 contains the following information on the case of Mr Zubairayev:

> "Zubair Isayevich Zubairayev was sentenced in August 2007 to five years in a maximum security prison and was sent to [a prison] in Frolovo, Volgograd region, where it is reported that he was subjected to torture and ill-treatment at the hands of prison officers. According to sources close to Zubair Isayevich Zubairayev, this included the use of electric shocks and beatings with plastic bottles filled with water, as well as with truncheons and rifle butts. His feet were also reportedly pierced with a sharp metal instrument. After making several complaints about this treatment, his condition worsened. He was transferred to a prison colony in Volgograd and admitted to a prison hospital in February 2008; however, the beatings and ill-treatment allegedly continued in these settings. At the time he told some of his contacts outside the prison that he had not received any treatment for the injuries previously sustained. He was transferred to [a prison] in Minusinsk in the summer of 2009, where there have been no further reports of torture or beatings, but prison authorities have thus far failed to provide him with adequate medical care."

7. Other facts and documents relied on by the applicants

62. During a round table organised in Chechnya on 26 February 2010 Mr I. Ezheyev, the applicants' representative, met the mother of the first applicant and the brother of the second applicant. They stated that members of the armed forces had periodically entered their houses at night and threatened to burn their homes or to arrange for their close relatives to be prosecuted unless they persuaded the applicants to accept their extradition to Russia.

63. In a letter of 27 October 2010 addressed to the Minister of Justice of Slovakia, the Secretary General of the Norwegian Helsinki Committee cautioned the Slovakian authorities against the applicants' extradition. Reference was made to the fact that the charges against the applicants had been based on statements extracted under torture. The Slovakian authorities were asked to consider the case of seven Russian citizens released from Guantanamo in 2004, after the United States had obtained diplomatic assurances from Russia. However, in a report from March 2007, Human Rights Watch documented that all seven detainees were later ill-treated or tortured upon their return to Russia.

64. The Norwegian Helsinki Committee's letter also indicated that extradition requests from the Russian Federation in connection with the conflict in the Caucasus had been rejected in Norway, Sweden and several other European States. Reference was made to the situation in the North Caucasus as described in the Resolution of the Parliamentary Assembly of the Council of Europe 1738(2010) and the Parliamentary Assembly's report "Allegations of politically motivated abuses of the criminal justice system in the Council of Europe member States" from August 2009.

65. In a letter to the Prime Minister of Slovakia of 19 November 2010 Mr M. Kocáb, the former Minister for Human Rights of the Czech Republic, proposed that humanitarian asylum be granted to the applicants. The letter referred to the personal situation of the applicants as well as to

numerous materials including statements by both governmental and non-governmental organisations, journalists and politicians.

66. The applicants further relied on a number of letters and requests addressed to Slovakian authorities with a view to preventing their extradition. They included letters from members of the European Parliament, members of the Lithuanian Parliament, a statement from the "Free Caucasus" organisation based in Denmark, a petition from the Polish organisation Wrocławski Spoleczni Komitet Poparcia Jarosława Kaczyńskiego, and an appeal by the American Association of Jews from the Former Soviet Union (State of Massachusetts).

67. In particular, the last-mentioned appeal pointed to nine individual cases, such as the murder in June 2009 of N. Estemirova, who had worked at the Grozny branch of the Memorial organisation; kidnapping, torture and killing of human rights activists M. Sadulayeva and A. Zhabrailov in August 2009, and the kidnapping and killing of two young Chechen men in April and October 2009 respectively. The appeal further pointed to cases of ill-treatment of persons of Chechen origin in prisons. Reference was made, among others, to Mr Z. Zubairayev. The testimony of Mr Elbiyev was also quoted. He stated that, while detained in a pre-trial detention centre in Grozny, he had been insulted, severely beaten and tortured by persons who had introduced themselves as employees of a special unit from Moscow.

68. Finally, the applicants rely on a number of other international documents, such as the report "The System of Impunity in the North Caucasus (2009-2010) – How Does it Function? Abductions and Disappearances of People in the North Caucasus in 2009. Sabotage of Investigation of Criminal Cases in 2009-2010" issued by the Memorial Human Rights Center[1]; the 2009 Human Rights Report (chapter on Russia) issued by the United States Department of State[2], and the United Kingdom Foreign and Commonwealth Office's Annual Report on Human Rights 2009[3].

COMPLAINTS

69. The applicants complain under Article 3 of the Convention that, as persons of Chechen origin and former active combatants, they would be exposed to the risk of torture and their lives would be under threat in the event of their extradition. They maintain that unenforceable bilateral diplomatic assurances from one Government to another do not provide a

[1] http://www.memo.ru/eng/news/2010/10/18/1810102.htm
[2] http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136054.htm
[3] http://www.official-documents.gov.uk/document/cm78/7805/7805.pdf

reliable safeguard against serious human rights violations, such as ill-treatment.

70. With reference to Article 6 of the Convention the applicants complain that the criminal charges against them in Russia were invented and based on statements obtained under torture. They would not benefit from the guarantees of a fair hearing in the event of their extradition to Russia.

71. The applicants complain that their lengthy detention in prison in Slovakia has been in breach of Article 3 and Article 5 §§ 1 (f) and 4 of the Convention.

72. Under Article 6 § 2 of the Convention the applicants complain that their right to be presumed innocent was breach by the above statement of the Minister of the Interior of 24 November 2010 as well as by a number of press articles indicating that the applicants were terrorists, killers or bandits.

73. With reference to their detention, treatment by the Slovakian authorities and the proceedings in their cases, the applicants also alleged a breach of Articles 6, 7, 17 and 18 of the Convention.

74. With reference to Article 13 of the Convention and the 1951 Convention relating to the Status of Refugees the applicants complain that they were unable to effectively protect their rights in Slovakia.

THE LAW

A. Alleged breach of Articles 3 and 6 of the Convention in the event of the applicants' extradition

75. The applicants complain under Article 3 of the Convention that, as persons of Chechen origin and former active combatants, they would be exposed to a risk of torture and their lives would be under threat in the event of their extradition.

76. With reference to Article 6 of the Convention the applicants further complain that the criminal charges against them in Russia were invented and based on statements obtained under torture. They would not benefit from the guarantees of a fair hearing in the event of their extradition to Russia.

77. The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

B. Complaints related to the applicants' stay in Slovakia

1. Alleged breach of Articles 3, 5 §§ 1 (f) and 4, and Article 6 § 2

78. The applicants complain that their lengthy detention in prison in Slovakia has been in breach of Article 3 and Article 5 §§ 1 (f) and 4 of the Convention. They further complain under Article 6 § 2 of the Convention that their right to be presumed innocent was breached by the statement of the Minister of the Interior of 24 November 2010 and by a number of press articles indicating that the applicants were terrorists, killers or bandits.

79. The Court notes that the applicants have not, after having used the other remedies available, sought redress in respect of the above matters by means of a complaint to the Constitutional Court lodged in accordance with the applicable requirements, as applied and interpreted by the Constitutional Court.

It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. Other complaints made by the applicants

80. With reference to their detention, treatment by the Slovakian authorities and the proceedings in their cases, the applicants also allege a breach of Articles 6, 7, 13, 17 and 18 of the Convention.

81. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court by a majority

Decides to adjourn the examination of the applicants' complaints that their rights under Articles 3 and 6 of the Convention would be breached in the event of their extradition;

Declares the remainder of the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President