

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

THIRD SECTION

DECISION

Application no. 27145/14
Anzor Chadidovich CHENTIEV
against Slovakia

The European Court of Human Rights (Third Section), sitting on 15 April 2014 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco, *judges,*

and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the application lodged on 15 November 2010 and originally registered under file no. 65916/10,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court which was subsequently discontinued,

Having regard to the partial decision on admissibility of application no. 65916/10 of 21 February 2012,

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,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Anzor Chadidovich Chentiev, is a Russian national of Chechen ethnic origin. He was born in 1983 and is detained in Leopoldov prison.

The Government of the Slovak Republic ("the Government") were represented by their Agent, Mrs M. Pirošíková.

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

3. The applicant arrived illegally in Slovakia from Ukraine in January 2006. He unsuccessfully applied for asylum. The Slovak authorities found that his extradition to the Russian Federation for the purpose of his criminal prosecution there was admissible.

4. On 14 September 2010 the Court declared inadmissible application no. 21022/08 in which the applicant complained that his extradition to the Russian Federation would amount to a breach of his rights under Articles 3 and 6 of the Convention and under Article 1 of Protocol No. 6.

5. On 12 November 2010 the applicant lodged a new application with the same subject-matter as application no. 21022/08 while relying on additional facts. In parallel the applicant filed a fresh asylum request with reference to those facts.

6. On 15 December 2010 the President of the Fourth Section to which the case had been allocated decided to indicate to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not been extradited to the Russian Federation. On 23 November 2010 the Court (Fourth Section) decided to prolong under further notice that interim measure.

7. On 21 February 2012 the Court decided to give notice of the application to the Government of Slovakia and to invite the Government to submit written observations on the complaints that the applicant's extradition to the Russian Federation would amount to a breach of his rights under Articles 3 and 6 of the Convention. The Chamber declared the remainder of the application inadmissible.

8. As regards the domestic proceedings on his fresh asylum request, the Bratislava Regional Court, in a judgment of 21 November 2013, dismissed the applicant's action against the decision given by the Ministry of the Interior.

9. The applicant filed an appeal through his legal representative.

10. In two letters of 6 February 2014 the applicant informed the Regional Court that he had terminated the authority of his representative and withdrawn his action for review of the administrative decisions on his asylum request.

11. On 13 March 2014 the Supreme Court discontinued the proceedings on that ground without addressing the merits of the case.

12. In the meantime, on 11 February 2014, the applicant informed the Court that he no longer wished to pursue the application and that he had petitioned for the domestic proceedings to be discontinued. The respondent Government confirmed that information.

13. On 18 March 2014 the Court reconsidered the application in the light of the information submitted by the parties and decided to lift the interim measure under Rule 39 of the Rules of Court previously indicated in respect of the applicant.

14. In a letter which was delivered on 1 April 2014 the applicant informed the Court that he and his family were threatened by Russian authorities in order to make him return to Russia voluntarily. The applicant maintained that he wished to pursue the application.

COMPLAINTS

15. The applicant complained that his rights under Articles 3 and 6 of the Convention would be breached in the event of his extradition.

THE LAW

16. The applicant alleged that his extradition would entail a breach of Articles 3 and 6 of the Convention the relevant parts of which read as follows:

Article 3

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

Article 6 § 1

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

17. The respondent Government argued that the applicant had not exhausted domestic remedies as he had not sought redress before the Constitutional Court after having exhausted the other remedies available. They further argued that the applicant's complaint was in any event manifestly ill-founded.

18. The applicant maintained his complaints.

19. The Government of the Russian Federation referred to the guarantees issued by the Russian authorities and expressed the view that the applicant's complaints were unsubstantiated.

20. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with the matter after all domestic remedies have been exhausted. The rule of exhaustion of domestic remedies obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal

system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. It is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports of Judgments and Decisions* 1996-IV).

21. The documents before the Court indicate that in the proceedings on his renewed asylum request the applicant withdrew his action by which he had sought a review of the administrative authorities' decisions. On that ground the Supreme Court discontinued the proceedings without addressing the merits of the case (see paragraph 11 above).

22. Furthermore, as regards applications against Slovakia, a complaint under Article 127 of the Constitution has been generally considered as an effective remedy in respect of alleged breaches of the Convention which the applicants have been required to use after having had recourse to other domestic remedies available (see *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60237/00, 60242/00, 60679/00, 60680/00, 68563/01, 60226/00, ECHR 2002-IX; *Kvasnica v. Slovakia*, no. 72094/01, § 63, 9 June 2009; or *Chentiev and Ibragimov v. Slovakia* (dec.), no. 65916/10, 21 February 2012, §§ 78-79 which concerned also a different complaint by the present applicant).

23. In view of the above, the Court considers that the applicant has failed to use the remedies available in Slovakia as required by Article 35 § 1 of the Convention. Therefore, the subsidiary role of the Convention mechanism (see paragraph 20 above) prevents the Court from dealing with the application.

24. The Court has taken into account that in his letter delivered on 1 April 2014 (see paragraph 14 above) the applicant expressed the wish to pursue the application contrary to his earlier submission. This fact cannot, however, affect the position from the viewpoint of compliance with the admissibility requirements under Article 35 of the Convention.

25. It follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the remainder of the application inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President