



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

## FIRST SECTION

### DECISION

Application no. 56478/13

M.D.

against Russia

The European Court of Human Rights (First Section), sitting on 10 June 2014 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Paulo Pinto de Albuquerque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 5 September 2013,

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 decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Mr M. D., is a Kyrgyzstan national, who was born in 1987 and currently resides in Novosibirsk. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 4). He was represented before the Court by Ms I.B. Kalkopf, a lawyer practising in Novosibirsk.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

### A. The circumstances of the case

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

4. The applicant is a Kyrgyzstan national of an Uzbek ethnic origin.

5. In October 2010, after the inter-ethnic violence in the region of Jalal-Abad in June 2010, the applicant left Kyrgyzstan for Russia, fleeing ethnic-motivated violence.

6. On 30 January 2011 the Kyrgyz authorities charged the applicant *in absentia* with violent crimes committed in June 2010. On 1 May 2011 they issued an international search warrant.

7. On 30 September 2011 the applicant was arrested and placed in custody in Russia. The Kyrgyz authorities confirmed their intention to seek the applicant's extradition.

8. On 30 September 2012 the detention measure was lifted and the applicant was released from custody under an obligation not to leave his place of residence.

9. Pending the completion of the extradition proceedings, the applicant unsuccessfully sought a refugee status, temporary asylum and political asylum in Russia.

10. On 4 April 2013 the Deputy Prosecutor General of Russia granted the extradition request and ordered the applicant's extradition. The order mentioned that the Kyrgyz authorities provided diplomatic assurances that the applicant would not be tortured or subjected to inhuman or degrading treatment; the extradition request did not aim at persecuting the applicant on religious, political grounds or grounds relating to his ethnic origin; he would benefit from free access by the Russian authorities' representative in the place of his detention.

11. The applicant appealed against this decision and advanced an argument that he might be subject to ill-treatment due to his Uzbek ethnic origin.

12. On 21 June 2013 the Novosibirsk Regional Court upheld the extradition order. As to the applicant's arguments about alleged risk of ill-treatment the court concluded that they were unfounded, since the reports provided by the applicant referred to past years, namely 2011, and the opinions of human rights activists were their own subjective opinion not based on real facts.

13. The applicant appealed to the Supreme Court of Russia.

14. On 11 September 2013 the Court acceded to the applicant's request to apply Rule 39 of the Rules of Court and indicated to the Government that the applicant should not be extradited or otherwise involuntarily removed from Russia to Kyrgyzstan or another country for the duration of the proceedings before the Court.

15. On 17 September 2013 the Supreme Court of Russia quashed the judgment of 21 June 2013 and remitted the case for a fresh examination in the first instance.

16. On 5 October 2013 the Novosibirsk Regional Court quashed the extradition order of 4 April 2013.

17. On 14 January 2014 the Supreme Court of Russia dismissed the appeal lodged by the Prosecutor's Office of the Novosibirsk Region and upheld the judgment of 5 October 2013. The extradition order of 4 April 2013 was thus annulled.

#### **B. Relevant domestic and international law and international materials**

18. For a summary of relevant international and domestic law and practice see *Abdulkhakov v. Russia* (no. 14743/11, §§ 71-98, 2 October 2012).

19. For relevant reports on Kyrgyzstan see *Makhmudzhan Ergashev v. Russia* (no. 49747/11, §§ 30-46, 16 October 2012).

### **COMPLAINTS**

20. The applicant complained under Articles 3 and 13 of the Convention that he would face a real risk of ill-treatment if extradited to Kyrgyzstan and that he did not have available effective domestic remedies in this respect.

21. In the observations on the admissibility and merits of the application of 16 January 2014 the applicant raised for the first time a complaint about alleged unlawfulness of his detention pending extradition between 30 September 2011 and 30 September 2012. He relied on Article 5 § 1 (f) of the Convention.

### **THE LAW**

22. The applicant complained that in case of his extradition to Kyrgyzstan he would be exposed to a risk of ill-treatment proscribed by Article 3 of the Convention, which reads as follows:

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

23. The Government submitted that since the extradition order had been quashed the applicant no longer risked ill-treatment in the requesting country and thus had lost his victim status.

24. The applicant maintained his complaint.

25. The Court reiterates that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 of the Convention in the receiving country (see *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161). With regard to the material date, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of extradition. However, if the applicant has not yet been extradited when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Chahal v. the United Kingdom*, 15 November 1996, §§ 85-86, *Reports of Judgments and Decisions* 1996-V).

26. The Court observes that, while the proceedings before it were pending, the Russian law-enforcement authorities annulled the decision to extradite the applicant to Kyrgyzstan. Therefore, as matters stand, the applicant no longer faces any risk of removal to Kyrgyzstan. Thus, it must be concluded that the factual and legal circumstances which were at the heart of the applicant's grievance before the Court on that account are no longer valid. Consequently, the applicant can no longer claim to be a victim within the meaning of Article 34 of the Convention as regards his complaints that he would be subjected to ill-treatment in Kyrgyzstan (see *Bakoyev v. Russia*, no. 30225/11, § 98, 5 February 2013, and *Mohamed Hussein v. the Netherlands* (dec.), no. 7049/13, 1 April 2014).

27. It follows that this part of the application must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

28. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

29. The above findings do not prevent the applicant from lodging a new application before the Court and from making use of the available procedures, including the one under Rule 39 of the Rules of Court, in respect of any new circumstances, in compliance with the requirements of Articles 34 and 35 of the Convention (see *Dobrov v. Ukraine* (dec.), no. 42409/09, 14 June 2011, and *Bakoyev*, cited above, § 100).

30. As regards the applicant's Article 13 complaint, the Court considers that this complaint is unsubstantiated and should be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

31. Finally, as regards the applicant's complaint under Article 5 § 1 (f) of the Convention, the Court notes that it was raised on 16 January 2014 and that the applicant was released from detention pending extradition on 30 September 2012, that is, more six months before the issue at hand was brought before the Court.

32. It follows that this part of the application was introduced out of time and must be rejected for non-compliance with the six-month rule pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible;

*Decides* to lift the interim measure indicated pursuant to Rule 39 of the Rules of Court.

Søren Nielsen  
Registrar

Isabelle Berro-Lefèvre  
President