

Press release issued by the Registrar

**CHAMBER JUDGMENT  
GARABAYEV v. RUSSIA**

The European Court of Human Rights has today notified in writing its Chamber judgment<sup>1</sup> in the case of *Garabayev v. Russia* (application no. 38411/02).

The Court held unanimously that there had been:

- a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on account of the applicant's extradition to Turkmenistan;
- a **violation of Article 5 § 1 (f)** (right to liberty and security) of the Convention in respect of the applicant's detention prior to extradition;
- a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) in respect of the availability of judicial review of detention pending extradition;
- a **violation of Article 5 § 3** (right to be brought promptly before a judge) in respect of the failure to bring the applicant promptly before a judge after his return from Turkmenistan; and,
- a **violation of Article 13** (right to an effective remedy).

Under Article 41 (just satisfaction), the Court awarded the applicant 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 105 for costs and expenses. (The judgment is available only in English.)

### **1. Principal facts**

The applicant, Murad Redzhepovich Garabayev, is a citizen of Russia and Turkmenistan who was born in 1977 and lives in Moscow. He was an accountant in the Central Bank of Turkmenistan.

On 4 March 2002 he was registered at the Russian Consulate in Turkmenistan as a Russian citizen living in Ashkhabad, and, on 17 March 2002, was issued with a Russian passport.

On 27 September 2002 the Prosecutor General of Turkmenistan sent a request to the Prosecutor General of the Russian Federation to detain and extradite the applicant, who was

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<sup>1</sup> Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

charged with withdrawing and not returning financial assets worth 40 million US dollars from the correspondent account of the Central Bank of Turkmenistan in the Deutsche Bank AG (Frankfurt-am-Main, Germany). The applicant was consequently arrested in Moscow that day and placed in detention.

The applicant's lawyer complained to the Prosecutor General's Office (PGO) that the applicant could not be extradited to Turkmenistan according to, among other things, the Code of Criminal Procedure (CCP), because he was a Russian national. She referred to human-rights reports which indicated that the applicant risked facing torture or inhuman or degrading treatment if extradited. Memorial, a Russian NGO, also contacted the prosecutor general, referring to the applicant's Russian nationality and the absence of fair-trial guarantees and the lack of impartiality and independence of the judiciary and prevalence of torture in Turkmenistan. Memorial subsequently indicated that the applicant was being persecuted in Turkmenistan in connection with a politically-motivated case against the former deputy head of the Central Bank of Turkmenistan. Memorial gave details of the persecution of the employees of the Central Bank and their relatives, including the arrest of the applicant's mother, sister and uncle and confiscation of their property.

On 15 October 2002 Sergey Kovalev, a member of the State Duma, sent a letter to the head of the International Department of the PGO concerning the applicant's case, referring to his nationality and the risk of torture and the lack of fair-trial guarantees.

On 24 October 2002 the applicant was extradited to Turkmenistan. The applicant submitted that he was shown a copy of the decision to extradite him for the first time at the airport that day and that his request to see a lawyer was rejected.

On 18 and 24 October 2002 the applicant's lawyer challenged his detention and extradition. Moscow City Court replied that it did not have jurisdiction to deal with the complaint about detention and that the complaint about the unlawfulness of the decision to extradite could not be reviewed in the applicant's absence.

On 14 November 2002 the European Court of Human Rights requested information from the Russian Government concerning the applicant's detention and extradition to Turkmenistan, and asked whether his claims that he might be subjected to treatment contrary to Article 3 had been reviewed by a competent national authority.

On 5 December 2002 Moscow City Court reviewed the lawyer's complaint of 24 October. It found that the decision to extradite the applicant had been unlawful in view of his Russian nationality, proof of which - a copy of his Russian passport - was contained in the case file. The court further found that the decision had not been officially served on the applicant or his lawyer, as a result of which he had been deprived of the possibility to challenge it under national law. The applicant's detention was also found to be unlawful.

The applicant claimed that, while in detention in Turkmenistan, he had been threatened with torture and reprisals against his family and hit on the head and back. He had denied the charges brought against him. He submitted that he was detained in a 10m<sup>2</sup> cell with two other detainees and that they were only allowed 15-20 minutes' exercise a day for the first 20 days and, for two months, no exercise at all. During his detention he was constantly afraid that he or his close relatives would be subjected to torture. He was questioned twice without a lawyer.

The Russian Consulate in Ashkhabad tried four times to arrange for a consular meeting with the applicant, but without success.

On 1 February 2003 the applicant was returned to Moscow, where he was arrested and placed in pre-trial detention, charged with swindling on a large scale.

After the applicant was returned to Moscow, he learnt that his mother had been tried again and sentenced to 14 years' imprisonment and that similar sentences had been imposed on his sister and his uncle.

On 2 April 2003 the European Court of Human Rights requested the Russian Government, under Rule 39 of the Rules of Court, not to extradite the applicant to Turkmenistan until further notice.

On 9 March 2004 the applicant was found guilty of using a forged document and sentenced to a 5,000 rouble fine. He was acquitted of the other charges and released from detention.

On 19 March 2004, following a letter from the Russian Government giving assurances that the applicant would not be extradited to Turkmenistan in view of his undisputed Russian nationality, the European Court discontinued its request under Rule 39.

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

The application was lodged with the European Court of Human Rights on 28 October 2002 and declared partly admissible on 8 September 2005.

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

Christos **Rozakis** (Greek), *President*,  
Loukis **Loucaides** (Cypriot),  
Nina **Vajić** (Croatian),  
Anatoli **Kovler** (Russian),  
Khanlar **Hajiyev** (Azerbaijani),  
Dean **Spielmann** (Luxemburger),  
Sverre Erik **Jebens** (Norwegian), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

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

### **Complaints**

The applicant complained about his extradition to Turkmenistan and that his detention in Russia had been illegal. He relied on Article 3 (prohibition of inhuman or degrading treatment), Article 5 § 1, 3 and 4 (right to liberty and security) and Article 13 (right to an effective remedy).

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

## **Decision of the Court**

### Article 3

The Court noted that the Russian Government did not dispute that, immediately after the applicant's arrest several letters by the applicant, his lawyers and various public figures had been addressed to the prosecutor general, expressing fears of torture and personal persecution of the applicant for political motives and seeking to prevent his extradition on those grounds. They also referred to the general situation in Turkmenistan. The competent authorities were thus made sufficiently aware of a risk of ill-treatment in case of the applicant's return to Turkmenistan. The Court therefore found that at the date of the applicant's extradition to Turkmenistan there existed substantial grounds for believing that he faced a real risk of treatment proscribed by Article 3.

However, no assurances of the applicant's safety from treatment contrary to Article 3 were sought, and no medical reports or visits by independent observers were requested or obtained.

Furthermore, the applicant was informed of the decision to extradite him only on the day of his transfer to Turkmenistan and he was not allowed to challenge it or to contact his lawyer. The decision of the domestic court which found the extradition unlawful after it had occurred also failed to take into account the submissions under Article 3. In such circumstances, the Court concluded that no proper assessment was given by the competent authorities to the real risk of ill-treatment. The extradition was thus carried out without giving a proper assessment to that threat.

The Court observed that, not only was the applicant extradited to Turkmenistan, he was returned to Russia three months later. He produced an account of the events which had occurred while he was there. The Court was thus able to look beyond the moment of extradition and to assess the situation in view of those later developments. According to that evidence, the applicant spent most of his three-months detention in a 10m<sup>2</sup> cell shared with two other inmates. He had been allowed very little exercise for the first 20 days of his detention, and no exercise in the remaining period. He was denied consular visits from the staff of the Russian Consulate, who could have provided some independent information about the conditions of his detention and his situation during that period. He was in constant fear for his life, anxious about the uncertainty of his own fate and that of his relatives. He was also hit by investigators on several occasions. The Government did not contest those submissions. The Court therefore concluded that there had been a violation of Article 3.

### Article 5 § 1 (f)

Concerning the lawfulness of the applicant's detention between 27 September and 24 October 2002, the Court noted that he had been detained in Russia under a detention order issued by a prosecutor in Turkmenistan. His detention was not confirmed by a Russian court, contrary to the provisions of the CCP, which required such authorisation unless the detention in the country seeking extradition had been ordered by a court. Therefore the applicant's detention pending extradition was not in accordance with a "procedure prescribed by law" as required by Article 5 § 1.

Furthermore, the decision of 5 December 2002 found the applicant's extradition unlawful in view of his Russian nationality. Domestic legislation excluded, in non-ambiguous terms, the

extradition of Russian nationals. The information about the applicant's nationality had already been available to the competent authorities at the time of the applicant's arrest because the applicant and his lawyer had raised the issue and his Russian passport had been in his extradition file. On that basis Moscow City Court had declared the applicant's detention for the purpose of extradition unlawful from the outset. The Court considered that the procedural flaw in the order authorising the applicant's detention was so fundamental as to render it arbitrary and invalid. That conclusion was further strengthened by the absence of judicial review of the lawfulness of the applicant's detention until his extradition had taken place.

The Court concluded that the applicant's detention during the period in question was unlawful and arbitrary, in violation of Article 5 § 1 (f).

#### Article 5 § 3

Concerning the justification of detention after 30 January 2003, the Court noted that once the applicant was returned from Turkmenistan on 1 February 2003 and arrested in Russia, he should have been promptly brought before a judge. However, he was not brought before a judge until 19 March 2003, one month and 19 days later. There had therefore been a violation of Article 5 § 3 on the account of a failure to be brought promptly before a judge.

#### Article 5 § 4

Concerning the availability of judicial review of the detention prior to extradition, the Court noted that the applicant was detained in Russia under an arrest warrant issued by the Prosecutor General of Turkmenistan. The applicant's detention was not authorised by a Russian court, in violation of the relevant domestic provisions. Moscow City Court refused to consider the complaints concerning the unlawfulness of detention for lack of jurisdiction, but did not indicate which court would be competent to review them. It nevertheless addressed the issue of detention in the context of the extradition proceedings, but only after the applicant's extradition had taken place. Thus, the lawfulness of the applicant's detention during the period in question was not examined by any court, despite his appeals. A court would also have been much better placed to uncover the fundamental flaw in the detention order and order the applicant's release. There had therefore been a violation of Article 5 § 4 on account of the absence of judicial review of the applicant's detention pending extradition.

#### Article 13

The Court considered that the applicant was not provided with an effective remedy as regards the complaint concerning the risk of ill-treatment if extradited: he was only informed of the decision to extradite him on the day of his transfer; he was not allowed to contact his lawyer or to lodge a complaint, in breach of the relevant provisions of domestic legislation; and, the compatibility of the scheduled removal with Article 3 was not examined by the relevant authorities before it had occurred. The Court concluded that there had been a violation of Article 13 in connection with Article 3.

The Court considered that no separate issue arises in respect of Article 13 in connection with Article 5.

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

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*The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*