

# EHRAC

## Bulletin

## Recent Article 3 judgments regarding extradition to CIS countries

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The European Court of Human Rights (ECtHR) view on the extradition of applicants varies according to a number of factors, including: the destination country and the general human rights situation there, the accessibility of the country to international observers and its detention conditions. However, primarily it depends on the applicant's individual circumstances, as well as on the nature of the charges against them, the circumstances in which they left the country and their belonging to a persecuted group, if applicable. These factors were all taken into consideration by the ECtHR when judging the following cases of extradition to countries in the former Soviet Union.

### **Turkmenistan – no objective information on prison conditions, lack of accessibility, vulnerability**

In *Kolesnik v Russia* (No. 26876/08) 17.6.10, the ECtHR confirmed its ear-

lier conclusions in *Ryabikin v Russia* (No. 8320/04) 19.6.08 and *Soldatenko v Ukraine* (No. 2440/07) 23.10.08, declaring extradition to Turkmenistan to be in breach of Art. 3 due to “*very poor conditions of detention; discrimination against persons of non-Turkmen ethnicity, which made them particularly vulnerable to abuses; [...] and] systematic refusal of the Turkmen authorities to allow any monitoring of the places of detention by international or non-government observers*” (para. 68). The ECtHR also noted that the latest reports by observers did not demonstrate any improvement in the situation in Turkmenistan - in particular that “*international observers, including the ICRC, have continued to be denied access to the places of detention*” (para. 69).

### **Tajikistan – ratification of key instruments does not eliminate risk of ill-treatment and vulnerability: Hizb ut-Tahrir and ethnic Uzbeks**

The applicant in *Khodzhayev v Russia* (No. 52466/08) 12.05.10 was ac-

cused of being a member of the illegal group, Hizb ut-Tahrir. The ECtHR found sufficient grounds to suggest that there was persecution of members and supporters of Hizb ut-Tahrir and ruled that the applicant's extradition would be in violation of Art. 3.

In *Gafarov v Russia* (No. 25404/09), 21.10.10, the ECtHR additionally noted evidence of discrimination in Tajikistan on the basis of national origin. However, this case once more turned on the applicant's status as a member of Hizb ut-Tahrir. He had also alleged that he had been tortured previously; he had escaped custody and his relatives had been approached and threatened by law enforcement officials. These were factors taken into consideration by the ECtHR and they ruled against extradition.

In *Khaydarov v Russia* (No. 21055/09) 20.5.10, the applicant (who was charged with criminal offences of banditry that were alleged to be politically motivated) was once again of Uzbek

origin and the ECtHR made reference to the discrimination on the grounds of ethnicity outlined above. The ECtHR rejected the Russian Government's argument that Tajikistan's ratification of key human rights instruments excluded the risk of ill-treatment, stating that reliable sources had reported that the authorities were tolerating practices manifestly contrary to the ECHR and even resorting to such practices themselves (para. 105).

#### **Kazakhstan – detention not sufficient to amount to violation of Art. 3 due to improvement in detention conditions**

Previously, in *Kaboulov v Ukraine* (No. 41015/04) 19.11.09, the ECtHR referred to credible reports of the torture and ill-treatment of detainees, poor prison conditions and a failure to investigate reports of torture to support a finding that the mere fact of being detained in Kazakhstan was sufficient to fear treatment contrary to Art. 3. The ECtHR came to a similar conclusion in *Baysakov and Others v Ukraine* (No. 54131/08) 18.02.10. However, in the more recent case of *Dzhaksybergenov v Ukraine* (No. 12343/10) 10.02.11, the ECtHR did not find a violation of Art. 3. Their reasons cited the recent improvements in the human rights situation, particularly with regards to detention conditions. It therefore revised its previous conclusions regarding extradition to Kazakhstan, stating that there was no indication that the human rights situation was serious enough to call for a total ban on extradition.

#### **Uzbekistan – systematic practice of torture according to international observers insufficient to prevent extradition for ordinary criminal offences**

In 2008 the ECtHR noted that the “ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan”,<sup>1</sup> and in 2010 that “no concrete evidence has been produced to demonstrate any fundamental improvement in this area

in this country for several years. Given these circumstances, the Court considers that ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan”.<sup>2</sup> However, in *Elmuratov v Russia* (No. 66317/09) 03.03.11 the ECtHR stated that, unlike in previous cases of extradition to Uzbekistan where the applicants had been members of especially vulnerable groups who were systematically subjected to the practice of ill-treatment, the applicant had been indicted solely with property-related criminal offences and did not belong to a vulnerable group. Therefore, his extradition would not be a violation of Art. 3.

However, in recent judgments concerning the same issues, the ECtHR found that there is no concrete evidence to demonstrate any real improvements to the risk of ill treatment.

In *Yakubov v Russia* (No. 7265/10) 08.11.11, the ECtHR found that to demand the applicant provide irrefutable evidence of the risk of ill treatment in the country in question would be asking them to predict future events and would put a disproportionate burden on the applicant. The ECtHR reiterated its position that, in these cases, the likely consequences of extraditing someone to a particular country must be taken into account.<sup>3</sup>

As a result, the ECtHR found violations of Art.3 in *Yakubov v Russia* and, in a further case, *Ergashev v Russia* (No. 12106/09) 20.12.11, insofar as the applicants objectively demonstrated that they were members of persecuted

groups in Uzbekistan (it was alleged they were members of the organisation Hizb Ut-Tahrir).

#### **Belarus – individual circumstances, vulnerability of certain groups, including political opposition**

ECtHR practice regarding extradition to Belarus has depended on the individual circumstances of the applicant. For example, in *Kamyshev v Ukraine* (No. 3990/06) 20.5.10, the

ECtHR found no violation of Art. 3, stating that whilst international documents demonstrated serious concerns as to the human rights situation in Belarus, general problems concerning human rights observance cannot serve as a basis for refusing extradition, adding that, “there is no indication that the human rights situation in Belarus is serious enough to call for total ban on extradition to that country”. The ECtHR found that the applicant did not belong to the political opposition or to any other recognised vulnerable group, and the allegation that any criminal suspect ran the risk of ill-treatment was too general to substantiate a serious risk.

Meanwhile, in *Koktysh v Ukraine* (No. 43707/07) 10.12.09, the ECtHR held that the individual circumstances of the applicant resulted in a risk of ill-treatment, since the applicant had previously been ill-treated by the authorities. Furthermore, the ECtHR found that the potential for the applicant to face the death penalty, together with the prospect of an unfair trial (his previous final acquittal had been quashed), would generate sufficient mental suffering to fall within the ambit of Art. 3.

It is therefore evident from recent ECtHR practice on the application of Art. 3 that each case will largely turn on its own facts and the individual circumstances of the applicant, particularly in relation to membership of vulnerable groups. The human rights situation in each country is also clearly a critical prerequisite for a finding of a

violation of Art. 3. However, the jurisprudence of the ECtHR demonstrates that such a finding is often not considered warranted in the absence of specific risk to the applicant.

<sup>1</sup> *Ismoilov & Others v Russia* (No. 2947/06) 24.4.08, para. 121.

<sup>2</sup> *Sultanov v Russia* (No. 15303/09) 4.11.10, para. 71; *Karimov v. Russia* (No. 54219/08) 29.7.10, para. 99.

<sup>3</sup> See *Vilvarajah and Others v United Kingdom* (Nos. 13163/87; 13164/87; 13165/87; 13447/87; 13448/87) 30.10.91.

