



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

FIRST SECTION

CASE OF TERSHIYEV v. AZERBAIJAN

(Application no. 10226/13)

JUDGMENT

STRASBOURG

31 July 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tershiyev v. Azerbaijan,

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

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 July 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 10226/13) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Ramazan Teshtemirovich Tershiyev (“the applicant”), on 5 February 2013.

2. The applicant was represented by Mr E. Osmanov, a lawyer practising in Azerbaijan. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that he would likely be subjected to torture or ill-treatment if extradited to Russia, and that he had no effective remedies available to him in Azerbaijan by which to challenge his extradition on the grounds that he would risk being subjected to torture or ill-treatment.

4. On 12 February 2013 the Acting President of the Section decided to indicate to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited to Russia for the duration of the proceedings before the Court. It was also decided to grant the application priority treatment under Rule 41 of the Rules of Court.

5. On 10 April 2013 the application was communicated to the Government. In addition, on 8 July 2013 the Russian Government informed the Court that they would exercise their right to intervene in the proceedings as a third party (Article 36 § 1 and Rule 44 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1961 and is of Chechen ethnic origin. He is currently serving a prison sentence in Azerbaijan.

A. Background information

7. The applicant appears to have arrived in Azerbaijan in 2009. In July 2009 he was arrested while attempting to illegally cross the border from Azerbaijan to Russia together with several other individuals.

8. On 5 April 2011 the Assize Court convicted the applicant, together with a number of other accused, of a number of serious criminal offences committed in Azerbaijan in 2009, including: creation of an illegal organised armed unit; illegal border crossing; illegal possession of firearms, explosives and other weapons; and creation of a network of clandestine flats in Baku as temporary accommodation for members of illegal armed units operating in Chechnya. He was sentenced to fourteen years' imprisonment. His conviction was upheld by the higher courts. The applicant is currently serving his sentence in Prison No. 11 in Baku.

B. Criminal proceedings instituted against the applicant in Russia

9. By a decision of 6 September 2011, an investigator of the Vedeno district department of the interior of the Russian Federation ("the Vedeno ROVD") instituted criminal proceedings against the applicant under Article 208 § 2 of the Russian Criminal Code (participation in an armed unit not envisaged by federal law), on suspicion that during the period 2000 to 2007, he had been an active member of an illegal armed unit operating in the Vedeno district of Chechnya under the command of Khuseyn Gakayev, and that he was still a member of that unit at the time of institution of the criminal proceedings.

10. On 10 October 2011 the Vedeno ROVD issued a search warrant in respect of the applicant as a suspect.

11. On 26 April 2012 it formally charged him as an accused person under Article 208 § 2 of the Russian Criminal Code.

12. On 18 July 2012 it issued an international search warrant in respect of him.

13. By a decision of 20 July 2012, the Vedeno District Court of the Chechen Republic remanded him in custody in absentia.

C. Extradition proceedings in Azerbaijan

14. In the meantime, in January 2012 the applicant applied to the Baku Office of the United Nations High Commissioner for Refugees (UNHCR) with a request for asylum. It appears that, since the early 2000s, by mutual agreement and understanding between the UNHCR and the Azerbaijani Government, the processing of asylum applications by people originating from Chechnya was separated from the ordinary government procedure, with applications by members of this group being dealt with directly by the UNHCR. In September 2012 the applicant was interviewed by UNHCR representatives but his application was rejected.

15. On 24 August 2012 the Russian Deputy Prosecutor General formally requested the Azerbaijani Prosecutor General's Office to extradite the applicant under the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters ("the Minsk Convention"). As an alternative, in the event the extradition was subject to postponement under Article 64 of the Minsk Convention owing to the fact that the applicant was serving a prison sentence in Azerbaijan, he requested the applicant's "temporary extradition" for a period of three months for the purposes of carrying out necessary procedural steps in the framework of the criminal proceedings pending in Russia.

16. The extradition request contained a number of assurances: that the applicant would only be prosecuted in connection with the criminal offence he was charged with; that he would not be subjected to torture or ill-treatment; and that in the event of "temporary extradition" he would be returned to Azerbaijan no later than three months after being handed over to the Russian law-enforcement authorities.

17. By a decision of 26 November 2012, the Azerbaijani First Deputy Prosecutor General granted the extradition request and ordered the applicant's "temporary extradition" to Russia for a period of three months.

18. The applicant, who had a lawyer, lodged an appeal against that temporary extradition order with the Sabayil District Court, arguing that there was a serious risk that he would be tortured or ill-treated by the Russian law-enforcement authorities if he was extradited.

19. By an inquiry letter of 17 January 2013, the judge of the Sabayil District Court dealing with the case requested the Baku Office of the UNHCR to provide information about the grounds on which the applicant had requested refugee status, and whether any decision had been taken by the UNHCR in this respect.

20. By a letter of 23 January 2013, the Baku Office of the UNHCR informed the judge that the applicant's asylum application had been rejected by the UNHCR "at first instance", but that he had lodged an appeal against the decision which was awaiting consideration. The UNHCR therefore "strongly requested" that the applicant's forced return to Russia should be

“prevented” until a final decision had been taken by the UNHCR in respect of his application for refugee status.

21. By a decision of 24 January 2013, the Sabayil District Court dismissed the applicant’s appeal against the temporary extradition order of 26 November 2012. The court noted the following: that there were no grounds in the domestic law or relevant international instruments for precluding his temporary extradition to Russia; that his request for refugee status had been rejected by the UNHCR, therefore he did not have refugee status at the time of examination of his appeal; and that the Russian authorities’ extradition request provided the necessary assurances. The court refused to examine the applicant’s complaints concerning an alleged risk of torture or ill-treatment, noting that he had failed to submit any evidence in that regard.

22. On 28 January 2013 the applicant lodged an appeal against this decision, reiterating his complaint that he would be subjected to a risk of ill-treatment if extradited to Russia, and Chechnya in particular.

23. On 1 February 2013 the Baku Court of Appeal dismissed the appeal, finding that the Sabayil District Court had reached the correct decision. The Baku Court of Appeal’s decision was silent as to the pending examination by the UNHCR of the applicant’s asylum request and as to his allegations concerning a risk of torture or ill-treatment in the receiving country.

24. In accordance with the procedural rules concerning appeals against the prosecution authorities’ decisions concerning extradition, no further appeal lay against the Baku Court of Appeal’s decision.

25. According to the Government, on 1 March 2013 the applicant was interviewed again by the UNHCR in Prison No. 11. In his latest communication to the Court (4 November 2013), he provided no update concerning his pending appeal with the UNHCR.

II. RELEVANT DOMESTIC LAW

A. Constitution

26. Part II of Article 148 establishes that international treaties to which the Republic of Azerbaijan is a party constitute an integral part of the legal system of the Republic of Azerbaijan.

B. Code of Criminal Procedure (CCrP)

27. Chapter LVII of the CCrP deals with legal assistance in criminal matters. Article 495.1 provides that upon receipt of a request for extradition and a copy of a detention order from the competent authority of a foreign State, the prosecution authority of the Republic of Azerbaijan to which the

request is addressed may, if necessary, take measures to have the person arrested and detained before a decision on that person's extradition is taken. Article 496.1 provides that a person who is in the territory of the Republic of Azerbaijan shall be extradited by the prosecution authority with a view to criminal prosecution or enforcement of a sentence, taking into consideration the requirements and conditions set out in Article 496.2-496.7 of the Code, on the basis of an official request for his extradition from the competent authority of the foreign State concerned.

28. Article 496.5.3 states that an extradition request can be refused if the person whose extradition is sought is being pursued on political, racial or religious grounds. Moreover, Article 492.1 provides that legal assistance to a foreign State in criminal matters may be refused in cases specified in Article 3.1 of the Law on Legal Assistance in Criminal Cases (see paragraph 31 below).

29. Under Article 495.5, a person detained with a view to extradition can challenge the prosecution authorities' decisions before the courts. Such an action is examined under the procedure established in Articles 442-454 (Chapter LII). In particular, Article 449 provides that the accused (or suspect) or a person whose rights and freedoms are affected can challenge various acts or decisions of the prosecution authorities, including decisions concerning detention or forcible procedural measures. The judge examining the legality of the prosecution authorities' acts and decisions can quash them if found to be unlawful (Article 451).

C. Law on Legal Assistance in Criminal Cases of 29 June 2001

30. Article 2.1 states that legal assistance in criminal matters comprises actions by the Azerbaijani authorities taken further to a request by a foreign State in connection with a criminal case pending investigation or judicial examination by that State's competent authorities.

31. Article 3.1 provides that such legal assistance shall be refused if, *inter alia*, there are grounds for believing that the request for legal assistance is made with the purpose of pursuing the person concerned on the grounds of race, ethnicity, language, religion, nationality, political views or gender.

D. Law on Extradition of 15 May 2001

32. Articles 3.2.2 and 3.2.3 state that an extradition request may be refused if there are grounds to believe that the person whose extradition is sought would be subjected to torture or cruel, inhuman or degrading treatment or punishment in the receiving State, or that he or she is being pursued on the grounds of race, ethnicity, language, religion, nationality, political views or gender.

E. The 1993 CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (“the Minsk Convention”)

33. This Convention, to which both Azerbaijan and Russia are parties, provides that in executing a request for legal assistance, the requested party applies its domestic law (Article 8 § 1).

34. The Contracting Parties must, at each other’s request, extradite persons in their territory for criminal prosecution or to serve a sentence (Article 56 § 1). Extradition to serve a sentence extends to offences which are criminally punishable under the laws of the requesting and requested Contracting Parties, and which entail at least six months’ imprisonment or a heavier sentence (Article 56 § 3).

35. Articles 63 and 64 of the Convention provide as follows:

“Article 63. Postponement of extradition

If the person to be extradited was brought to criminal responsibility or condemned for some other crime on the territory of the requested Contracting Party, his or her extradition may be postponed until completion of the criminal proceedings, execution of the verdict or until the release.

Article 64. Temporary extradition

1. If the postponement of extradition envisaged by Article 63 may entail the expiration of the term of the criminal responsibility or damnify the investigation, then the person to be extradited may be extradited temporarily.

2. The temporarily extradited person must be returned after the completion of the actions concerning the criminal case for which he or she was extradited, but not later than three months after the extradition. If there are well-grounded reasons, this term may be prolonged.”

36. A person being extradited may not – other than with the consent of the requested party – be held criminally responsible or punished for any crime committed before the extradition, unless the crime constitutes the reason for the extradition. Nor may such a person be extradited to any third State other than with the consent of the requested party (Article 66 §§ 1 and 2).

37. The Prosecutor General of each Contracting Party is responsible for dealing with matters concerning extradition and criminal prosecution (Article 80).

III. RELEVANT INTERNATIONAL REPORTS

38. A number of relevant international reports concerning the situation in Chechnya, and Russia in general, are summarised in the Court’s judgment in *Chankayev v. Azerbaijan* (no. 56688/12, §§ 44-52, 14 November 2013, with further references).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant complained that extraditing him to Russia would violate Article 2 of the Convention. The Court considers that, in substance, this complaint falls to be examined under Article 3 of the Convention and decides to examine it under Article 3 alone, which provides as follows:

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

A. Admissibility

40. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) **The applicant**

41. The applicant reiterated his complaint. He argued that the Russian prosecution authorities had “false intentions” in his respect, demonstrated by the fact that the criminal proceedings against him had not been instituted in Russia until after his conviction in Azerbaijan, even though the criminal offences of which he was accused had been allegedly committed during the period 2000 to 2007.

42. In support of his argument that there was an imminent risk of him being tortured or killed, the applicant referred to the case of Gaji Chankayev, who was also a former Chechen rebel serving a prison sentence in Azerbaijan and who had been extradited to Russia in similar circumstances. The applicant noted that Mr Chankayev claimed to have been ill-treated by the Russian law-enforcement authorities during his stay in Russia. The applicant also submitted a copy of a one-page statement by an organisation called the Chechen Refugee Council in Azerbaijan, containing a list, without relevant details, of about thirty Chechen refugees in Azerbaijan, some of whom had allegedly been “illegally” transferred to Russia and, out of those transferred, some had allegedly been killed or had disappeared there.

43. Lastly, the applicant submitted that there was no monitoring mechanism existing between Azerbaijan and Russia which would allow

each State to monitor the other's compliance with assurances given in respect of ill-treatment in extradition cases.

(b) The Government

44. The Government considered that there were no substantial grounds for believing that the applicant would be exposed to a real risk of ill-treatment or being killed if extradited to Russia. They further noted that in the extradition request itself, the Russian authorities had provided all the necessary guarantees stipulated in the relevant international treaties that the applicant would not be subjected to ill-treatment. In addition, the Government submitted that parties to the Minsk Convention always informed each other of all actions taken in cases of extradition.

45. The Government further noted that the Russian Prosecutor General's Office had given the following additional assurances: (a) that representatives of the Azerbaijani diplomatic mission or consulate in Russia would be granted unrestricted permission to meet with the applicant in detention, and the applicant would be given the opportunity to contact to them; (b) that the representatives of the Azerbaijani diplomatic mission or consulate would have the opportunity to obtain information on the applicant's criminal case and participate at the court hearings; (c) that the Azerbaijani authorities would be informed of the final judgment delivered in the applicant's case; and (d) that upon completion of all necessary procedural steps the applicant would be returned to Azerbaijan no later than three months after his extradition. The Government did not present to the Court a copy of the document providing the above assurances.

(c) The third party

46. The Russian Government submitted that the applicant had been charged with a serious criminal offence and that the refusal to extradite him for the purposes of his criminal prosecution might seriously harm the interests of the requesting State and limit its ability to fight organised crime. They emphasised that the offences committed by the applicant had not been of a political nature. They further reaffirmed the guarantees previously given to the Azerbaijani authorities. In particular, they asserted that the applicant would be given a fair trial and would only be prosecuted for the crime for which he would be extradited, would not be extradited to a third State without the consent of the Azerbaijani Government, and would not be subjected to torture or inhuman or degrading treatment or punishment.

2. The Court's assessment

(a) General principles

47. Extradition by a Contracting State may give rise to an issue under Article 3, thereby engaging 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 in the requesting country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the requesting country, whether under general international law, the Convention, or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment (see *Soering v. the United Kingdom*, 7 July 1989, §§ 90-91, Series A no. 161).

48. In determining whether it has been shown that the applicant runs a real risk, if extradited, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it, or, if necessary, material obtained *proprio motu* (see *Cruz Varas and Others v. Sweden*, 20 March 1991, § 75, Series A no. 201). In cases such as the present, the Court must examine the foreseeable consequences of the applicant being extradited to the requesting country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 108 *in fine*, Series A no. 215). To that end, as regards the general situation in a particular country, the Court has often attached importance to the information originating from various reliable and objective sources such as, for instance, agencies of the United Nations, reputable domestic or international human-rights protection associations, or other Contracting or non-Contracting States (see, for example, *Chahal v. the United Kingdom*, 15 November 1996, §§ 99-100, *Reports of Judgments and Decisions* 1996-V; *Saadi v. Italy* [GC], no. 37201/06, §§ 143-146, ECHR 2008; and *Ismoilov and Others v. Russia*, no. 2947/06, §§ 120-23, 24 April 2008). The Court has also taken into account reports by the Commissioner for Human Rights of the Council of Europe (see, for example, *Bajsultanov v. Austria*, no. 54131/10, §§ 38-42, 12 June 2012; and *I v. Sweden*, no. 61204/09, §§ 27-31, 5 September 2013).

49. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3. Where such evidence is adduced, it is for the Government to dispel any doubts raised by it (see, among other authorities, *Nnyanzi v. the United Kingdom*, no. 21878/06, § 53, 8 April 2008).

50. With regard to the material date, the existence of a 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 removed when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Saadi*, cited above, § 133, and *Chahal*, cited above, §§ 85-86). A full and *ex nunc* assessment is called for, as the situation in a country of destination may change over the course of time. Even though the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive (see *Salah Sheekh v. the Netherlands*, no. 1948/04, § 136, 11 January 2007).

(b) Application of those principles to the present case

51. In the applicant's view, his fears of possible ill-treatment in Russia are justified by the fact that he is a Chechen who participated in military activities against the Russian federal forces. Bearing in mind that the applicant has not yet been extradited owing to the indication of an interim measure under Rule 39 of the Rules of Court, the material date for the assessment of that risk is that of the Court's consideration of the case.

52. In the present case, the applicant is not facing deportation to Chechnya or other areas in the North Caucasus (contrast, for example, *Bajsultanov v. Austria* and *I v. Sweden*, both cited above). He is facing temporary extradition in order to appear as an accused in criminal proceedings and it is likely that, for the duration of his stay in Russia, he would be placed in a remand prison or other pre-trial detention facility.

53. The Court notes that the country reports for Russia still reflect a situation of danger and arbitrary abuse with regard to certain categories of people, such as (former) rebels and their relatives. Furthermore, there were reports of physical abuse of suspects by police officers, occurring usually within the first few days of arrest. As to the North Caucasus and Chechnya in particular, the situation still indicates occurrences of arbitrary violence, abductions, disappearances, impunity, and torture and ill-treatment in pre-trial detention centres and "unofficial" prisons.

54. The Court also notes that various country reports, obtained by it *proprio motu*, state that conditions in remand prisons across Russia vary but are sometimes harsh, specifying such conditions as overcrowding, limited access to health care, food shortages, abuse by guards and inmates, and inadequate sanitation. The Court itself has had to deal with a large number of applications concerning conditions of detention in Russian remand prisons (see the Annex in *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012, for a list of final judgments in which at least one violation of Article 3 was found on account of inadequate conditions of detention in remand prisons).

55. In the Court's view, the above-mentioned information on remand prisons in Russia is a matter of serious concern, in view of the reports that conditions of detention are sometimes harsh and that there are still

occurrences of ill-treatment of detainees, particularly in Chechnya and the North Caucasus. However, the general situation is not such as to conclude that any extradition of Chechens to Russia would violate Article 3 of the Convention (see *Zarmayev v. Belgium*, no. 35/10, § 67, 27 February 2014). Accordingly, an assessment of the particular circumstances of each case is necessary.

56. Turning to the applicant's personal circumstances, the Court notes that, in the present case, he is subject to "temporary extradition" under the Minsk Convention for a period of three months, which can be extended if there are "well-grounded reasons". Pursuant to the procedure prescribed by Article 64 of the Minsk Convention, Russia is under an obligation to return him to Azerbaijan after completing the necessary procedural steps for which the extradition was requested. In the absence of concrete evidence to the contrary, the Court considers that, in practical terms, the obligation to return a temporarily extradited person should be assessed as a factor reducing the risk of ill-treatment in the receiving State.

57. The Court further notes that the applicant does not appear to have been a prominent figure in the Second Chechen War. He had apparently been in a supporting role.

58. As to the statement by the Chechen Refugee Council in Azerbaijan submitted by the applicant in support of his case, the Court notes that, as mentioned above (see paragraph 42), although it purports to show that there was a pattern of ill-treatment and disappearances of Chechens extradited or abducted to Russia from Azerbaijan, the list lacks a reasonably minimal degree of necessary detail for it to be accepted by the Court as *prima facie* relevant and reliable. Apart from the allegation that all the individuals concerned were Chechen rebels, it is not possible to establish any further definitive similarity between their and the applicant's situation, or to deduce that the applicant was likely to suffer the same fate as they allegedly did.

59. The applicant also argued his case by referring to the case of another former Chechen rebel imprisoned in Azerbaijan, Gaji Chankayev, who had been sent to Russia under a similar temporary extradition order in 2006. Noting Mr Chankayev's claims that he had been tortured during his stay in Russia, the applicant argued that he would be subjected to similar treatment if extradited. However, the Court notes that it has already examined the application brought by Mr Chankayev and found, *inter alia*, that his claims of ill-treatment during his temporary extradition to Russia were unsubstantiated (see *Chankayev*, cited above, §§ 76-78).

60. Having regard to the applicant's personal situation as described and presented by him, the Court cannot discern any circumstances disclosing a serious risk of ill-treatment in the event of his extradition.

61. The Court further attaches importance to the fact that the case concerns extradition to a High Contracting Party to the European Convention on Human Rights, which has undertaken to secure the

fundamental rights guaranteed under its provisions (see *Tomic v. the United Kingdom* (dec.), no. 17837/03, 14 October 2003; *Hukić v. Sweden* (dec.), no. 17416/05, 27 September 2005; *Harutioenyan v. the Netherlands* (dec.), no. 43700/07, 1 September 2009; *Chentiev and Ibragimov v. Slovakia*, nos. 21022/08 and 51946/08, 14 September 2010; *Barnic v. Austria* (dec.), no. 54845/10, 13 December 2011; *Bajsultanov*, cited above, § 70; and *Zarmayev*, cited above, § 113).

62. Having regard to the above, the Court concludes that it has not been established in the applicant's case that there are substantial grounds for believing that he would be exposed to a real risk of ill-treatment in the event of his extradition to Russia.

63. The Court concludes that the applicant's extradition to Russia would not amount to a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3

64. Relying on Articles 2 and 13 of the Convention, the applicant complained that the domestic extradition proceedings had not constituted an effective remedy by which he could have challenged his extradition on the grounds that he would risk being subjected to torture or ill-treatment if extradited. The Court considers that this complaint falls to be examined under Article 13 of the Convention in conjunction with Article 3 of the Convention. Article 13 provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

65. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

66. The Government submitted that the applicant had had an effective remedy under Articles 449-451 of the CCrP, which provide that any decision of the prosecution authorities could be challenged before the domestic courts, which had competence to review the lawfulness of the impugned decision and to either uphold or quash it. In the present case, the

domestic courts had duly examined the applicant's submissions and found that he had failed to substantiate his allegations.

67. The applicant reiterated his complaint.

2. *The Court's assessment*

68. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 of the Convention is thus to require the provision of a domestic remedy to deal with the substance of an "arguable claim" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 of the Convention varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see, among other authorities, *Aksoy v. Turkey*, 18 December 1996, § 95, *Reports* 1996-VI; *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI; and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 288, ECHR 2011).

69. In the context of extradition, given the irreversible nature of the harm that might occur if the alleged risk of torture or ill-treatment materialises and the importance the Court attaches to Article 3, the notion of an effective remedy under Article 13 requires (i) independent and rigorous scrutiny of a claim that there exist substantial grounds for believing that there is a real risk of treatment contrary to Article 3 in the event of the applicant's extradition to the country of destination, and (ii) the provision of an effective means of suspending the enforcement of measures whose effects are potentially irreversible (see *Muminov v. Russia*, no. 42502/06, § 101, 11 December 2008, with further references).

70. The Court observes that the applicant's complaint under Article 3 of the Convention was declared admissible and was examined on the merits. Although the examination on the merits resulted in the finding that the extradition would not amount to a violation of Article 3, the applicant's complaint was nevertheless "arguable" for the purpose of Article 13 of the Convention (compare, for example, *Andrei Georgiev v. Bulgaria*, no. 61507/00, § 67, 26 July 2007, and *Mohammed v. Austria*, no. 2283/12, §§ 85 and 111, 6 June 2013). Thus it remains to be established whether the applicant was afforded an effective remedy to challenge the extradition order on the grounds that he would risk being subjected to torture or ill-treatment.

71. The Court notes that the extradition order of 26 November 2012 was issued by the First Deputy Prosecutor General. The applicant challenged it

by lodging appeals with the Sabayil District Court and subsequently the Baku Court of Appeal under the procedure provided for by Articles 449-451 of the CCrP (see paragraphs 18 and 21-23 above), which the Government argued was an effective avenue of redress because the domestic courts were competent under this procedure to review the lawfulness of the extradition order and, if appropriate, to quash it. In this connection, the Court reiterates that judicial review proceedings constitute, in principle, an effective remedy within the meaning of Article 13 of the Convention in relation to complaints arising in the context of expulsion and extradition, provided that the courts can effectively review the legality of executive discretion on substantive and procedural grounds and quash decisions as appropriate (see *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 99, ECHR 2002-II).

72. In the present case, the first-instance court refused to examine whether there were any risks of torture or ill-treatment, finding that the applicant submitted no proof in this regard. However, the Court notes that, however scant the applicant's submissions might have been, he explicitly complained that he would be subjected to a risk of torture or ill-treatment and pointed out the general precarious situation of former rebels in Chechnya. In the present case, that was sufficient to show that his allegations in this regard were arguable and should have been examined. He raised the same arguments in his appeal, but the Baku Court of Appeal's decision was silent in this regard (compare *Garayev v. Azerbaijan*, no. 53688/08, § 84, 10 June 2010, and *Chankayev*, cited above, § 93). It does not appear that the courts took these considerations into account when they examined the question of the applicant's extradition, even though they were required to do so not only under the Convention, which was directly applicable in the Azerbaijani legal system, but also under the substantive provisions of the domestic law on extradition detailing the situations in which extradition should be refused (see paragraphs 28 and 31-32 above).

73. In such circumstances, the Court finds that the applicant was denied an effective domestic remedy by which to challenge his extradition on the grounds that he would risk being subjected to torture or ill-treatment. Consequently, there has been a violation of Article 13 of the Convention.

III. OTHER ALLEGED VIOLATION OF THE CONVENTION

74. Relying on Article 1 of Protocol No. 7 to the Convention, the applicant complained that the domestic procedural rules concerning appeals against an extradition order did not provide sufficient procedural safeguards.

75. 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.

IV. RULE 39 OF THE RULES OF COURT

76. The Court reiterates that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

77. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see above § 4) must continue in force until the present judgment becomes final or until the Court takes a further decision in this connection.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

79. The applicant claimed, in respect of non-pecuniary damage, compensation in the sum of 50,000 euros (EUR), and an additional EUR 5,000 “for each infringement of [his] rights under provisions stipulated in the European Convention”.

80. The Government did not comment.

81. The Court finds that the finding of a violation of Article 13 in conjunction with Article 3 of the Convention constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

B. Costs and expenses

82. The applicant did not submit a claim for the costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 3 and 13 admissible and the remainder of the application inadmissible;
2. *Holds* that the applicant's extradition to Russia would not violate Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 13 in conjunction with Article 3 of the Convention;
4. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to extradite the applicant until such time as the present judgment becomes final or until further order;
5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 31 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President