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### **EXTRADITION OF ASLAN YANDIEV TO THE RUSSIAN FEDERATION EXPOSED HIM TO A RISK OF TORTURE AND ILL-TREATMENT**

On 17 July 2018, an ethnic Ingush, Aslan Yandiev was extradited from Slovakia to Russian Federation. Amnesty International, the Human Rights League and International Partnership for Human Rights consider that the extradition violated Slovakia's obligations not to put persons within its jurisdiction at risk of torture and other ill-treatment, and to guarantee the right to a fair trial.

Amnesty International, the Human Rights League and International Partnership for Human Rights as well as Lukáš Opett, the lawyer representing Aslan Yandiev in extradition proceedings in Slovakia, note that Slovak authorities carried out the extradition in reliance on diplomatic assurances given by the Russian authorities that Mr Yandiev would not be tortured and/or ill-treated on return.

The organizations are concerned that the extradition was carried out:

- in breach of international law, in particular the prohibition of *refoulement*;
- in a non-transparent manner: the Slovak Ministry of Foreign Affairs and the Ministry of Justice were unable to provide any information on the state of the extradition and Mr Yandiev's whereabouts to the NGOs and the lawyer working on Mr Yandiev's case;
- without the necessary safeguards: on 13 July, the Constitutional Court received a request for interim measures from the lawyers of Mr Yandiev. The lawyers were not given any information on whether or not the Constitutional Court assessed the request by 17 July.

The organizations are deeply concerned that Aslan Yandiev is at grave risk of torture or other inhuman or degrading treatment following his extradition to Russian Federation. According to information available to Amnesty International, he is held in the Vladikavkaz pre-trial detention centre where the organization documented frequent use of torture to extract "confessions". Following the 1992 ethnic conflict between Ossetians and Ingush people in Russia's North Caucasus, persons of Ingush ethnicity, such as Aslan Yandiev, are often treated in a discriminatory way in North Ossetia.

Amnesty International, the Human Rights League and International Partnership for Human Rights urge the Slovak authorities to carry out a rigorous monitoring of the conditions of Mr Yandiev's detention in the Russian Federation. Furthermore, to ensure independent and transparent monitoring of the commitment that Mr Yandiev would be protected from torture and ill-treatment in Russian Federation, the organizations call on the authorities to involve human rights NGOs in the monitoring and to make its outcomes public.

## Chronology of the extradition case

On 9 July 2010 a judge in a District Court of Vladikavkaz (Republic of North Ossetia-Alania) issued a warrant for the arrest of Aslan Yandiev on the charges of membership of an existing armed illegal group.

In 2010 Aslan Yandiev applied for asylum in Slovakia. On 20 January 2011, he was arrested by the Slovak authorities and was put in extradition detention.

In February 2011, the Office of the Prosecutor General of the Russian Federation submitted a request for the extradition of Mr Yandiev. The Russian Federation alleged that Mr Yandiev was charged with crimes<sup>1</sup> of participation in the actions of an armed group;<sup>2</sup> illegal possession and transport of firearms and explosives;<sup>3</sup> terrorist act<sup>4</sup> and other crimes.

In March 2012, the Regional Court in the city of Trnava authorized the extradition to Russian Federation. In June 2012 the Supreme Court upheld the decision, against which Yandiev submitted a complaint to the Constitutional Court.

In June 2012, the European Court of Human Rights issued an order for interim measures against the extradition of Mr Yandiev to Russian Federation.

In October 2013, the Constitutional Court quashed the June 2012 Supreme Court extradition decision on the basis that it violated the right to be protected from torture and ill-treatment as well as the prohibition of torture and inhuman or degrading treatment under the European Convention of Human Rights. The case was returned to the Slovak Supreme Court for re-assessment.

In July 2014, the Supreme Court issued a new decision in which it held that it is not the role of the court to assess “[the risk of] violation of the right not to be subjected to torture and inhuman and degrading treatment.” The Supreme Court was of the opinion that such an assessment is solely within the discretion of the Minister of Justice. Such a position directly contradicts the jurisprudence of the European Court of Human Rights in ensuring a rigorous scrutiny of the risk of torture and ill-treatment at the domestic level. The European Court clarified that such scrutiny involves assessment of materials originating from reliable sources other than those provided by the Russian public authorities.<sup>5</sup> The Supreme Court also opined that the assurances provided by the Prosecutor General of the Russian Federation in February 2011 were “specific and reliable”. These guarantees were confirmed in a letter of 12 October 2012 from the Representative of the Russian Federation to the Ministry of Justice of the Slovak Republic, which stated that Aslan Yandiev would enjoy all the fair trial guarantees which existed in international law; would not be subjected to torture or inhuman or degrading treatment or punishment; and would not be extradited to a third country without Slovakia’s consent.<sup>6</sup>

The Slovak Supreme Court reached its decision despite mounting evidence that diplomatic assurances from governments in countries where torture is a persistent problem or where specific categories of people are routinely targeted for torture and other ill-treatment cannot provide an effective safeguard

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<sup>1</sup> These are crimes under the 1996 Criminal Code of the Russian Federation.

<sup>2</sup> Art. 209.2 of the Criminal Code of Russian Federation

<sup>3</sup> Art. 222.3

<sup>4</sup> Art. 205.3

<sup>5</sup> In the 2012 *Umirov v. Russia*, a case in which a court conducting judicial review stated that the allegation of a risk of ill-treatment in itself was not a reason for granting the challenge to the extradition order, the European Court noted that: “In such circumstances, the [European] Court doubts that the issue of the risk of ill-treatment was subject to rigorous scrutiny in the extradition case. No fair attempt was made at the domestic level to assess the materials originating from reliable sources other than those provided by the Russian public authorities.” See: *Umirov v. Russia*, Application no. 17455/11, 18 September 2012, para 120.

<sup>6</sup> *A.Y. v. Slovakia*, Application no. 37146/12, 26 March 2016, paras 28-29

against such violations.<sup>7</sup> Amnesty International and other human rights groups have documented that torture of certain persons, including persons with Mr Yandiev's profile, continues to be a widespread and persistent problem in the Russian Federation.<sup>8</sup>

Aslan Yandiev challenged the Supreme Court decision at the Constitutional Court, which declared the application inadmissible in November 2014 without going into the merits of the case, on the ground that it fell manifestly short of the applicable formal requirements.<sup>9</sup>

In 2016, the European Court of Human Rights rejected a complaint by Aslan Yandiev against the extradition. Relying on the diplomatic assurances provided by the Russian Prosecutor and arguing that "physical abuse of suspects by police officers usually occurs within the first few days after arrest... which is a different type of situation from the applicant",<sup>10</sup> it held that Yandiev would not be at risk of torture and ill-treatment.<sup>11</sup>

On 7 February 2018, the Minister of Justice authorized the extradition of Aslan Yandiev's to Russian Federation, mainly on the basis of diplomatic assurance given to it by Russia. On 21 March the Constitutional Court of the Slovak Republic issued interim measures while it was assessing the complaint against the extradition authorization issued by the Minister of Justice.

On 2 May 2018, the Constitutional Court held that the extradition of Aslan Yandiev to the Russian Federation would not amount to a violation of human rights as there were no substantial grounds "for believing that he would be exposed to a real risk of ill-treatment." The Constitutional Court did not address the issue of Aslan Yandiev's asylum application, that has been pending since 2010, and which should have rendered the extradition unlawful under international law.

In June 2018, the UN Human Rights Committee issued interim measures calling on the Slovak authorities to refrain from the extradition while it considers the case.<sup>12</sup>

At 1:35pm on 18 July, Yandiev's lawyers received confirmation from the Ministry of Justice that the extradition had been carried out on 17 July.

### **The very long asylum procedure**

Mr Yandiev fled the Russian Federation and applied for asylum in Slovakia on 14 May 2008 on the grounds that he feared persecution by members of the law enforcement agencies in Ingushetia and North Ossetia (North Caucasus, Russian Federation) because he had been accused of several crimes, including membership in an armed group. His first asylum application was rejected in November 2010 in a final decision. On an unspecified date in 2010, he had left Slovakia for Belgium, where he unsuccessfully applied for asylum in November 2010 and was returned to Slovakia on 9 December 2010.

Mr Yandiev filed his second application in Slovakia on 9 December 2010. What followed was a sequence of negative decisions of the Migration Office, which Mr Yandiev successfully appealed in

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<sup>7</sup> <https://www.amnesty.org/download/Documents/IOR4061452017ENGLISH.pdf> or: <http://www.hrw.org/sites/default/files/reports/diplomatic0404.pdf>.

<sup>8</sup> Considering the ongoing tensions between North Ossetia and Ingushetia, Yandiev's Ingush ethnicity is an additional risk factor since he is likely to be detained and put on trial in North Ossetia where he allegedly committed the crimes he is accused of. See: <https://www.amnesty.org/en/latest/news/2013/06/torture-russia-torture-traditional-component-proof/>

<sup>9</sup> *A.Y. v Slovakia*, para 25

<sup>10</sup> *A.Y. v Slovakia*, para 58

<sup>11</sup> *A.Y. v Slovakia*, paras 55 – 59 and paras 61 - 65

<sup>12</sup> <https://www.amnesty.org/download/Documents/EUR7287992018ENGLISH.pdf>This

Slovak courts. The last negative decision of the Migration Office was dated on 28 September 2016 and was quashed by the Regional Court in Košice on 14 February 2017.

**There has not been a new decision in the asylum procedure since February 2017 and the procedure was pending on 17 July 2018, when Slovak authorities extradited Aslan Yandiev to Russian Federation.**

In his asylum procedure, Aslan Yandiev alleged that in September 2005, he was detained by police in Nazran, Republic of Ingushetia, taken to a police station and accused of participation in an armed attack on Nazran town police station which took place on 21-22 June, 2004. According to Mr Yandiev, police officers tortured and ill-treated him for three days in order to make him “confess” to crimes he maintains he had not committed. The beatings stopped only on the fourth day when his health condition deteriorated significantly. He was then held in detention for six more days. Only on the tenth day of detention, when his condition became critical, did the police officers call for an ambulance and released him on the grounds that they lacked evidence against him. Mr Yandiev has alleged that he was held without contact with his family or a lawyer throughout his detention except for one occasion when a lawyer was allowed to see him. Upon release from detention he was hospitalized for one month and subsequently underwent outpatient treatment until January 2006 when his condition deteriorated again and he had to be admitted to a hospital for another month.

After his release from the hospital, Mr Yandiev claimed that he hid in an unspecified location in Russia. He eventually left Russia in May 2008. Three other men he knew had been arrested in Vladikavkaz (North Ossetia) in 2006 and allegedly incriminated him during their interrogations under torture. The men later filed a complaint with the European Court of Human Rights alleging torture. In 2011 the case was communicated to the Russian authorities, and the case is still pending.<sup>13</sup>

### **Excessive length of detention**

The organizations note that Aslan Yandiev was detained in Slovakia from the beginning of the extradition proceedings in January 2011 until 17 July 2018. The length of his detention thus was 7 years and 7 months.

Although international human rights law permits the state to detain a person subjected to extradition proceedings, it must do so within the limitations set under international law. The detention must be *lawful* under domestic law and it must *not be arbitrary or disproportionate*.<sup>14</sup> In order to be justified, the authorities must demonstrate that they have proceeded with due diligence when detaining a person for extradition proceedings.<sup>15</sup> The European Court of Human Rights has found that “any deprivation of liberty will be justified only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible[.]”<sup>16</sup> Detention “‘with a view to deportation’ can only be justified as long as the deportation is in progress and there is a true prospect of executing it.”<sup>17</sup>

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<sup>13</sup> Application no. 30444/08. The case was communicated to the Russian Federation on 17 January 2011.

<sup>14</sup> *Saadi v United Kingdom* (2008) 47EHRR 17, para 67;

<sup>15</sup> *Bordovskiy v Russia* (2005), 49419/99 (2005), para 50

<sup>16</sup> *Case of Nabil and Others v. Hungary*, Application no. 62116/12 (22 December 2015) at para 29 online: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-157392"\]}](https://hudoc.echr.coe.int/eng#{) [*Nabil*]; See also *Samba Jalloh v. Netherlands*, CCPR/C/74/1998 (15 April 2002) at para 8.2: “Once a reasonable prospect of expelling him no longer existed his detention was terminated. In the circumstances, the Committee finds that the author’s detention was not arbitrary and thus not in violation of article 9 of the Covenant.”

<sup>17</sup> *Nabil*, *supra* note 16 at para 38.

These grounds for detention only apply to migrants. Since international refugee law prohibits the expulsion of asylum-seekers, states are prohibited from detaining asylum-seekers for the purpose of expelling them.<sup>18</sup>

Slovak legislation does not impose a time limit on the length of extradition detention. Amnesty International, the Human Rights League and International Partnership for Human Rights are concerned over the lack of judicial scrutiny regarding whether Mr. Yandiev's detention was proportionate. There was also very little concern by the Slovak authorities regarding the due diligence requirement, particularly given the length of his time in detention. Nor was there any consideration of Mr Yandiev's status as an asylum-seeker.

The organizations also note that since his arrival to Slovakia, Aslan Yandiev suffered ill-health and experienced significant weight fluctuation as a result.

### **Situation with the rule of law in the Russian North Caucasus**

Amnesty International regularly reports on allegations of torture and other ill-treatment committed by law enforcement officials in the North Caucasus, including Ingushetia and North Ossetia.<sup>19</sup> Human rights violations tend to take place in the context of counter-terrorism activities conducted by members of law enforcement agencies across the North Caucasus. Amnesty International has repeatedly received information about arbitrary targeting of individuals who are suspected of being members of armed groups. In the cases Amnesty International documented, people were accused of membership in armed groups solely on the grounds of being identified on photographs together with other suspects. There were also reported cases, in Ingushetia for example, of people being extra-judicially executed because they were seen in a car with a suspected member of an armed group. In some cases, the authorities also targeted family members of alleged suspects or known members of an armed group.<sup>20</sup>

In the absence of effective rule of law in the North Caucasus and the climate of near total impunity for members of law enforcement agencies, such allegations warrant particular scrutiny.

The use of torture is frequent, persistent and widespread not only in the North Caucasus, but also across the Russian Federation, and victims lack access to any effective legal remedies.<sup>21</sup> According to human rights organisations, in significant number of reported cases of individuals who were being targeted as suspects of terrorism-related offences, evidence used against them was based mostly or entirely on "confessions" or "testimonies" extracted under torture or duress.<sup>22</sup> Moreover, such "confessions" and "testimonies" are reported to be widely used as the basis for convicting people in connection with the activities of armed groups, as well as for other crimes.

Amnesty International has also documented numerous cases of obstruction or denial of access for detainees under investigation to a defence lawyer, especially to a lawyer of their choice, and/or various restrictions imposed on communication with their lawyer. Such interference with the rights of detainees to have contact with the outside world, including through visits from a lawyer, increases their risk of them being subjected to torture or other ill-treatment and violates their right to receive a fair trial.<sup>23</sup>

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<sup>18</sup> See *R.U. v. Greece*, ECtHR Application No. 2237/08 (7 June 2011) at para 94; See also *S.D. v. Greece*, ECtHR, Application No. 53541/07 (11 June 2009) at para 62.

<sup>19</sup> The Circle of Injustice: Security Operations and Human Rights Violations in Ingushetia, AI Index: EUR 46/012/2012, June 2012, pp. 38-54; Russian Federation: Amnesty International Briefing to the UN Committee against Torture 2012, Index EUR 46/040/2012, October 2012

<sup>20</sup> The Circle of Injustice: Security Operations and Human Rights Violations in Ingushetia, pp. 39-41

<sup>21</sup> [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/RUS/INT\\_CAT\\_CSS\\_RUS\\_31612\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/RUS/INT_CAT_CSS_RUS_31612_E.pdf)

<sup>22</sup> See: <https://meduza.io/feature/2018/08/09/vse-soobscheniya-o-pytkah-etogo-goda-v-odnoy-tablitse-ih-uzhe-bolshe-polusotni> and Public Verdic Report: <http://police-barometer.ru/report-torture>

<sup>23</sup> The Circle of Injustice: Security Operations and Human Rights Violations in Ingushetia, AI Index: EUR 46/012/2012, June 2012; pp.43-54

## Conclusion

We consider that Mr Yandiev's extradition to the Russian Federation has exposed him to a real risk of human rights violations, including the risk of being subjected to torture and other ill-treatment, and unfair trial.

By implementing the extradition, the Slovak authorities violated international human rights law: the extradition was carried out in breach of interim measures issued by the UN Human Rights Committee in June 2018. The Committee had called on the Slovak authorities to refrain from the extradition while it considers the case.<sup>24</sup>

The Slovak authorities also breached the absolute obligation under international human rights and refugee law not to forcibly return a person to a country where he or she would face a risk of torture or other ill-treatment, or other forms of persecution (the principle of non-*refoulement*).

Moreover, the Slovak authorities' reliance on diplomatic assurances from the Russian Federation in this case is deeply problematic as such assurances do not provide an effective safeguard against torture, other ill-treatment, and other serious human rights violations.

Finally, the extradition of Mr Yandiev took place while procedures to assess his individual need for international protection were still pending.

In light of the above, Amnesty International, the Human Rights League and International Partnership for Human Rights urge the Slovak authorities to carry out a rigorous monitoring of the conditions of Mr Yandiev's detention in the Russian Federation. The organizations also call on the authorities to involve human rights NGOs in the monitoring and to make its outcomes public.

Sincerely yours,

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