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EUROPEAN COURT OF HUMAN RIGHTS GIVES A JUDGEMENT IN THE EXTRADITION CASE - *SOLDATENKO V. UKRAINE*

On the 28 September 2008, the European Court of Human Rights ruled that the extradition of Nikolay Ivanovich Soldatenko to Turkmenistan would constitute a violation of Article 3 (prohibition of inhuman or degrading treatment) as well as a breach of Article 13 (right to an effective remedy) and of Article 5 §1 (f) and §4 (right to liberty and security).

Helsinki Foundation for Human Rights Warsaw (HFHR), an organization undertaking legal actions in the public interest, provided assistance to the Court by sending the *amicus curiae* brief. This case was important for the HFHR as one of the first important cases litigated by its lawyers was the case of Mandugeqi couple who were detained in Poland and whose extradition was requested by China on the allegations of economic crimes. Polish Supreme Court ruled in 1997 that Mandugeqi should not be extradited to China, where they could face violations of their human rights (resolution of 29 July 1997, II KKN 313/97).

Circumstances of the case

The applicant is currently detained in a penitentiary institution in the Ukraine, awaiting his extradition to Turkmenistan. In 1999, an indictment was issued against him in Turkmenistan on order of a minor offence. He then fled to the Ukraine, allegedly to avoid persecution in Turkmenistan to which he had been subjected on ethnic grounds.

In 2007 he was arrested by the Ukrainian police and then detained, pending the extradition proceedings against him. The European Court of Human Rights subsequently adopted an interim measure and indicated to the Ukrainian Government that the applicant should not be extradited to Turkmenistan pending the Court's decision.

The General Prosecutor's Office of Turkmenistan as well as the First Deputy Prosecutor General of Turkmenistan requested the applicant's extradition, affirming that the applicant would never be discriminated against on the grounds of social status, race, ethnic origin or religious beliefs and that his rights under Articles 3 and 6 of the European Convention would be guaranteed.

The judgment

Concerning **Article 3**, the Court stated it to be clear from the available materials that any criminal suspect held in custody in Turkmenistan ran a serious risk of being subjected to torture or inhuman or degrading treatment. The Court also concluded that the applicant had not had an effective domestic remedy by which he could challenge his extradition on the ground of the risk of ill-treatment on return, in violation of **Article 13**. The Court found that Ukrainian legislation did not provide for a procedure that was sufficiently accessible, precise and foreseeable in its application to avoid the risk of arbitrary detention pending extradition. This accordingly constitutes a violation of **Article 5 § 1 (f)**. The Government had failed to demonstrate that the applicant had at his disposal any procedure through which the lawfulness of his detention could have been examined by a Court. The Court thus ruled that there was also a violation of **Article 5 § 4**.

These findings were strongly supported by the Helsinki Foundation for Human Rights, whose amicus curiae brief pointed out a wealth of evidence concerning the grave and widespread disregard of human rights in Turkmenistan. The Warsaw-based foundation also examined the international standards of „legal” extradition and evaluated in a comparative analysis Ukrainian and Polish standards regarding extradition.

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