

## **Statement of the Ministry of Justice of the Slovak Republic on extradition of A. A. Jandiev**

The case was already properly assessed by a different international authority – European Court of Human Rights (ECtHR).

On 15 June 2012, A. A. Jandiev lodged an application with the ECtHR pursuant to Article 34 of the European Convention on Human Rights (the Convention). On 18 June 2012, the ECtHR issued an interim measure banning the extradition of A. A. Jandiev to Russia, but on 1 March 2016 declared the application as inadmissible, bringing the application of the interim measure to an end and thereby removing the obstacle preventing the applicant's extradition. On 7 February 2018 the Minister of Justice of the Slovak Republic allowed extradition of A. A. Jandiev to Russia. On 8 February 2018, A. A. Jandiev lodged with the ECtHR a request for a new interim measure to prevent his extradition to Russia, but on the same day the ECtHR decided not to indicate an interim measure and not to prevent the applicant's extradition. The Constitutional Court of the Slovak Republic dismissed the complaint of A. A. Jandiev in its finding *III. ÚS 129/2018 of 2 May 2018* (which became final on 2 July 2018). The complaint of A. A. Jandiev contended that the decision of the Minister of Justice of 7 February 2018 had violated his fundamental rights. A. A. Jandiev lodged with the ECtHR a new request for a new interim measure to prevent his extradition to Russia on 28 May 2018. On 30 May 2018, the ECtHR decided not to indicate an interim measure and not to prevent the applicant's extradition.

It clearly follows from Article 35(2) of the Convention that had the ECtHR believed that new relevant circumstances occurred after it had declared the original application inadmissible, it would have issued a new interim measure, as it did in the case of *Chentiev v. Slovakia* (see ECtHR decision on application no. 27145/14, §§ 5-6) and *Ibragimov v. Slovakia* (see ECtHR decision on application no. 65916/10, §§ 19-22) and it would have examined the case again. However, unlike in the two cases quoted above, in the case of A. A. Jandiev the ECtHR did not issue an interim measure. In our view, the abovementioned fact clearly shows that the applicant's complaint was already dealt with by another international body (ECtHR) on 1 March 2016 and that the ECtHR did not consider the new circumstances, as put forward by the applicant in his request of 8 February 2018 (after the decision of the Minister of Justice) and 28 May 2018 (after the dismissal of his complaint by the Constitutional Court), to be relevant.

We would like to point out that according to Section 501 of the Code of Criminal Procedure, pending asylum proceeding is not an impediment of extradition. This provision covers a situation when foreigners, who ought to be extradited for criminal prosecution or imprisonment purposes, abuse the right to asylum by repeatedly filing asylum applications by which they cause delays in their extradition and thus avoid criminal prosecution or imprisonment in the requesting state. The first asylum proceeding, which hindered extradition of A. A. Jandiev, was finally terminated on 18 November 2010. A. A. Jandiev filed new asylum application on 9 December 2010. The fact that it is repeated application was acknowledged by the court when deciding on admissibility of his extradition in accordance with Section 501 of the Code of Criminal Procedure. The Constitutional Court dismissed the complaint of A. A. Jandiev in its finding *III. ÚS 129/2018 from 2 May 2018* also on

the basis of the fact that the applicant was unsuccessful previously in his asylum applications in Switzerland and Belgium.

We remind that A. A. Jandiev is subject to criminal prosecution on the charges of membership in an armed illegal group and of perpetration of assaults organised by it, of illegal possession, transport and carrying of firearms, of terrorist acts, of attempted acts of terrorism through explosions terrifying the population, and of attempted homicide of two or more persons perpetrated in a dangerous manner by an organised group. These charges warrant the imminent assessment of the security risks that his release might pose. The extradition procedure is implemented within the statutory time limit of 60 days, running from the date of the allowing decision by the Minister of Justice; the expiry on 18 July 2018 of this time limit would result in the release of A. A. Jandiev from detention. Unlike the legally binding interim measure of the ECtHR or decision of the Constitutional Court on suspension of enforceability, the interim measure of the Human Rights Committee does not have effect in regards the abovementioned statutory 60 days limit.

With a view to the aforementioned, recalling the finding of the Constitutional Court of the Slovak Republic, taking into account the conclusions of the ECtHR, being aware of the legally non-binding nature of Human Rights Committee decisions, considering the risk of having to release A. A. Jandiev upon expiry of the statutory time limit for his detention, and being aware of the risk which A. A. Jandiev represents to public security, there was no possibility to accommodate the request of the Human Rights Committee which, pursuant to Rule 92 of the Committee's Rules of Procedure, has asked Slovakia to refrain from extraditing the aforementioned to Russia.

Also, having regard to the guarantees given by the Russia and our previous practice in similar cases, we will monitor the situation of the applicant in Russia. In letter from 3 October 2014, the General Prosecutor of Russia provided diplomatic guarantees that the Embassy of the Slovak Republic in Moscow would be informed of the place of his detention and officers of the embassy would be allowed to visit him and speak to him without the presence of a third person. Similar process was applied after extradition of A. CH. Chentiev to Russia, when representatives of the Embassy checked compliance with previously provided guarantees during monitoring visit on 28 April 2015, which confirmed, that A. CH. Chentiev was not threatened with torture or abuse, was not injured or beaten, was not subject to inhuman or degrading treatment or punishment during the custody. During the custody, he did not file any complaint regarding his conditions in the custody. Representatives of the Embassy in Moscow confirmed that A. CH. Chentiev was in a good physical condition and there were no signs of abuse or torture. According to the report of the Ministry of Foreign and European Affairs of the Slovak Republic, his trial finally terminated and subsequently he was released. The fact that there is no doubt of credibility of the guarantees provided by the Russia was also confirmed in the decision of the ECtHR from 1 March 2016 in the case of A. A. Jandiev (A.Y. v. Slovakia, no. 37146/12). Moreover, Russia is a member state of the Council of Europe and high contracting party of the Convention. Therefore, A. A. Jandiev still has an access to the ECtHR in the case of any violation of his rights in Russia.