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Implementation of the European Convention on Human Rights in Extradition Proceedings in Russia

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Abstract. The present article gives a complete overview of developments in the Russian law and practice since the adoption of the Russian Criminal Procedure Code in light of the European Convention standards applicable in extradition and transfer cases.
The authors analyze the positive and negative trends and identify the remaining problems on the basis of legislative acts, national jurisprudence, conclusions of the European Court of Human Rights, academic studies and the direct professional experience of one of the authors dealing with extradition cases in Russia for the last 9 years as a representative of requested persons before national courts and the ECtHR.
Since the adoption of the Russian Criminal Procedure Code in 2001 the Russian authorities has made a number of improvements in law and legal practice as regards extradition proceedings. These steps proved to be quite effective and put an end to the gravest human rights violations in this sphere such as detention without any time-limits or judicial review of its lawfulness. Moreover, national courts began to analyze extradition orders issued by the Russian Prosecutor General's Office more thoroughly from the European Convention perspective and quash them more often (at least in certain categories of cases). This led to the change of approaches of the Russian Prosecutor General's Office itself.
However, some of the «traditional» problems still remain present. Among them are the improper assessment of risks of ill-treatment in a requesting country and the too lengthy appellate judicial review of detention pending extradition. This results into a flow of new judgments of the ECtHR delivered in a 3-judge Committee formation dealing with repetitive cases.
At the same time, new questions have arisen, for example, regarding the regulation of termination of national search of a person whose extradition has been denied. Furthermore, there are recent worrying trends in the jurisprudence of the Presidium of the Russian Supreme Court in cases where the Presidium reconsiders extradition orders after the European Court judgments.

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The existing problems require prompt legislative amendments and other measures aimed at bringing the Russian law and practice in full conformity with the Convention requirements. The authors make their own suggestions as regards such measures.

Keywords: European Convention on Human Rights, European Court of Human Rights, extradition, extradition from Russia, removal, removal from Russia.

Research area: law.

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Имплементация Европейской конвенции по правам человека в процессе экстрадиции в России

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Аннотация. В настоящей статье дан полный обзор изменений в российском законодательстве и практике с момента принятия Российского Уголовно-процессуального кодекса в свете стандартов Европейской конвенции, применимых в делах о выдаче и передаче.

Авторы анализируют положительные и отрицательные тенденции и выявляют оставшиеся проблемы на основе законодательных актов, национальной судебной практики, выводов Европейского суда по правам человека, научных исследований и непосредственного профессионального опыта одного из авторов, занимающегося делами об экстрадиции в России в течение последних 9 лет в качестве представителя запрашиваемых лиц в национальных судах и ЕСПЧ.

С момента принятия Российского Уголовно-процессуального кодекса в 2001 году российские власти внесли ряд улучшений в законодательство и правовую практику в отношении процедур экстрадиции. Эти шаги оказались весьма эффективными и положили конец грубейшим нарушениям прав человека в этой сфере, таким как содержание под стражей без каких-либо сроков или судебного пересмотра его законности. Более того, национальные суды стали более тщательно анализировать постановления об экстрадиции, выданные Генеральной прокуратурой России, с точки зрения Европейской конвенции и чаще отменять их (по крайней мере, в определенных категориях дел). Это привело к изменению подходов самой российской Генеральной прокуратуры.

Однако некоторые из «традиционных» проблем все еще остаются актуальными. Среди них неправильная оценка рисков жестокого обращения в запрашивающей стране и слишком длительный апелляционный судебный пересмотр содержания под стражей в ожидании экстрадиции. Это приводит к потоку новых решений ЕСПЧ, вынесенных в составе Комитета из трех судей, занимающегося повторяющимися делами России

по делам, когда Президиум пересматривает постановления об экстрадиции после решений Европейского суда.
Существующие проблемы требуют незамедлительных законодательных поправок и других мер, направленных на приведение российского законодательства и практики в полное соответствие с требованиями Конвенции. Авторы вносят собственные предложения относительно таких мер.

Ключевые слова: Европейская конвенция по правам человека, Европейский суд по правам человека, экстрадиция, экстрадиция из России, выдворение, выдворение из России.

Научная специальность: 12.00.00 – юридические науки.

Introduction

The ECtHR has taken a great number of judgments against Russia finding violations of the ECHR in extradition proceedings, mostly of Articles 3 and 5. Since 2017 the Court has been considering a significant part of such cases by a Committee of 3 judges via a simplified procedure developed for repetitive applications based on well-established case law.

This indicates the existence of structural problems with the implementation of the ECHR in extradition proceedings in Russia, which remains important as Russia will remain a party to the ECHR at least until 16 September 2022 and the ECtHR will continue examining cases against Russia.

Theoretical Framework

There are not many studies on the topic despite its importance. Certain related issues were touched upon in papers by attorneys at law and other legal practitioners such as Daria Trenina, E. Z. Riabinina, N. V. Ermolaeva, E. G. Davidian, A. E. Stavitskaia.

Statement of the Problem

The Russian authorities have already taken a range of rather effective steps to bring the national law and jurisprudence regarding extradition in conformity with the Convention standards. However, the number of judgments of the ECtHR finding repetitive violations has not decreased. Moreover, new applications have been communicated and are now pending.

It demonstrates that certain systemic problems remain, which requires an urgent response in legislative and other forms.

Discussion

Implementation of Article 3 of the ECHR in extradition proceedings

1.1. Overview of the developments since the adoption of the Russian Criminal Procedure Code

The Russian Criminal Procedure Code (the CPC)[1] provided a list of grounds for denial of an extradition request in Article 464 not including risks of human rights violations (except the non-extradition clause in case of granting asylum in Russia). As a result, the Russian prosecutors and courts did not carry out thorough analysis of such risks in the light of Article 3 of the ECHR (Riabinina, 2017. 16, 68) with rare exceptions (Ibid. 177–181)[2]. All of these resulted in dozens of judgments taken by the ECtHR from 2007 to 2012 finding violations of Article 3 of the ECHR in extradition cases against Russia[3].

In light of the above, on 14 June 2012 the Plenum of the Russian Supreme Court issued a special Ruling on extradition and transfer proceedings[4]. The Supreme Court specifically reminded that «the grounds and the conditions

[1] Criminal Procedure Code of the Russian Federation of 18.12.2001 № 174-FZ (in Rus.).

[2] Further, see the cassation ruling of the Supreme Court of the Russian Federation of 19 July 2011 in the case of A. T. Niiazov № 66–011–93.

[3] See the list of judgments of the ECtHR in the group of cases "Garabayev v. Russia". Available at https://search.coe.int/cm/Pages/result_details.aspx? ObjectID=090000168091ed13#-globalcontainer (accessed 11 August 2021).

[4] Ruling of the Plenum of the Supreme Court of the Russian Federation of 14.06.2021 № 11 "On practice of consideration by courts of issues connected with extradition of persons for criminal prosecution or execution of a conviction and transfer of persons for serving a sentence" (in Rus.).

for denial of an extradition request are set forth not only in the Criminal Procedure Code of the Russian Federation or other laws but also in the international treaties ratified by Russia». It directly referred to Article 3 of the ECHR and cited the case-law of the ECtHR.

The Court, in turn, welcomed this new ruling and noted that following its provisions by courts could indeed prevent breaches of Article 3 of the ECHR[5].

However, strange as it may seem, the publication of the Ruling in 2012 did not lead to a significant decrease of violations in extradition cases[6]. Some studies even implied that the situation after 2012 deteriorated further (Trenina, 2014a. 63–78). Thus, at least until 2016–2017 in most cases the Russian prosecutors (Riabinina, 2017) and courts including the Supreme Court did not seriously assess risks of ill-treatment with only rare exceptions[7]. They generally required that the requested persons already belonging to especially vulnerable groups should provide additional evidence of risks; accepted vague diplomatic assurances and upheld extradition orders basing solely on ratification by a requesting state of certain human rights treaties (Riabinina, 2017. 86; Trenina, 2014). All of these led to a new stream of judgments of the ECtHR[8].

Fortunately, since approximately 2016–2017 the situation has been gradually improving. Thus, in 2017–2018 the Supreme Court found unlawful at least 45 extradition orders[9]. Some of them were quashed with direct reference to a high risk of ill-treatment[10] or due to certain related facts such as falsification of charges[11].

Since 2016 there has also been a stable trend of setting aside extradition orders in respect of persons belonging to one of the vulnerable groups identified by the ECtHR[12], namely ethnic Uzbeks from Kyrgyz Republic[13].

As to the judgments of the ECtHR of 2017–2018 (regarding extradition proceedings at the domestic level taken place in mostly 2015–2016) by that moment the ECtHR had already delivered a considerable number of judgments against Russia finding violations of Article 3 where the Court had held that persons charged with anti-state crimes by the Uzbekistani authorities formed a vulnerable group[14].

However, the Russian authorities continued to grant such extradition requests. This resulted in the delivery of the judgment *"I.U. v. Russia"*[15], which became the sixty-ninth judicial act within the group of cases *"Garabayev v. Russia"* and the first judgment against Russia concerning extradition delivered via a simplified procedure by a Committee of 3 judges.

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[5] Savriddin Dzhurayev v. Russia, no. 71386/10, § 259, ECHR 2013 (extracts).

[6] Recommendations of the Russian Presidential Council for Civil Society and Human Rights following the special meeting on the topic "On ensuring rights of foreign nationals in the course of extradition, deportation, expulsion and asylum proceedings in the Russian Federation. 2014. P. 2 (in Rus.).

[7] See, for example, the appellate ruling of the Supreme Court of the Russian Federation of 14 January 2014 № 67-АПУ13–33 (in Rus.).

[8] See the list of judgments of the ECtHR in the group of cases "Garabayev v. Russia". Available at https://search.coe.int/cm/Pages/result_details.aspx? ObjectID=090000168091ed13#-globalcontainer (accessed 11 August 2021).

[9] See information on the execution of the judgments of the ECtHR in the group of cases "Garabayev v. Russia". Available at https://hudoc.exec.coe.int/eng#{%22fulltext%22:[%22garabayev%22],%22EXECIdentifier%22:[%22004–14088 %22]} (accessed 11 August 2021).

[10] See, for instance, the appellate ruling of the Supreme Court of the Russian Federation of 16 February 2017 in the case of S.R. Bazarov № 78-АПУ17–3 (in Rus.).

[11] See, for instance, the appellate ruling of the Supreme Court of the Russian Federation of 15 June 2017 in the case of F.D. Nurmatov № 5-АПУ17–31 (in Rus.). In this case the Supreme Court referred to the serious inconsistencies in the procedural documents submitted by the requesting state.

[12] See, for instance, Makhmudzhan Ergashev v. Russia, no. 49747/11, 16 October 2012, Kadirzhanov and Mamashev v. Russia, nos. 42351/13 and 47823/13, 17 July 2014, Khamrakulov v. Russia, no. 68894/13, 16 April 2015 and R. v. Russia, no. 11916/15, 26 January 2016.

[13] Judgment of the Moscow City Court of 11 February 2016 in the case of A.E. Khasanbaev № 2–0006/2016 (in Rus.); Appellate ruling of the Supreme Court of the Russian Federation of 14 April 2016 in the case of A.E. Khasanbaev № 5-АПУ16–15 (in Rus.); Judgment of the Moscow City Court of 23 May 2016 in the case of D.A. Sarymsakov № 2–22z/16 (in Rus.); Appellate ruling of the Supreme Court of the Russian Federation of 6 September 2016 in the case of D.A. Sarymsakov № 5-АПУ16–40 (in Rus.); Appellate ruling of the Supreme Court of the Russian Federation of 30 January 2017 in the case of D.A. Talibaev № 82-АПУ17–1 (in Rus.).

[14] Muminov v. Russia, no. 42502/06, 11 December 2008; Abdulazhon Isakov v. Russia, no. 14049/08, 8 July 2010; Karimov v. Russia, no. 54219/08, 29 July 2010; Yakubov v. Russia, no. 7265/10, 8 November 2011; Ergashev v. Russia, no. 12106/09, 20 December 2011; Abdulkhakov v. Russia, no. 14743/11, 2 October 2012; Kholmurodov v. Russia, no. 58923/14, 1 March 2016

[15] I.U. v. Russia, no. 48917/15, 10 January 2017.

It is remarkable that soon after the said judgment the Russian courts continued to issue analogous rulings leading to violations of the ECHR[16].

Finally, in 2018 the Court expanded its practice of considering applications by a Committee of 3 judges to cases of extradition to Tajikistan[17].

1.2. Implementation of Article 3 of the ECHR in extradition proceedings at the present stage

Due to the constant increase in the number of judgments of the ECtHR and the Russian courts finding extradition orders unlawful the Prosecutor General's Office has more and more often refrained from taking extradition orders in respect of persons belonging to vulnerable groups since 2017–2018. In some cases extradition checks ended by denials of extradition[18]. In many others requested persons were released from detention without any final decisions on their extradition[19].

Moving further, it seems appropriate to make an overview of the most recent judgments of the ECtHR against Russia in extradition cases. In 2019 the Court took 5 judgments finding violations of Article 3 n regard of 6 applicants[20]. In 2020 the Court issued no such judgments and in 2021 there was one judgment «*A.K. and Others v. Russia*»[21]. All the applicants were nationals of Uzbekistan and Tajikistan charged with anti-state crimes and the violations occurred (in 2017–2021) are similar to those already described in par. 1.1.

Of particular interest is also the judgment of 19 November 2019 in the case «*T.K. and S.R. v. Russia*»[22] where the Court suddenly changed its consistent approach to extraditions of Uzbeks to Kyrgyzstan and concluded that belonging to the Uzbek minority is no longer enough to establish the real risk of ill-treatment in Kyrgyzstan in case of criminal prosecution. The Court referred to the recent positive developments in the situation in Kyrgyzstan and relied on the bilateral mechanism of monitoring diplomatic assurances of humane treatment. The said line of reasoning was unanticipated as it is unclear from the judgment what exactly had changed in the regulation and functioning of the monitoring mechanism as compared to the period when the Court had considered it unreliable[23]. The case is now being reconsidered by the Grand Chamber and the final judgment is yet to be delivered.

Further, there have been unanticipated trends in the case law of the Presidium of the Russian Supreme Court – the highest judicial authority in Russia. Under the Russian criminal procedure law, the Presidium reconsiders criminal (including extradition) cases if the Court has found a violation. Before 2020 the Presidium had always quashed extradition orders following the Court's judgments.

However, on 22 January 2020 the Presidium after fresh consideration found lawful the extradition of Mr. I. Usmanov[24] – the applicant in «*I.U. v. Russia*», which has been already described. The Supreme Court referred to the selected abstracts from the reports of international organizations on Uzbekistan

[16] Judgment of the Moscow City Court of 26 January 2017 in the case of Z. R. Saifullayev № 2–0008/2017 (in Rus.); Appellate ruling of the Supreme Court of the Russian Federation of 21 March 2017 in the case of Z. R. Saifullayev № 5-АПУ17–16 (in Rus.); A.N. and Others v. Russia, no. 61689/16 and 3 Others, 23 October 2018; Judgment of the Moscow City Court of 6 April 2017 in the case of F. D. Nurmatov № 2–0018/2017(in Rus.).

[17] A.N. and Others v. Russia, no. 61689/16 and 3 Others, 23 October 2018.

[18] The author is aware of at least 7 such decisions of the Russian Prosecutor General's Office in 2018–2021. Though, it is not possible to provide further details due to attorney-client privilege.

[19] See, for instance, the judgments and decisions of the ECtHR in the cases B.U. and Others v. Russia, no. 59609/17, 22 January 2019, S.S. and Others v. Russia, no. 2236/16 and 3 others, 25 June 2019, K.Z. v. Russia (dec.), no. 35960/18, 19 March 2020 and also communicated cases K.Z. v. Russia and 1 other application, no. 35960/18 and 1 other, N.K. v. Russia and 1 other application, no. 45761/18 and 1 other, K.O. v. Russia and 4 ther applications, no. 71772/17 and 4 others.

[20] S.S. and B.Z. v. Russia, no. 35332/17 and 1 other, 11 June 2019; S.S. and Others v. Russia, no. 2236/16 and 3 others, 25 June 2019; S.B. and S.Z. v. Russia, no. 65122/17 and 1 other, 8 October 2019; R.R. and A.R. v. Russia, no. 67485/17 and 1 other, 8 October 2019; N.M. v. Russia, no. 29343/18, 3 December 2019.

[21] A.K. and Others v. Russia, no. 38042/18 and 2 Others, 18 May 2021.

[22] T.K. and S.R. v. Russia, nos. 28492/15 and 49975/15, 19 November 2019.

[23] Khamrakulov v. Russia, no. 68894/13, 16 April 2015; U.N. v. Russia, no. 14348/15, 26 July 2016.

[24] Judgment of the Presidium of the Supreme Court of the Russian Federation of 22 January 2020 in the case of I. M. Usmanov № 199-П19 (in Rus.).

covering the period of 2019 and concluded that the situation in Uzbekistan had improved. Apparently, the Supreme Court did not take into account the conclusions of the ECtHR in its judgment «*N.M. v. Russia*» delivered just a month and a half before the hearing of Mr. I. Usmanov's case at the Presidium. Moreover, it was clear from the reasoning of the Presidium that it was unaware that the ECtHR had assessed the risk of ill-treatment *ex nunc*, although this concept had been first formulated back in 1996[25].

After that the Presidium issued a few analogous rulings regarding extradition to Uzbekistan and Tajikistan[26]. Therefore, the recent developments in the case-law of the Presidium might raise new problems with the proper implementation of the judgments of the ECtHR. In 2020 and 2021 the Court communicated the new three applications under Article 3 lodged by the said applicants[27].

2. Implementation of Article 5 of the ECHR in extradition proceedings

There are no serious troubles with implementation of Article 5–1-f guarantees in extradition proceedings at the moment since detention of requested persons is now governed by the general provisions of Chapter 13 of the CPC. These provisions and clarifications made by the Supreme Court ensure the higher level of protection.

Though, the situation has not always been perfect. Conversely, in the first years after the adoption of the CPC it was unclear which legal rules applied to detention pending extradition. This led to detention for years without any court's judgment setting time-limits. As a result, the ECtHR found violations of Article 5 in more than a dozen of judgments from «*Garabayev v. Russia*»[28] and «*Eminbeyly v. Russia*»[29] up to «*Gaforov v. Russia*»[30]. The Russian highest courts, reacted by making certain clarifications. The Constitutional Court in a few rulings[31] and the Plenum of the Supreme Court in its special ruling regarding detention, bail and house arrest[32] explained that Chapter 13 of the CPC did apply to detention pending extradition. The said steps soon put an end to the gravest violations of Article 5 (Riabinina, 2017. 87).

Nevertheless, Article 466 of the CPC, par. 2 still allows a significant exclusion from the general rules. Thus, a prosecutor may detain a requested person without a Russian court's order if the extradition request is accompanied by a requesting country's court's detention order. In «*Kholmurodov v. Russia*» the Court concluded that such legal regulation did not meet the criteria of lawfulness required by Article 5–1-f. Unfortunately, no amendments to Article 466 have been adopted so far. Still, examples could be found where the Russian courts quashed prosecutor's detention orders referring to the Court's case law[33].

There is another issue in the Russian law and practice interesting from the Article 5 perspective. In a number of cases the Russian authorities refused to take out from the national wanted list names of the persons whose extradition had been denied or annulled. For example, this happened to Mr. A. Khasanbaev and Mr. D. Sarymsakov who appealed to courts referring to Article 39 of the CIS Regulation on

[25] See Chahal v. the United Kingdom, 15 November 1996, 112, Reports of Judgments and Decisions 1996-V.

[26] Judgment of the Presidium of the Supreme Court of the Russian Federation of 19 February 2020 in the case of Z. Z. Khudoyberdiev № 197-П19 (in Rus.); Judgment of the Presidium of the Supreme Court of the Russian Federation of 10 June 2020 in the case of S. N. Saidov № 194-П19 (in Rus.); Judgment of the Presidium of the Supreme Court of the Russian Federation of 9 September 2020 in the case of N. A. Makhanov № 9-П20 (in Rus.).

[27] See the communicated cases I.U. and Z.K. v. Russia, no. 12767/20 and N.M. v. Russia, no. 22706/20.

[28] Garabayev v. Russia, no. 38411/02, 7 June 2007.

[29] Eminbeyli v. Russia, no. 42443/02, 26 February 2009.

[30] Gaforov v. Russia, no. 25404/09, 21 October 2010.

[31] Rulings of the Constitutional Court of the Russian Federation of 4 April 2006 № 101-O "On the complaint of the national of the Tajikistan Republic Nasruloiev Khabibullo about the violation of his constitutional rights by parts one and two of article 466 of the Criminal Procedure Code of the Russian Federation" and of 1 March 2007 № 333-O-П "On the complaint of the national of the USA Menakhem Saidenfeld about the violation by part three of article 1 and part one of article 466 of the Criminal Procedure Code of the Russian Federation of his rights guaranteed by the Constitution of the Russian Federation" (in Rus.).

[32] Ruling of the Supreme Court of the Russian Federation "On practice of application by courts of the measures of restriction in the forms of detention, bail and house arrest" of 29 October 2009 (in Rus.).

[33] Judgment of the Frunzenskii District Court of Iaroslavl' of 20 August 2018 in the case № 3 10–43/2018 (in Rus.).

international search[34]. However, the Russian courts upheld the refusals to terminate their search referring to the lack of competence of the respective bodies[35]. At the moment a few other cases of that kind are pending before Russian courts in a number of regions[36].

The presence of the foreigners' names whose extradition has been denied in the national wanted list leads to their periodic arrests with no prospect of their extradition in breach of Article 5–1-f.

As regards implementation of Article 5–4 in extradition proceedings, in the first years after the adoption of the CPC there were also serious problems with that. The absence of common understanding that Chapter 13 rules apply to extradition cases led to no review of detention pending extradition at all. Consequently, the Court found violations in a number of judgments starting from «*Nasrulloev v. Russia*»[37]. Later the regulation was put in conformity with the ECHR. However, even in recent years there have been violations of the requirement of speediness of review of detention[38].

As to the implementation of the Article 5–5 the Russian legal system provides mechanisms of claiming compensation for unlawful detention under the civil law. One of the successful examples is the case of Mr. A. Khasanbaev who was granted 40 000 rubbles for two-months unlawful detention pending extradition[39]. The Court found this sum appropriate[40].

3. Implementation of Articles 13 and 34 of the ECHR in extradition proceedings

As to Article 13 in conjunction with Article 3 the Court found its violation in the very first Russian extradition case «*Garabayev v. Russia*». The violation occurred due to the execution of the extradition order on the same day its copy was provided to the applicant. It contradicted both the Russian law and the requirement of an automatic suspensive effect of a domestic remedy against removal. Later such situations did not recur.

Finally, Article 34 of the Convention have not been always observed in extradition proceedings in Russia. In the recent case «*S.S. and B.Z. v. Russia*» the extradition order was executed 2 days after the Court suspended one of the applicant's removal. Before the ECtHR the Russian authorities claimed that the applicant applied for the interim measure too late. Still, the Court concluded that the Government had had enough time to effectively comply with the interim measure using modern-day technologies and found a violation of Article 34.

Conclusions / Results

For a few years after the adoption of the CPC there were significant troubles with implementation of the ECHR in extradition proceedings, mostly of Articles 3 and 5. They took place due to the absence of provisions allowing to deny extradition on human rights grounds and vague governance of detention pending extradition.

A number of steps was taken to improve the situation. In particular, the Supreme Court delivered two significant rulings: concerning detention, bail and house arrest in 2009[41] and regarding extradition proceedings in 2012 aimed at complying with the ECHR.

These steps put an end to the gravest violations in extradition proceedings such as detention with no time-limits or judicial review. National courts also began to analyze extradition orders more thoroughly and quash them. This

[34] Decision of the Council of Heads of Governments of the CIS "On the Regulation of of the competent bodies of the CIS on conducting international search" (Adopted in Dushanbe on 30.10.2015 (in Rus.).

[35] See the appellate ruling of the Moscow City Court of 2 November 2017 in the case 33a-4913/2017 (in Rus.).

[36] See, for example, cases 02a-0043/2021 at the Tverskoi District Court of Moscow, 02a-0534/2020 at the Butyrskii District Court of Moscow, 2a-154/2021 at the Kanashskii District Court of the Chuvash Republic. See also Cassation ruling of the Sixth Cassation Court of General Jurisdiction of 23 September 2021 in the case № 8a-20097/2021 (in Rus.).

[37] Nasrulloyev v. Russia, no. 656/06, 11 October 2007.

[38] See, for instance, S.S. and B.Z. v. Russia, no. 35332/17 and 1 other, 11 June 2019, R.A. v. Russia, no. 2592/17, 9 July 2019.

[39] Decision of the Simonovskiy district court of Moscow of 8 February 2018 in the case of A. E. Khasanbaiev in the case № 02–0630/2018 (in Rus.).

[40] Khasanbayev v. Russia (dec.), no. 19488/16, 21 May 2019.

[41] Later replaced by the Ruling of the Supreme Court of the Russian Federation of 19.12.2013 № 41 "On practice of application by courts of legislative acts on measures of restriction in the forms of detention, house arrest, bail and prohibition of certain acts" (in Rus.).

led to the change of approaches of the Prosecutor General's Office.

However, some «traditional» problems remain present. The most acute of them are the improper assessment of risks of ill-treatment and the lengthy appellate review of detention. New questions have arisen as to the regulation of termination of search of a person whose extradition has been denied. Moreover, there are worrying trends in the case-law of the Presidium of the Supreme Court.

Suggestions

It has been discussed that most violations of Article 3 of the ECHR in extradition cases may be caused by the fact that the CPC does not include the risk of ill-treatment in the list of grounds for denial of extradition.

The first suggestions to add it were made back in 2010 (Riabinina, 2017. 123–125), though, not adopted.

In 2016 a new legislative draft was prepared[42]. It provided that an extradition order shall not be executed if the ECtHR had granted an interim measure. Article 463 of the CPC was also supposed to include a non-exhaustive list of sources proving a real risk of ill-treatment. In June 2017 the draft law was adopted by the State Duma in the first reading but there has been no developments since then[43]. Still, there remains a strong need in such amendments to the CPC.

It also seems appropriate to repeal par. 2 of Article 466 of the CPC. Moreover, clarity should be made as regards implementation of Article 39 of the CIS Regulation on international search, for instance, by amending the instructions of the Prosecutor General's Office and the Ministry of the Interior.

Beside the legislative amendments other steps may be taken. For instance, the authorities should ensure speedy communication of information on the Court's interim measures to the local officers executing extradition via modern means of communication.

[42] Draft of the Federal Law № 67509–7 "On amendment of the Criminal Procedure Code of the Russian Federation (in part regarding the improvement of the procedure of extradition upon request of a foreign state for criminal prosecution or execution of a conviction)" (in Rus.).

[43] See https://sozd.duma.gov.ru/bill/67509–7 (accessed date 12 August 2021).

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