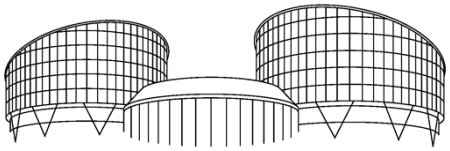

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KHACHATUROV v. ARMENIA

(Application no. 59687/17)

JUDGMENT

Art 3 • Extradition (Russia) • Decision to extradite applicant unfit for travel, even with medical supervision, due to severe health condition • Extradition without proper assessment of transfer risks would entail a breach • Receiving State's assurances insufficient, since limited to availability of medical supervision during transfer • Requirement of a case-by-case examination of individual's medical condition, at a particular point in time, and of substantiated specific medical risks in light of conditions of a particular transfer • Lack of relevant domestic legal safeguards and procedures

STRASBOURG

24 June 2021

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 Khachaturov v. Armenia,

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

Krzysztof Wojtyczek, *President,*
Tim Eicke,
Aleš Pejchal,
Armen Harutyunyan,
Pauliine Koskelo,
Raffaele Sabato,
Linos-Alexandre Sicilianos, *judges,*
and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 59687/17) against the Republic of Armenia 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 Suren Khachaturov ("the applicant"), on 18 August 2017;

the decision to give notice of the application to the Armenian Government ("the Government");

the decision to indicate interim measure to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with;

the decision not to notify the Russian Federation of the application (see *I v. Sweden*, no. 61204/09, §§ 42-46, 5 September 2013);

the parties' observations;

Having deliberated in private on 25 May 2021,

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

INTRODUCTION

1. The application, lodged under Articles 2 and 3 of the Convention, concerns the applicant's allegation that his transfer, if the decision to extradite him to Russia were implemented, would expose him to risks to his life and physical well-being, considering his state of health.

THE FACTS

2. The applicant was born in 1974 and lives in Yerevan. The applicant was represented by Mr T. Yegoryan and Mr N. Baghdasaryan, lawyers practising in Yerevan.

3. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant, who is ethnic Armenian, lived and worked in Russia prior to his return to Armenia on an unspecified date in June 2015. He was first deputy director of one of the State budgetary establishments of the City of Moscow.

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT IN RUSSIA

6. On 27 May 2015 the investigative department of the north administrative district of Moscow instituted criminal proceedings against the applicant on suspicion of attempted bribe-taking.

7. On 1 June 2015 the applicant undertook to appear when summoned by the investigative authority and to inform the investigator immediately of any change of place of residence or registration.

8. On 10 June 2015 the applicant was charged with attempted bribe-taking.

9. On the same date the applicant was admitted to accident and emergency in a hospital in Moscow with transient cerebral ischaemia. He was discharged on 14 June 2015.

10. On 16 June 2015 the investigator declared the applicant a fugitive, including him in the federal wanted list.

11. On 8 July 2015 the applicant was declared an international fugitive.

12. On 14 July 2015 the Savelevskiy District Court of Moscow allowed the investigator's application seeking the applicant's detention. In doing so, it dismissed the applicant's lawyer's arguments concerning the applicant's poor state of health and the fact that that he had received inpatient medical treatment in Yerevan of which the investigator had been informed. The court found, *inter alia*, that the applicant had knowingly chosen not to receive medical treatment in Russia and had left the country despite the criminal proceedings pending against him.

II. EXTRADITION PROCEEDINGS IN ARMENIA AND THE APPLICANT'S STATE OF HEALTH

13. On 11 April 2017 the applicant was arrested in Yerevan. He was then detained pending determination of the question of his extradition to Russia.

14. On 14 April 2017 the Office of the Prosecutor General of Armenia submitted an application to the Kentron and Nork-Marash District Court of Yerevan ("the District Court") seeking to detain the applicant for a period of forty days pending determination of the question of his extradition to Russia.

15. On the same date the District Court authorised the applicant's detention for a period of forty days counting from 11 April 2017.

16. On 19 April 2017 the applicant lodged an appeal against the District Court's decision of 14 April 2017, arguing that he should be considered an Armenian citizen, which would be legal grounds preventing his extradition. The applicant submitted a number of documents such as his birth certificate, old passports, documents concerning his military conscription in Armenia, and so forth to substantiate that he satisfied the requirements of section 10 of the Nationality Act and he should therefore be recognised an Armenian citizen.

17. On 30 May 2017 the Criminal Court of Appeal ("the Court of Appeal") dismissed the applicant's appeal. In particular, having examined the documents submitted by the prosecution in support of the argument that the applicant had received Russian nationality before 13 July 1995, the date of entry into force of the Constitution – one of the requirements of section 10 of the Nationality Act – the Court of Appeal found that the applicant's detention for the purpose of his extradition to a foreign country would be in breach of his rights since the question of his nationality was disputed. At the same time, the Court of Appeal found that the applicant's detention pending receipt of the criminal case against him for the purpose of his prosecution in Armenia was lawful under Articles 478.2 and 478.3 of the Code of Criminal Procedure.

18. On 12 May 2017 the Prosecutor General of Russia requested the applicant's extradition under the 1993 Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters. That request also stated that the applicant would not be subjected to torture, inhuman and degrading treatment or punishment.

19. On 14 May 2017 the Office of the Prosecutor General of Armenia lodged an application with the District Court, seeking the applicant's detention for two months for the purpose of carrying out his extradition.

20. On 19 May 2017 the District Court authorised the applicant's detention for a period of two months.

21. On 16 June 2017 the applicant was transferred from the Nubarashen detention facility to the Central Prison Hospital with the following diagnosis: "Heart ischaemic disease; arterial hypertension progressing to a critical state".

22. In a decision of 23 June 2017 the Prosecutor General of Armenia granted the extradition request, instructing the police and the Central Prison Hospital, where the applicant was detained, to ensure his extradition to Russia after the decision had become final. It was stated in the decision that according to the documents provided by the Office of the Prosecutor General of Russia the applicant had received Russian nationality on 26 July 1994 and that he was still a Russian citizen. Hence, there were no legal impediments to his extradition.

23. On 3 July 2017 the deputy head of the Central Prison Hospital issued a certificate in respect of the applicant's state of health. It stated that he was

suffering from a post-stroke condition with severe vestibulopathy and eye-movement impairment; remnants of the stroke in the area of the left middle artery of the brain with right-sided reflector hemiparesis; walking difficulty as a result of hemiparesis; 2nd degree atherosclerotic encephalopathy; 1st degree arterial hypertension; a 15% risk of developing cardiovascular complications.

24. On 6 July 2017 the applicant appealed against the extradition decision of 23 June 2017 to the Court of Appeal. He argued that, considering his state of health, his transfer to Russia could cause irreparable harm to his health or put his life in danger. In support of his appeal, the applicant relied on the medical certificate of 3 July 2017.

25. In a letter of 12 July 2017 the Office of the Prosecutor General of Russia asked the Office of the Prosecutor General of Armenia to inform it of the planned date for the applicant's transfer, guaranteeing that during the applicant's detention and, in the event of his conviction, during the serving of his sentence the staff of the Armenian consulate in Russia would have access to him. In addition, during the same periods, in case of necessity, the applicant would be provided with the requisite medical assistance.

26. On the same date the chief neurologist of the Ministry of Health of Armenia issued a medical certificate which stated that the applicant was suffering from the consequences of an ischaemic stroke indicating severe disorders of the cardiovascular and nervous systems. Considering those risks, it could not be ruled out that the applicant's transfer to Russia by air or land could result in a further stroke or a heart attack.

27. By further letter of 14 July 2017 the Office of the Prosecutor General of Russia gave assurances that a doctor with the relevant specialisation would travel with a special convoy to provide the applicant with medical assistance if necessary during his transfer.

28. On 19 July 2017 the Court of Appeal rejected the applicant's appeal. It referred to the assurances provided by the Office of the Prosecutor General of Russia regarding the presence of a medical specialist during the applicant's transfer to Russia and during his detention and, if convicted, while serving his sentence.

29. On 26 July 2017 the applicant lodged an appeal on points of law against the decision of 19 July 2017, arguing that the translator appointed for him had failed to appear at the hearing and that a copy in Russian of the judgment had not been provided to him. In addition, the applicant had not been able to effectively participate in the proceedings since he had neither been properly given a chance to make arguments nor had he been informed of his rights. Lastly, the applicant argued that the Court of Appeal had failed to verify his state of health as far as the risks during his transfer were concerned.

30. In the certificate of 28 July 2017 Dr A.K., the head of the neurological department of a hospital in Yerevan, confirmed the applicant's

diagnosis as set out in the medical certificate of 12 July 2017 (see paragraph 26 above). It was further noted that the applicant had developed cephalic disorder accompanied with photophobia and phonophobia, which required treatment and preferably supervision by a neurologist. On the basis of those conditions and risk factors, it was concluded that the applicant should not be allowed to be transferred by air or land as that might cause further heart and brain problems.

31. Between 14 August and 1 September 2017 the applicant underwent inpatient medical examination and treatment in a civilian hospital. His discharge diagnosis stated the following:

> "Arterial hypertension, progressing to a critical state, high risk with chronic insufficiency of blood circulation and frequent transient ischaemic attacks in vertebra-basilar pool. Discirculatory angio-encephalopathy of the 3rd degree with ischaemic strokes in the vertebra-basilar pool and the pool of the left-middle cerebral artery accompanied with post-stroke cysts in the midbrain, the bridge and the brainstem; with leukoaraiosis with stable residual phenomena in the form of the right-sided moderate hemiparesis; vestibulopathy; moderate disorder of walking function; hypertensive syndrome manifested with frequent cephalgia. Ischaemic heart disease, stable angina pectoris ... "

32. On 21 August 2017 the Court of Cassation quashed the decision of 19 July 2017 and remitted the case for a new examination on the grounds that the Court of Appeal had failed to ensure that the applicant had understood the language of the proceedings and that he had been aware of his rights.

33. On 13 September 2017 Dr A.K. provided a further medical opinion concerning the applicant's state of health based on his discharge diagnosis (see paragraph 31 above). She stated, in particular, the following:

> "[T]he applicant's [condition] is serious and unpredictable, considering the strong probability of future attacks in the form of hypertonic crises and transient ischaemic attacks, the two previous ischaemic strokes in the vertebra-basilar pool and the pool of the left-middle cerebral artery.
>
> A person suffering from those conditions cannot participate in court hearings, because any emotional tension might lead to the development of new potential complications."

34. At the hearing of 25 October 2017 during the fresh examination of the applicant's appeal against the extradition decision of 23 June 2017, his lawyer lodged an application with the Court of Appeal, seeking the appointment of an expert to assess his state of health. The prosecutor objected to the application, stating that there were insufficient grounds to conclude that the applicant's transfer to Russia would pose any risks to his health or life. She reasoned that during the examination of the request for the applicant's extradition the Prosecutor General of Armenia had not been in possession of any medical documents concerning the applicant's health. Moreover, the prosecutor expressed doubts about the applicant's medical

condition, referring to a letter from the detention facility dated 13 July 2017 which stated that he was fit to participate in court proceedings.

35. On the same date the Court of Appeal rejected the applicant's appeal finding that there were no circumstances preventing the applicant's extradition. In particular, the applicant was a Russian national and assurances about securing his rights within the framework of the criminal proceedings against him had been provided by the Russian authorities. The Court of Appeal affirmed the decision of the Prosecutor General of Armenia on extraditing the applicant to Russia, relying on the supplementary assurances of the Russian authorities that the applicant's medical supervision during and after his transfer to Russia would be ensured. In the meantime, it also rejected the applicant's request to appoint a forensic medical expert on the grounds that the assignment of a forensic medical examination during extradition proceedings was not prescribed under domestic law.

36. The applicant lodged an appeal on points of law complaining of lack of a public hearing and adversarial trial before the Court of Appeal. He also reiterated his arguments about the medical risks of his transfer.

37. On 23 November 2017 the Court of Cassation declared the appeal inadmissible for lack of merit. Accordingly, the decision of the Prosecutor General of Armenia to extradite the applicant to Russia became final.

38. On 30 November 2017 the decision of 23 November 2017 was served on the applicant's lawyer.

III. INDICATION OF AN INTERIM MEASURE UNDER RULE 39 OF THE RULES OF COURT

39. On 18 August 2017 the applicant asked the Court, under Rule 39 of the Rules of the Court, to indicate to the Government to stay his extradition to Russia until the Court had examined the merits of his complaints.

40. On 30 November 2017 the applicant informed the Court that the domestic courts had reached a final decision to extradite him to Russia.

41. On the same date the Court (the duty judge) decided to indicate to the Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited until further notice. In the meantime, the Court (duty judge) decided, under Rule 54 § 2 (a) of the Rules of Court, to ask the Government to respond to the following questions by 15 December 2017:

> "1. What practical steps, if any, have been taken for the applicant's effective transfer to the Russian Federation?
>
> 2. If steps have been taken, when and how will the applicant be transferred (by air, land)?
>
> 3. Will the applicant be provided with medical assistance during the journey? If so, please provide details.

4. Is there a medical protocol for handing over the applicant to the Russian authorities upon arrival?"

42. In their reply the Government submitted that the applicant had speculatively tried to hinder his extradition first by providing misleading information to substantiate that he was an Armenian national and then by producing medical documents about a drastic deterioration of his state of health. Furthermore, the applicant had already been suffering from the diseases mentioned in the medical note of 12 July 2017 when he had travelled to Armenia by plane in June 2015.

The Government relied on the letters of 12 and 14 July (see paragraphs 26 and 27 above) and 14 December 2017 (see paragraph 49 below) which contained assurances by the Russian authorities that the applicant would be provided with the requisite medical assistance during his transfer to Russia and, if convicted, while serving his sentence. They submitted that according to the established practice, a person's extradition from Armenia was performed only if a medical document proving his or her fitness to be transferred had been issued by the Central Prison Hospital.

43. In reply to the Government's submissions, the applicant maintained that he had had health issues since at least 1994, when he had been exempted from mandatory military service on health grounds. However, it had only been since 2015 that his health had sharply deteriorated as a result of the stress and anxiety caused by his prosecution. Owing to his poor state of health he had been kept in the Central Prison Hospital during his detention and transferred to civilian hospitals by the authorities to receive specialist care. Furthermore, the Government had never ordered an assessment of his state of his health in order to verify whether he had been fit to be extradited. In addition, the Court of Appeal had dismissed his application to be examined by a forensic medical expert.

The applicant argued that the general assurances obtained from the Russian authorities were insufficient for the discontinuation of the measure indicated by the Court, considering the seriousness of his illnesses as attested to by various medical professionals. He also relied on the medical advice that he should not be transferred to Russia either by air or land given the potential risks of such transfer indicated by doctors.

44. On 6 February 2018 the Court (the duty judge) decided to maintain the interim measure indicated on 30 November 2017.

IV. PARALLEL AND SUBSEQUENT DEVELOPMENTS

45. On 27 September 2017 the applicant submitted a request for asylum to the State Migration Service.

46. In a decision of 14 November 2017 the State Migration Service refused the applicant's request for asylum.

47. On 11 December 2017 the applicant was released from detention as the maximum period of his detention pending extradition had expired.

48. On the same date he was admitted to the neurology department of a civilian hospital for examination and treatment.

49. By letter of 14 December 2017 the Office of the Prosecutor General of Russia, with reference to a letter from the Russian Federal Service for Execution of Sentences, informed the Prosecutor General of Armenia that the special convoy accompanying the applicant would include a medical specialist ready to provide medical assistance to him in accordance with his state of health. Furthermore, the medication and medical equipment necessary to provide assistance in the event of cardiovascular problems would be at the disposal of the doctor accompanying the applicant during his transfer. The letter also stressed that, before signing the applicant's act of transfer, it would be necessary for the accompanying doctor to examine his medical records with a view to verifying the absence of contraindications for his transfer by air transport. Lastly, it was stated that the applicant would undergo medical examinations and consultations upon arrival at the detention facility with a view to planning outpatient supervision of his chronic illnesses.

50. On 18 December 2017 the applicant lodged a claim with the Administrative Court seeking judicial review of the decision of the State Migration Service dated 14 November 2017 (see paragraph 46 above).

51. On 21 December 2017 the Administrative Court admitted the applicant's claim for examination. The outcome of those proceedings was not communicated to the Court.

52. On 26 December 2017 the applicant qualified for disability.

53. On 28 December 2017 the applicant was discharged from hospital with the following diagnosis:

> "Arterial hypertension, progressing to a critical state, high risk with chronic insufficiency of blood circulation and frequent transient ischaemic attacks in the vertebra-basilar pool. Third degree discirculatory angio-encephalopathy with ischaemic strokes in the vertebra-basilar pool and the pool of the left-middle cerebral artery with the existence of post-stroke cysts in the midbrain, the bridge and the brainstem, with leukoaraiosis with stable residual phenomena in the form of the right–sided moderate hemiparesis, vestibulopathy, moderate disorder of walking function, with hypertensive syndrome, and frequent cephalgia. Ischaemic heart disease, angina pectoris class 2, class 1 heart failure (NYHA classification). Multi-level degenerative-dystrophic changes of the spine, osteochondrosis of the 4th degree with hernias at C4-C5, C5-C6, C6-C7 levels, hydromyelia.
>
> Recommendation: constant supervision by a neurologist. At the moment, he is not fit to travel. Constant administration of hypotensive and antiplatelet medication".

V. EVENTS AFTER NOTICE OF THE APPLICATION BEING GIVEN TO THE RESPONDENT GOVERNMENT

54. On 9 January 2019 the Government informed the Court that they had ordered an additional impartial medical evaluation of the potential risks associated with the applicant's transfer to Russia based on the evidence presented by the applicant regarding his state of health.

55. On 11 January 2019 a neurologist examined the applicant and confirmed the diagnoses set out in the conclusion of 28 December 2017 (see paragraph 53 above). In addition, the neurologist noted the following:

> "... at the moment, transfer by air or land is contraindicative, as any change in pressure (take-off, landing, being in a confined space for a long time, oxygen scarcity, motion sickness, any sudden and quick movements) can worsen the state of the disease, which threatens not only the patient's health, but also his life."

56. In a letter of 31 January 2019 the Government Agent asked the Minister of Health to form a medical panel which would provide professional medical opinion on the following questions:

> "Considering [the applicant's] diagnosis as stated in the medical documents submitted to the [European Court of Human Rights], would his transfer to the Russian Federation by air or land expose him to risks to his life and physical well-being?
>
> If [the applicant's] transfer exposed him to risks to his life and physical well-being, would the presence of an accompanying doctor (specifically with what type of specialisation) during the transfer eliminate or minimise such risks?"

57. On 12 February 2019 the Minister of Health submitted the opinion of the medical panel which had been convened on 11 February 2019. The medical panel answered the questions as formulated in the Government Agent's letter of 31 January 2019 (see paragraph 56 above) as follows:

> "Question 1: Yes, the high risks associated with [the applicant's] transfer to the Russian Federation by air or land are linked to the chronic diseases reflected in ... his medical documents and their possible unpredictable aggravation.
>
> Question 2: No, since in the event of aggravation [of the chronic diseases] emergency medical care in a specialist medical institution may become necessary."

58. The opinion of the medical panel convened on 11 February 2019 was provided to the Court on 2 May 2019 by the applicant, who had received it in response to an enquiry sent to the Ministry of Health in April 2019.

59. The parties have not provided any further information with regard to developments in the applicant's state of health.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

A. Constitution (with the amendments introduced on 6 December 2015, in force as of 22 December 2015)

Article 55: Prohibition of expulsion or extradition

"1. No one may be expelled or extradited to a foreign State if there is a real danger that the given person may be subjected to the death penalty, torture, inhuman or degrading treatment or punishment in that country.

2. A citizen of the Republic of Armenia may not be extradited to a foreign State, except for the cases provided for by the international treaties ratified by the Republic of Armenia."

B. Code of Criminal Procedure

60. Article 478.2 § 1 states that individuals who have committed a crime outside the territory of Armenia and have been arrested in the territory of that State can be placed in temporary detention for a maximum of forty days or another time-period as provided in an international treaty with the purpose of receiving an extradition request and verifying the existence of circumstances excluding extradition.

61. Article 478.3 § 5 provides that the person can be detained for the purpose of his or her extradition for a period of two months. Detention for the purpose of extradition cannot exceed eight months.

62. Article 479 § 1 (1) provides that it is the Prosecutor General of Armenia who adopts decisions to grant or refuse extradition requests if the case is at the pre-trial stage. The Prosecutor General's relevant decision is subject to appeal to the Criminal Court of Appeal within ten days of its receipt while the decisions of the appellate court are subject to appeal to the Court of Cassation within five days of their receipt.

The Court of Appeal and the Court of Cassation must examine the case and adopt a decision within five days of the date of receipt of the appeal (Article 479 § 3).

If a person's, including an Armenian citizen's, extradition is refused, but there are sufficient grounds to prosecute him or her for the offence in relation to which a foreign country requested his or her extradition, the Prosecutor General of Armenia initiates that person's criminal prosecution (Article 479 § 9).

63. In accordance with Article 488 § 1 (3) an extradition request submitted by the competent authorities of a foreign State must be refused if the request concerns the extradition of an Armenian citizen.

C. Nationality Act (enacted on 6 November 1995)

64. Pursuant to section 10(1), former USSR nationals who permanently reside in the territory of the Republic of Armenia and who did not obtain the nationality of another State before the entry into force of the Constitution (13 July 1995) or who renounced it within a period of one year of the date of the entry into force of the present Act (28 November 1995), are recognised as nationals of the Republic of Armenia.

II. RELEVANT INTERNATIONAL LAW

A. 1993 Minsk Convention

65. The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (signed in Minsk on 22 January 1993 – hereinafter "the Minsk Convention"), to which both Armenia and Russia are parties, provides as follows:

Article 56. Obligation of extradition

"1. The Contracting Parties shall ... at each other's request, extradite persons who find themselves in their territory for criminal prosecution or to serve a sentence.

2. Extradition for criminal prosecution shall extend to offences which are criminally punishable under the laws of the requesting and requested Contracting Parties, and which entail at least one year's imprisonment or a heavier sentence."

Article 60. Detention for extradition

"Upon receipt of an extradition request, the requested Contracting Party shall immediately take measures to detain the person whose extradition is sought, except in cases where no extradition is possible."

Article 61. Arrest or detention before the receipt of an extradition request

"1. The person whose extradition is sought may also be arrested before receipt of an extradition request, if there is a related petition. The petition shall contain a reference to a detention order or a final conviction and shall indicate that an extradition request will follow ..."

Article 62. Release of the person arrested or detained

"1. A person arrested under Article 61 § 1 ... shall be released ... if no request for extradition is received by the requested Contracting Party within forty days of the arrest ..."

B. European Convention on Extradition

66. The European Convention on Extradition (signed in Paris on 13 December 1957) which entered into force in respect of Armenia on 25 April 2002, provides as follows:

Article 1 – Obligation to extradite

"The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order."

67. The instrument of ratification deposited by the Armenian Government on 25 January 2002 contained the following reservation:

"In respect of Article 1 of the Convention, the Republic of Armenia reserves the right to refuse to grant extradition:

...

b. if there are sufficient grounds to suppose that in result of the person's state of health and age her [or] his extradition will be injurious to her [or] his health or threaten her [or] his life;

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

68. The applicant alleged that his extradition to Russia would be contrary to the requirements of Articles 2 and 3 of the Convention, considering the medical evidence in respect of the risks of his transfer. Those Articles provide, in so far as relevant, as follows:

Article 2

"1. Everyone's right to life shall be protected byone shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

..."

Article 3

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

A. Admissibility

69. In their further observations submitted in reply to the applicant's observations, the Government argued that the applicant's representative had used offensive language. In particular, the applicant's representative had labelled the Government's observations as "irrelevant", asserted that the Government were trying to misinterpret the facts and were "in pursuit of covert and unclear goals", among other things. Furthermore, the observations mentioned that the Government had "overstepped the

permissible limits of formal judicial communication and legal ethics" and had "blamed" and "shamed" the applicant. The Government considered this to amount to an abuse of the right of application within the meaning of Article 35 § 3 of the Convention and asked the Court to declare the application inadmissible on those grounds.

70. The Court reiterates that the implementation of Article 35 § 3 (a), which allows it to declare inadmissible any individual application that it considers to be "an abuse of the right of individual application", is an "exceptional procedural measure" and that the concept of "abuse" refers to its ordinary meaning, namely the harmful exercise of a right by its holder in a manner that is inconsistent with the purpose for which such right is granted (see *S.A.S. v. France* [GC], no. 43835/11, § 66, ECHR 2014 (extracts), and *Miroļubovs and Others v. Latvia*, no. 798/05, § 62, 15 September 2009).

71. The use of particularly vexatious, insulting, threatening or provocative language by the applicant – whether this is directed against the respondent State or the Court itself – may be considered an abuse of the right of petition (see *Apinis v. Latvia* (dec.), no. 46549/06, 20 September 2011, and *Miroļubovs and Others v. Latvia*, cited above, § 64). At the same time, the applicant's language must exceed "the bounds of normal, civil and legitimate criticism" in order to be regarded as abusive (see *Di Salvo v. Italy* (dec.), no. 16098/05, 11 January 2007, and *Apinis*, cited above).

72. Turning to the present case, the Court observes that in his submissions the applicant's lawyer justified his impugned statements by the fact that in their previous correspondence as regards the applicant's request under Rule 39 of the Rules of Court and in their observations on the admissibility and merits of the application the Government had expressed doubts as to whether the applicant had been genuinely in poor health, despite the medical evidence and the authorities' own refusal to appoint an expert to assess his medical condition (see paragraph 42 above). Furthermore, according to him, the Government had then omitted to disclose such a crucial piece of evidence – unfavourable to them – as the conclusions of the medical panel of 11 February 2019 formed by the Ministry of Health following a request by the Government themselves. It had only been owing to his enquiries that the applicant had found out about the medical conclusion in question and had been able to provide it to the Court.

73. The Court underlines that the only issue it is called to determine in this respect is whether the relevant statements of the applicant's lawyer went beyond "the bounds of normal, civil and legitimate criticism" as understood in its above-cited case-law.

74. Having regard to the material in its possession and the relevant facts (see paragraphs 56-58 above), the Court considers that the statements at issue were an emotional manifestation of the applicant's representative's

frustration about the fact that the Government, despite being in possession of a medical opinion directly supporting the applicant's grievances, had not submitted it in the proceedings before the Court. As to their form, those statements did not contain personal characterisations or offensive language. Although they could be described as being rather sharp and polemical, in the eyes of the Court they were not "insulting or provocative" (see *Aleksanyan v. Russia*, no. 46468/06, § 118, 22 December 2008; and contrast *Di Salvo*, cited above, and *Řehák v. the Czech Republic* (dec.), no. 67208/01).

75. In the light of the foregoing, the Court does not consider that the statements of the applicant's representative referred to by the Government amounted to an abuse of the right of petition. Accordingly, the Government's objection must be dismissed.

76. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

77. The applicant submitted that he had experienced health problems, albeit of lesser seriousness, starting from at least 1994. On 10 June 2015 he had been hospitalised in Moscow with an ischaemic stroke. His condition had subsequently deteriorated because of the mental stress caused by his prosecution. He was under constant medical supervision, undergoing checks and taking medication regularly.

78. The applicant maintained that there was ample medical evidence, including the medical opinion ordered by the Government, that his transfer, if the decision to extradite him were implemented, would expose him to real risk of serious and irreparable harm.

In particular, the medical opinion of 11 February 2019 (see paragraph 57 above) provided straightforward and unequivocal answers to the questions raised in his application, rendering the Government's reliance on the assurances of the Russian authorities meaningless. The applicant argued that those assurances were highly formalistic and superficial considering that the Russian authorities had not been provided with specific information concerning his state of health.

79. In their observations filed on 11 February 2019 the Government submitted that during the examination of the extradition request in respect of the applicant the Office of the Prosecutor General had not been in possession of any medical documents concerning the applicant's state of health which would have given sufficient basis to conclude that his extradition might pose a risk to his life and health. Furthermore, when arrested in April 2017 the applicant's health had been satisfactory. He had

not complained of health issues during his temporary detention and court hearings and had actively tried to substantiate his Armenian citizenship as the basis for refusal of extradition. The applicant referred to his poor state of health as grounds excluding his transfer only after his application to the Passport and Visa Department of the police with a view to being considered an Armenian national was denied. Hence, some doubts had arisen as to the credibility of the medical documents submitted by the applicant.

Nevertheless, after the applicant had relied on his medical condition in July 2017 during the proceedings before the Court of Appeal, the Office of the Prosecutor General had received assurances on the availability of medical care and additional assurances to the effect that the applicant's transfer would be organised by a special convoy of the Federal Prison Service of Russia which would include a medical practitioner with the relevant specialisation (see paragraphs 26 and 27 above). Most importantly, in a letter of 14 December 2017 the Office of the Prosecutor General of Russia had provided further assurances that the medication and medical equipment required for the treatment of possible cardiovascular problems would be available during the applicant's transfer. Furthermore, before signing the act of transfer it would be necessary for the accompanying doctor to examine the applicant's medical records to verify the absence of contraindications for his transfer by air (see paragraph 49 above).

The Government submitted that the applicant had not provided any medical evidence which would have addressed the possibility of his transfer in the light of the additional assurances provided by the Russian authorities. They argued that the applicant's condition was not critical while the decision to extradite would not be final until the accompanying doctor had examined him and confirmed that he was fit to travel.

80. In their further observations filed on 23 August 2019 the Government submitted, *inter alia*, that the domestic courts had upheld the Prosecutor General's decision to extradite the applicant without having in their possession an impartial and unbiased medical opinion concerning the potential risks of the applicant's transfer provided that constant medical supervision was ensured. Instead, the courts had referred to the assurances of the Russian authorities concerning the availability of medical supervision during and after the applicant's transfer. The Government averred that all the relevant and necessary information concerning the applicant's state of health had been provided to the Russian authorities and expressed readiness to present relevant documentary proof should the Court consider it necessary.

2. The Court's assessment

(a) General principles

81. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Indeed, the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity.

Unlike most of the substantive clauses of the Convention, Article 3 makes no provision for exceptions, and no derogation from it is permissible under Article 15 § 2, even in the event of a public emergency threatening the life of the nation. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see *Bouyid v. Belgium* [GC], no. 23380/09, § 81, ECHR 2015, with further references).

82. Nevertheless, according to the Court's well-established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 159, 15 December 2016, and *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI). In order to determine whether the threshold of severity has been reached, the Court may also take other factors into consideration, in particular: the purpose for which the ill-treatment was inflicted, together with the intention or motivation behind it, although the absence of an intention to humiliate or debase the victim cannot conclusively rule out a finding of a violation of Article 3; the context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions; and whether the victim was in a vulnerable situation (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 117, 25 June 2019).

83. The Court has held that the suffering which flows from naturally occurring illness may be covered by Article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, ECHR 2002-III).

84. It is the settled case-law of the Court that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the individual concerned, if extradited, faces a real risk of being subjected to treatment

contrary to Article 3 (see, *mutatis mutandis*, *Soering v. the United Kingdom*, 7 July 1989, § 91, Series A no. 161).

85. In the context of the removal of seriously ill individuals, the Court has held that the authorities of the returning State have an obligation, under Article 3, to protect the integrity of the individuals concerned – an obligation which is fulfilled primarily through appropriate procedures allowing the risks relied upon to be assessed. In the context of these procedures, it is for the applicants to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to treatment contrary to Article 3. In this connection it should be observed that a certain degree of speculation is inherent in the preventive purpose of Article 3 and that it is not a matter of requiring the individuals concerned to provide clear proof of their claim that they would be exposed to proscribed treatment. Where such evidence is adduced, it is for the authorities of the returning State, in the context of domestic procedures, to dispel any doubts raised by it (see *Paposhvili v. Belgium* [GC], no. 41738/10, §§ 185-87, 13 December 2016).

86. The Court has already had occasion to apply the above-mentioned principles in cases concerning the enforcement of removal orders in respect of individuals who could be exposed to risk during transfers. In particular, the Court has found on several occasions that the transfer of an individual suffering from a serious illness would not be in breach of Articles 2 and 3 of the Convention, in so far as it was convinced that in accordance with domestic law and procedure, a removal order would not be implemented unless the individual concerned was found to be medically fit for transfer (see, in particular, *Al-Zawatia v. Sweden* (dec.), no. 50068/08, § 58, 22 June 2010; *Karim v. Sweden*, (dec.), no. 24171/05, 4 July 2006; and *Imamovic v. Sweden* (dec.), no. 57633/10, 13 November 2012).

87. Lastly, in cases of removal of an applicant suffering from an illness, the Court has held that the issue to be assessed is the foreseeable consequences of such a removal for the applicant (see *Paposhvili*, cited above, § 187). Therefore, in cases where the applicant has not already been removed, the material point in time for the assessment must be that of the Court's consideration of the case, and the Court may take into account information that has come to light after the final decision by the domestic authorities was taken (see, for example, *mutatis mutandis*, *F.G. v. Sweden* [GC], no. 43611/11, § 115, 23 March 2016).

(b) Application of the general principles to the present case

88. The Court notes at the outset that the core issue in the present case is whether the transfer (for the purpose of extradition) of the applicant, who is seriously ill, may, in itself, result in a real risk of his being subjected to treatment contrary to Article 3.

89. The case of *Imamovic v. Sweden* (cited above), the circumstances of which most closely compare to those of the applicant in the present case, concerned the deportation of a Bosnian asylum-seeker who was suffering from rather severe mental and physical health problems. Having regard to the medical evidence indicating that enforcement of the deportation order would put the applicant at risk of suffering a heart attack, the Court found that "there [were] no elements indicating that Sweden [would] enforce the deportation order if the applicant's overall state of health [was] considered too serious to travel to his home country". That finding was further supported by the fact that in accordance with the enforcement procedure in Sweden, "the implementation of a deportation order [would] occur only if the authority responsible for the deportation [considered] that the medical condition of the alien so [permitted] and ... the responsible authority [would] ensure that appropriate measures [were] taken with regard to the alien's particular needs".

90. In the light of the general principles described earlier (see, in particular, paragraphs 81-84 above) and its findings in the series of Swedish cases mentioned above, the Court considers that the transfer of an individual whose state of health is particularly poor may, in itself, result in the individual concerned facing a real risk of being subjected to treatment contrary to Article 3 (see, *mutatis mutandis*, *Soering*, cited above, § 91).

91. That being said, the assessment of the impact of a given transfer on the person concerned must be based on specific medical evidence substantiating the specific medical risks relied upon. This would require a case-by-case assessment of the medical condition of the individual and the specific medical risks in the light of the conditions of that particular transfer. Furthermore, that assessment would need to be made in relation to the medical condition of the person concerned at a particular point in time, considering that the specific risks substantiated at a certain moment could, depending on whether they were of a temporary or permanent nature, be eliminated with the passage of time in view of developments in that person's state of health.

92. Turning to the present case, the Court notes that the applicant provided detailed medical information obtained from different doctors, including the chief neurologist of Armenia, attesting to severe disorders of cardiovascular and nervous systems and the associated risks if he were to travel. In particular, according to this information, the applicant suffers from the effects of a past stroke, including vestibulopathy, eye-movement impairment, hemiparesis and resultant difficulty walking, atherosclerotic encephalopathy, and arterial hypertension with a risk of developing cardiovascular disease. A further stroke or a heart attack was considered as a possible development should the applicant travel by air or land (see paragraph 26 above). This diagnosis was subsequently confirmed by Dr A.K., the head of the neurological department of a hospital in Yerevan,

who stated that the applicant had also developed cephalic disorder accompanied with photophobia and phonophobia and confirmed the potential risks of travel (see paragraph 30 above). Following that, the applicant was hospitalised having been diagnosed with additional conditions, including chronic insufficiency of blood circulation, frequent transient ischaemic attacks and ischaemic heart disease. His unfitness for travel was further confirmed (see paragraphs 31 and 53 above).

93. The Court observes that throughout the domestic proceedings and in the proceedings before the Court the authorities expressed doubts in relation to the applicant's medical condition and the claimed risks (see, for example, paragraphs 34 and 42 above). Nevertheless, the authorities did not initiate their own assessment of the applicant's state of health while the applicant's request seeking the appointment of a forensic medical expert was refused by the Court of Appeal (see paragraph 35 above). Furthermore, neither in the domestic proceedings nor in the proceedings before the Court did the authorities question the reliability of the medical certificates submitted by the applicant or the credibility of the medical professionals who had issued them. While it is true that the applicant did not submit any medical documents concerning the history of his medical condition, such as the results of his past medical examinations and treatment received, if any, in his submission his state of health sharply worsened after 2015 as a result of the anxiety caused by his prosecution.

94. Having regard to the material in its possession and considering that the Government have not submitted any medical evidence rebutting that submitted by the applicant in relation to his state of health, in the Court's view there are no grounds to doubt the credibility of the medical data provided by the applicant. The Court finds it therefore established that the applicant suffers from serious cardiovascular and neurological disorders with associated conditions as described therein.

95. The Court notes that the Prosecutor General made a decision to grant the request to extradite the applicant on 23 June 2017. Although by then the applicant had already been transferred to the Central Prison Hospital due to the deterioration of his health (see paragraph 21 above), there is nothing to indicate that the Prosecutor General was in possession of any medical documents concerning the applicant's state of health when taking the decision.

96. Having said that, the Court observes that the applicant submitted relevant medical evidence, in particular the medical certificate issued by head of the Central Prison Hospital on 3 July 2017 and the note issued by the chief neurologist of the Ministry of Health on 12 July 2017 (see paragraphs 23 and 26 above) to the Court of Appeal during the examination of his appeal against the extradition decision. Nevertheless, the Court of Appeal rejected the applicant's arguments concerning the risks of his transfer with reliance on the assurances provided by the Russian authorities

rather than as a result of a careful scrutiny of the applicant's medical condition and the alleged risks of his transfer (see paragraph 28 above). Notably, as already mentioned above, the Court of Appeal refused to appoint a forensic medical expert to examine the applicant's state of health during the fresh examination of the applicant's appeal following the remittal of the case by the Court of Cassation (see paragraph 35 above).

97. In their further observations filed on 23 August 2019, the Government admitted that the domestic courts had upheld the Prosecutor General's decision to extradite the applicant without having had in their possession an impartial and unbiased medical opinion concerning the potential risks of the applicant's transfer provided that constant medical supervision was ensured. Instead, the courts had relied on the assurances of the Russian authorities concerning availability of medical supervision during and after the applicant's transfer (see paragraph 80 above).

98. The Court concludes from the above that, although the applicant had provided objective evidence such as medical certificates showing the particular seriousness of his state of health and the possible significant and irreversible consequences to which his transfer might lead, the courts examining the legality of the decision to extradite him failed to properly assess the risks that such consequences could occur.

99. The Court notes that in their submissions the applicant and the Government referred to and relied on subsequent factual information about the applicant's medical condition and the risks of its deterioration if he were transferred. Therefore, the Court will proceed with its assessment also in light of the information that was not available when the final decision concerning the applicant's extradition was taken (see paragraph 87 above).

100. When discharged from the hospital where the applicant had been admitted upon release from detention he was considered to be, *inter alia*, at high risk, with chronic insufficiency of blood circulation along with frequent transient ischaemic attacks. His not being fit to travel was again confirmed (see paragraph 53 above).

101. The applicant's unsuitableness for travel was further confirmed by a medical certificate of 11 January 2019 (see paragraph 55 above).

102. Subsequently, a medical panel convened by the Minister of Health was requested to answer specific questions concerning the potential risks to the applicant's health in the event of his travelling and the possibility of elimination or minimisation of the risks, if any, if the presence of a relevant medical specialist were ensured during the transfer. According to its opinion issued on 11 February 2019, the high risks associated with the applicant's transfer by air or land were linked to his chronic diseases and their possible unpredictable aggravation whereas the presence of an accompanying doctor could not eliminate those risks since emergency medical care in a specialist medical institution might become necessary should the applicant's health sharply deteriorate (see paragraphs 56 and 57 above).

103. In reply to the Court's questions put to the Government during the examination of the applicant's request for an interim measure, they submitted that according to the established practice a person's extradition from Armenia was performed only if a medical document proving his or her fitness to be transferred had been issued by the Central Prison Hospital. At the same time, in their observations filed on 11 February 2019 the Government submitted that the decision to extradite the applicant would not be final until the accompanying doctor had examined him and confirmed that he was fit to travel (see paragraph 79 above). Subsequently, in their submissions made after the receipt of the panel's conclusion of 11 February 2019 (see paragraph 80 above), the Government still referred to the assurances provided by the Office of the Prosecutor General of Russia to argue that the domestic authorities had taken all the necessary measures, considering the information at their disposal, to ensure that the applicant's transfer would be in line with his state of health. However, given that the assurances provided by the Russian authorities seem to have been limited merely to the availability of medical supervision during the applicant's transfer (see paragraphs 49 and 80 above), they alone cannot provide a sufficient basis for the Court to conclude that the anticipated conditions of the transfer would remove the existing risk of a significant deterioration in the applicant's health if his removal from Armenia were to be effected while his state of health was as indicated by the latest information made available to the Court (see paragraphs 57, 58 and 59 above) (see, *mutatis mutandis*, *Tarariyeva v. Russia*, no. 4353/03, §§ 112-117, ECHR 2006-XV (extracts)).

104. As noted above, in several previous cases concerning the enforcement of removal orders in respect of individuals who could be exposed to risk during transfer, the Court underlined the importance of the existence of a relevant domestic legal framework and procedure whereby the implementation of a removal order would depend on the assessment of the medical condition of the individual concerned (see, in particular, *Al-Zawatia*, cited above, § 58; *Karim*, cited above; and *Imamovic*, cited above).

105. The Court observes, however, that no such legal safeguards or procedure have been shown to exist in the present case. Instead, as noted above, the Government initially submitted that it was "established practice" that an extradition decision would be executed upon the condition that the Central Prison Hospital confirmed that the person concerned was medically fit for travel. However, the Government neither referred to any domestic legal provisions to support this submission, nor did they provide any examples to substantiate the existence of such "established practice". The Government then referred to the fact that the accompanying doctor of the receiving State would need to confirm whether the applicant was fit for travel for the extradition decision to be enforced. Similarly, this submission was not based on any legal regulations but rather on the letter of the Office

of the Prosecutor General of Russia dated 14 December 2017 (see paragraph 49 above).

106. The Court is not convinced that such an assessment by the Russian authorities immediately before the transfer, even if carried out, would be capable of adequately addressing the risks to which the applicant could be exposed in the absence of any indication of the extent of such an assessment and – in the absence of any legal regulation of the matter – its effect on the binding nature of the final decision to extradite the applicant (see, *mutatis mutandis*, *Paposhvili*, cited above, § 202; and, contrast, *Karim*, cited above).

107. The Court also notes that the Government's position with regard to the enforcement of the extradition decision in the light of the conclusion of the medical panel dated 11 February 2019 remains unclear. In particular, although the Government requested the relevant conclusion in order to obtain an "impartial medical evaluation of the potential risks associated with the applicant's transfer" (see paragraph 54 above), in their further observations they did not specifically elaborate on the findings of the medical panel and, more importantly, on the question of whether or not those findings were to have an impact on their decision to proceed with the applicant's extradition.

108. In view of the foregoing, the Court finds that, as matters stood at the time when the exchange of the observations between the parties was finalised (see paragraphs 58 and 80 above), there was sufficient information to conclude that, considering the particularly poor state of the applicant's health, his transfer, even in the presence of an accompanying doctor, would result in a real risk of him being subjected to treatment contrary to Article 3.

109. In reaching this finding, the Court is mindful of the particular context of extradition and the importance of not undermining its foundations (see *Soering*, cited above, § 89). In particular, the Court has held that the presence of third-party rights requires that in the examination of whether there exists a concrete and individualised risk of ill-treatment, negating the requested State's ability to surrender a person, the requested State must rely on a solid factual basis to support a finding that the required threshold of risk is met (see *Romeo Castaño v. Belgium*, no. 8351/17, §§ 85-90, 9 July 2019).

110. It follows that there would be a violation of Article 3 of the Convention if the applicant were to be extradited to Russia without the Armenian authorities having assessed, in accordance with that provision, the risk faced by him during his transfer in the light of the information concerning his state of health.

111. In view of this finding the Court considers that it is not necessary to examine the complaint under Article 2 of the Convention (ibid., § 207).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

112. Lastly, relying on Articles 18, 34 and 38 of the Convention, the applicant complained that the Government had failed to disclose the medical opinion of 11 February 2019.

113. Having regard to all the material in its possession, and in so far as these complaints fall 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 the remainder of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. RULE 39 OF THE RULES OF COURT

114. 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 referral 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.

115. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 41 above) should remain in force until the present judgment becomes final or until the Court takes a further decision in this connection.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

116. 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

117. The applicant claimed 20,000 euros (EUR) in respect of the non-pecuniary damage suffered as a result of the stress and anxiety which aggravated his conditions.

118. The Government were of the view that the claim was exorbitant and that the finding of a breach would amount to sufficient just satisfaction.

119. The Court finds that there is no causal link between the breach of Article 3 relating to the applicant's potential extradition to Russia and the alleged stress and anxiety suffered by him. Since the Armenian authorities have complied with the interim measure indicated by the Court (see

paragraph 41 above) and refrained from enforcing the decision to extradite the applicant until the conclusion of these proceedings, no breach of Article 3 has yet occurred. Hence, the Court's finding that the implementation of the decision to extradite the applicant to Russia before such time as his condition rendered him fit for transfer would give rise to a breach of that Article amounts to sufficient just satisfaction for the purposes of Article 41 (see, among other authorities, *Soering*, cited above, § 127, *Umirov v. Russia*, no. 17455/11, § 160, 18 September 2012 and *M.G. v. Bulgaria*, no. 59297/12, § 102, 25 March 2014).

B. Costs and expenses

120. The applicant also claimed EUR 8,048 for the costs and expenses incurred before the Court. That amount included EUR 7,490 for the costs of legal representation in the proceedings before the Court and EUR 558 for postal and translation expenses.

121. The Government submitted that the claim for legal fees incurred before the Court was not itemised and that in any event the amounts claimed were excessive while the claim for postal and translation costs was not duly substantiated.

122. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily and are reasonable as to quantum.

123. The Court observes that the applicant submitted two contracts for provision of legal services concluded with his former and current representatives before the Court, which indicated specific amounts due for each type of work to be carried out. The Court therefore does not accept the Government's argument that the claims for legal costs were not itemised. On the other hand, the Court considers that not all the legal costs claimed were necessarily and reasonably incurred, including some duplication in the work carried out by the applicant's two representatives. Furthermore, the Court observes that only part of the claims in respect of postal costs was supported by documentary evidence.

124. In view of the foregoing and regard being had to the documents in its possession, the Court considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court.

C. Default interest

125. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the risk of the applicant's being subjected to treatment contrary to Articles 2 and 3 of the Convention if extradited to Russia admissible, and the remainder of the application inadmissible;

2. *Holds* that there would be a violation of Article 3 of the Convention if the decision to extradite the applicant to Russia were implemented without the Armenian authorities having assessed, in accordance with that provision, the risk faced by him during his transfer in the light of the information concerning his state of health;

3. *Holds* that there is no need to examine the complaint under Article 2 of the Convention;

4. *Holds* that the finding of a potential breach of Article 3 of the Convention constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage that may have been sustained by the applicant;

5. *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 notice;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Renata Degener
Registrar

Krzysztof Wojtyczek
President