



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

THIRD SECTION

CASE OF U.A. v. RUSSIA

(Application no. 12018/16)

JUDGMENT

STRASBOURG

22 January 2019

This judgment is final but it may be subject to editorial revision.

In the case of U.A. v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Alena Poláčková, *President*,

Dmitry Dedov,

Jolien Schukking, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 18 December 2018,

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

PROCEDURE

1. The case originated in application (no. 12018/16) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Uzbek national, Mr U.A. (“the applicant”), on 30 March 2016.

2. The applicant was represented by Ms D. Trenina and Ms E. Davidyan (“the representatives”), lawyers practising in Moscow. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and subsequently by his successor in that office Mr M. Galperin.

3. The applicant raised complaints under Articles 3, 5, 8 and 13 of the Convention.

4. On 2 March 2016 the applicant’s request for interim measures preventing his removal from Russia to Uzbekistan was granted by the Court under Rule 39 of the Rules of Court. The application was further granted priority (Rule 47) and confidentiality (Rule 33) and the applicant was granted anonymity (Rule 47 § 4).

5. On 23 February 2017 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant is a national of Uzbekistan born on 5 November 1972. The relevant details of the application are set out in the appended table.

7. On 21 July 2015 the applicant was charged in Uzbekistan with religious and politically motivated crimes. On 22 July 2015 his pre-trial detention was

ordered *in absentia*, and international search warrant was issued by the authorities.

8. Subsequently the Russian authorities decided to deport the applicant (see the appended table), despite his consistent claims that in the event of removal he would face a real risk of treatment contrary to Article 3 of the Convention in his country of origin.

II. RELEVANT DOMESTIC LAW AND PRACTICE

9. A summary of the domestic law and practice concerning extraditions was provided in the case of *Mukhitdinov v. Russia* (no. 20999/14, §§ 29-31, 21 May 2015, with further references).

III. REPORTS ON UZBEKISTAN BY INTERNATIONAL NON-GOVERNMENTAL HUMAN RIGHTS ORGANISATIONS

10. The relevant reports by the UN agencies and international NGOs on the situation in Uzbekistan up until 2015 were cited in the case of *Kholmurodov v. Russia* (no. 58923/14, §§ 46-50, 1 March 2016).

11. Furthermore, the most recent Amnesty International's Report 2017/18 "The State of the World's Human Rights" reveals some steps taken for improving the human rights protection in Uzbekistan:

"In November, the President issued a decree explicitly prohibiting the use of torture to obtain confessions and their admission as evidence in court proceedings."

12. However, the relevant chapter of the same report on Counter-Terror and Security issues reads as follows:

"The authorities continued to secure forcible returns, including through extradition proceedings, of Uzbekistani nationals they identified as threats to the "constitutional order" or national security. NSS officers continued to abduct wanted individuals (so-called renditions) from abroad. Those abducted or otherwise forcibly returned were placed in incommunicado detention, often in undisclosed locations, and tortured or otherwise ill-treated to force them to confess or incriminate others. In many cases, security forces pressured relatives not to seek support from human rights organizations, and not to file complaints about alleged human rights violations."

13. Similar conclusions were drawn in Human Rights Watch *World Report 2016* and Amnesty International's Submissions to the Committee of Ministers of the Council of Europe in the group of cases *Garabayev v. Russian Federation* (No.38411/02).

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

14. In their observations the Government noted that the representatives had failed to provide properly executed forms of authority at the moment of lodging the application with the Court and that raised doubts as to the applicant's awareness of the institution of proceedings on his behalf.

15. The Government highlighted that the representatives failed to provide forms of authority when they requested an interim measure in their first letter to the Court. The representatives commented in their observations on behalf of the applicant that the arguments of the Government were unsubstantiated. The first letter concerned the applicant's imminent deportation on the same day, and in this letter the representatives specifically mentioned that under the circumstances it was impossible to provide forms of authority at that moment.

16. According to the Rule 45 § 3 of the Rules of Court an applicant's representative should supply a duly completed and signed authority form at the moment of initiating proceedings at the Court. Further, in a number of cases in which the applicant had not been in contact with the Court directly, the Court has held that it is essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victims within the meaning of Article 34 of the Convention on whose behalf they purport to act (see *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, § 35, 17 November 2016; *Kaur v. the Netherlands* (dec.), no. 35864/11, § 14, 15 May 2012; *K.M. and Others v. Russia* (dec.), no. 46086/07, 29 April 2010; and *Çetin v. Turkey* (dec.), no. 10449/08, 13 September 2011).

17. The Court notes that the representatives failed to submit properly completed and signed forms of authority as required by the Rule 45 § 3 of the Rules of Court in the application in respect of both representatives. However, the Court further notes that the representatives duly informed the Court of the instantaneous difficulties with submitting the forms in their first letter to the Court.

18. The Court observes that a close cooperation between the representatives and the applicant has been demonstrated in the course of the proceedings. This fact has been manifested in the manner the representatives provided pertinent information, updates and documents on behalf of the applicant. The Court further observes that the Government have not disputed the subsequent contact of the representatives with the applicant either. The Court considers that the shortcomings linked with submission of proper forms of authority at the moment of lodging of the application can be accounted for by the urgency required for requesting interim measures as stipulated in Rule 47 § 5.1 (a) and (b) of the Rules of Court.

19. In the light of the above, the Court dismisses the Russian Government's preliminary objection.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The applicant complained under Article 3 of the Convention that the national authorities had failed to consider his claims that he could be at risk of ill-treatment in the event of his removal to Uzbekistan and that his removal would expose him to that risk. Article 3 of the Convention reads:

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

21. The Government contested those arguments. In particular they referred to the steps that Uzbek authorities took for improving the situation in respect of human rights in the country and to the assurances provided to the Russian authorities that the applicant would not be subject to torture or ill-treatment.

A. Admissibility

22. The Government argued that the applicant had failed to exhaust the available domestic remedies by pursuing refugee status or temporary asylum proceedings. In this respect the Court notes that the applicant raised his complaints under Article 3 of the Convention before the domestic courts that reviewed the lawfulness of his expulsion, but that these arguments were dismissed by the domestic courts (see the appended table). The Court is satisfied that the applicant had exhausted the domestic remedies by raising the relevant Article 3 claims in expulsion proceedings.

23. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

24. The Court further notes that it is not inadmissible on any other grounds. The application must therefore be declared admissible.

B. Merits

1. General principles

25. The relevant general principles concerning the application of Article 3 have been summarised recently by the Court in the judgment in the case of *F.G. v. Sweden* ([GC], no. 43611/11, §§ 111-27, ECHR 2016) and in the context of removals from Russia to Uzbekistan in *Mamazhonov v. Russia* (no. 17239/13, §§ 127-35, 23 October 2014).

2. Application of those principles to the present case

(a) Existence of substantial grounds for believing that the applicant faces a real risk of ill-treatment

26. The Court has previously established that the individuals whose extradition was sought by Uzbek authorities on charges of religiously or politically motivated crimes constituted a vulnerable group facing a real risk of treatment contrary to Article 3 of the Convention in the event of their removal to Uzbekistan (see *Mamazhonov*, cited above, § 141).

27. Turning to the present application, it is not disputed that in the course of the deportation proceedings the applicant consistently and specifically argued that he had been prosecuted for religious extremism and faced a risk of ill-treatment. The extradition request submitted by the Uzbek authorities was clear as to its basis, namely that the applicant was accused of religiously and politically motivated crimes. The Uzbek authorities thus directly identified the applicant with the groups whose members have previously been found to be at real risk of being subjected to proscribed treatment.

28. In such circumstances, the Court considers that the Russian authorities had at their disposal a sufficiently substantiated complaints pointing to a real risk of ill-treatment.

29. The Court is therefore satisfied that the applicant presented the Russian authorities with substantial grounds for believing that he faced a real risk of ill-treatment in Uzbekistan.

(b) Duty to assess claims of a real risk of ill-treatment through reliance on sufficient relevant material

30. Having concluded that the applicant had advanced at national level valid claims based on substantial grounds for believing that he faced a real risk of treatment contrary to Article 3 of the Convention, the Court must examine whether the authorities discharged their obligation to assess these claims adequately through reliance on sufficient relevant material.

31. Turning to the present case, the Court considers that in the deportation proceedings the domestic authorities did not carry out a rigorous scrutiny of the applicant's claims that he faced a risk of ill-treatment in his home country. The Court reaches this conclusion having considered the national courts' simplistic rejections of the applicant's claims.

32. The Court also notes that the Russian legal system – in theory, at least – offers several avenues whereby the applicant's removal to Uzbekistan could be prevented, given the risk of ill-treatment he faces there. However, the facts of the present application demonstrate that the applicant's claims were not adequately considered in any relevant proceedings, despite being consistently raised.

33. The Court concludes that, although the applicant had sufficiently substantiated the claims that he would risk ill-treatment in Uzbekistan, the

Russian authorities failed to assess these claims adequately through reliance on sufficient relevant material. This failure opened the way for the applicant's removal to Uzbekistan.

(c) Existence of a real risk of ill-treatment or danger to life

34. Given the failure of the domestic authorities to adequately assess the alleged real risk of ill-treatment through reliance on sufficient relevant material, the Court finds itself compelled to examine independently whether or not the applicant would be exposed to such a risk in the event of his removal to Uzbekistan.

35. The Court notes that nothing in the parties' submissions, nor available relevant material from independent international sources such as recent Human Rights Watch *World Report 2016* and Amnesty International's Submissions to the Council of Europe Committee Of Ministers: *Garabayev v. Russian Federation* (No.38411/02) Group of Cases, nor previously adopted judgments and decisions (see recently *Kholmurodov v. Russia*, no. 58923/14, 1 March 2016, and *Mukhitdinov v. Russia*, no. 20999/14, 19 October 2015), indicate that there has been any improvement in either the criminal justice system of Uzbekistan in general or in the specific treatment of those prosecuted for religiously and politically motivated crimes.

36. The Court has given due consideration to the available material disclosing a real risk of ill-treatment to individuals accused, like the applicant, of religiously and politically motivated crimes, and concludes that by authorising the applicant's deportation the Russian authorities exposed him to a real risk of treatment contrary to Article 3 of the Convention.

(d) Conclusion

37. The foregoing considerations are sufficient to enable the Court to conclude that there would be a violation of Article 3 of the Convention if the applicant were to be removed to Uzbekistan.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

38. The applicant further complained under Article 5 § 1 (f) of the Convention of the unlawfulness of his detention pending deportation and of lack of foreseeability regarding its length. The relevant provisions of the Convention read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law...

...

(f) the lawful arrest or detention of a person against whom action is being taken with a view to deportation or extradition.”

39. The Government contested that argument and insisted that the applicant's detention was in full compliance with the national law.

40. The Court reiterates that the exception in sub-paragraph (f) of Article 5 § 1 of the Convention requires only that "action is being taken with a view to deportation or extradition" without any further justification (see, among others, *Chahal v. the United Kingdom*, 15 November 1996, § 112, *Reports of Judgments and Decisions* 1996-V) and that deprivation of liberty will be justified as long as deportation or extradition proceedings are in progress (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009).

41. The Court notes that the applicant's detention lasted at least a year. The applicant was placed in a temporary detention centre for aliens on 2 March 2016 and his detention was extended several times pending extradition. The applicant was released only on 13 March 2017. Nothing in the available materials or the parties' submissions indicates that the authorities pursued the proceedings with requisite diligence, what kind of progress was achieved in the proceedings or what steps were taken by the authorities at reasonable intervals to justify continuing detention.

42. The Court concludes that it had not been demonstrated that the length of the applicant's detention pending deportation was compliant with what was reasonably required for the purpose pursued. Accordingly, there had been a violation of Article 5 § 1 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION RIGHTS

43. The applicant further complained under Article 13 of the Convention of a lack of effective domestic remedies in Russia in respect of his complaint under Article 3 of the Convention. The applicant also complained of a violation of his right to family life under Article 8 of the Convention.

44. However, having regard to the facts of the case, the submissions of the parties and its findings under Articles 3 and 5 of the Convention, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014 with further references).

V. APPLICATION OF AN INTERIM MEASURE UNDER RULE 39 OF THE RULES OF COURT

45. On 2 March 2016 the Court indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited, expelled or otherwise involuntarily removed from Russia to Uzbekistan for the duration of the proceedings before the Court.

46. In this connection the Court reiterates that, in accordance with Article 28 § 2 of the Convention, the present judgment is final.

47. Accordingly, the Court considers that the measures indicated to the Government under Rule 39 of the Rules of Court come to an end.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

49. The applicant claimed 5,000 euros (EUR) of non-pecuniary damage.

50. The Government noted that finding a violation in the present application would in itself constitute sufficient just satisfaction for any non-pecuniary damage allegedly suffered by the applicants.

51. In the light of the nature of the established violations of Article 3 of the Convention and the specific facts of the present case, the Court considers that finding that there would be a violation of Article 3 of the Convention if the applicant were to be removed to Uzbekistan constitutes sufficient just satisfaction in respect of any non-pecuniary damage suffered (see, to similar effect, *J.K. and Others v. Sweden* [GC], no. 59166/12, § 127, ECHR 2016).

52. At the same time having regard to its conclusions under Article 5 of the Convention (see paragraph 42 above) and acting on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant also claimed EUR 5,200 for the costs and expenses incurred before the domestic courts and the Court.

54. The Government noted that no supporting documents were provided for the amount claimed for the costs and expenses and suggested the requested amount to be reduced.

55. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the applicant the sum of EUR 2,500 covering costs under all heads.

C. Default interest

56. 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. *Decides* to dismiss the Government's preliminary objection;
2. *Declares* the applicant's complaints under Articles 3 and 5 of the Convention admissible;
3. *Holds* that there would be a violation of Article 3 of the Convention if the applicant were to be removed to Uzbekistan;
4. *Holds* that there has been a violation of the applicant's rights under Article 5 § 1 of the Convention;
5. *Holds* that it is not necessary to examine the admissibility and merits of the complaints under Articles 8 and 13 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant EUR 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses within three months, 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;
 - (b) that the above award in respect of costs and expenses should be payable jointly and directly to his representatives Ms D. Trenina and Ms E. Davidyan;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 claims for just satisfaction.

Done in English, and notified in writing on 22 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Alena Poláčková
President

APPENDIX

No.	Application no, Application title, Date of introduction	Dates of detention and release (where relevant)	Removal proceedings (type, progress, outcome)	Refugee and/or temporary asylum proceedings	Other relevant information
1.	12018/16 U.A. v. Russia 30/03/2016	<p>Detention pending extradition 23/12/2015 – arrested and subsequently detained 21/01/2016 – released due to the absence of the extradition request</p> <p>Detention pending deportation 09/03/2016 – arrested and detained in the Centre for temporary detention of aliens 13/03/2017 – applicant released</p>	<p>Extradition Proceedings 21 to 22/07/2015 – criminal charges against the applicant and an international search warrant issued by the Uzbek authorities 22/01/2016 – extradition request by the Uzbek authorities</p> <p>Deportation proceedings 02/03/2016 – deportation ordered by the migration authorities of the Sverdlovsk region 14/09/2016- the Sverdlovsk Regional Court by the final judgment upheld the deportation order</p>	<p>Refugee status proceedings 14/09/2016 – refugee status refused by the final decision of the Sverdlovsk Regional Court</p> <p>Temporary asylum proceedings 26/05/2016 – temporary asylum refused by the migration authorities</p>	<p>19/04/2013 - residence permit issued with a validity until 2017 29/01/2016 - residence permit annulled 02/03/2016 – interim measure granted by the Court preventing the applicant's removal to Uzbekistan</p>