THIRD SECTION

CASE OF N.O. v. RUSSIA

(Application no. 84022/17)

JUDGMENT

STRASBOURG

2 February 2021

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

In the case of N.O. v. Russia,

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

 Darian Pavli, *President,* Dmitry Dedov, Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 84022/17) 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 N.O. (“the applicant”), on 15 December 2017;

the decision to give notice of the application to the Russian Government (“the Government”);

the decision not to have the applicant’s name disclosed;

the decision to indicate interim measure to the respondent Government under Rule 39 of the Rules of Court;

the parties’ observations;

Having deliberated in private on 12 January 2021,

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

INTRODUCTION

1.  This case concerns the administrative removal to Uzbekistan of the applicant, who was accused of politically and religiously motivated crimes, and raises issues under Articles 3 and 13 of the Convention. It further concerns the failure of the Russian authorities to comply with the interim measure indicated under Rule 39 of the Rules of Court.

1. THE FACTS

2.  The applicant was born in 1989. He was represented by Mr T. Shirokov, a lawyer practising in Moscow, and Mr B. Khamroyev, a human rights activist. The application was lodged in the applicant’s name by Mr B. Khamroyev.

3.  The Government were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights.

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

* + 1. Removal proceedings

5.  In August 2013 the applicant was charged in Uzbekistan with recruiting Uzbek citizens to the Islamic Movement of Turkestan and facilitating their travel to terrorist training camps in Pakistan. A search warrant in his name was issued by the Uzbek authorities.

6.  On 7 December 2017 the applicant was released and immediately re‑arrested for violation of migration rules.

7.  On 8 December 2017 the Vasileostrovskiy District Court of St Petersburg ordered the applicant’s expulsion and detention pending enforcement of the order. The applicant, who was present during the hearing and represented by a lawyer, K., acknowledged that he was guilty of violating the migration rules.

8.  The applicant was placed in a specialised detention facility for aliens.

9.  On 25 December 2017 the District Court returned an application to suspend the removal order, because it had not been accompanied by a valid authority form.

10.  It appears from the material that on an unspecified date a photocopy of a statement of appeal against the above expulsion order was lodged with the registry of the District Court and subsequently forwarded to the appeal court.

11.  On 23 January 2018 the St Petersburg City Court, sitting in a single‑judge formation, terminated the appeal proceedings, because the original of the photocopied statement of appeal had never reached the appeal court and the applicant had not submitted any statements of appeal through the administration of the detention facility.

12.  On 25 January 2018 the applicant was expelled to Uzbekistan.

* + 1. Proceedings before the Court

13.  On 11 December 2017 Mr B. Khamroyev lodged a request in the applicant’s name under Rule 39 of the Rules of Court, seeking to stay his removal to Uzbekistan. The request, sent by post, reached the Court on 15 December 2017. It was accompanied by a completed authority form dated 8 December 2017.

14.  On 21 December 2017 the Court decided that the request was premature and dismissed it.

15.  On 14 January 2018 Mr B. Khamroyev lodged another request for an interim measure. The request, sent by post, reached the Court on 18 January 2018. It was accompanied by a completed authority form dated 12 January 2018.

16.  On 19 January 2018 the Court decided “in the interests of the parties and the proper conduct of the proceedings before it, to indicate to the Government of Russia, under Rule 39, that the applicant should not be removed for the duration of the proceedings before the Court”. Mr B. Khamroyev was asked to submit a duly completed application form by 15 February 2018.

17.  On 6 February 2018 Mr B. Khamroyev informed the Court that during his visit to a detention facility on that day he had learned about the applicant’s removal.

18.  On 13 February 2018 Mr B. Khamroyev submitted an application form in the applicant’s name. The authority form was signed by Mr B. Khamroyev and Mr T. Shirokov, acting as representatives; the box intended for the applicant’s signature contained the following handwritten remark: “the applicant was secretly transferred to Uzbekistan”.

19.  On 16 February 2018, under Rule 49 §§ 2 and 3 (a) of the Rules of Court, the Court requested information from the parties by 9 March 2018. Mr B. Khamroyev was asked to inform the Court whether he was still in contact with the applicant or his next of kin. The Government of Russia were asked to inform the Court whether the applicant had been removed (deported or extradited) to his country of origin.

20.  On 6 March 2018 the Government informed the Court that the applicant had been expelled to Uzbekistan on 25 January 2018.

21.  On 7 March 2018 Mr B. Khamroyev sent a letter to the Court. The part of the letter relevant to the above request for information reads as follows:

“According to information from the uncle of N.O. ... [mobile phone number], who lives in Tula [Russia], N.O. is indeed in Uzbekistan in the Karshinskiy SIZO, [and] his relatives have not seen him. The authorities of Uzbekistan refuse [to allow] visits to N.O.

[I] also provide information about an appointed lawyer in Uzbekistan: [mobile phone number and the lawyer’s first name].”

22.  On 3 September 2018 the Court gave notice of the application to the Russian Government, who submitted their observations on 16 January 2019.

23.  On 4 March 2019 Mr Shirokov submitted observations in reply. The submissions contained reference to a telephone conversation with the applicant’s defence counsel in Uzbekistan, who had provided a brief account of the applicant’s removal and his alleged ill-treatment in Uzbekistan, and had implied that he had had telephone contact with the applicant. No details about the date and circumstances of the conversation or the defence counsel’s identity were provided to the Court.

24.  On 21 June 2019, under Rule 49 § 3 (a) of the Rules of Court, the Court asked Mr Shirokov to provide information on whether he had maintained contact with the applicant and/or his next of kin and whether the applicant wished to maintain his application. He was also asked to indicate when he had last been in contact with the applicant and to provide documentary evidence supporting his position.

25.  On 13 July 2019 Mr Khamroyev sent the following letter dated 7 July 2019 to the Court.

“We, in particular, the representative – the human rights activist Bakhrom Khamroev – keep in touch with the mother and relatives of [the applicant] by telephone [mobile phone number].

The relatives [of the applicant sent the attached letters] to the human rights activist Bakhrom Khamroev via WhatsApp Messenger.

[The applicant supports the application and the claims].”

Mr Khamroyev’s letter was accompanied by two photos of handwritten notes allegedly written by the applicant and dated 12 February 2019 and 8 July 2019. The notes provided a brief account of the applicant’s removal to Uzbekistan and his alleged ill-treatment in that country, and stated that he wished to pursue the application. No originals of these notes were submitted to the Court.

26.  On 31 July 2019 the Government provided their comments on the above submissions. They stated that the letter was not supported by any “tangible evidence” and could not in itself be considered a piece of evidence. The Government further emphasised that although allegedly there had been contact between the applicant, his relatives, representatives and lawyers, no evidence supported the claims.

1. RELEVANT LEGAL FRAMEWORK

27.  The relevant domestic law is summarised in the Court’s judgment in *Akram Karimov* *v. Russia* (no. 62892/12, §§ 88-100, 28 May 2014).

1. THE LAW
	1. Preliminary considerations

28.  Having regard to the circumstances of the present case, the Court considers it necessary first to examine the need to continue the examination of the application in accordance with the criteria set forth in Article 37 of the Convention. This provision reads as follows:

“1.  The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a)  the applicant does not intend to pursue his application; or

(b)  the matter has been resolved; or

(c)  for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2.  The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.”

29.  The Court reiterates that an applicant’s representative must not only supply a power of attorney or written authority (Rule 45 § 3 of the Rules of Court), but that it is also important that contact between the applicant and his or her representative be maintained throughout the proceedings. Such contact is essential both in order to learn more about the applicant’s particular situation and to confirm the applicant’s continuing interest in pursuing the examination of his or her application (see *V.M. and Others* *v. Belgium*(striking out)[GC], no. 60125/11, § 35, 17 November 2016).

30.  In a number of cases in which an applicant has 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*, cited above; *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; *Çetin v. Turkey* (dec.), no. 10449/08, 13 September 2011; and *Asady and Others v. Slovakia*, no. 24917/15, §§ 40-42, 24 March 2020).

31.  The Court has previously held that it cannot ignore the generally precarious conditions of asylum seekers and other events that may temporarily prevent communication between a legal representative and applicants (see *Sharifi and Others* *v. Italy and Greece* (no. 16643/09, § 131, 21 October 2014). Thus, it has accepted that contact between a legal representative and applicants took place via third parties where such contact was regular and substantiated by relevant documents (ibid., § 130). However, the Court has struck out applications for lack of contact between applicants and their legal representative where information about the applicants’ whereabouts or the circumstances of the contact appeared insufficient, contradictory or unsubstantiated (ibid., §§ 129, 133). By way of example, the Court has considered proof of contact to be unsubstantiated where applicants or their legal representative have failed to provide any document proving their legal status, or where they have provided only a link to the Facebook account of an applicant without further explanation (ibid., § 129). Recently the Court in the judgment in the case *N.D. and N.T. v. Spain* [GC] (nos. 8675/15 and 8697/15, § 74, 13 February 2020) found in the circumstances of that case that the contact existed when in absence of the Government’s arguments to the contrary the applicants’ lawyers supplied signed and fingerprinted authority form, remained in touch with them over telephone and WhatsApp and reported specific statements from the applicants during the hearing.

32.  Highly analogous facts and context have already been examined by the Court in the judgment in *O.O. v. Russia* (no. 36321/16, 21 May 2019). In that case, the Court satisfied itself that continuous contact had been maintained between representatives and an applicant deported from Russia to Uzbekistan in breach of an interim measure (ibid., § 37). The representatives convincingly demonstrated the existence of contact by the following evidence: (i) a signed and dated handwritten note from the applicant’s mother; (ii) a signed and dated handwritten affidavit from the applicant confirming his wish to maintain the application; (iii) a signed and dated handwritten affidavit from the applicant describing his deportation from Russia; (iv) a signed and dated report from the applicant’s lawyer in Uzbekistan stating that during a meeting with the applicant in person the applicant had confirmed both his wish to maintain his application and the facts stated in the above-mentioned handwritten affidavits (ibid., § 27).

33.  Turning to the present case, the Court notes that the case file contains not a single submission originating from the applicant himself, that neither Mr Khamroyev nor Mr Shirokov participated in the administrative removal proceedings, and that the authority forms of 8 December 2017 and 12 January 2018 allegedly bearing the applicant’s signature and pre-dating his removal to Uzbekistan were issued in respect of Mr B. Khamroyev.

34.  The Court further observes that no authority form bearing the applicant’s signature was issued in respect of Mr Shirokov, who on 4 March 2019 submitted the observations in reply in the present case. Mr Shirokov’s name first appeared in the application form lodged by Mr Khamroyev in the applicant’s name on 13 February 2019. The authority form included in the application form was signed by Mr Khamroyev and Mr Shirokov as representatives, and the box intended for the applicant’s signature contained the handwritten remark “the applicant was secretly transferred to Uzbekistan”.

35.  Lastly, the Court takes note of the fact that the requests of 16 February 2018 and 21 June 2019 (see paragraphs 19 and 24 above) aimed at establishing whether the alleged representatives had maintained contact with the applicant and/or his next of kin rendered no certain results. Neither the letters of 7 March 2018 and 13 July 2019 nor the observations of 4 March 2019 alleged the existence of any direct contact between Mr Khamroyev and/or Mr Shirokov and the applicant (see paragraphs 21, 23 and 25 above). The replies from the above representatives contained references to the applicant’s mother, uncle, relatives and lawyer in Uzbekistan without clearly identifying them, indicating the dates of the alleged communication or providing statements from any of these persons. In respect of the photos of the handwritten notes allegedly written by the applicant, it must be emphasised that no originals of these documents reached the Court (see paragraph 25 above). Importantly, at no point in time did Mr Khamroyev or Mr Shirokov argue that they had encountered any real obstacles in obtaining proof of their contact with the applicant or his next of kin.

36.  In the light of the above considerations, the Court concludes that, in stark contrast to the judgment in *O.O. v. Russia* (cited above), the representatives in the present case failed to demonstrate the existence of continuous contact with the applicant and the fact that they had received specific and explicit instructions from him.

37.  Having regard to the foregoing, and in accordance with Article 37 § 1 (c) of the Convention, the Court has to conclude that it is no longer justified to continue the examination of the application as regards the complaints under Articles 3 and 13 of the Convention. It also considers that no particular circumstance relating to respect for the rights guaranteed by the Convention or its Protocols requires it to continue the examination of the application pursuant to Article 37 § 1 *in fine*.

38.  Accordingly, the case should be struck out of the list in relation to the part concerning the complaints under Articles 3 and 13 of the Convention. However, the Court observes that under Article 37 § 2 of the Convention, the application may be restored to the list of cases if the circumstances justify such a course.

39.  At the same time, the Court is acutely mindful of the importance of interim measures in the Convention system and their exceptional nature calling for maximal cooperation of the State (see, notably, *Savriddin Dzhurayev v. Russia*, no. 71386/10, §§ 212-13, ECHR 2013 (extracts)). Given the distinctly well-established applicable principles and the significance of compliance with interim measures for the Convention machinery, the Court concludes, in the light of Article 37 § 1 *in fine*, that respect for human rights as defined in the Convention requires the continued examination of the complaint under Article 34 of the Convention.

* 1. ALLEGED INTERFERENCE WITH THE RIGHT TO INDIVIDUAL APPLICATION UNDER ARTICLE 34 OF THE CONVENTION

40.  The applicant’s representatives complained that his removal to Uzbekistan had been in breach of the interim measures indicated by the Court under Rule 39 of the Rules of Court. This claim, focusing substantively on an interference with the right to individual application, falls to be examined under Article 34 of the Convention, which reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

41.  Rule 39 of the Rules of Court provides:

“1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.

2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.

3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated ...”

42.  The Court reiterates that, by virtue of Article 34 of the Convention, Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of the right of individual application, and this has been consistently reaffirmed as a cornerstone of the Convention system. According to the Court’s established case-law, a respondent State’s failure to comply with an interim measure entails a violation of that right (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 102 and 125, ECHR 2005‑I; see also, more recently, *M.A. v. France*, no. 9373/15, §§ 64-65, 1 February 2018, and *A.S. v. France*, no. 46240/15, §§ 72-75, 19 April 2018).

43.  The Government, in their submissions, stated that the Court’s letter indicating the interim measure under Rule 39 of the Rules of Court had been received on Friday 19 June 2018 at 5.31 p.m., that is, after regular working hours. On 22 January 2018, after “the necessary and inevitable procedures [had been] conducted”, the information about the measure had been sent to the competent authorities, who had received that information on 24 January 2018.

44.  It is not disputed that the applicant’s deportation occurred on 25 January 2018 – six days after the indication on 19 January 2018 of an interim measure under Rule 39 of the Rules of Court, three days after the information about the measure had been sent to the competent authorities on 22 January 2018, and the day after the authorities had received that information on 24 January 2018. It has also been established that following the Court’s indication of the measure, the Office of the Representative of the Russian Federation to the European Court of Human Rights was duly notified of it and relayed that information to the competent authorities through the usual channels of communication.

45.  No uncertainty exists regarding the manner of the applicant’s transfer to Uzbekistan, since it occurred in the course of routine actions aimed at enforcing a removal order issued on 8 December 2017. In this regard, the present case is distinctly different from a number of previously decided cases where a failure to comply with an interim measure took place in the context of: an applicant’s disappearance (see *Mamazhonov v. Russia*, no. 17239/13, §§ 173-209, 23 October 2014), an illegal forcible transfer by unidentified persons with the passive or active involvement of State agents (see *Savriddin Dzhurayev*, cited above, §§ 177-85, 197-204, 214-19), or an action otherwise outside of the normal functioning of the law-enforcement authorities (see *Ermakov v. Russia*, no. 43165/10, §§ 212-17, 7 November 2013, or *Mukhitdinov v. Russia*, no. 20999/14, §§ 69-72, 21 May 2015).

46.  Issues concerning inter-agency communication between the Russian authorities and the existence of “the necessary and inevitable procedures” essential for the transmission of information about interim measures appear to be relevant to the analysis of the State’s compliance with the indication of an interim measure. However, the Court does not find it necessary to consider those matters in the present case.

47.  It must be acknowledged that the practicalities of various agencies sharing information may present certain difficulties for the immediate implementation of an interim measure indicated by the Court (see *O.O. v. Russia*, cited above, § 61). However, it appears that the six-day period in the present case – including three working days – by itself, and also when considered in the context of available modern technologies, was amply sufficient for all competent and relevant authorities to be notified that the applicant’s removal to Uzbekistan had been stayed by the Court.

48.  The above considerations allow the Court to conclude that nothing objectively impeded compliance with the measure indicated by the Court under Rule 39 of the Rules of Court, and that by disregarding that measure the Russian authorities failed to comply with their obligations under Article 34 of the Convention

* 1. RULE 39 OF THE RULES OF COURT

49.  Having regard to the circumstances of the present case, specifically the applicant’s removal to Uzbekistan in breach of the interim measure, the Court considers it appropriate to discontinue the indication of the above interim measure to the Russian Government.

* 1. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50.  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.”

* + 1. Damage

51.  The applicant’s representative claimed 26,500 euros (EUR) in respect of non-pecuniary damage, and EUR 564 in respect of pecuniary damage. He also asked for any award to be transferred to his bank account.

52.  The Government considered that the claim in respect of pecuniary damage was unsubstantiated.

53.  The Court, having regard to the above findings under Article 34 of the Convention and its case-law on the matter (see, for example, *O.O. v. Russia*, cited above, § 69) awards the applicant EUR 10,000 in respect of non-pecuniary damage, and considers it most appropriate that this amount should be paid directly to him or a person duly authorised by him. The Court further dismisses the claim in respect of pecuniary damage as having no link to the nature of the present case.

* + 1. Costs and expenses

54.  The applicant’s representatives made no claim for costs and expenses. Therefore, the Court considers that there is no call to rule on this matter.

* + 1. Default interest

55.  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.

1. FOR THESE REASONS, THE COURT, UNANIMOUSLY,
2. *Decides* to strike outthe applicant’s complaints under Articles 3 and 13 of the Convention, and to continue the examination of the complaint under Article 34 of the Convention;
3. *Holds* that the respondent State has disregarded the interim measure indicated by the Court under Rule 39 of the Rules of Court and therefore failed to comply with its obligations under Article 34 of the Convention;
4. *Decides* to discontinue the indication made to the Government under Rule 39 of the Rules of Court in respect of the interim measure;
5. *Holds*
	1. that the respondent State is to pay the applicant directly or to a person duly authorised by him, within three months, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
	2. 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;
6. *Dismisses* the remainder of the applicant’s claim for just satisfaction.

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

Olga Chernishova Darian Pavli
 Deputy Registrar President