



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

THIRD SECTION

CASE OF T.M. AND OTHERS v. RUSSIA

(Application no. 31189/15 and 5 others – see appended list)

JUDGMENT

STRASBOURG

7 November 2017

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

In the case of T.M. and Others v. Russia,

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

Luis López Guerra, *President*,

Dmitry Dedov,

Jolien Schukking, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 10 October 2017,

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

PROCEDURE

1. The case originated in six applications (nos. 31189/15, 49973/15, 54813/15, 55625/15, 38250/16 and 40014/16) 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 Uzbek nationals (“the applicants”) on the various dates indicated in the appended table.

2. The applicants were represented by various lawyers practising in Moscow, as indicated in the appended table. 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 then by his successor in that office, Mr M. Galperin.

3. Between 7 September 2015 and 24 January 2017 the applications were communicated to the Government.

4. On 23 August 2016 the International Commission of Jurists was granted leave to intervene as a third party in the case of *S.U. v. Russia*, no. 55625/15 under Rule 44 § 3 of the Rules of Court.

5. On various dates the applicants’ requests for interim measures preventing their removal from Russia were granted by the Court under Rule 39 of the Rules of Court. The applicants’ cases were also granted priority (Rule 41) and confidentiality (Rule 33) and the applicants were granted anonymity (Rule 47 § 4).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The applicants are nationals of Uzbekistan. Their initials, dates of birth, the dates on which their applications were introduced, application

numbers, as well as the particulars of the domestic proceedings and other relevant information are set out in the Appendix.

7. On various dates they were charged in Uzbekistan with religious and politically motivated crimes, their pre-trial detention was ordered *in absentia*, and international search warrants were issued by the authorities.

8. Subsequently the Russian authorities took final decisions to remove (that is to say extradite or expel) the applicants to Uzbekistan, despite consistent claims that in the event of removal the applicants would face a real risk of treatment contrary to Article 3 of the Convention.

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).

THE LAW

11. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given that they concern similar facts and raise identical legal issues under the Convention.

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

12. The applicants complained under Article 3 of the Convention that the national authorities had failed to consider their claims that they could be at risk of ill-treatment in the event of their removal to Uzbekistan and that extradition would expose them to that risk if it were to take place. Article 3 of the Convention reads:

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

13. The Government contested that argument.

14. In their third party intervention in the case of *S.U. v. Russia*, no. 55625/15 submitted to the Court on 19 September 2016 the International

Commission of Jurists argued that assurances issued by the authorities of Central Asian states are insufficient to protect individuals from ill-treatment in their countries of origin and that their monitoring mechanism falls short of the established standard, while the Russian courts routinely rely on them. They further argued that in practice Russian courts reviewing allegations of a real risk of ill-treatment defer to the position of the Prosecutor General's Office and rarely exercise their power to carry out an independent assessment of risks.

A. Admissibility

15. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

16. In the cases of *B.S. v. Russia* (no. 38250/16) and *K.R. v. Russia* (no. 40014/16) the Government argued that the applicants had failed to exhaust the available domestic remedies by pursuing refugee status or temporary asylum proceedings. In this respect the Court notes that the applicants raised their complaints under Article 3 of the Convention before the domestic courts that reviewed the lawfulness of their expulsion, but that these arguments were dismissed by the domestic courts (see the appended table). The Court reiterates that, in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see *Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010 with further references). The Court is satisfied that the applicants had exhausted the domestic remedies by raising the relevant Article 3 claims in expulsion proceedings.

17. The Court further notes that the applicants' complaints are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. General principles

18. 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**

19. The Court has previously established that the individuals whose extradition was sought by either 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).

20. Turning to the present cases, it is apparent that in the course of the extradition and expulsion proceedings the applicants consistently and specifically argued that they had been prosecuted for religious extremism and faced a risk of ill-treatment. The extradition request submitted by the Uzbek authorities were clear as to their basis, namely that the applicants were accused of religiously and politically motivated crimes. The Uzbek authorities thus directly identified them with the groups whose members have previously been found to be at real risk of being subjected to proscribed treatment.

21. 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.

22. The Court is therefore satisfied that the applicants presented the Russian authorities with substantial grounds for believing that they 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**

23. Having concluded that the applicants had advanced at national level valid claims based on substantial grounds for believing that they 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 claim adequately through reliance on sufficient relevant material.

24. Turning to the present cases, the Court considers that in the extradition and expulsion proceedings the domestic authorities did not carry out a rigorous scrutiny of the applicants' claim that they faced a risk of ill-treatment in their home country. The Court reaches this conclusion having considered the national courts' simplistic rejections of the applicants' claims. Moreover, the domestic courts' reliance on the assurances of the Uzbek authorities, despite their formulation in standard terms, appears tenuous, given that similar assurances have consistently been considered unsatisfactory by the Court in the past (see, for example, *Abdulkhakov v. Russia*, no. 14743/11, §§ 149-50, 2 October 2012, and *Tadzhibayev v. Russia*, no. 17724/14, § 46, 1 December 2015).

25. The Court also notes that the Russian legal system – in theory, at least – offers several avenues whereby the applicants’ removal to Uzbekistan could be prevented, given the risk of ill-treatment they face there. However, the facts of the present cases demonstrate that the applicants’ claims were not adequately considered in any relevant proceedings, despite being consistently raised.

26. The Court concludes that, although the applicants had sufficiently substantiated the claims that they would risk ill-treatment in Uzbekistan, the Russian authorities failed to assess their claims adequately through reliance on sufficient relevant material. This failure opened the way for the applicants’ extraditions to Uzbekistan.

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

27. 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 applicants would be exposed to such a risk in the event of their removal to Uzbekistan.

28. The Court notes that nothing in the parties’ submissions, nor available relevant material from independent international sources (see paragraph 9 above and also Human Rights Watch *World Report 2016*, Amnesty International report *Fast-track to Torture: Abductions and Forcible Returns from Russia to Uzbekistan*, 21 April 2016), nor previously adopted judgments and decisions (see recently *Kholmurodov*, cited above, and *Mukhitdinov*, cited above), 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.

29. The Court has given due consideration to the available material disclosing a real risk of ill-treatment to individuals accused, like the applicants, of religiously and politically motivated crimes, and concludes that authorising the applicants’ removal to Uzbekistan exposed them to a real risk of treatment contrary to Article 3 of the Convention.

(d) Conclusion

30. 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 applicants were to be removed to Uzbekistan.

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

31. The applicant in the case *F.N. v. Russia*, no. 54813/15 complained under Article 5 § 1 (f) of the Convention that his detention pending

extradition and expulsion had been arbitrary. 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.”

32. The Government contested that argument and argued that the applicant’s detention was in full compliance with the national law.

33. 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).

34. The Court notes that first the applicant had been detained pending extradition and immediately after pending expulsion. His detention lasted at least for two years. Apparently, during the first year of his detention pending extradition no apparent progress had been achieved in the proceedings. On 26 October 2015 immediately after his release due to expiry of the maximum time-limit for detentions pending extradition, the applicant was detained pending expulsion. In a similar manner, nothing in the available materials or the parties’ submissions indicates what kind of progress was achieved in the proceedings or what steps were taken by the authorities at reasonable intervals to justify continuing detention.

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

36. The applicants further complained under Article 13 of the Convention of a lack of effective domestic remedies in Russia in respect of their complaints under Article 3 of the Convention. Article 13 reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

37. The Court notes that these complaints are intrinsically linked to those examined above and must therefore likewise be declared admissible.

38. In view of the findings made under Article 3 of the Convention, the Court does not consider it necessary to deal with the complaints under Article 13 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

39. The applicant in the case *K.R. v. Russia*, no. 40014/16 also complained under Article 5 § 1 (f) of the Convention about his detention pending expulsion. Having regard to all the material in its possession, the Court finds that this complaint did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

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

40. On various dates the Court indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicants should not be extradited, expelled or otherwise involuntarily removed from Russia to Uzbekistan for the duration of the proceedings before the Court.

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

42. Accordingly, the Court considers that the measures indicated to the Government under Rule 39 of the Rules of Court should be discontinued.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicants claimed non-pecuniary damage, but left the amount of award at the discretion of the Court.

45. The Government did not advance any specific argument in this respect and was generally of the view that any award should be made in compliance with the Court’s established case-law.

46. 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 applicants 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).

47. At the same time having regard to its conclusions under Article 5 § 1 of the Convention in the case *F.N. v. Russia*, no. 54813/15 and acting on an equitable basis, the Court awards the applicant in that case 5,000 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

48. The applicants also claimed between EUR 3,200 and EUR 7,286 for the costs and expenses incurred before the domestic courts and the Court.

49. The Government did not advance any specific argument in this respect and was of the view that any award should be made in compliance with the Court's established case-law.

50. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,500 covering costs under all heads to each of the applicants.

C. Default interest

51. 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 join the applications;
2. *Declares* the complaints of all applicants under Articles 3 and 13 of the Convention and the complaint under Article 5 § 1 of the Convention in the case *F.N. v. Russia*, no. 54813/15 admissible and the remainder of the applications inadmissible;
3. *Holds* that there would be a violation of Article 3 of the Convention if the applicants were to be removed to Uzbekistan;

4. *Holds* that there is no need to examine the complaints under Article 13 of the Convention;
5. *Holds* that there has been a violation of the applicant's rights under Article 5 § 1 of the Convention in the case *F.N. v. Russia*, no. 54813/15;
6. *Holds* that the finding that there would be a violation of Article 3 of the Convention if the applicants were to be removed to Uzbekistan in itself constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the applicants in this regard;
7. *Holds* that in connection with finding of a violation of Article 5 § 1 of the Convention the applicant in the case *F.N. v. Russia*, no. 54813/15 be awarded EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
8. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, 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 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;
9. *Dismisses* the remainder of the applicants' claims for just satisfaction;
10. *Decides* to discontinue the measures indicated to the respondent Government under Rule 39 of the Rules of Court that the applicants should not be extradited, expelled or otherwise involuntarily removed from Russia to Uzbekistan or another country for the duration of the proceedings before the Court.

Done in English, and notified in writing on 7 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President

APPENDIX

List of applications and awards made by the Court under Article 41 of the Convention

No.	Name application no. lodged on date of birth nationality destination country represented by	Dates of detention and release (where relevant)	Removal proceedings (type, progress, outcome)	Refugee and/or temporary asylum proceedings	Other relevant information	Just satisfaction under Article 41
1.	<p><i>T.M. v. Russia</i> no. 31189/15 25 June 2015</p> <p>26 October 1982 Uzbekistan Uzbekistan</p> <p>N. Yermolayeva</p>		<p><i>Extradition proceedings</i></p> <p>29 June 2012 – extradition request on charges of participating in an extremist religious group and attempted overthrow of the constitutional order</p> <p>1 July 2015 – extradition request refused by the Deputy Prosecutor General of Russia</p> <p><i>Expulsion proceedings</i></p> <p>29 September 2014 – the applicant’s stay in Russia was declared undesirable</p> <p>24 November 2015 – expulsion order upheld by the final decision of the Kursk Regional Court, Article 3 claims dismissed</p>	<p>9 February 2016 – temporary asylum refused by the migration authorities in the Kursk Region, Article 3 claims dismissed</p>	<p>2 July 2015 – interim measure preventing the applicant’s removal</p>	<p>EUR 1,500 in respect of costs and expenses</p>

No.	Name application no. lodged on date of birth nationality destination country represented by	Dates of detention and release (where relevant)	Removal proceedings (type, progress, outcome)	Refugee and/or temporary asylum proceedings	Other relevant information	Just satisfaction under Article 41
2.	<p><i>V.N. v. Russia</i> no. 49973/15 11 October 2015</p> <p>22 March 1987 Uzbekistan Uzbekistan</p> <p>N. Yermolayeva</p>		<p><i>Extradition proceedings</i></p> <p>13 February 2014 –extradition request on charges of participating in an extremist religious group and attempted overthrow of the constitutional order</p> <p>15 January 2015 - extradition request granted by the Deputy Prosecutor General of Russia</p> <p>27 May 2015 - extradition order upheld by the Moscow Regional Court.</p> <p>14 October 2015 - upheld by the final decision of the Supreme Court of Russia, Article 3 claims dismissed as unsubstantiated</p>	<p>1 October 2015 – refusal of temporary asylum upheld by the Basmaniyy District Court of Moscow, Article 3 claims dismissed</p>	<p>13 October 2015 – interim measure preventing the applicant’s removal</p>	<p>EUR 1,500 in respect of costs and expenses</p>
3.	<p><i>F.N. v. Russia</i> no. 54813/15 20 December 2015</p> <p>18 June 1988 Uzbekistan</p>	<p><i>Detention pending extradition</i></p> <p>27 October 2014 – 26 October 2015</p>	<p><i>Extradition proceedings</i></p> <p>20 November 2014 – extradition request on charges of participating in an extremist religious group and attempted overthrow of the constitutional order</p>	<p>21 December 2015 – refusal of refugee status upheld by the Basmaniyy District Court of Moscow, Article 3 claims dismissed</p>	<p>21 December 2015 – interim measure preventing the applicant’s removal</p>	<p>EUR 5,000 non-pecuniary damage in respect of the violation of Article 5 § 1</p>

No.	Name application no. lodged on date of birth nationality destination country represented by	Dates of detention and release (where relevant)	Removal proceedings (type, progress, outcome)	Refugee and/or temporary asylum proceedings	Other relevant information	Just satisfaction under Article 41
	Uzbekistan N. Yermolayeva	<i>Detention pending expulsion</i> 26 October 2015 – at least until 2 November 2016	<i>Expulsion proceedings</i> 18 February 2016 – expulsion order upheld by the final decision of the Moscow City Court, Article 3 claims dismissed			EUR 1,500 in respect of costs and expenses
4.	<i>S.U. v. Russia</i> no. 55625/15 10 November 2015 11 June 1985 Uzbekistan Uzbekistan I. Vasilyev		<i>Extradition proceedings</i> 23 April 2013 – extradition request on charges of participating in an extremist religious group, attempted overthrow of the constitutional order, terrorism 10 July 2015 - extradition request granted by the Deputy Prosecutor General of Russia 9 December 2015 – upheld by the final decision of the Supreme Court of Russia, Article 3 claims dismissed <i>Expulsion proceedings</i>		10 November 2015 – interim measure preventing the applicant's removal	EUR 1,500 in respect of costs and expenses

No.	Name application no. lodged on date of birth nationality destination country represented by	Dates of detention and release (where relevant)	Removal proceedings (type, progress, outcome)	Refugee and/or temporary asylum proceedings	Other relevant information	Just satisfaction under Article 41
			7 April 2015 – the applicant’s presence in Russia was declared undesirable by the authorities			
5.	<p><i>B.S. v. Russia</i> no. 38250/16 5 July 2016</p> <p>13 July 1990 Uzbekistan Uzbekistan</p> <p>D. Trenina E. Davidyan K. Zharinov A. Denisov</p>		<p><i>Extradition proceedings</i></p> <p>10 June 2016 - extradition request on charges of participating in an extremist religious group, attempted overthrow of the constitutional order, terrorism</p> <p>2 September 2016 – the applicant informed by the Office of the Prosecutor General of the Russian Federation that verification of the extradition check is still pending</p> <p><i>Expulsion proceedings</i></p> <p>14 July 2016 – expulsion order upheld by the final decision of the Moscow City Court, Article 3 claims dismissed</p>	19 August 2016 – refugee status refused by the migration authorities in Moscow, Article 3 claims dismissed	5 July 2016 – interim measure preventing the applicant’s removal	EUR 1,500 in respect of costs and expenses to all of the representatives jointly

No.	Name application no. lodged on date of birth nationality destination country represented by	Dates of detention and release (where relevant)	Removal proceedings (type, progress, outcome)	Refugee and/or temporary asylum proceedings	Other relevant information	Just satisfaction under Article 41
6.	<p><i>K.R. v. Russia</i> no. 40014/16 12 July 2017</p> <p>15 July 1986 Uzbekistan Uzbekistan</p> <p>D. Trenina E. Davidyan E. Ryleyeva</p>		<p><i>Extradition proceedings</i></p> <p>7 March 2013 – extradition request on charges of participating in an extremist religious group, attempted overthrow of the constitutional order, terrorism</p> <p>17 May 2016 – the applicant informed by the Office of the Prosecutor of the Lipetsk Region that extradition is procedurally barred</p> <p><i>Expulsion proceedings</i></p> <p>15 April 2016 - the applicant’s presence in Russia was declared undesirable by the authorities</p> <p>20 December 2016 – declaration of undesirability upheld by the final decision of the Moscow City Court, Article 3 claims dismissed</p> <p>18 July 2016 – expulsion ordered by the Yeletskiy District Court of Lipetsk,</p>	<p>4 June 2013 – refugee status request refused by the migration authorities in Moscow Region</p> <p>21 November 2016 – refugee status request refused by the migration authorities in Lipetsk Region</p> <p>1 February 2017 – refusal of refugee status upheld by the federal migration authorities, Article 3 claims dismissed</p>	<p>3 April 2014 – the applicant convicted of attempted counterfeiting and sentenced to three years’ imprisonment</p> <p>13 July 2016 – interim measure preventing the applicant’s removal</p>	<p>EUR 1,500 in respect of costs and expenses to all of the representatives jointly</p>

No.	Name application no. lodged on date of birth nationality destination country represented by	Dates of detention and release (where relevant)	Removal proceedings (type, progress, outcome)	Refugee and/or temporary asylum proceedings	Other relevant information	Just satisfaction under Article 41
			<p>4 August 2016 - expulsion order upheld by the final decision of the Lipetsk Regional Court, Article 3 claims dismissed</p> <p>19 July 2016 – deportation ordered by the migration authorities in Lipetsk Region</p> <p>21 December 2016 – deportation order upheld by the Pravoberezhniy District Court of Lipetsk, Article 3 claims dismissed</p>			