



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

Information Note on the Court's case-law 237

February 2020

***M.A. and Others v. Bulgaria* - 5115/18**

Judgment 20.2.2020 [Section V]

Article 2

Expulsion

Lack of effective guarantees against *refoulement* to China of Muslim Uighurs at risk of arbitrary detention, ill-treatment and death: *deportation would constitute a violation*

Article 3

Expulsion

Lack of effective guarantees against *refoulement* to China of Muslim Uighurs at risk of arbitrary detention, ill-treatment and death: *deportation would constitute a violation*

Facts – The applicants, five Muslim Uighurs from the Xinjiang Uighur Autonomous Region (XUAR) of China, fled their country of origin, being suspected of terrorism there. They were arrested in Bulgaria after having illegally crossed the Bulgarian-Turkish border. Subsequently, they were refused asylum, and the authorities took decisions for their repatriation and expulsion on national security grounds. The applicants' removal is currently only blocked by the Court's decision to impose an interim measure under Rule 39 of the Rules of Court.

Law – Articles 2 and 3: According to the domestic authorities, the applicants had not shown that they had had to leave China due to persecution based on their ethnicity or religion; they had received education and had led normal lives before breaching the law; the Chinese authorities had been taking anti-terrorist action in response to violence by Uighur separatists. However, in the subsequent proceedings which were directly relevant for the applicants' *refoulement*, the Supreme Administrative Court had failed to examine their allegations that they faced a risk of ill-treatment in the case of expulsion.

The relevant information on the current situation in the XUAR showed that the Chinese authorities had proceeded with the detention of hundreds of thousands or even millions of Uighurs in "re-education camps", where instances of ill-treatment, torture, and death of the detainees had been reported. That had been the case of many Uighurs who had returned to China after leaving the country, or who had been forcibly repatriated. The governmental repression against Uighurs was being justified by the need to combat terrorism and extremism. Suspicions of separatism or endangering State security could lead to long prison terms or the death penalty without due process. According to the Bulgarian authorities, prior to arriving in Bulgaria, the applicants had undergone training for the East Turkistan Islamic Movement, a separatist organisation active in Western China, which was considered to be a terrorist organisation.

In view of the above, in light of the information about the general situation in the XUAR and the applicants' individual circumstances (their being suspected of terrorism and having fled China), there were substantial grounds for believing that they would be at real risk of arbitrary detention and imprisonment, as well as ill-treatment and even death, if they were removed to their country of origin.

The Court had therefore to examine whether any effective guarantees existed that protected the applicants against arbitrary *refoulement* by the Bulgarian authorities to China, be it direct or indirect. No destination country had been indicated in the initial decisions for the applicants' repatriation or in the expulsion decisions. According to the Supreme Administrative Court, the determination of such a country and the assessment of any risk the applicants would face if returned to China fell to be carried out in the process of implementation of the expulsion decisions. However, such an approach offered no guarantees that the Bulgarian authorities would examine with the necessary rigour the question of the risk the applicants would face if returned to the country they had fled. It was unclear by reference to what standards and on the basis of what information the authorities would determine, if at all, the relevant risk. Lastly, there was no indication as to whether, if the authorities chose to send the applicants to a third country, they would properly examine whether they would in turn be sent from there to China without due consideration for the risk of ill-treatment and even death. In sum, there were no effective guarantees, in the process of implementation of the repatriation or the expulsion decisions against the applicants, that they would not be sent back to China.

Conclusion: violation (unanimously).

Article 41: No award because the applicants had not submitted a claim for just satisfaction.

(See also *Ismoilov and Others v. Russia*, 2947/06, 24 April 2008, [Information Note 107](#); *Auad v. Bulgaria*, 46390/10, 11 October 2011, [Information Note 145](#); *L.M. and Others v. Russia*, 40081/14 and al., 15 October 2015, [Information Note 189](#); *J.K. and Others v. Sweden* [GC], 59166/12, 23 August 2016, [Information Note 199](#)).

© Council of Europe/European Court of Human Rights
This summary by the Registry does not bind the Court.

Click here for the [Case-Law Information Notes](#)