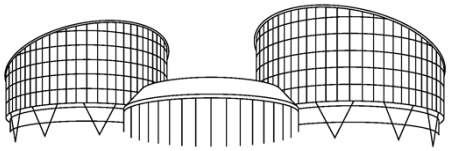

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

# CASE OF N.K. v. RUSSIA

*(Application no. 45761/18)*

JUDGMENT

STRASBOURG

29 March 2022

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

**In the case of N.K. v. Russia,**

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

María Elósegui, *President,*
Andreas Zünd,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 45761/18) 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") on 28 September 2018 by a Tajikistani national, N.K., born in 1979 ("the applicant") who was represented by Ms Olga Pavlovna Tseytlina, a lawyer practising in St Petersburg;

the decision to give notice of the complaints concerning the conditions of the applicant's detention, his alleged removal to Tajikistan, delayed review of his appeal complaints and the alleged interference with his right to individual application to the Russian Government ("the Government"), initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov, and to declare inadmissible the remainder of the application;

the decision to give priority (Rule 41 of the Rules of Court) to the application and the decision to indicate interim measure to the respondent Government under Rule 39 of the Rules of Court which was subsequently lifted;

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

the parties' observations;

Having deliberated in private on 8 March 2022,

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

## SUBJECT-MATTER OF THE CASE

1. The case concerns removal of the applicant to Tajikistan, in breach of an interim measure issued by the Court, and the conditions and lawfulness of the applicant's detention pending removal. Articles 3, 5 and 34 of the Convention are, principally, invoked.

2. The present case is brought by a national of Tajikistan (see Appendix for factual details). The applicant was charged *in absentia* with a crime of membership of an extremist organisation by the Tajik authorities and then his administrative removal was ordered by the Russian authorities. On 28 September 2018 an interim measure was indicated by the Court preventing his administrative removal to Tajikistan. The applicant was detained in Russia in pre-trial detention facilities and in a temporary detention centre for

foreigners and alleged that the conditions of such detention had been inhuman. In September 2020 the applicant was allegedly removed to Tajikistan, despite the application of the interim measure. According to this subsequent information, the applicant was ill-treated upon arrival to Tajikistan and later sentenced to a lengthy prison sentence. The applicant and his lawyer submitted written statements providing details of the applicant's transfer to Tajikistan. No investigation was carried out into the applicant's alleged abduction.

# THE COURT'S ASSESSMENT

## I. ALLEGED VIOLATION OF ARTICLES 3 AND 34 OF THE CONVENTION

3. The applicant initially complained under Article 3 of the Convention that that the national authorities had failed to consider his claims that he risked ill-treatment in the event of his removal to Tajikistan, and that if removal were to take place it would expose him to that risk. Further to information from the applicants' representatives indicating that the applicant was illegally transferred to Tajikistan and the Government's reply to the Court's request for factual information (see Appendix, "Other relevant information"), the applicants' representative supplemented the applicant's complaint alleging that that there had been a violation of Articles 3 and 34 on account of the applicant's illegal transfer. In her view, such transfer could only have been achieved with the active or passive involvement of the Russian authorities and there had been no investigation into his alleged abduction. The Government submitted that they had had no information confirming that the applicant's departure had not been voluntary and that, in any case, the applicant's alleged kidnapping by unidentified persons after the expulsion hearing could not be imputed to the State.

4. The Court notes that the complaint under Article 3 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

5. In so far as the applicant's complaint concerned the risk of ill-treatment that he ran in Tajikistan, the present case is identical to cases in which the Court previously established that individuals whose extradition was sought by Tajik 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 Tajikistan (see *K.I. v. Russia*, no. 58182/14, 7 November 2017; *Savriddin Dzhurayev v. Russia*, no. 71386/10, ECHR 2013 (extracts); *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, 3 October 2013; and *Gaforov v. Russia*, no. 25404/09, 21 October 2010). Furthermore, given the nature of the charges against the applicant, the manner in which the indictment was issued against

him (see paragraph 2 above) and perfunctory judicial review of his allegations by the domestic courts (see Appendix, "Removal proceedings"), the Court finds no reason to depart from its earlier findings in similar cases and concludes that at the time of his alleged removal for Tajikistan a real risk had existed that the applicant would be subjected in Tajikistan to treatment proscribed by Article 3 of the Convention.

6. In so far as the complaint concerns the alleged abduction of the applicant and his illegal transfer to Tajikistan, the Court should examine whether the authorities (i) complied with their obligation to protect the applicant against the risk of the treatment contrary to Article 3 of the Convention; (ii) conducted an effective investigation into the applicant's disappearance, and (iii) should be held accountable for the applicant's disappearance (see *Mukhitdinov v. Russia*, no. 20999/14, § 59, 21 May 2015).

7. The Court has already pointed out recurring failures of the Russian Government to comply with an interim measure indicated under Rule 39 of the Rules of Court in cases of applicants whose extradition was sought on extremism or terrorism related crimes in Uzbekistan and Tajikistan and who disappeared or were illegally transferred there (see *Savriddin Dzhurayev*, cited above, §§ 177-205); and *Mukhitdinov*, cited above, §§ 59-76 and 91-96, with further references). Having regard to the repetitive pattern of disappearances of applicants in similar circumstances and taking into account the applicant's background, the Court is satisfied that the Russian authorities were aware that the applicant could face a forcible transfer to the country where he could be subjected to torture or ill-treatment and that relevant measures of protection should have been taken by them (see *Mukhitdinov*, cited above, § 62). However, even though the Government claimed that the relevant State bodies were duly alerted by the Ministry of Justice about the application of interim measure by the Court in respect of the applicant (see Appendix, "Other relevant information"), no evidence was submitted by the Government that such notification was in fact taken into account and that the relevant steps were taken in view of the precarious situation of the applicant (see, for similar reasoning, *Mukhitdinov*, cited above, § 63).

8. Furthermore, where, as in the present case, the authorities of a State party are informed of illegal transfer of a person from Russia, they have an obligation under the Convention to conduct an effective investigation (see *Savriddin Dzhurayev*, cited above, § 190). The Court however notes from the material of the case file that no attempt was made to carry out investigation into the applicant's alleged abduction.

9. Lastly, in the view of the above and having regard to the facts as alleged by the applicant and his representatives and confirmed by their detailed written statements, and the Government's failure to substantiate their version of facts about voluntary nature of the applicant's return with results of the domestic investigation or other evidence (see Appendix, "Other relevant information" Summary of the parties' submissions; and see *Khamidkariyev*

*v. Russia*, no. 42332/14, § 120, 26 January 2017), the Court is satisfied that the applicant has been subject of 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). The Court also considers that given the circumstances of the present case, the Russian Government had not complied with an indication of an interim measure and nothing had objectively impeded that compliance (see *O.O. v. Russia*, no. 36321/16, §§ 59-63, 21 May 2019).

10. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that, in breach of Article 3, the Russian authorities exposed the applicant to a real risk of ill-treatment in Tajikistan by ordering his removal, that they were implicated in his forcible return there and they failed to carry out an effective investigation into his abduction. Furthermore, the Court holds that the authorities breached the interim measure indicated under Rule 39 of the Rules of the Court and that they therefore failed to comply with their obligations under Article 34 of the Convention.

## II. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

11. The applicant also raised other complaints which are covered by the well-established case-law of the Court. They concern the conditions in the Krasnoye Selo centre for detention of foreigners in cell no. 708 between 17 September and 3 October 2018 (for 16 days) and the delay in appeal review of the applicant's complaint against the detention order of 23 July 2018 pending extradition, which constituted 2 months and 3 days (see Appendix, "Detention" and "Removal proceedings" for details). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other grounds. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they disclose a violation of Articles 3 and 5 § 4 of the Convention in the light of its findings in the following judgments (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 121, 10 January 2012; *Kim v. Russia*, no. 44260/13, §§ 31-35 and 39-45, 17 July 2014; *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006; and *Dimo Dimov and Others v. Bulgaria*, no. 30044/10, § 80, 7 July 2020).

## III. OTHER COMPLAINTS

12. The applicant also complained under Article 13 of the Convention that he had not had an effective domestic remedy in respect of his complaint under Article 3 of the Convention on account of his ordered expulsion to Tajikistan.

Having regard to the facts of the case, the submissions of the parties, and its findings above (see paragraph 5 above), the Court considers that it has examined the main legal questions raised in the present application and there is no need to give a separate ruling on the admissibility and the merits of the complaint under Article 13 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, with further references, and, in the context of removals, *O.O. v. Russia*, cited above, § 64).

## IV. REMAINING COMPLAINTS

13. The applicant also raised other complaints under Article 3 (conditions of detention in the pre-trial detention facility) and Article 5 § 4 of the Convention (delay in appeal review of order for detention pending administrative expulsion of 17 September 2018) (see Appendix for details). The Court has examined that part of the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

14. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

# APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. The applicant claimed an award in respect of non-pecuniary damage in connection with the violations found. He left the amount to be determined at the Court's discretion.

16. The Government submitted that an award, if made, should be determined in accordance with the Court's well-established case-law.

17. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violation. Having regard to the seriousness of the violation in question and to equitable considerations, it awards 30,000 euros (EUR) to the applicant in respect of non-pecuniary damage. Given the applicant's extremely vulnerable situation in Tajikistan, the Court considers it appropriate that the payment of the amount awarded to him by way of just satisfaction should be made directly to the bank account of the applicant's representative before the Court, Ms Olga Pavlovna Tseytlina, for subsequent transmission to the applicant (see, *mutatis mutandis*, *Savriddin Dzhurayev*, cited above, § 251 and point 6 (a) (i) of the operative part).

18. The applicant also claimed 110,000 Russian roubles (EUR 1,300) in respect of costs and expenses. Having regard to the documents in its

possession, the Court considers it reasonable to award EUR 1,300 covering costs under all heads; to be paid directly to the applicant's representative's account as requested by the applicant.

19. The Court further 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* admissible (i) the complaint under Article 3 concerning the applicant's removal to Tajikistan; (ii) the complaint under Article 3 concerning the conditions of detention in cell no. 708 between 17 September and 3 October 2018 in the Krasnoye Selo detention centre; (iii) the complaint under Article 5 about delay in the appeal review of the detention order of 23 July 2018 and inadmissible the complaint under Article 3 concerning the conditions of detention in the pre-trial detention facilities and the complaint under Article 5 concerning delays in appeal review of the detention order of 17 September 2018;

2. *Holds* that there has been violation of Article 3 on account of exposing the applicant to a real risk of torture and ill-treatment by authorising his administrative removal to Tajikistan;

3. *Holds* that there has been violation of Article 3 on account of the Russian authorities' responsibility for the applicant's forced removal and their failure to carry out an effective investigation into the incident;

4. *Holds* that the respondent State failed to comply with its obligations under Article 34 of the Convention;

5. *Holds* that there has been a violation of Article 3 and Article 5 § 4 of the Convention as regards the other complaints raised under the well-established case-law of the Court;

6. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention;

7. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, the payment of which is to be made directly to the bank account of the applicant's

representative before the Court, Ms Olga Pavlovna Tseytlina, for subsequent transmission to the applicant;

(ii) EUR 1,300 (one thousand three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly to Ms Olga Pavlovna Tseytlina's account;

(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 point.

Done in English, and notified in writing on 29 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Olga Chernishova | María Elósegui |
| Deputy Registrar | President |