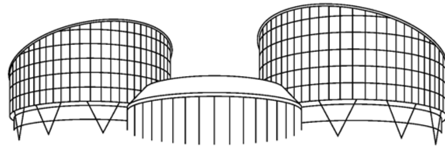

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF N.M. v. RUSSIA

(Application no. 29343/18)

JUDGMENT

STRASBOURG

3 December 2019

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

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

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

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

Alena Poláčková, *President,*
Dmitry Dedov,
Gilberto Felici, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 12 November 2019,

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

PROCEDURE

1. The case originated in an application (no. 29343/18) 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") by a national of Kazakhstan, Mr N.M. ("the applicant"), on 22 June 2018.

2. The applicant was represented by Mrs D. Trenina, Mr K. Zharinov and Mrs. E. Davidyan, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights.

3. On 25 June 2018 the applicant's request for the application of an interim measure under Rule 39 of the Rules of Court was granted. It was indicated to the Russian Government that the applicant should not be removed from Russia for the duration of the proceedings before the Court. It was further decided that the applicant's identity would not be disclosed to the public (Rule 47 § 4) and that the application should be granted priority treatment (Rule 41).

4. On 9 January 2019 the Government were given notice of the complaint concerning the risk of ill-treatment of the applicant in Uzbekistan in case of his return there and the alleged lack of remedies in respect of that complaint and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. On 13 September 2019 the Government were informed that the Court envisaged the assigning of the present application to a committee of three judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 in Uzbekistan. He currently remains in Russia. The applicant's personal details, the information concerning his

application, and the particulars of the domestic proceedings are set out in the Appendix.

6. The applicant was charged with religious crimes by the authorities in Uzbekistan, his pre-trial detention was ordered *in absentia*, and an international search warrant was issued in his name. He was detained in Russia pending his extradition.

7. The Russian authorities took final decisions to extradite the applicant despite his consistent claim that in the event of his removal he would face a real risk of treatment contrary to Article 3 of the Convention.

II. RELEVANT LAW

8. The relevant domestic and international law is summarised in the Court's judgment concerning removals from Russia to Uzbekistan (see *Akram Karimov v. Russia*, no. 62892/12, §§ 69-87, and §§ 101-05, 28 May 2014).

III. REPORTS ON UZBEKISTAN

9. The references to the relevant reports by the UN agencies and international NGOs on the situation in Uzbekistan were cited in the cases of *Kholmurodov v. Russia*, no. 58923/14, §§ 46-50, 1 March 2016, and *T.M. and Others v. Russia*, no. 31189/15, § 28, 7 November 2017.

10. In respect of Uzbekistan the 2019 World Report by Human Rights Watch indicated that there were certain promising steps to reform the country's human rights record; however, many reforms are yet to be implemented. It further stated that a limited number of persons imprisoned on politically motivated charges had been released in 2016-2018. Furthermore, isolated incidents of security agency officers sentenced for torture and death in custody were cited. Amnesty International Report 2017/2018 reflected similar trends, including judicial independence and effectiveness as the priorities set by the authorities for the systemic reform. At the same time the report stressed that the authorities continued to secure forcible returns, including through extradition proceedings, of Uzbekistani nationals identified as threats to the "constitutional order" or national security.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

11. The applicant complained that he would face a real risk of being subjected to treatment in the event of his removal to Uzbekistan, in breach of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

12. The Government contested that argument.

A. Admissibility

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

B. Merits

1. General principles

14. 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 Central Asian states 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

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

16. Turning to the present case, it is apparent from the material in the applicant's case file that in the course of the extradition proceedings and the proceedings concerning refugee status the applicant consistently and specifically argued that he had been prosecuted for religious extremism and faced a risk of ill-treatment. The Court further observes that the documents from the Uzbek authorities, that is, the extradition request, the bill of indictment and the detention order, were clear as to their basis - the applicant was accused of religiously motivated crimes. The Uzbek authorities thus directly identified the applicant with the group whose members have previously been found to be at real risk of being subjected to proscribed treatment.

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

18. 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

19. Having concluded that the applicant had advanced at national level valid claim 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 that claim adequately through reliance on sufficient relevant material.

20. The Court considers that in the extradition and the refugee status proceedings the domestic authorities did not carry out a rigorous scrutiny of the applicant's claim that he faced a risk of ill-treatment in Uzbekistan. The Court reaches this conclusion having considered the national courts' simplistic rejections of the applicant's claims. Moreover, the domestic courts' reliance in 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).

21. The Court therefore concludes that the Russian authorities failed to assess the applicant's claim adequately through reliance on sufficient relevant material. This failure cleared the way for the applicant's removal.

(c) Existence of a real risk of ill-treatment or danger to life in their countries of origin

22. Given the failure of the domestic authorities to adequately assess the applicant's claim, 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.

23. The Court reiterates that previously it has consistently concluded that the removal of an applicant charged with religiously motivated crimes in Uzbekistan exposes that applicant to a real risk of ill-treatment there (see e.g., *T.M. and Others v. Russia*, cited above; and *B.U. and Others v. Russia*, no. 59609/17, 74677/17, 76379/17, 22 January 2019). While the Court notes with attention the cautious indications of improvement included in the independent reports (see paragraph 10 above), nothing in the parties' submissions in the present case or the relevant material from independent international sources provides at this moment a sufficient basis for a conclusion that the persons prosecuted for religiously motivated crimes no longer run such a risk.

(d) Conclusion

24. The Court concludes that there would be a violation of Article 3 of the Convention if the applicant were to be returned to their respective countries of origin.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. The applicant further complained under Article 13 about an alleged lack of effective remedies in respect of his Article 3 complaint.

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

III. APPLICATION OF THE INTERIM MEASURES UNDER RULE 39 OF THE RULES OF COURT

27. On 25 June 2018 the Court indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not be removed from Russia to Uzbekistan for the duration of the proceedings before the Court.

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

29. Accordingly, the Court considers that the measure indicated to the Government under Rule 39 of the Rules of Court comes to an end.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

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

32. The Government submitted that the finding of a violation would in itself constitute a sufficient just satisfaction.

33. In the light of the nature of the established violation 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 returned to Uzbekistan constitutes sufficient just satisfaction in respect of any non-pecuniary damage suffered by him (see, to a similar effect, *J.K. and Others v. Sweden* [GC], no. 59166/12, § 127, ECHR 2016).

B. Costs and expenses

34. The applicant also claimed EUR 1,080, EUR 240 and EUR 1,140 for the costs and expenses incurred respectively, by Ms Trenina, Mr Zharinov and Ms Davidyan before the Court.

35. The Government submitted the applicant's claim for costs and expenses was not substantiated.

36. 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 2,500, jointly, to the applicant's representatives covering costs for the proceedings before the Court.

C. Default interest

37. 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. *Declares* the complaint under Article 3 concerning the applicant's pending removal to Uzbekistan admissible;

2. *Holds* that there would be a violation of Article 3 of the Convention if the applicant were to be returned to Uzbekistan;

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

4. *Holds* that the finding that there would be a violation of Article 3 of the Convention in case of the applicant's return to Uzbekistan constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant in this regard;

5. *Holds*
   (a) that the respondent State is to pay, jointly and directly to the applicant's representatives, within three months, EUR 2,500 (two thousand five hundred euros), 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, in respect of costs and expenses;
   (b) 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 3 December 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Alena Poláčková
Registrar	President

Appendix

Application no./ Lodged on/ Applicant/ Date of birth/ Nationality/ Represented by	Detention	Removal proceedings	Refugee status/Temporary asylum proceedings
29343/18 22/06/2018 **N.M.** 07/12/1969 Kazakhstan Daria TRENINA Kirill ZHARINOV Eleonora DAVIDYAN	**Detention pending extradition to Uzbekistan** 1 August 2016 – arrested; 3 August 2016 – the Zheleznodorozhniy District Court of Novosibirsk ordered detention – eventually prolonged until 01 August 2017; 31 July 2017 – the applicant released from the detention (maximum term of detention reached).	**Extradition proceedings** 28 May 2015 - charged with religious extremism crimes by the Uzbek authorities; 27 April 2017 - extradition ordered by the Prosecutor General of Russia; 6 April 2017 – extradition order upheld by the Novosibirsk Regional Court; 27 June 2018 - the Supreme Court of Russia upheld extradition order.	**Refugee status proceedings** 6 September 2016 - requested refugee status; 18 November 2016 - second request for refugee status lodged; 2 March 2017 - refusal to grant status of a refugee by the migration authorities; 26 April 2017 - refusal upheld by the main migration service; 28 September 2017 - the Basmanniy District Court of Moscow dismissed the applicant’s complaint; 4 December 2017 - the Moscow City Court upheld dismissal.