



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

FIRST SECTION

CASE OF MUMINOV v. RUSSIA

(Application no. 42502/06)

JUDGMENT
(Just satisfaction)

STRASBOURG

4 November 2010

FINAL

04/02/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Muminov v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Registrar*,

Having deliberated in private on 14 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 42502/06) 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 Rustam Tulaganovich Muminov (“the applicant”), on 23 October 2006.

2. In a judgment delivered on 11 December 2008 (“the principal judgment”), the Court decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). The Court dismissed the Government's objections as to the non-exhaustion of domestic remedies in respect of the complaints about a risk of ill-treatment in the event of the applicant's being expelled to Uzbekistan and the unlawfulness of his deprivation of liberty. The Court held that there had been a violation of Article 3 of the Convention on account of the applicant's expulsion to Uzbekistan; a violation of Article 13 of the Convention on account of the authorities' failure to afford the applicant an effective and accessible remedy in relation to his complaint under Article 3 of the Convention; a violation of Article 5 § 4 of the Convention on account of the unavailability of any procedure for a judicial review of the lawfulness of the applicant's detention with a view to his extradition to Uzbekistan; and a violation of Article 5 § 1 of the Convention in relation to his detention with a view to his extradition to Uzbekistan. The Court also held that there had been no breach of the respondent State's obligation under Article 34 of the Convention and that there was no need to examine separately the complaint under Article 1 of Protocol No. 7.

3. Under Article 41 of the Convention the applicant's representative (Ms I. Biryukova) claimed monetary compensation, on her client's behalf, in

respect of non-pecuniary damage, leaving the amount to the Court's discretion.

4. Since the question of the application of Article 41 of the Convention was not ready for decision, the Court reserved it and invited the Government and the applicant to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach (see § 143 of the principal judgment and point 9 of the operative provisions).

5. The applicant and the Government each filed observations.

THE FACTS

6. The following facts were established in the principal judgment:

“38. According to the applicant's representative before the Court, the applicant had been refused permission to be represented by his privately retained counsel but legal-aid counsel had been appointed instead. Neither the applicant's representative nor his family members had been informed of the exact place of his detention in Uzbekistan.

39. The applicant's representative before the Court wrote to the Uzbek Prosecutor General's Office asking for information regarding the place of the applicant's detention and the conditions of access to him. Her request was forwarded to the prosecutor in the Surkhandaryinsk Region of Uzbekistan. On 17 January 2007 the prosecutor forwarded the request to the Surkhandaryinsk Regional Court. The applicant's representative also wrote to the Uzbek Ministry of the Interior and the Ministry of Foreign Affairs. No replies were received.

40. On an unspecified date, the Russian authorities sent a request concerning the applicant to the Uzbek authorities. On 6 March 2007 the Uzbek Ministry of the Interior replied and enclosed a letter in Russian from the applicant dated 20 December 2006 worded as follows:

“... during my arrest and detention ... the police and other law-enforcement officers did not violate my rights and did not exert any physical pressure upon me.

I have no claims against the police officers in Moscow or Lipetsk or against any other law-enforcement authority in Russia.

I confirm that this declaration is correct and written with my own hand.”

41. According to a linguistic expert report, produced by the applicant's representative, the above letter did not contain any significant mistakes, whereas the applicant's personal letters contained numerous mistakes reflecting his Uzbek mother tongue's phonetics and grammar. The expert noted that the applicant would not have been able to acquire a sufficient command of the Russian language during the three months between the date of his sample letters (September 2006) and the letter in question (December 2006). The expert concluded that the letter of 20 December 2006 had not been written spontaneously by the applicant, who had transcribed the text from the original or written it from a letter-by-letter dictation by someone else.”

7. Following the adoption of the principal judgment by the Court, by a letter of 9 July 2009 the Prosecutor General's Office of the Russian Federation replied to a request from the applicant's representative before the Court. The Prosecutor General's Office stated that all matters relating to the execution by the applicant of the prison term imposed by an Uzbek court in 2007 were within the exclusive competence of the Uzbek authorities; the applicant's representative thus had to apply directly to those authorities.

8. By a letter of 17 July 2009, the Office of the Representative of the Russian Federation at the European Court of Human Rights indicated to the applicant's representative that any correspondence between the national authorities and the applicant's representative on procedural matters should be carried out through the European Court. Thus, the representative was directed to address all her queries to the Court.

THE LAW

9. 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

1. The parties' submissions

10. The Government considered that a finding of a violation should constitute such just satisfaction. They alternatively submitted that the award of compensation in respect of non-pecuniary damage should correspond to the awards made in two other Russian cases (*Garabayev v. Russia*, no. 38411/02, § 115, ECHR 2007-VII (extracts), and *Ryabikin v. Russia*, no. 8320/04, § 145, 19 June 2008). They also noted that questions relating to the execution of the sentence imposed on the applicant following his conviction in Uzbekistan were within the exclusive competence of the Uzbek authorities.

11. The applicant's representative submitted that the Government had omitted to comment on the consequences to be drawn, in terms of just satisfaction, from the irreversible effect produced by the violation by the respondent Government of their obligation under Article 3 of the Convention in respect of the applicant in the present case. Despite the fact that the applicant's representative had previously suggested a number of non-monetary measures to be taken, the respondent Government had made

no attempt to show that any such measures had been or could have been effectively taken to attenuate the effect of the violation found by the Court. Thus, inferences should be drawn from the Government's attitude. Lastly, the Government had failed to provide any examples of comparable awards made in other cases.

2. *The Court's assessment*

12. The Court reiterates at the outset that the applicant's representative had previously requested a number of non-monetary measures to be taken by the respondent State in order to remedy the violations of the Convention rights and freedoms in respect of the applicant. In particular, she invited the Court "to recognise the detriment to the applicant's 'life plan' ... caused by his unlawful removal from Russia in violation of the Convention". She further asked that the respondent Government be required to undertake, via their diplomatic contacts in Uzbekistan, measures aimed at re-establishing contact with the applicant and his relatives, commuting his sentence by way of amnesty or pardon, securing his eventual release and facilitating his departure for a country that was ready to accept him (see § 140 of the principal judgment).

13. The Court examined the above requests in the context of Article 46 of the Convention (*ibid.*, § 144). Having regard to the circumstances of the present case, the Court did not find it appropriate to indicate, under this provision, measures to be adopted in order to redress the violations found (§ 145).

14. It is further reiterated that the Court's decision to reserve the examination of the question concerning just satisfaction was, *inter alia*, due to the fact that the applicant was held to be no longer within the jurisdiction of the respondent State and that after his removal to Uzbekistan he had been convicted and sent to serve a prison sentence in an unspecified detention facility in that country. All contact between him and his representative before the Court or between him and the Court had been interrupted. In fact, the Court had no means of renewing contact with the applicant. Nor was there any prospect of making any other arrangements which would allow execution of any just satisfaction award made by the Court.

15. Indeed, since the applicant was and remains within the jurisdiction of another State, which is not a High Contracting Party to the Convention, the execution of a just satisfaction award may prove difficult in the circumstances of the case (see also paragraph 6 above).

16. Moreover, although it judged insufficient the factual basis for finding a violation of Article 34 of the Convention in respect of the State's obligation concerning the application of Rule 39 of the Rules of Court, the Court found that the applicant's expulsion to Uzbekistan gave rise to violations of Articles 3 and 13 of the Convention. The Court also stated in this connection that the absence of any reliable information as to the

applicant's situation after his expulsion to Uzbekistan, except for the fact of his conviction, remained a matter of grave concern for the Court (§ 98 of the principal judgment).

17. In the Court's view, in such a situation it could be expected of the respondent Government that they would cooperate fully in the conduct of the subsequent proceedings, in particular by helping, by appropriate means, to re-establish contact between the applicant and his representative and/or between the applicant and the Court (see, in that connection, Article 38 of the Convention and Rule 44A of the Rules of Court). However, it does not appear that such cooperation has been forthcoming (see paragraphs 7 and 8 above).

18. The Court has found a combination of serious violations in the present case. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. In view of the considerations in the preceding paragraphs, having regard to the nature of the violations found in the principal judgment and making an assessment on an equitable basis, the Court awards the applicant 20,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

19. The Court also reiterates that the Convention must be interpreted and applied in such a way as to guarantee rights that are practical and effective (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 35, ECHR 2000-IV, and, *mutatis mutandis*, *Lesnova v. Russia*, no. 37645/04, § 25, 24 January 2008). Given the particular circumstances of the present case and the nature of the violations found, the Court considers that the respondent State shall secure, by appropriate means, the execution of the just satisfaction award, in particular, by facilitating contact between the applicant, on the one hand, and the Committee of Ministers of the Council of Europe acting under Article 46 of the Convention, the applicant's representative in the Convention proceedings or any other person entitled or authorised to represent the applicant in the enforcement proceedings, on the other.

B. Costs and expenses

20. Since no claim was made under this head, the Court considers that there is no call to make any award.

C. Default interest

21. The Court considers it appropriate that the default interest 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*Holds*

- (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
- (c) that the respondent State, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, shall secure, by appropriate means, payment of the above amount, in particular by facilitating contact between the applicant, on the one hand, and the Committee of Ministers of the Council of Europe, the applicant's representative in the Convention proceedings or any other person entitled or authorised to represent the applicant in the enforcement proceedings, on the other.

Done in English, and notified in writing on 4 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President