



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

FIRST SECTION

CASE OF KAMALIYEVY v. RUSSIA

(Application no. 52812/07)

JUDGMENT
(just satisfaction)

STRASBOURG

28 June 2011

FINAL

28/09/2011

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

In the case of Kamaliyevy v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyeu,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 52812/07) 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 Mr Abdugani Kamaliyev, a national of Uzbekistan, and his wife Mrs Maymuna Kamaliyeva, a national of Russia (“the applicants”), on 3 December 2007. On 20 August 2008 the second applicant died, and the application was continued on her behalf by the first applicant.

2. In a judgment delivered on 3 June 2010 (“the principal judgment”), the Court decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). Having dismissed the first applicant’s complaints under Articles 3 and 6 of the Convention and Article 2 of Protocol No. 4 as inadmissible, the Court held that there had been a violation of Article 34 of the Convention on account of the Government’s failure to comply with the interim measure ordered under Rule 39 of the Rules of Court. It also decided that there had been no violation of Article 8 of the Convention.

3. Under Article 41 of the Convention the applicants’ representative, Mr Koroteyev, claimed monetary compensation for the damage suffered by the first applicant as a result of the breach of Article 34. He left the amount to the Court’s discretion. He also referred to the absence of contact between him and the first applicant since the latter’s expulsion to Uzbekistan and asked the Court to order the respondent State to facilitate such contact (see *Muminov v. Russia* (just satisfaction), no. 42502/06, § 19, 4 November 2010). Finally, he claimed 8,025 euros (EUR) for costs and expenses.

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 first 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 (§ 84 and point 4 of the operative provisions of the main judgment).

5. The first applicant and the Government each filed observations.

THE LAW

6. 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

7. The Government considered that the finding of a violation of Article 34 in the present case would constitute just satisfaction. They stressed that no other violations of the Convention had been found by the Court. They reiterated that the situation which had given rise to the finding of a breach of Article 34 had arisen unintentionally.

8. The applicants' representatives referred to their previous submissions. In respect of non-pecuniary damage, in addition to the monetary award, they sought measures of the following nature: “to recognise the detriment to the [first] applicant's ‘life plan’... caused by his unlawful removal from Russia in violation of the Convention”. They further requested that the respondent Government be required to undertake, via their diplomatic contacts in Uzbekistan, measures aimed at re-establishing contact between the first applicant and his relatives, commuting his sentence by way of amnesty or pardon, securing his eventual release and facilitating his departure for a country which would be willing to accept him.

9. In their latest observations the applicants' representatives also referred to the *Muminov* judgment on just satisfaction, cited above, seeking to oblige the respondent State to facilitate contact between them and the first applicant.

2. The Court's assessment

10. The Court notes that where it has found a violation of the substantive Articles of the Convention resulting from the transfer of applicants outside

the competence of the respondent State, it has been able to order the latter, with reference to Article 46 of the Convention, to take steps in order to put an end to the applicants' suffering as soon as possible, for example by taking every possible measure to put an end to the arbitrary detention (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 490, ECHR 2004-VII) or by taking all possible steps to obtain an assurance that the applicants would not be subjected to the death penalty (see *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, § 171, ECHR 2010-...).

11. At the same time, the Court is mindful of the limits to findings which could be made under this provision in respect of applicants who are outside of the jurisdiction of the respondent State. Thus, in the above-mentioned *Muminov* case, it considered it inappropriate to request measures similar to those requested by the applicants in the present case (see *Muminov v. Russia*, no. 42502/06, § 145, 11 December 2008).

12. Turning to the circumstances of the present case, the Court notes that no violation has been found in the principal judgment other than that of Article 34 on account of the first applicant's expulsion. It therefore does not find it appropriate to request the measures sought by the applicants' representatives as described above in paragraph 8.

13. The Court further reiterates that as a result of a failure by a country to comply with its obligations under Article 34 of the Convention applicants are liable to suffer non-pecuniary damage which cannot be repaired solely by such a finding (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 134, ECHR 2005-I). The Court considers it appropriate to award the first applicant EUR 9,000 for the violation of that provision, plus any tax that may be chargeable.

14. Noting the absence of contact between the first applicant since his removal to Uzbekistan and his representatives and following the approach taken in the above-mentioned *Muminov* case (just satisfaction), the Court also holds that the respondent State shall secure, by appropriate means, the execution of the just satisfaction award, in particular, by facilitating contact between the first applicant, and the Committee of Ministers of the Council of Europe acting under Article 46 of the Convention, his representatives in the Convention proceedings, or any other person entitled or authorised to represent him in the enforcement proceedings.

B. Costs and expenses

15. The applicants' representatives submitted an amended claim for reimbursement of costs and expenses incurred in the proceedings. Mrs Ryabinina claimed reimbursement of 60 hours of work. Two other representatives claimed 12 and 3 hours of legal work each. They estimated the cost of their work at EUR 100 per hour. They also claimed 7% of that amount to cover administrative costs.

16. The Government disputed the reasonableness and necessity of the expenses claimed and noted the absence of any documentary evidence. They found the overall sum to be excessive.

17. The Court may make an award in respect of costs and expenses only in so far as they were actually and necessarily incurred and are reasonable as to quantum (see *Bottazzi v. Italy* [GC], no. 34884/97, § 30, ECHR 1999-V, and *Sawicka v. Poland*, no. 37645/97, § 54, 1 October 2002).

18. The Court notes that the applicants enclosed no documents to corroborate the amounts claimed, apart from the breakdown of work performed by the representatives. At the same time it observes that the applicants issued authority forms for three lawyers, who submitted an application form and observations on their behalf. Therefore, the Court is satisfied that the applicants' representatives did carry out a certain amount of legal work in relation to the present application (see *Aliyeva v. Russia*, no. 1901/05, § 122, 18 February 2010).

19. The Court further notes that most of the complaints have been found inadmissible. No domestic proceedings were pending after 5 December 2007. The Court thus doubts whether the research was necessary to the extent claimed.

20. Having regard to the above, the Court awards to the first applicant the amount of EUR 2,000, together with any value-added tax that may be chargeable to him, the net award to be paid into the bank account identified by the applicants' legal representatives.

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

1. *Holds*

(a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

- (i) EUR 9,000 (nine thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
- (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Russian roubles at the rate applicable at the date of

settlement, to be paid into the representatives' bank account, as identified by the applicant;

(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;

(c) that the respondent State, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, shall secure, by appropriate means, payment of the above amount, in particular by facilitating contact between the first applicant and the Committee of Ministers of the Council of Europe, his representatives in the Convention proceedings, or any other person entitled or authorised to represent him in the enforcement proceedings.

2. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President