



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

FIRST SECTION

CASE OF SHARIPOV v. RUSSIA

(Application no. 18414/10)

JUDGMENT

STRASBOURG

11 October 2011

FINAL

08/03/2012

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

In the case of Sharipov 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,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 18414/10) 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 Kazakh national, Mr Timur Malikovich Sharipov (“the applicant”), on 4 April 2010.

2. The applicant was represented by Mr K.I. Terekhov, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 8 April 2010 the President of the First Section indicated to the Government that the applicant should not be extradited to Kazakhstan until further notice (Rule 39 of the Rules of Court). He granted priority to the application on the same date (Rule 41 of the Rules of Court).

4. On 23 April 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The applicant complained under Article 3 of the Convention that he faced a risk of ill-treatment, including lack of adequate medical assistance, in the event of his extradition to Kazakhstan.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1982 and lives in Kaluga.

7. The applicant submitted two medical documents issued on 18 December 2000 and 27 March 2002 in Kazakhstan, stating that he was suffering from non-osteogenic fibroma of the bones, a condition causing tumours.

8. On 16 November 2006 the Almaty Department for Economic Crimes and Corruption of the Republic of Kazakhstan launched a criminal case against the applicant for fraud.

9. By a decision of 7 February 2007 the authorities issued an arrest warrant in respect of the applicant, which was authorised by the prosecutor on 7 March 2007.

10. On 16 February 2007 the applicant was charged with fraud, and on 4 April 2007 he was placed on the international wanted list.

11. In April or May 2007 the applicant moved to Russia.

A. The applicant's detention and ensuing extradition proceedings

12. On 9 June 2009 the applicant was detained as a wanted person in Kaluga.

13. On 10 June 2009 he was questioned by the prosecutor's office of the Kaluga Region. The applicant stated that he had arrived in Russia in September 2007 as a visitor and had subsequently learned of the criminal proceedings initiated against him in Kazakhstan. He had decided not to return to Kazakhstan to avoid criminal prosecution. According to the Government, the applicant had not indicated any fear of ill-treatment or torture in Kazakhstan and had assumed that he was not a victim of political persecution. The Government did not provide a copy of the record of the interview.

14. By a decision of 10 June 2009 the Kaluga District Court, Kaluga Region, remanded the applicant in custody pending extradition. Subsequently, the detention period was extended on several occasions.

15. On 16 July 2009 the Prosecutor General's office of the Republic of Kazakhstan requested the applicant's extradition pending criminal charges against him. The request contained assurances that the applicant would not be extradited to a third state without the consent of the Russian Federation, nor would he be held criminally liable for a different crime committed before his extradition, that upon termination of the trial proceedings and completion of any criminal sentence the applicant would be free to leave

Kazakhstan and that the charges against the applicant were of a common criminal nature and he would not be discriminated against on any ground.

16. On 30 December 2009 the Russian Prosecutor General's Office ordered the applicant's extradition.

17. On an unspecified date the prosecutor's office of the Kaluga Region investigated the applicant's allegations of lack of proper medical treatment while in detention. In its conclusion issued on 14 January 2010 it stated that during his detention in Russia the applicant had been examined by medical professionals on numerous occasions, including in connection with his tumour condition. There had been no deterioration in his condition during the detention, and the medical documents supplied had served as proof that the necessary medical treatment would be available to the applicant in Kazakhstan.

18. On 29 January 2010 the applicant's representative challenged the extradition order.

19. On 19 February 2010 the Prosecutor General's office of Kazakhstan submitted an additional letter to the Prosecutor General's office of the Russian Federation, containing further assurances in respect of the applicant. In particular, it referred to the ratification by Kazakhstan on 24 April 2005 of the United Nations International Covenant on Civil and Political Rights, prohibiting, among other things, torture, inhuman and degrading treatment and punishment. The author of the letter pledged that, irrespective of the fact that Kazakhstan was not a party to the European Convention on Human Rights, it would ensure the rights guaranteed to the applicant by Articles 2, 3, 5, 6, 7, 13 and 14 of the Convention. Finally, the letter assured that the applicant would be detained in compliance with the Detention Act of 30 March 1999 and would be provided with medical aid, if necessary.

20. On 24 February 2010 the Kaluga Regional Court rejected the applicant's complaint against the extradition order. It noted, *inter alia*, that the applicant's extradition would not violate the European Convention, as the applicant was being prosecuted for a common crime and there was nothing to suggest that he would be subject to torture, inhuman treatment or lack of adequate medical treatment in Kazakhstan. It further considered that none of the medical documents provided demonstrated that the applicant had an illness which precluded him from being detained or extradited. It also relied on the assurances given by the Prosecutor General's Office of Kazakhstan.

21. By a decision of 22 April 2010 the Supreme Court of Russia upheld that decision on appeal. The appeal decision essentially repeated the reasoning of the lower court.

22. On 7 April 2010 the President of the Chamber to which the case had been allocated decided, in the interests of the parties and the proper conduct of the proceedings before the Court, to indicate to the Russian Government,

under Rule 39 of the Rules of Court, that the applicant should not be extradited to Kazakhstan for the duration of the proceedings before the Court. The case was also granted priority under Rule 41 of the Rules of Court.

B. The applications for refugee status, citizenship and asylum

23. On 18 August 2009 the Federal Migration Service office of the Kaluga Region rejected the applicant's application for refugee status after analysing his arguments in accordance with the Refugees Act and concluding that the applicant did not have any grounds to fear persecution if he returned to Kazakhstan. By a decision of 10 December 2009 the Kaluga Regional Court upheld this decision on appeal in final instance.

24. On 4 December 2009 the same office refused to accept the applicant's application for Russian citizenship, referring to the criminal charges against him in Kazakhstan.

25. Finally, on 18 January 2010 the same office refused the applicant's request for asylum in Russia. On 1 April 2010 the Kaluga Regional Court upheld the decision on appeal at the final level of jurisdiction.

II. RELEVANT INTERNATIONAL AND DOMESTIC LEGAL MATERIAL

A. Constitution of the Russian Federation of 1993

26. Everyone has the right to liberty and security (Article 22 § 1). Arrest, remand in custody and custodial detention are permissible only on the basis of a court order. The term during which a person may be detained prior to obtaining such an order cannot exceed forty-eight hours (Article 22 § 2).

B. International documents

The relevant international legal material is summarised in the case of *Dzhaksybergenov v. Ukraine*, no. 12343/10, §§ 25-29, 10 February 2011.

THE LAW

I. RULE 39 OF THE RULES OF COURT

27. The Court reiterates that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

28. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 3 above) must continue in force until the present judgment becomes final.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicant complained that if extradited to Kazakhstan he would face the risk of being subjected to ill-treatment by the Kazakh authorities. He relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

30. The Court notes that the application 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

31. The Government maintained that the applicant had failed to substantiate his complaint. They submitted that the applicant’s arguments concerning the risk of ill-treatment once extradited to Kazakhstan had been verified and declared unfounded by the Prosecutor General’s office of the Russian Federation, the Federal Migration Service office of the Kaluga Region, the Kaluga District Court of the Kaluga Region, the Kaluga Regional Court and the Supreme Court of Russia. They further stated that neither the Russian Prosecutor General’s office nor the Russian Ministry of Foreign Affairs had possessed any information concerning infringement of the rights of individuals previously extradited to Kazakhstan or widespread

problems in the Kazakh detention system. Furthermore, in addition to the receipt of the assurances by the Kazakh authorities, the Russian authorities had duly studied the reports from international and non-governmental organisations submitted by the applicant and his representatives. However, the data contained in the reports had been of a generic nature and could not warrant the conclusion that the applicant was at serious risk of ill-treatment if he were to be extradited to Kazakhstan. Finally, the Government referred to the Court's observation in the case of *Saadi v. Italy* (no.37201/06, § 131, 28 February 2008) that "mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3".

32. The applicant referred to the conclusions made by the Court in the case of *Baysakov and Others v. Ukraine* (no. 54131/08, 18 February 2010) and retorted that the information contained in the reports of the organisations concerned with protection of human rights had presented sufficient evidence that the risk of ill-treatment faced by him was real.

33. The Court reiterates that in determining whether it has been shown that the applicant runs a real risk, if expelled, of suffering treatment proscribed by Article 3, it will assess the issue in the light of all the material placed before it. In cases such as the present the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances. To that end, as regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human rights protection associations such as Amnesty International, or governmental sources. At the same time, it has held that the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 and that, where the sources available to it describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Kamyshev v. Ukraine*, no. 3990/06, § 43, 20 May 2010, with further references).

34. Furthermore, in assessing such a risk, the Court assesses the situation in its development, taking into account the indications of improvement or worsening of the human rights situation in general or in respect of a particular group or area that might be relevant to the applicant's situation (see, *mutatis mutandis*, *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 337, ECHR 2005-III).

35. The Court firstly observes that in the recent case of *Dzhaksybergenov v. Ukraine* it has reassessed its earlier findings in the previous cases concerning extradition to Kazakhstan and found that although international reports still voiced serious concerns as to the human rights situation in Kazakhstan, there was no indication that the situation was

grave enough to call for a total ban on extradition to that country (see *Dzhaksybergenov*, cited above, § 37).

36. The Court further notes that the applicant did not assert that he belonged to the political opposition or to any other vulnerable group. His allegation that any criminal suspect in Kazakhstan runs a risk of ill-treatment is too general and not corroborated by any other evidence. In addition, the applicant did not provide any evidence that he would not have access to adequate medical treatment if he were extradited to Kazakhstan, nor is there any evidence that his condition is grave or acute enough to otherwise prevent his extradition.

37. Considering that reference to a general problem concerning human rights observance in a particular country or reference to a health condition cannot alone serve as a basis for refusal of extradition, the Court is not convinced that the applicant's individual circumstances substantiate his fear of ill-treatment, including lack of adequate medical treatment, in the receiving country.

38. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's extradition, if executed, would not violate Article 3 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there would be no violation of Article 3 of the Convention if the applicant were extradited to Kazakhstan;
3. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to extradite the applicant until such time as the present judgment becomes final or further order.

Done in English, and notified in writing on 11 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President