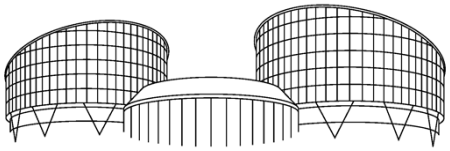

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF K.J. AND OTHERS v. RUSSIA

(Applications nos. 27584/20 and 39768/20)

JUDGMENT

Art 2 and Art 3 • Expulsion • Art 5 § 1 • Lawful arrest or detention • Unlawful apprehension of one applicant by Russian State agents and illegal transfer into the custody of North Korean officials • Arrest unacknowledged and manifestly lacking any legal basis • Presentation of substantial grounds for believing he faced a real risk of death or ill-treatment if expelled • No examination of his arguable claim by any competent domestic authority • Failure to carry out an effective investigation into his illegal transfer
Art 5 § 1 • Expulsion • Art 5 § 4 • Review of lawfulness of detention • Detention of another applicant pending expulsion for over two years, without a date or release and an opportunity to ensure periodic review • Domestic authorities' failure to assess at regular intervals whether his removal remained a "realistic prospect", despite the passage of time • Length of detention exceeded what was reasonably required for the purpose pursued • No effective judicial review of detention pending expulsion

Prepared by the Registry. Does not bind the Court.

STRASBOURG

19 March 2024

FINAL

19/06/2024

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

In the case of K.J. and Others v. Russia,

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

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Yonko Grozev,
Darian Pavli,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 27584/20 and 39768/20) 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 two nationals of the Democratic People's Republic of Korea ("the DPRK" or "North Korea"), K.J. and C.C., and by the Institute for Human Rights, a non-governmental organisation ("the applicants"), acting on behalf of S.K., also a North Korean national, on 7 July 2020 (K.J. and C.C.) and 10 September 2020 (S.K.);

the decision to give notice to the Russian Government ("the Government") of the complaints under Articles 2, 3 and 13 of the Convention concerning the risks linked to the applicants' removal to North Korea, K.J.'s complaint under Articles 5 §§ 1 and 4 of the Convention concerning his detention pending removal, and S.K.'s complaint under Article 5 §§ 1 of the Convention concerning his unrecorded detention, and to declare the remainder of the applications inadmissible;

the decision not to have K.J.'s, C.C.'s and S.K.'s names disclosed;

the decision to indicate an interim measure to the Government under Rule 39 of the Rules of Court;

the parties' observations;

the decision of the President of the Section to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 (see *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

Having deliberated in private on 20 February 2024,

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

INTRODUCTION

1. The main issues in the present case are whether the removal of K.J., C.C., and S.K. to North Korea was or would be in breach of Articles 2 and 3 of the Convention, whether effective domestic remedies were available to them in respect of their complaints under Articles 2 and 3 (as required by

Article 13 of the Convention) and whether the detention of K.J. and S.K. pending expulsion was in violation of Article 5 of the Convention.

THE FACTS

2. K.J. and C.C. were represented by Ms E. Davidyan, Ms D. Trenina and Mr K. Zharinov, lawyers practising in Moscow. S.K. was represented by the Institute for Human Rights ("the IHR"). Ms Davidyan is the IHR's staff lawyer and Ms Trenina and Mr Zharinov were invited by it to provide legal services to S.K. under legal-aid agreements.

3. The Government were represented by Mr M. Vinogradov, Representative of the Russian Federation to the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

I. THE CIRCUMSTANCES OF K.J.'S, C.C.'S AND S.K.'s CASES

5. In July 2018 K.J. and C.C. were captured in Russian territorial waters, convicted of illegal fishing and sentenced in April 2019 to two years' and two years and one month's imprisonment respectively.

A. The case of K.J.

6. On 24 January 2020, immediately after K.J. had been released from prison having served his sentence, the Shkotovskiy District Court of the Primorsky Region found him guilty of breaching migration regulations and ordered his detention pending expulsion in a detention centre for foreigners. No term of detention was indicated in that judgment and K.J. did not appeal against it.

7. On 3 July 2020 K.J. brought an appeal against the judgment of 24 January 2020 and asked the appeal court to extend the time-limit for appeal on the grounds that he spoke no Russian and lawyers had had no access to the detention centre because of COVID-19 restrictions. On 15 July 2020 the Primorskiy Regional Court refused the request, stating that (i) the text of the decision of 24 January 2020 had been translated into Korean and K.J. had said through an interpreter that he understood the decision, and (ii) access to the detention centre had been restricted because of COVID-19 only on 18 February 2020, following a ruling by the regional governor.

8. On 25 February 2021 the 9th Cassation Court of General Jurisdiction examined K.J.'s appeal against the judgment of 24 January 2020 which included his complaint against his detention pending removal and confirmed the expulsion order, stating that (i) "[K.J. had] failed to provide sufficient evidence that he was at risk of persecution" and "there were no grounds to believe that his life would be at a greater risk than the lives of other North

Korean citizens" and (ii) the expulsion order had been correctly issued with a view to preventing K.J. from committing further offences. The court did not address the applicant's arguments against his detention pending removal.

9. On 4 February 2022 the Shkotovskiy District Court granted K.J.'s request for release following the expiry of the two-year maximum term of detention pending expulsion.

10. No other decisions were issued concerning K.J.'s detention.

B. The case of C.C.

11. On 27 February 2020 the Artyom Town Court of the Primorskiy Region ordered C.C.'s detention pending deportation. On 14 February 2022 the same court ordered his release.

C. The case of S.K.

1. Background

12. On 18 September 2019 S.K. moved to Vladivostok to study at the Far Eastern Federal University. The IHR submitted on behalf of S.K. that when North Korean students arrived in Russia, North Korean officials from the Consulate General of the DPRK in Vladivostok supervised all their activities. These officials also collected the students' identity documents and kept them for the duration of their studies.

13. After completing the first year of his studies S.K. decided not to return to North Korea and to seek asylum in Russia. In late August 2020, he moved out from the university campus to the home of a local pastor, a Russian citizen of Korean origin, in the city of Artyom in the Primorskiy Region.

14. On 27 August 2020 S.K. contacted the office of the United Nations High Commissioner for Refugees (UNHCR), where he was referred for legal assistance to Ms T., a lawyer providing legal help to asylum-seekers as part of joint projects between UNHCR and the IHR. S.K. immediately contacted Ms T. and told her that he was "ready to do anything" in order not to return to North Korea. He also mentioned that he was probably being followed by DPRK officials since he was attending a Christian church. According to the IHR's submissions, on the same day, someone, presumably North Korean officials, filed a missing person report in respect of S.K. with the police department at Russkiy Island (police department no. 9 of the Vladivostok department of the Ministry of the Interior), which was then forwarded to the Artyom city police department.

15. On 8 September 2020 S.K. and Ms T. attended the Primorskiy Region migration authority to register for the identification procedure. While they were there, five North Korean officials came and demanded that Ms T. let S.K. go with them. S.K. was able to leave unnoticed.

2. The events of 10 September 2020

(a) Alleged transfer of S.K. to North Korean officials

16. On 10 September 2020 S.K. was provided with a hard copy of a certificate stating that his application to register for the identification procedure had been accepted. The IHR submitted that on the same day, when S.K. had returned to the home of a pastor who was hosting him in Artyom, he had been detained by police officers who had come there and had taken him to an undisclosed location. They informed Ms T. that he would be taken to police station no. 4 in Vladivostok; she was given no reasons for S.K.'s detention.

17. Ms T. went to police station no. 4 but she did not find S.K. there. The police officer on duty informed her that S.K. had not been brought to that station.

18. At 11.30 a.m. (Moscow time) on the same day S.K. telephoned Ms T. He informed her that he was at the police station in Artyom.

19. At 12.15 p.m. (Moscow time), the police officer on duty at police station no. 4 in Vladivostok informed Ms T. that S.K. had been handed over to officials of the Consulate General of North Korea with the assistance of officers of the Russian Federal Security Service ("the FSB").

(b) Application of an interim measure under Rule 39 by the Court

20. On the same day, at the request of Ms Davidyan, Ms Trenina and Mr Zharinov, the Court applied an interim measure in respect of S.K, indicating to the Government of Russia that S.K. should not be removed from Russia for the duration of the proceedings before the Court.

(c) Criminal proceedings initiated by Ms T. on S.K.'s behalf

21. On the same day Ms T. filed a criminal complaint at police station no. 4 in Vladivostok alleging that S.K. had been apprehended by unknown persons and asking the police to locate him.

3. The progress of the criminal proceedings concerning S.K.'s disappearance

22. On 11 September 2020 Mr Zharinov and Ms Trenina lodged requests with the FSB, asking it to provide information on whether S.K. had crossed the Russian border, what the factual reasons and legal basis for his detention had been and where he had been taken. On 8 October 2020 the FSB replied that S.K. had not been suspected of any activities falling within its jurisdiction.

23. On 12 September 2020 Mr Zharinov and Ms Trenina also lodged requests with the Prosecutor General's office, asking it to review the actions of the Primorskiy Unit of the FSB, to establish the legal basis for S.K.'s

transfer to the North Korean officials and to ensure compliance with the interim measure applied by the Court on 10 September 2020. On 19 October 2020 the Prosecutor General's Office replied that in September 2020 the FSB for the Primorskiy Region had not carried out any activities in respect of S.K. and had not arrested him.

24. On 14 September 2020 Mr Zharinov sent a request for information about S.K. to the police department in Artyom. On 18 September 2020 he was informed that S.K. had not been brought to the police station in Artyom, and that there were no records of his having been arrested, fingerprinted or photographed. A further reply with identical content was sent to Mr Zharinov on 5 October 2020.

25. On 18 September 2020 a police officer from police station no. 4 in Vladivostok reported to his supervising officer that on 27 August 2020 S.K. had been located at the address where he was residing and subsequently handed over to the North Korean officials.

26. On 21 September 2020 a decision refusing to open a criminal case in connection with S.K.'s disappearance was issued by the deputy head of police station no. 4 in Vladivostok. In that decision it was stated that S.K. had been located by police officers at his place of residence in Artyom and had been handed over to the representatives of the Embassy of North Korea. It was further stated in the decision that there had been no records of S.K. having been arrested or brought to police station no. 4. On 30 September 2021 Ms T. received a copy of the decision.

27. On 28 October 2020 the Ministry of Interior for the Primorskiy Region sent Ms Trenina a letter stating that S.K. had not been brought to the police station in the city of Artyom, and that there was no information in the border-crossing database indicating that S.K. had left Russia; it added that that his whereabouts were unknown and that the relevant authorities had been informed about the application of the interim measure by the Court.

28. On 1 December 2020 Ms Trenina filed a complaint with the Frunzenskiy District Court of Vladivostok against the refusal of 21 September 2020 to open a criminal case.

29. On 20 January 2021 the deputy prosecutor of the Frunzenskiy District of Vladivostok set aside the refusal of 21 September 2020 as unlawful and ordered measures "to prevent further violations of the law and to initiate disciplinary proceedings against officials breaking the law". On 21 January 2021 the Frunzenskiy District Court terminated the proceedings concerning the refusal to open a criminal case.

30. On 26 February 2021 the head of police station no. 4 in Vladivostok issued a second refusal to open a criminal case in connection with Ms T.'s criminal complaint. He stated, in particular:

> "... On 27 August 2020 information was received ... that [S.K.] had been absent from his place of residence.

> On [the same date] police officers went to the place where [S.K.] was believed to reside, where a certain person of Korean nationality was found who resembled S.K. His identity was subsequently confirmed as that of S.K.
>
> Since S.K. is a national of the DPRK he was handed over to officials of the DPRK's embassy.
>
> There is no record that S.K. was arrested by police officers or that he was taken to [police station no. 4] since he was not brought to [police station no. 4]."

31. Ms T. was notified of the refusal in July 2021. On 29 July 2021 Ms Trenina filed a complaint against it with the Frunzenskiy District Court of Vladivostok, stating that (i) S.K. had been illegally handed over against his will to the North Korean officials without any formal decision as to his expulsion or readmission, contrary to the requirements of Russian law and international agreements, and (ii) a criminal complaint had been filed on S.K.'s behalf but no pre-investigative inquiry had been carried out as to the grounds on which S.K. had been detained and handed over to the North Korean officials. Ms Trenina asked for the refusal to open a criminal case to be set aside as unlawful and unjustified.

32. On 19 August 2021 the Frunzenskiy District Court, referring to Ms Trenina as "the representative of S.K.", refused to examine her complaint on the merits, stating:

> "... the court established that no documents had been submitted confirming that Ms Trenina could bring a complaint against the refusal to open a criminal case. The letter of authority to act empowers [Ms Trenina] to bring a complaint against the refusal to open a criminal case in connection with abduction.
>
> Also, the complaint does not contain any reference as to exactly which of [S.K.]'s constitutional rights were breached as a result of that refusal and how exactly that refusal could impede his access to justice."

33. Ms Trenina was not duly notified of the decision of 19 August 2021 or sent a copy of it. She found out about it on 30 December 2021. On 12 January 2022 she lodged a second complaint against the refusal to open a criminal case, which was rejected on 29 January 2022 by the Frunzenskiy District Court for "lack of information as to how Ms Trenina was empowered to bring a complaint and take part in proceedings concerning the refusal to open a criminal case in relation to the disappearance of S.K.".

34. On 18 February 2022 the head of police station no. 4 in Vladivostok issued a third refusal to open a criminal case in connection with Ms T.'s criminal complaint, giving the same reasons as before (see paragraph 30 above).

35. On 29 March 2022 the Primorskiy Regional Court set aside the ruling of the Frunzenskiy District Court of Vladivostok of 29 January 2022 and confirmed that Ms Trenina had been duly authorised by the managing partner of the law firm Musayev and Associates to represent S.K., on the basis of a legal services agreement.

36. On 22 April 2022 the Deputy Prosecutor of the Frunzenskiy District of Vladivostok set aside the refusal to open a criminal case as unlawful and ordered the head of the Frunzenskiy police station (i) to locate S.K. and question him; (ii) to request a reply from the DPRK's Consul General; and (iii) to establish whether S.K. had been taken to police station no. 4 and whether any documents had been drawn up in that respect.

37. On 28 April 2022 the Frunzenskiy District Court, referring to the decision of the Deputy Prosecutor of the Frunzenskiy District of 22 April 2022, terminated the proceedings brought by Ms Trenina concerning the second refusal to open a criminal case.

38. On 14 June 2023 Ms Trenina lodged a third complaint with the Frunzenskiy District Court against the refusal to open a criminal case.

II. ADDITIONAL RELEVANT INFORMATION

39. The application to the Court on behalf of S.K. was lodged by the IHR. The authority form authorising the IHR (and, in particular, Ms Davidyan, Mr Zharinov and Ms Trenina) to represent S.K. was signed by Mr G., the IHR's chief executive officer. In the application form, in respect of its standing to represent S.K. before the Court, the IHR stated:

> "By the moment of his abduction, [S.K.] was admitted to the identification procedure, there [had been] no removal decision in his respect, migration officers were providing services to [S.K.] in due course and he felt safe in the pastor's apartment, since the police [were] aware of his whereabouts and took no action on his removal. There was no predictable immediate prospect of his removal and therefore no apparent need to sign a power of attorney for the [ECHR].
>
> At the same time, if such prospect manifested itself, there is no doubt that [S.K.] would have signed the power of attorney. First, [S.K.] clearly expressed his desire to seek asylum in Russia and not to return to the DPRK, by contacting the UNHCR office and following actions advised by the attorney. Further, [S.K.] specifically told his lawyer that he was 'ready to do anything' in order not to return to North Korea. Finally, escaping from the university campus and even more so contacting the UNHCR are actions *per se* enough for a North Korean citizen to be accused of treason in the DPRK and therefore face torture and death in case of return. ...
>
> [S.K.], being the direct victim of the claimed violations[,] was abducted while in the hands of the State agents, [and] his whereabouts are unknown. He had no next of kin in Russia or anywhere outside North Korea. ...
>
> Based on the above, ... in the exceptional circumstances of the case [the] IHR is acting as a *de facto* representative of [S.K.], with the purpose of bringing the claim of serious violations of the Convention (Articles 2 and 3) for examination at an international level."

The IHR further stated that (i) Ms T. had been instructed by S.K. to represent him in the domestic proceedings; (ii) she had been providing him with legal assistance under her contract as part of the joint project between

the UNHCR and the IHR; and (iii) she had been advised and instructed by the IHR on the strategy for the protection of S.K.'s rights.

40. On 30 October 2020, in reply to a query from the Court, the Government stated that they had no information to the effect that S.K. had been handed over to the North Korean authorities. They further stated affirmatively that he had not left Russian territory and that he was still living in Russia.

41. On 25 November 2021 the Government submitted that no reports of the abduction of S.K. had been filed with the relevant authorities and there had been no judicial decision ordering his placement in immigration detention.

42. On 4 March 2022 the Government submitted that S.K.'s location had not been established.

43. On 14 June 2023 Ms Trenina, in reply to a request for further information, informed the Court that on 11 July and 28 September 2022 respectively, K.J. and C.C. had left Russia for the Republic of Korea (South Korea), which had issued travel documents for them. They had since been residing in Seoul, South Korea.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

44. The agreement of 2 February 2016 between Russia and North Korea on the transfer and reception of persons who have illegally entered or are illegally residing within the territory of Russia and North Korea provides for the speedy transfer ("readmission") of persons between the two countries. It does not specify any rules requiring the persons in question to be notified or to be able to contest the transfer (for more details about this agreement, see *M.L. and Others v. Russia* [Committee], no. 25079/19, §§ 24-25, 6 April 2021).

RELEVANT INFORMATION ABOUT THE SITUATION IN NORTH KOREA

45. Human Rights Watch, in its special report "Worth Less Than an Animal: Abuses and Due Process Violations in Pretrial Detention in North Korea", dated 19 October 2020, stated:

> "All former detainees told Human Rights Watch that they were forced to sit still on the floor, kneeling or with their legs crossed, fists or hands on top of their laps, heads down, with their eyesight directed to the floor for 7-8 hours or, in some cases, 13-16 hours a day. If a detainee moves, guards punish the detainee or order collective punishment for all detainees. Abuse, torture, and punishment, including for failing to remain immobilized when ordered, appear to be more acute when interrogators are attempting to obtain confessions. Because detainees are treated as though they are inferior human beings, unworthy of direct eye contact with law enforcement officers,

they are referred to by a number instead of their names. Some female detainees reported sexual harassment and assault, including rape ...

The country has an official, law-based judicial system, but it also has a party-based quasi-judicial system that works in parallel and can supersede the official system in an opaque manner. Arbitrariness in the application of the law adds another layer of confusion for North Korean detainees and even law enforcement personnel ...

There is no prohibition against using evidence gathered illegally. The law fails to include the presumption of innocence, the right against self-incrimination, or the right to remain silent. To the contrary, article 283 of the DPRK Criminal Procedure Code requires an accused to 'answer questions when asked.' ...

The treatment of ordinary crimes and political crimes is strictly divided. Political crimes are considered anti-state and anti-nation crimes committed by enemies or 'counter-revolutionaries' against the party and government. These cases are under the jurisdiction of the secret police, and the Military Security Command when connected to the army ...

North Korean citizens who have allegedly committed severe anti-state or anti-nation offenses disappear and are sent to political prison camps (*kwanliso*) without notice, trial or judicial order. There, they are held incommunicado, subjected to torture, forced labor and other severe mistreatment, and their families are not informed of their fate even if they die ...

Mistreatment in custody is a standard feature of the criminal justice system in North Korea ... The former officials explained that the authorities consider harsh treatment to be necessary to obtain confessions, which are crucial in the interrogation process during the investigation and preliminary examination stages. They added that humiliation and mistreatment are considered important to preempt future crimes by detainees ..."

46. The Office of the United Nations (UN) High Commissioner for Human Rights, in the report "Promoting accountability in the Democratic People's Republic of Korea", of 11 January 2021 (A/HRC/46/52), stated:

"46. The interviews that OHCHR conducts with people who have escaped from the Democratic People's Republic of Korea continue to provide reasonable grounds to believe that the crime against humanity of imprisonment is ongoing within the ordinary prison system.

...

51. OHCHR continued to receive consistent and credible accounts of the systematic infliction of severe physical and mental pain or suffering upon detainees, through the infliction of beatings, stress positions and starvation in places of detention. Such information reconfirms the findings of the commission of inquiry and indicates that the crime against humanity of torture continues to take place in the ordinary prison system ...

54. Several interviewees confirmed the continued use of the 'sitting tight' tactic of torture in pretrial detention. They said that if they moved, spoke or even made unacceptable eye contact with guards while sitting tight, guards would beat them or force other detainees to beat them. Guards would also punish all the detainees in an entire cell by making them all perform difficult physical activity, such as a large number of squats. One particularly egregious punishment was to require a detainee to bang his or her own head against the cell bars. An interviewee who experienced that was told by the guard that the sound of her banging her head should fill the cell, and she was forced

to bang her head until she fainted. The frequency of breaks to stand up and stretch, or to use the toilet, depended entirely on the goodwill and mood of the guards. Some interviewees mentioned that detainees sometimes soiled themselves while sitting tight because they were not allowed to use the toilet. Those conditions add a psychological element to the physical pain of stress positions, demonstrating absolute control over the detainee's physical and mental being. More recent escapees said that they were monitored by closed-circuit television while sitting tight so that they could be even more efficiently terrorized.

55. Also consistent with the findings of the commission of inquiry, almost all recent interviewees confirmed to OHCHR that detainees are provided with an inadequate quantity of poor-quality food. The quantity may be further reduced as punishment for any perceived infraction or for failing to work well or hard enough. Former detainees described receiving, for example, 200 kernels of corn or a handful of boiled cornmeal three times a day, with little else. Interviewees described their own malnutrition and severe weight loss, and women said that they stopped menstruating. Some detainees had reportedly died of malnutrition ...

60. Beatings, stress positions, psychological abuse, forced labour, denial of medical care and sanitation and hygiene products, and starvation all combine to create an atmosphere of severe mental and physical suffering in detention, exacerbated by extremely poor living conditions. Multiple credible accounts of such abuse provide reasonable grounds to believe that officials of the Democratic People's Republic of Korea have inflicted and continue to intentionally inflict severe physical and/or mental pain upon detainees in their custody. Those acts may amount to the crime against humanity of torture, if found by a competent court to have taken place in the context of a widespread and/or systematic attack against a civilian population, as indicated by the commission of inquiry.

61. OHCHR is gravely concerned by credible accounts of forced labour under exceptionally harsh conditions within the ordinary prison system, which may amount to the crime against humanity of enslavement ..."

47. The US Department of State, in its 2020 "Country Report on Human Rights Practices: Democratic People's Republic of Korea" of 30 March 2021, found:

"... The penal code prohibits torture or inhuman treatment, but many sources reported these practices continued. Numerous defector accounts and NGO reports described the use of torture by authorities in several detention facilities. Methods of torture and other abuse reportedly included severe beatings; electric shock; prolonged periods of exposure to the elements; humiliations such as public nakedness; confinement for up to several weeks in small 'punishment cells' in which prisoners were unable to stand upright or lie down; being forced to kneel or sit immobilized for long periods; being hung by the wrists; water torture; and being forced to stand up and sit down to the point of collapse, including 'pumps,' or being forced to repeatedly squat and stand up with their hands behind their back. Defectors continued to report many prisoners died from torture, disease, starvation, exposure to the elements, or a combination of these causes. Detainees in re-education through labor camps reported the state forced them to perform difficult physical labor under harsh conditions ... Defectors noted they did not expect many prisoners in political prison camps and the detention system to survive. Detainees and prisoners consistently reported violence and torture. Defectors described witnessing public executions in political prison camps. According to defectors, prisoners received little to no food or medical care in some places of detention. Sanitation was poor, and former labor camp inmates reported they had no changes of clothing during their

incarceration and were rarely able to bathe or wash their clothing. The South Korean and international press reported that the kyohwaso re-education through labor camps held populations of up to thousands of political prisoners, economic criminals, and ordinary criminals ..."

48. Amnesty International, in its "Report 2020/21: The State of the World's Human Rights: North Korea", released on 7 April 2021, pointed out:

"... ARBITRARY ARRESTS AND DETENTIONS

The government continued to deny the existence of four known political prison camps, where up to 120,000 people remained detained and subjected to torture, forced labour and other ill-treatment, and harsh conditions including inadequate food. Many of them had not been convicted of any internationally recognizable criminal offence and were arbitrarily detained solely because they were related to people who were deemed a threat to the state or for 'guilt-by-association'. Others were detained for exercising their rights, such as the freedom to leave their own country ..."

49. The UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, in his report of 1 May 2020 (A/HRC/43/58), emphasised the following:

"D. Situation of people repatriated to the Democratic People's Republic of Korea

18. The Special Rapporteur has received information on an increasing number of escapees from the Democratic People's Republic of Korea, including children, who have been detained in China ... the Special Rapporteur highlights the obligation of China under international human rights and refugee law not to repatriate persons to the Democratic People's Republic of Korea ... He further reiterates that, regardless of the status of those persons, international human rights law also provides the principle of non-refoulement, which is explicitly included in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has been ratified by China. There are substantial grounds to believe that escapees would be subjected to torture or other serious human rights violations if repatriated to the Democratic People's Republic of Korea, and they should therefore be protected as refugees sur place ...

19. The Special Rapporteur is deeply concerned about the decision made by the Government of the Republic of Korea on 7 November 2019 to deport two fishermen of the Democratic People's Republic of Korea who were reportedly seized in the waters of the Republic of Korea on 2 November 2019 ... The Special Rapporteur is concerned that the decision was taken without due process and that the two men are at risk of serious human rights violations against them upon their return, including enforced disappearance, arbitrary execution, torture and ill-treatment, and trials that do not conform to international fair trial standards. Their whereabouts following their return are unknown. The Special Rapporteur joined 67 civil society organizations and 10 individuals in signing an open letter to the President of the Republic of Korea, Moon Jae-in, expressing concern about the failure to uphold international human rights obligations. In the letter, the Special Rapporteur urged the Government to take corrective action and uphold the right of individuals not to be returned if they are at risk of torture and other ill-treatment."

50. The US Committee for Human Rights in North Korea (an NGO), in its written statement to the UN Human Rights Council, released on 17 June 2021 (A/HRC/47/NGO/67), noted:

"Under Article 63 (Treason to State), a North Korean who 'defects to a foreign country in betrayal of the country ... shall be committed to more than five years of reform through labor.' Reform through labor for an indefinite period or the death penalty and confiscation of property can also be imposed 'in case of an extremely grave crime.' In fact, these laws amount to political discrimination at the highest levels and have led to death through forced labor due to the harsh punishment meted out by the DPRK's internal security forces operating its prison facilities. North Koreans who are caught attempting to flee their country, or worse, arrested in China by PRC security officials and forcibly repatriated are deemed traitors to their country ...

In these [political prison] camps, prisoners are almost never released and serve life sentences until they succumb to crimes against humanity perpetrated inside the prisons. Family members of these prisoners may be sent to these prisons too, regardless of the DPRK's legislation known to the international community. Even if the Criminal Law is adhered to, serving a year or less in a mobile labor brigade, for example, is known to result in prisoner deaths due to the previously mentioned lack of food and medicine, harsh forced labor, grossly inadequate prison conditions, and prisoner abuse, including torture, sexual violence, and inhumane treatment ...".

51. Human Rights Watch, in its most recent World Report 2022 – North Korea, of 13 January 2022, highlighted the following:

"The Democratic People's Republic of Korea (DPRK) remains one of the most repressive countries in the world. Ruled by the authoritarian leader Kim Jong Un, the government responded to international challenges and the Covid-19 pandemic in 2021 with deepened isolation and repression, and maintained fearful obedience in the population through threats of execution, imprisonment, enforced disappearances, and forced hard labor in detention and prison camps... The government does not tolerate pluralism, bans independent media, civil society organizations, and trade unions, and systematically denies all basic liberties, including freedom of expression, public assembly, association, and religion. Fear of collective punishment is used to silence dissent. Authorities in North Korea routinely send perceived opponents of the government to secretive political prison camps (*kwanliso*) in remote regions where they face torture by guards, starvation rations, and forced labor. ...

Moving from one province to another, or traveling abroad, without prior approval remains illegal in North Korea. The government continues to strictly enforce a ban on 'illegal' travel to China. Border buffer zones set up in August 2020, which extend one to two kilometers from the northern border, operated continuously in 2021 with guards ordered to 'unconditionally shoot' on sight anyone entering without permission. There were reports of border guards shooting dead North Koreans trying to cross the border ...

North Korean law states that leaving the country without permission is a crime of 'treachery against the nation', punishable by death. The 2014 UN Commission of Inquiry (COI) on human rights in the DPRK found Pyongyang committed crimes against humanity against those forcibly returned by China to North Korea ...

The North Korean government routinely and systematically requires forced labor from much of its population to sustain its economy. The government's forced labor demands target women and children through the Women's Union or schools; workers at state-owned enterprises or deployed abroad; detainees in short-term hard labor detention centers (*rodong dallyeondae*); and prisoners at long-term ordinary prison camps (*kyohwaso*) and political prison camps (*kwanliso*).

> At some point in their lives, a significant majority of North Koreans must perform unpaid hard labor, often justified by the state as 'portrayals of loyalty' to the government. Since punishment for crimes in North Korea is arbitrary, and depends on a person's record of loyalty, personal connections, and capacity to pay bribes, any refusal of a government order to work as a 'volunteer' can result in severe punishment, including torture and imprisonment ..."

52. The UN Special Rapporteur on the situation of human rights in North Korea stated in reports of 17 March 2022 (A/HRC/49/74) and of 12 October 2023 (A/78/526), respectively:

> "11. The Special Rapporteur has received reports that three individuals of the Democratic People's Republic of Korea seeking asylum are being held at the Consulate of the Democratic People's Republic of Korea in Vladivostok, Russia. About 1,500 people of the Democratic People's Republic of Korea are estimated to be detained in China as 'illegal migrants' and are at risk of being repatriated to their country once the border reopens. Throughout his term, the Special Rapporteur has made continued efforts to prevent the forced repatriation of people from the Democratic People's Republic of Korea, including through regular engagement with China, the Republic of Korea and the United Nations High Commissioner for Refugees. While this engagement has had a positive impact in some instances, the Special Rapporteur remains concerned that the relevant parties have not agreed on a comprehensive solution to ensure protection and to provide safe passage to escapees. The OHCHR continues to document serious human rights violations on repatriation, including torture and other forms of cruel, inhuman or degrading treatment. According to the Korea Institute for National Unification, '[s]ince President Kim Jong Un came to power, punishment for repatriated defectors has been greatly strengthened'."

> "4. ... the Special Rapporteur is extremely concerned about the imminent risk of repatriation of individuals from the Democratic People's Republic of Korea by other countries since there are long-standing and credible reports to believe that escapees from the Democratic People's Republic of Korea that are forcefully returned to the country would be subjected to torture, cruel, inhuman or degrading treatment and punishment as well as other grave human rights violations."

53. According to Freedom House's 2023 report on North Korea,

> "Religious groups are harshly suppressed and unable to organize politically ... Although freedom of religion is constitutionally guaranteed, it does not exist in practice. State-sanctioned churches maintain a token presence in Pyongyang, and some North Koreans are known to practice their faith furtively. However, intense state indoctrination and repression preclude free and open exercise of religion. Crackdowns are common, and those caught – including foreigners – are arrested and subjected to harsh punishments, including imprisonment in labor camps. In 2021, nongovernmental organization Open Doors US reported that 50,000 to 70,000 Christians were held in prison camps. ...
>
> Citizens have no freedom of movement, and forced internal resettlement is routine. Emigration is illegal. In recent years, authorities have employed stricter domestic controls to arrest the flow of defectors, who have also been impeded by regional coronavirus-related travel restrictions. The South Korean Unification Ministry reported that over 1,000 defectors entered the country in 2019 but only 67 did so in 2022."

THE LAW

I. JOINDER OF THE APPLICATIONS

54. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. PRELIMINARY ISSUES

A. Jurisdiction in respect of the respondent State

55. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a Party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023, and *Pivkina and Others v. Russia* (dec.), no. 2134/23 and 6 others, §§ 38-46, 29 June 2023).

B. S.K.'s alleged transfer to North Korean officials and his whereabouts - establishment of the facts

56. The Government's submissions concerning the whereabouts of S.K. are set out in paragraphs 40-42 above.

57. The IHR reiterated that in the absence of any explanation by the Government, S.K. had been unlawfully apprehended on 10 September 2020 by State agents, who had rendered him to North Korean officials, bypassing any legal procedures, and that he had disappeared after that. They further submitted that the law-enforcement authorities had not only drawn up reports on S.K.'s abduction but had also conducted a pre-investigation inquiry and established that S.K. had been rendered to the North Korean officials, as shown by their refusals on 21 September 2020 and 26 February 2021 to open a criminal investigation. They also submitted that given that the whereabouts of S.K. had been unknown, the North Korean officials must have either returned him to North Korea, kept him *incommunicado* in the embassy (see paragraph 52 above) or had him murdered.

58. The Court observes that no documents were provided by the Government in support of their submissions as set out in paragraphs 40-42 above. The official decisions, however, show that on 10 September 2020 S.K. was indeed handed over to North Korean officials by police officers from police station no. 4 in Vladivostok (see paragraphs 25, 26, 30 and 34 above). No legal grounds for his initial detention and his transfer to the North Korean officials were given in those documents. The Government did not dispute the accuracy or authenticity of those documents. Neither did they explain the

apparent contradiction between their submissions (see paragraph 40 above) and those documents. Therefore, taking into account the circumstances of S.K.'s case, which match the pattern of other cases where applicants last seen in the custody of State authorities have then disappeared (see, for example, *Mukhitdinov v. Russia*, no. 20999/14, § 62, 21 May 2015, and, as the most recent examples, *A.Y. and Others v. Russia* [Committee], no. 29958/20 and 2 others, §§ 8-12, 17 January 2023, and *N.K. v. Russia* [Committee], no. 45761/18, 29 March 2022), the Court is satisfied that on 10 September 2020 S.K. was illegally transferred by Russian State agents into the custody of North Korean officials.

C. The Government's objection as to the standing of the IHR to complain on behalf of S.K.

1. The Government's submissions

59. The Government submitted that the Institute for Human Rights had no standing to pursue the application on behalf of S.K. In particular, they alleged that:

(i) the IHR had not provided an authority form signed by S.K.;

(ii) S.K. had not lacked capacity nor had he been a vulnerable person, unlike the applicant in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08, ECHR 2014), in which a non-governmental organisation had been granted standing to represent him;

(iii) the IHR had not demonstrated that it had acted on behalf of S.K. in any of the domestic proceedings; S.K.'s lawyers (Ms Trenina, Mr Zharinov and Ms Davidyan) had unilaterally declared themselves to be his representatives and no connection had been proved to exist either between their firm and the IHR or between their firm, the IHR and Ms T., who had represented S.K. in the domestic proceedings; and

(iv) no documents had been submitted showing either that S.K. had had no relatives that could be direct or indirect victims of the alleged violations or that he had died.

2. The IHR's submissions

60. The IHR, referring to *Centre for Legal Resources on behalf of Valentin Câmpeanu* (cited above, §§ 112-14), submitted that it was already acting as the *de facto* representative of S.K., given the exceptional circumstances of the case. In particular, it submitted that:

(i) the IHR was a non-profit organisation that implemented joint projects with the Russian office of the UNHCR aimed at protecting the rights of asylum seekers and in particular preventing their refoulement from Russia; its mission and the main reason for existence was to protect human rights of vulnerable people, in particular refugees and asylum seekers;

(ii) after S.K. had contacted UNHCR, it had engaged Ms T., a lawyer practising in the Far East Region, where S.K. had been at the time, whom it had instructed to take certain specific steps in S.K.'s case;

(iii) lawyers engaged by the IHR under the Right to Asylum programme had represented applicants in a significant number of cases before the Court, with over fifty judgments delivered so far, including such key cases as *Z.A. and Others v. Rus*sia ([GC] (nos. 61411/15 and 3 others, 21 November 2019); *Savriddin Dzhurayev v. Russi*a (no. 71386/10, 25 April 2013); *Azimov v. Russia* (no. 67474/11, 18 April 2013); and *Abdulkhakov v. Russia* (no. 14743/11, 2 October 2012);

(iv) the IHR needed to engage local practising lawyers [admitted to practise law by a bar association] for the most efficient representation of asylum-seekers because under Russian law, only practising lawyers had the special legal status entitling them to take part in criminal proceedings in which asylum seekers would be involved and to visit them in police or administrative detention facilities.

61. The IHR also submitted a statement of 19 January 2022 by the Head of the IHR confirming that (i) Ms Davidyan, as a project coordinator and staff lawyer at the IHR, had provided legal assistance to people who had asked for UNHCR's assistance, including S.K.; (ii) Ms Trenina and Mr Zharinov of the law firm Musayev and Associates had been asked by the IHR to provide legal assistance to any persons requesting help from UNHCR under legal services agreements of 2020-2022; and (iii) Ms T. had been engaged to represent S.K. in the proceedings concerning the refusal to open a criminal case in relation to his alleged abduction and before that, she had represented him in another UNHCR case.

3. The Court's assessment

62. The Court reiterates that a third party may, in exceptional circumstances, act in the name and on behalf of a vulnerable person where there is a risk that the direct victim will be deprived of effective protection of his or her rights, and where there is no conflict of interest between the victim and the applicant (see *Lambert and Others v. France* [GC], no. 46043/14, § 102, ECHR 2015). It further reiterates that, where applicants choose to be represented rather than lodging the application themselves, Rule 45 § 3 requires them to produce a written authority to act, duly signed. It is essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victim on whose behalf they purport to act before the Court. However, the Court has held that, in the case of victims of alleged breaches of Articles 2, 3 and 8 at the hands of the national authorities, applications lodged by individuals on their behalf, even though no valid form of authority has been presented, may be declared admissible. In such situations, particular consideration has been shown for factors relating to the victims' vulnerability, which rendered them unable to lodge a

complaint with the Court, due regard also being paid to the connections between the person lodging the application and the victim (see *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 149, 14 September 2022, with further references).

63. Turning to the circumstances of the present case, the Court observes that S.K., whose location remains unknown, was unable to lodge an application directly with the Court or to provide a letter of authority to the IHR because he was hastily transferred by the State agents to North Korean officials who assumed control over him (see paragraphs 19, 21, 30, 39 and 58 above), thereby losing contact with his representatives as a result of actions which cannot be attributable to him (see *Diallo v. the Czech Republic*, no. 20493/07, §§ 44-47, 23 June 2011; *Shamayev and Others v. Georgia and Russia*, no. 36378/02, §§ 305-12, ECHR 2005-III; and, conversely, *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, § 38, 17 November 2016). The Court therefore considers that given the serious nature of allegations made on S.K.'s behalf, in particular, under Article 2 and 3 of the Convention, and without prejudging the question of the admissibility and merits of those complaints, S.K. is a direct victim of the alleged violations who is in an extremely vulnerable situation where a risk exists that he will be deprived of effective protection of his rights (see, for similar reasoning, *H.F. and Others v. France*, cited above, § 151, and, conversely, *Firuze Asgarova and Albina Veselova v. Armenia* (dec.), no. 24382/15, §§ 51-53, 12 September 2023).

64. Furthermore, there appears to be no conflict of interest between S.K. and the IHR that would prevent them from pursuing an application on his behalf. The actions of the IHR's lawyers and Ms T., who represented him in the domestic proceedings, were aligned with S.K.'s wish not to be returned to North Korea which he expressed having contacted the UNHCR office (see paragraph 14 above). In particular, Ms T. who represented S.K. during identification procedure and who brought the first criminal complaint concerning his disappearance was requested to do so by the UNHCR as part of joint projects between them and the IHR and she was advised and instructed by the IHR on the strategy for the protection of S.K.'s rights (see paragraphs 39 and 61 above). Ms Trenina and Mr Zharinov had been providing legal assistance to any persons requesting help from UNHCR, including S.K., under legal services agreements of 2020-2022 (see paragraph 61 above), they pursued criminal proceedings on S.K.'s behalf and the domestic authorities reacted to their requests for information or complaints submitted by them, and, thereby, in the Court's opinion, they acquiesced to their status as S.K.'s representatives (see paragraphs 23, 27, 29 and 36 above, and see *Association Innocence en Danger and Association Enfance et Partage v. France*, nos. 15343/15 and 16806/15, § 130, 4 June 2020). More importantly, the domestic court expressly acknowledged that Ms Trenina had been duly authorised to represent S.K. (see paragraph 35

above and see, *mutatis mutandis*, *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 110). Ms Trenina and Zharinov also requested the Court to apply an interim measure in respect of S.K. seeking to prevent his removal from Russia and their request was granted by the Court (see paragraph 20 above).

65. Having regard to the above factors and to the cases of *Lambert and Others* and *H.F. and Others v. France* (both cited above), the Court accordingly finds that there are exceptional circumstances which enable it to conclude that the IHR has standing to bring an application on behalf of S.K. and dismisses the Government's objection.

III. COMPLAINTS TO BE STRUCK OUT

66. The Court notes that the relevant part of Article 37 § 1 of the Convention provides:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> ...
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

67. The Court notes that K.J. and C.C. left Russia for South Korea in 2022 and that they have since been residing in Seoul, South Korea (see paragraph 43 above).

68. The Court therefore considers, in the light of those submissions, that it is no longer justified to continue the examination of K.J.'s and C.C.'s application in so far as it concerns an alleged risk of death and/or ill-treatment under Articles 2 and 3 of the Convention (see *Rakhmonov v. Russia* (dec.), no. 11673/15, 31 May 2016, and *M.D. and Others v. Russia*, nos. 71321/17 and 8 others, § 56, 14 September 2021). The Court is furthermore satisfied that respect for human rights, as defined in the Convention and the Protocols thereto, does not require it to continue its examination of this part of K.J.'s and C.C.'s application (Article 37 § 1 of the Convention in *fine*). Accordingly, the Court decides to strike their application out of its list of cases in so far as it concerns their complaint that they would risk death and/or ill-treatment in the event of being expelled to North Korea from Russia.

IV. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION IN RESPECT OF S.K. ON ACCOUNT OF HIS TRANSFER TO THE NORTH KOREAN AUTHORITIES

69. The IHR complained that S.K.'s transfer to the North Korean authorities had been in breach of his right to life and the prohibition on torture and inhuman and degrading treatment as provided in Articles 2 and 3 of the Convention, which read as follows:

Article 2

"1. Everyone's right to life shall be protected by law..."

Article 3

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

A. Admissibility

70. The Government submitted that S.K. had not applied for refugee status or temporary protection in Russia. In such proceedings, his fears of death and ill-treatment could have been duly evaluated by the Russian authorities. They also submitted that S.K. had not been prevented from challenging the decision to transfer him under the readmission agreement, using the relevant provisions of the Russian Code of Administrative Procedure. He had not therefore exhausted domestic remedies in respect of his complaints under Articles 2 and 3 of the Convention.

71. The IHR submitted that S.K. had had no effective remedies at his disposal because he had been apprehended and handed over to North Korean officials, bypassing any legal procedures and before he had been able to finalise the identification procedure and apply for asylum. They further submitted that Russian asylum law required an application for asylum to be accompanied by a passport or other valid identification document, in the absence of which the applicants were invited to undergo the identification procedure and could start the asylum procedure only when that was completed. S.K.'s identification procedure had yet not been completed and therefore he could not apply for asylum in Russia.

72. The Court observes from the case material that S.K. intended to apply for refugee status in Russia. Since he had no identity papers, these having presumably been taken from him by the North Korean authorities (see paragraph 12 above), he applied to go through the identification procedure with a local migration service, the purpose of which was to enable him to confirm his identity so he could initiate proceedings for refugee status or temporary protection. He had, however, been abruptly prevented from pursing any such application by the Russian authorities, who had summarily

transferred him to North Korean officials (see paragraph 14 above). The Court considers that objective obstacles existed that prevented S.K. from exhausting available domestic remedies and he therefore should be exempted from the obligation to do so in the special circumstances of the case (see *Sejdovic v. Italy* [GC], no. 56581/00, § 55, ECHR 2006-II, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 76-77, 25 March 2014). It therefore dismisses the Government's objection as to non-exhaustion. It further holds that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

73. The IHR submitted that S.K. faced a risk of being subjected to the death penalty, which was commonly applied to returnees in North Korea, or to torture in reprisal for having applied for asylum. It further submitted that the Government had not disputed the risks alleged by it. Referring to *F. and Z. v. Russia* ([Committee], no. 18570/19, § 8, 6 April 2021), it further stated that the Russian migration authorities had expressly confirmed in previous decisions granting temporary asylum to asylum-seekers from North Korea that there was a risk of being subjected to persecution and severe ill-treatment in that country. According to the IHR, such decisions had cited information from the Russian Ministry of Foreign Affairs that (i) returnees to the DPRK "face[d] persecution by the North Korean authorities", (ii) "[the] death penalty in the DPRK [was] widely practi[s]ed, and (iii) up to 700 death sentences [were] imposed annually". They also cited Article 63 of the Criminal Law of the DPRK, which provided for the punishment of returnees, including corporal punishment. The IHR also referred to the latest reports of several reputable international organisations (see paragraphs 45-51 above) confirming that torture and the death penalty were still widely used by the North Korean authorities against those who had left the country illegally or failed to return, as well as against those accused of disseminating information discrediting the North Korean authorities. They lastly submitted that by rendering him to the North Korean officials, the Russian authorities had violated his rights under Articles 2 and 3 of the Convention.

74. The Government submitted that S.K.'s fear of persecution in North Korea had been unsubstantiated because he had not applied for asylum in Russia. They also submitted that he had not been subjected to the "readmission" (see paragraph 44 above) procedure.

2. The Court's assessment

75. At the outset the Court observes that in the context of expulsion, where there are substantial grounds to believe that the person in question, if expelled, would face a real risk of capital punishment, torture, or inhuman or degrading treatment or punishment in the destination country, both Articles 2 and 3 imply that the Contracting State must not expel that person. The Court will therefore also examine the two Articles together (see *F.G. v. Sweden* [GC], no. 43611/11, § 110, 23 March 2016, with further references).

76. The Court further reiterates that Contracting States have the right, as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens, and that the right to asylum is not explicitly protected by either the Convention or its Protocols. However, it is the Court's settled case-law that expulsion or extradition by a Contracting State may give rise to an issue under Articles 2 and 3 of the Convention (and hence engage the responsibility of that State under the Convention) where substantial grounds have been shown for believing that the individual concerned, if deported, faces a real risk of being killed or subjected to treatment contrary to Article 3 of the Convention (see *Headley v. the United Kingdom* (dec.), no. 39642/03, 1 March 2005, with further references, and *Mamazhonov v. Russia*, no. 17239/13, §§ 127-28, 23 October 2014).

77. As in other similar cases where allegations were made of abduction and illegal transfer of the applicants, the Court should examine whether the authorities (i) complied with their obligation to protect the applicant against the risk of the treatment contrary to Articles 2 and 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*, cited above, § 59, no. 20999/14, 21 May 2015).

78. The Court notes that the IHR argued that S.K. had run an extremely high risk of being subjected to the death penalty, which was commonly applied to returnees, and to torture in reprisal for applying for asylum. They relied on the latest reports from reputable international organisations which confirmed that torture and the death penalty were widely used by the North Korean authorities against people who left the country illegally or did not return after a permitted visit abroad (see paragraphs 45-51 above). The Court notes that the Government neither disputed the accuracy of those reports nor submitted any other evidence of the treatment that people who were forcefully returned to North Korea would be subjected to. The Court notes that the IHR's submissions are based on up-to-date data and corroborated by reliable and detailed reports by international bodies that unambiguously attest to grave human rights violations in that country, including in the context of detention, and indicate, in particular, that (i) persons are routinely detained and subjected to torture, forced labour and other ill-treatment for exercising their rights, such as the freedom to leave their own country; (ii) North

Koreans who defect and are forcibly repatriated are deemed traitors of the country and can be subjected to more than five years of "reform through labour"; (iii) leaving that country without permission constitutes the crime of treason against the nation and is punishable by death; and (iv) religious groups are severely suppressed and persons caught exercising their religious rights are subjected to harsh punishments. The Court also observes that S.K.'s personal situation had exposed him to a real risk of death or ill-treatment in that country. Having first been allowed to leave North Korea on a student visa to Russia, he had later indicated his intention not to return to North Korea and moved off the university campus to the house of a local pastor (see paragraphs 12-14 above). S.K. obtained legal advice in order to seek asylum and applied to the Russian migration authority to be admitted to the identification procedure, as he had no identity document on him (see paragraphs 15-16 above). S.K. can therefore be considered to have been at risk of death and ill-treatment for violating the terms of his departure from North Korea and his stay in a host country, being on close terms with a religious leader and, most importantly, attempting to defect.

79. Having regard to its findings in paragraph 58 above about the applicant's illegal transfer, the IHR's submissions and to the fact that the Government submitted no convincing material in support of their position, the Court is satisfied that the Russian authorities were, or at least should have been reasonably aware that S.K. could face a forcible transfer to the country where he could be subjected to death or ill-treatment and that relevant preventive measures should have been taken by them (see *Mukhitdinov*, § 62, and, as a recent example, *N.K. v. Russia*, both cited above). However, no competent authority has ever examined the merits of the applicant's arguable claim under Articles 2 and 3 before illegally transferring him to the North Korean officials; in fact, the applicant has not been even given a realistic opportunity to make such a claim (compare with *Diallo*, cited above, § 85, and see paragraph 63 above).

80. 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 despite the District Prosecutor's order (see paragraphs 36-38 above), no meaningful steps were taken to establish S.K.'s whereabout during the investigation into his disappearance.

81. In the view of the above and having regard to the facts as alleged by the IHR and confirmed by materials that they submitted, and taking into account the Government's failure to substantiate their version of facts, the Court finds that substantial grounds have been shown for believing that at the time of S.K.'s rendition to the North Korean authorities, there existed a real risk that he would face death or ill-treatment in North Korea and the Russian authorities should therefore be held accountable for handing S.K. over to the

North Korean officials. They also failed to carry out an effective investigation into his illegal transfer.

82. There has accordingly been a violation of Articles 2 and 3 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

83. K.J., C.C. and the IHR on behalf of S.K. also complained that they had not had effective domestic remedies available to them in respect of their complaints under Articles 2 and 3 of the Convention, in breach of Article 13 of the Convention, which reads as follows:

Article 13

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

84. The Government made no specific observations on this issue beyond stating that there had been no violation of Article 13.

85. Having regard to its findings above (see paragraphs 68, 72 and 80 above), the Court considers that it is not necessary to examine this complaint separately (see *L.M. and Others v. Russia*, nos. 40081/14 and 2 others, § 127, 15 October 2015).

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

86. K.J. complained that his detention pending expulsion had been arbitrary and prolonged. The IHR complained, on behalf of S.K., that his detention on 10 September 2020 had been unlawful. They both relied on Article 5 § 1 of the Convention, which, in so far as relevant, provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition ..."

87. K.J. also complained that during his detention pending expulsion he had not had at his disposal any procedure to obtain a judicial review of the lawfulness of that detention. He relied on Article 5 § 4 of the Convention, which states as follows:

> "...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

88. The Government submitted that K.J. had not appealed against any of the orders for his detention pending expulsion. They made no submissions as to the admissibility of the complaint under Article 5 brought by the IHR on behalf of S.K.

89. K.J. submitted that no order had been made extending the term of his detention pending expulsion imposed on 24 January 2020 by the Shkotovskiy District Court of the Primorskiy Region. There had also been no other decisions concerning his detention except the order for release of 4 February 2022.

90. In so far as the Government may be understood to be suggesting that K.J. had not exhausted domestic remedies in respect of his Article 5 complaints, the Court notes that even though K.J. did not, at first, appeal against the judgment of 24 January 2020 of the Shkotovskiy District Court and his lawyer's request to extend the time-limit for bringing the appeal was refused (see paragraphs 6 and 7 above), his eventual appeal against the removal and detention order of 24 January 2020 was nevertheless considered on the merits by the cassation court. In particular, on 25 February 2021, the 9th Cassation Court of General Jurisdiction examined his appeal in substance in cassation proceedings (see paragraph 8 above). K.J. therefore cannot be said to have failed to exhaust domestic remedies (see, for similar reasoning, *Chorbadzhiyski and Krasteva v. Bulgaria*, no. 54991/10, §§ 48-49, 2 April 2020; *Gäfgen v. Germany* [GC], no. 22978/05, § 143, ECHR 2010 (with further references); and *Vladimir Romanov v. Russia*, no. 41461/02, § 52, 24 July 2008 (with further references)).

91. The Court further notes that these complaints of K.J. and S.K. are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The case of K.J.

92. K.J. relied on the violations found by the Court in *Azimov v. Russia* (cited above, §§ 152 and 171-73); *Kim v. Russia* (no. 44260/13, §§ 41-57, 17 July 2014); and *A.N. and Others v. Russia* ([Committee], no. 61689/16 and 3 others, § 34, 23 October 2018). He argued that his detention pending expulsion had become arbitrary in view of its extensive length and that Russian legislation made no provision for periodic and speedy judicial review of the lawfulness of that detention.

93. The Government submitted that K.J.'s detention pending expulsion had been lawful as it had been ordered by a court, and that even though no time-limit for it had been set, the length of his detention had not been unreasonable.

94. The Court notes from the case material that K.J. had been detained for two years and twelve days. On 7 July 2020 the authorities became aware of the suspension – for the duration of the proceedings before the Court – of the order for the removal of K.J. because of the application of an interim measure by the Court.

95. In this connection, the Court reiterates that the fact that expulsion proceedings are provisionally suspended as a result of the application of an interim measure does not in itself render the detention of the person concerned unlawful, provided that the authorities still envisage expulsion at a later stage, so that "action is being taken" even though the proceedings are suspended, on condition that the detention will not be unreasonably prolonged (see *Ahmed v. the United Kingdom*, no. 59727/13, § 44, 2 March 2017, with further references). The Court has also stated that whether an applicant has an opportunity to apply for judicial review is an important factor to be taken into account when reviewing the lawfulness of detention in cases where an interim measure has been applied (ibid., § 50).

96. The Court observes, however, that following its application of an interim measure, the authorities took little action in K.J.'s case and did not assess at regular intervals whether his removal remained a "realistic prospect", despite the passage of time (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 167, ECHR 2009). K.J., meanwhile, was detained without a date for release (see paragraph 6 above) and without an opportunity to ensure the periodic review of the reasons for his detention (see paragraph 98 below).

97. Accordingly, in the light of these considerations, and given the Court's recurrent findings of violations of Article 5 § 1 of the Convention in respect of foreigners detained indefinitely in Russia with a view to administrative removal, the Court finds that the length of K.J.'s detention exceeded what was reasonably required for the purpose pursued (see *L.M. and Others v. Russia*, cited above, §§ 149-52, with further references, and *S.K. v. Russia*, no. 52722/15, §§ 115 and 116, 14 February 2017; see also *M.L. and Others v. Russia* [Committee], nos. 25079/19 and 2 others, 6 April 2021, in which the Court found that the detention of a North Korean national pending expulsion was in violation of Article 5 § 1 of the Convention). There has therefore been a violation of Article 5 § 1 of the Convention in respect of K.J.

98. Lastly, in so far as access by K.J. to periodic judicial review of his continued detention is concerned, the Court has already found that foreign nationals who have been detained in Russia pending their expulsion are not able to have the reasons and lawfulness of their detention reviewed by the

domestic courts (see, among other authorities, *L.M. and Others v Russia*, cited above, §§ 141-42, and *R.K. v. Russia*, no. 30261/17, §§ 62-65, 8 October 2019). In the present case, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of the complaint under Article 5 § 4 of the Convention. The Court considers that K.J. did not have the opportunity to obtain an effective judicial review of his detention pending expulsion, in breach of Article 5 § 4 of the Convention.

2. The case of S.K.

99. The IHR submitted that S.K.'s apprehension by police officers on 10 September 2020 with a view to his rendition to North Korean officials had been arbitrary and unlawful.

100. The Government submitted no comments under this head.

101. Having regard to the case material and to its own findings (see paragraphs 21, 26, 30 and 58 above), the Court considers that the apprehension of S.K. on 10 September 2020 by police officers was not only unacknowledged but also manifestly lacking in any legal basis and was accordingly unlawful and in breach of Article 5 § 1 of the Convention.

VII. RULE 39 OF THE RULES OF COURT

102. On 7 July 2020 (in the cases of K.J. and C.C.) and 10 September 2020 (in the case of S.K.) the Court indicated to the respondent Government under Rule 39 of the Rules of Court that K.J., C.C. and S.K. should not be involuntarily removed from Russia to North Korea for the duration of the proceedings before the Court. Those interim measures are still in place.

103. The Court notes 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; (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 for referral under Article 43 of the Convention.

104. Having regard to the fact that K.J. and C.C.'s application has been struck out by the Court in so far as it concerns their complaint that they risked death and/or ill-treatment in the event of their being expelled to North Korea from Russia, the Court decides to discontinue the application of the interim measure in respect of K.J. and C.C. However, in the case of S.K., given that his whereabouts are currently unknown, and regard being had to the finding that his rendition to North Korean officials was in breach of Articles 2 and 3 of the Convention, the Court considers that the indication made to the Government under Rule 39 must remain in force until the present judgment becomes final or until further notice.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. K.J. claimed 15,000 euros (EUR) in respect of non-pecuniary damage. The IHR submitted a claim for non-pecuniary damage on behalf of S.K. but left the amount to the Court's discretion.

107. The Government submitted that K.J.'s claim for non-pecuniary damage had been excessive and unreasonable. They submitted no comments in respect of S.K.'s claim for non-pecuniary damage.

108. The Court observes that both K.J. and S.K. have suffered non-pecuniary damage as a result of a breach of their rights which cannot be compensated for solely by the finding of a violation. Having regard to its case-law and to equitable considerations, as required by Article 41 of the Convention, the Court awards K.J. EUR 7,800 and S.K. EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. S.K.'s award of just satisfaction should be paid directly to him, or, considering the exceptional circumstances of the case, to a person designated by him or to his legal heir(s).

B. Costs and expenses

109. K.J claimed EUR 4,500 and the IHR claimed EUR 4,425 on behalf of S.K. for the costs and expenses incurred in the proceedings before the Court.

110. The Government submitted that K.J.'s claim for costs and expensive had been excessive and not substantiated with relevant receipts. They submitted no comments in respect of S.K.'s claim for costs and expenses.

111. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see *Z.A. and Others v. Russia,* cited above, § 206, and *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 135, 3 October 2014). In the present case, regard being had to the documents in its possession and to the above criteria, the Court finds it reasonable to award the sum of EUR 4,500 to K.J. covering costs under all heads, plus any tax that may be chargeable to him. This sum is to be paid jointly and directly to the representatives' bank accounts. The Court further rejects S.K.'s claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Holds* that it has jurisdiction to deal with the applicants' complaints in so far as they relate to facts that took place before 16 September 2022;

3. *Declares* that the Institute for Human Rights has standing to represent S.K. in the proceedings before the Court;

4. *Decides* to strike the application of K.J. and C.C. (no. 27584/20) out of its list of cases in so far as it concerns complaints under Articles 2 and 3 of the Convention concerning the risk of death and/or ill-treatment in the event of K.J.'s and C.C.'s being expelled to North Korea from Russia;

5. *Declares* admissible the complaint by S.K. under Article 2 and Article 3 of the Convention concerning the risk of death and/or ill-treatment as result of his transfer to North Korean officials;

6. *Declares* admissible the complaints by K.J. and S.K. under Article 5 § 1 and the complaint by K.J. under Article 5 § 4 of the Convention;

7. *Holds* that there has been a violation of Articles 2 and 3 of the Convention in respect of S.K.;

8. *Holds* that there has been a violation of Article 5 §§ 1 and 4 of the Convention in respect of K.J. and a violation of Article 5 § 1 in respect of S.K.;

9. *Holds* that there is no need to examine the complaints under Article 13;

10. *Decides* to discontinue the application of the interim measure in respect of K.J. and C.C and 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 expel S.K., if he is in Russia, until such time as the present judgment becomes final or until further notice;

11. *Holds*
    (a) that the respondent State is to pay, 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 7,800 (seven thousand eight hundred euros) to K.J. and EUR 30,000 (thirty thousand euros) to S.K., plus any tax that may

be chargeable, in respect of non-pecuniary damage; the payment of S.K.'s award is to be made directly to S.K. or to a person designated by him or to his legal heir(s);

(ii) EUR 4,500 (four thousand five hundred euros) to K.J., plus any tax that may be chargeable to him, in respect of costs and expenses, to be paid directly and jointly to the accounts of Ms Davidyan, Ms Trenina or Mr Zharinov;

(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;

12. *Dismisses* the remainder of K.J.'s and S.K.'s claim for just satisfaction.

Done in English, and notified in writing on 19 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Pere Pastor Vilanova President