

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

FIRST SECTION

CASE OF KIM v. RUSSIA

(Application no. 44260/13)

JUDGMENT

STRASBOURG

17 July 2014

FINAL

17/10/2014

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



In the case of Kim v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Erik Møse,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 24 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 44260/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Roman Anatolyevich Kim ("the applicant") on 21 June 2013.

2. The applicant was represented by Mr Yu. Serov and Ms O. Tseytlina, lawyers practising in St Petersburg. 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. The applicant alleged, in particular, that he had been detained for too long, in inhuman and degrading conditions, and that he had been unable to obtain judicial review of his detention.

4. On 30 August 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 in the Uzbek SSR of the Soviet Union. Since 1990 he has been living in St Petersburg, Russia. It appears that he did not acquire any nationality following the break-up of the USSR.

A. Expulsion proceedings

6. On 19 July 2011 the police stopped the applicant for an identity check and discovered that he had no identity documents. On the same day a judge of the Sestroretsk District Court of St Petersburg found him guilty of an administrative offence under Article 18.8 of the Code of Administrative Offences (breach of residence regulations in Russia), fined him 2,000 Russian roubles (RUB) and ordered his expulsion from Russia. The court ruled that the applicant should be detained in the detention centre for aliens until his expulsion.

7. Officers of the Federal Migration Service (FMS) interviewed and fingerprinted the applicant, who had no passport or other identity documents. He told them that he had been born in Tashkent and, prior to his arrival in Russia, had had a registered place of residence in the Tashkent Region.

8. On 30 November 2011 the director of the detention centre for aliens asked the Embassy of Uzbekistan to issue travel documents (return certificates) to thirteen individuals, including the applicant, who were described as being Uzbek nationals. No reply was received.

9. Further similar requests sent on 10 February, 29 March, 31 July and 11 November 2012 did not elicit any reply from the Embassy of Uzbekistan either.

10. On 7 June 2012 counsel for the applicant sent an inquiry to the Embassy of Uzbekistan in Russia, seeking to find out whether or not the applicant had Uzbek nationality and whether he could be removed to Uzbekistan. No reply was received.

11. On the same day counsel asked the FMS to inform him what measures had been taken with a view to expelling the applicant from Russia, whether or not his identity had been established and why the applicant had already spent more than eleven months in detention. In reply, the FMS refused to give any information, citing the law on the protection of personal data.

12. On 14 November 2012 counsel applied to the Sestroretskiy District Court for an order discontinuing the enforcement of the expulsion order of 19 July 2011. He pointed out that the enforcement was impossible since the Uzbek authorities would not accept the applicant, who was not a national of that State.

13. On 10 December 2012 a judge of the Sestroretskiy District Court rejected the application, without hearing the parties or the applicant. According to the judge, a failure to take measures with a view to expelling the applicant was not a ground for discontinuing the enforcement of the expulsion order. Counsel submitted an appeal, in which he complained in particular about the absence of a periodic judicial review of the applicant's detention in breach of Article 5 § 4 of the Convention and about the State

authorities' failure to show special diligence in the conduct of the expulsion proceedings, contrary to the requirements of Article 5 § 1 (f) of the Convention. On 14 March 2013 a judge of the St Petersburg City Court rejected the appeal in a summary fashion.

14. Counsel also attempted to challenge the applicant's detention as unlawful. By decision of 26 November 2012, the Krasnoselskiy District Court of St Petersburg disallowed the complaint, finding that the decision of 19 July 2011 constituted a sufficient lawful basis for the ensuing detention. It noted in particular that the applicant would remain in custody "until his expulsion from Russia". On 24 January 2013 the St Petersburg City Court upheld the District Court's decision.

15. By letter of 5 February 2013, the consular department of the Embassy of Uzbekistan informed the FMS that the applicant was not a national of Uzbekistan and could not therefore be issued with a travel document. On 25 March 2013 the Ministry of Internal Affairs of Uzbekistan sent a further letter to the FMS, stating that the applicant was not an Uzbek national.

16. On 29 July 2013 the applicant was released on the basis of the expiry of the two-year time-limit for enforcement of the administrative-expulsion decision.

B. Conditions of detention in the detention centre for aliens

17. The detention centre for aliens (Центр для содержания иностранных граждан) is located in Krasnoye Selo in St Petersburg and operated at the material time under the authority of the FMS.

18. The centre, an eight-storey building designed to hold 176 inmates, actually accommodated no fewer than 300 people at any one time and the number rose to 400 in the summertime and during special raids.

19. The applicant was initially held in cells 604 and 605. Each cell measured no more than ten square metres and housed five or six people. In the last ten months of his detention the applicant was held in cell 615, an eighteen-square-metre cell which he shared with four and occasionally up to seven other people.

20. There was no sink or access to drinking water from within the cells; there was one toilet and one shower per floor which were used by approximately forty inmates.

21. Up until March 2013 the applicant was allowed twenty to thirty minutes' outdoor exercise once every two or three weeks in a tiny yard.

22. The facility did not offer any meaningful activities: no television, radio, newspapers or magazines were available.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Administrative Offences

23. Article 18.8 of the current version of the Code provides as follows:

> "1. An infringement by a foreign national or a stateless person of the procedure for entry to the Russian Federation or the regulations on stay or residence in the Russian Federation, including ... a breach of the regulations on migration, travel or choice of permanent or temporary residence ... shall be punishable by an administrative fine ... and by possible administrative removal from the Russian Federation.
>
> 1.1. A breach of the regulations on stay or residence in the Russian Federation committed by a foreign national or a stateless person who has no document confirming the right to reside or stay in the Russian Federation ... shall be punishable by an administrative fine of between RUB 2,000 and 5,000 and by administrative removal from the Russian Federation.
>
> ...
>
> 3. The offences described in paragraphs 1, 1.1 ... above, if committed in the federal-level cities of Moscow and St Petersburg or in the Moscow or Leningrad Regions, shall be punishable by an administrative fine of between RUB 5,000 and 7,000 and by administrative removal from the Russian Federation."

Paragraphs 1.1 and 3 of Article 18.8 were added by Federal Law no. 207-FZ of 23 July 2013.

24. Article 32.10 (5), in force at the time the applicant's detention was ordered, allowed domestic courts to order the detention of a foreign national or stateless person with a view to his or her administrative removal. As from 1 January 2012, the relevant provisions have been contained in Articles 3.10 (5) and 27.19 (3).

B. Case-law of the Constitutional Court

25. In its decision no. 6-P dated 17 February 1998, the Constitutional Court held, in particular, as follows:

> "It follows from Article 22 of the Constitution of the Russian Federation, taken in conjunction with its Article 55 (paragraphs 2 and 3), that detention for an indefinite period cannot be regarded a permissible limitation on the right to liberty and personal security, and is in fact a violation of that right. Therefore the provisions ... concerning detention pending expulsion should not serve as a basis for detention for an indefinite period even when the expulsion of a stateless person is delayed because no State is prepared to accept that person ... Otherwise detention would turn from a measure necessary to ensure the execution of an expulsion order into a ... punishment which is not provided under Russian law and which is incompatible with the provisions of the Constitution of the Russian Federation."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

26. The applicant complained that the conditions of his detention in the detention centre for aliens had been incompatible with 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

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

B. Merits

28. The Government acknowledged a violation of Article 3 of the Convention and stated that the conditions of the applicant's detention had fallen short of the applicable standards.

29. The applicant submitted that the conditions of his detention in the detention centre for aliens, which had been designed for short periods of detention not exceeding fifteen days but in which he had spent two years, had been inhuman and degrading.

30. Article 3, as the Court has observed on many occasions, enshrines one of the fundamental values of a democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see *Balogh v. Hungary*, no. 47940/99, § 44, 20 July 2004, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that the suffering and humiliation involved must, for a violation to be found, go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

31. Turning to the facts of the present case, the Court notes that the applicant spent two years and ten days in the detention centre for aliens, which appears to have been designed for short-term detention. This accounts for the rudimentary state of the centre's facilities. There was no running water or toilets in the cells. Hygiene facilities were manifestly inadequate in relation to the number of detainees. Outdoor exercise was sporadic and of an extremely limited duration. The Court reiterates in this connection its well-established case-law that the mere fact of holding an applicant for a long period of time in an unadapted cell designed only for short-term detention discloses a violation of Article 3 (see *Aslanis v. Greece*, no. 36401/10, § 38, 17 October 2013, with further references; *Kuptsov and Kuptsova v. Russia*, no. 6110/03, §§ 69-72, 3 March 2011; *Khristoforov v. Russia*, no. 11336/06, §§ 23-27, 29 April 2010, and *Shchebet v. Russia*, no. 16074/07, §§ 84-96, 12 June 2008).

32. In addition, the detention centre for aliens was constantly and severely overcrowded. During the first one and a half years of his detention the applicant disposed of less than two square metres of personal space. In the final ten months his situation improved slightly, and periods of overcrowding, with eight people sharing the eighteen-square-metre cell, alternated with periods of relative normality when only four of them were present in the cell. However, the latter periods must be seen against the background of virtually non-existent outdoor exercise and deficient hygiene facilities. In previous cases where the applicants disposed of less than three square metres of personal space, the Court found that the overcrowding was severe enough to justify, in its own right, a finding of a violation of Article 3 of the Convention (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 145, 10 January 2012).

33. The Government did not dispute the applicant's account of the conditions of his detention. They also conceded that those conditions had fallen short of the standards set forth in Article 3 of the Convention.

34. The Court finds that the applicant had to endure conditions of detention which must have caused him considerable mental and physical suffering, diminishing his human dignity. The conditions of his detention thus amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention, even in the absence of any positive intention to humiliate or debase the applicant on the part of any domestic authority.

35. There has accordingly been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

36. The applicant complained that his detention pending expulsion had been in breach of Article 5 § 1 (f) of the Convention on account of its excessive length and the obvious impossibility to enforce the order for his

expulsion to Uzbekistan. He further complained under Article 5 § 4 of the Convention that he had been unable to obtain a judicial review of his detention. The relevant parts of Article 5 provide 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.
>
> ...
>
> 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

37. The Court notes that this part of 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

38. The Court will consider firstly whether there existed a possibility of effective supervision over unlawful or arbitrary detention and secondly whether the applicant's detention was compatible with the requirements of Article 5 § 1 (f) (see *Azimov v. Russia*, no. 67474/11, § 146 et seq., 18 April 2013; *Louled Massoud v. Malta*, no. 24340/08, § 29 et seq., 27 July 2010; and *Muminov v. Russia*, no. 42502/06, § 112 et seq., 11 December 2008).

1. Compliance with Article 5 § 4 of the Convention

39. The Government acknowledged a violation of Article 5 § 4.

40. The applicant submitted that Russian law does not provide for any possibility to obtain a meaningful judicial review of the detention of an individual who is detained pending administrative expulsion (he referred, by way of comparison, to *Tabesh v. Greece*, no. 8256/07, § 62, 26 November 2009). Such detention may last up to two years but there is no periodic judicial review of it. His applications for review were dismissed in a summary fashion first by the Sestroretsk Town Court and later by the Krasnoselskiy District Court. In both cases, the St Petersburg City Court upheld the lower courts' decisions.

41. The Court reiterates that the purpose of Article 5 § 4 is to guarantee to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected. A remedy must be made available during a person's detention to allow that person to obtain speedy judicial review of its lawfulness. That review should be capable of leading, where appropriate, to release. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see *Muminov*, cited above, § 113, and *Ismoilov and Others v. Russia*, no. 2947/06, § 145, 24 April 2008, with further references).

42. The Court notes at the outset that a judicial review of the kind required under Article 5 § 4 cannot be said to be incorporated in the initial detention order of 19 July 2011. The thrust of the applicant's complaint under Article 5 § 4 was not directed against the initial decision on his placement in custody but rather against his inability to obtain a judicial review of his detention after a certain lapse of time. Given that the applicant spent more than two years in custody, new issues affecting the lawfulness of the detention might have arisen in the meantime. In particular, the applicant sought to argue before the courts that his detention had ceased to be lawful after it had transpired that it was impossible to expel him to Uzbekistan. By virtue of Article 5 § 4 the applicant was entitled to apply to a "court" having jurisdiction to decide "speedily" whether or not his deprivation of liberty had become "unlawful" in the light of new factors which emerged subsequently to the decision on his initial placement in custody (see *Azimov*, cited above, §§ 151-152, with further references).

43. The Court observes that no automatic periodic extension of the applicant's detention or any judicial review thereof took place during the entire two-year period that he remained in custody. The applicant's attempts to seek any form of review were likewise unfruitful: two District Courts and the St Petersburg City Court refused to deal with the substance of his complaint about unlawful detention, finding that there was no need to vary the custodial measure or to review its lawfulness in the light of the new circumstances. The Court lastly notes that in the *Azimov* case, which featured a similar complaint, the Government did not point to any domestic legal provision which could have allowed the applicant to bring proceedings for judicial review of his detention pending expulsion (see *Azimov*, cited above, § 153); in the instant case, the Government also acknowledged a violation of Article 5 § 4.

44. It follows that throughout the term of the applicant's detention pending expulsion he did not have at his disposal any procedure for a judicial review of its lawfulness.

45. There has therefore been a violation of Article 5 § 4.

2. Compliance with Article 5 § 1 of the Convention

46. The Government acknowledged a violation of Article 5 § 1 (f) in respect of the time period after 5 February 2013, the date on which the letter from the Embassy of Uzbekistan made it clear that the applicant's expulsion to Uzbekistan was impossible. As regards the preceding period, the Government submitted that the lengthy detention was accounted for by an "objective reason", notably the absence of information from the Embassy of Uzbekistan. The domestic authorities had shown "special diligence" in the conduct of the expulsion proceedings.

47. The applicant submitted that the Russian authorities had not conducted the expulsion proceedings with due diligence. This lack of due diligence on their part was exemplified in several ways. Firstly, no effort had been made to contact the Uzbek authorities in the first four months and eleven days of his detention. Secondly, the Russian authorities had sent no fewer than four letters to the Embassy of Uzbekistan in Moscow, but a first reply was received more than one year and two months after the despatch of the first letter. Thirdly, there had been no justification for the applicant's detention after 5 February 2013, when the Russian authorities had become aware that he was not an Uzbek national. Finally, the applicant pointed out that he had been kept in detention pending expulsion: thus, there had been no complex extradition proceedings and the only issue to be determined had been whether at least one State was willing and able to receive him.

48. The applicant was held in custody with a view to his expulsion from Russia, which is a form of "deportation" in terms of Article 5 § 1 (f) of the Convention (see *Azimov*, cited above, § 160). Accordingly, the deprivation of the applicant's liberty fell within the ambit of Article 5 § 1 (f).

49. Article 5 § 1 (f) does not demand that detention be reasonably considered necessary, for example to prevent an individual from committing an offence or fleeing. Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified, however, only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see *Chahal v. the United Kingdom*, 15 November 1996, § 113, *Reports of Judgments and Decisions* 1996-V). To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009).

50. The Court notes that the applicant remained in detention pending the enforcement of the order for his expulsion for a total period of two years and ten days. It appears that the only steps taken by the Russian authorities during that time were to write to the Embassy of Uzbekistan in Moscow five

times, asking it to issue a travel document for the applicant. It is true that the Russian authorities could not compel the Embassy to issue such a document. However, there is no indication that they pursued the matter vigorously or endeavoured to enter into negotiations with the Uzbek authorities with a view to expediting its delivery (compare *Amie and Others v. Bulgaria*, no. 58149/08, § 77, 12 February 2013; *Raza v. Bulgaria*, no. 31465/08, § 73, 11 February 2010; *Tabesh*, cited above, § 56; and *Louled Massoud*, cited above, § 66).

51. It is a matter of particular concern to the Court that the Russian authorities sent their first letter to the Embassy of Uzbekistan more than four months after the applicant's placement in custody. The letter concerned the applicant and twelve other individuals who were presumed to be nationals of Uzbekistan. While administrative convenience may call for a group treatment of similar requests under different circumstances, the fact that the applicant was in detention required special diligence from the authorities and the four-month delay was clearly in breach of that requirement (see *Tabesh*, cited above, § 56, in which the authorities remained passive for three months).

52. Upon receipt of the letter from the Uzbek authorities dated 5 February 2013, the Russian authorities became aware that the applicant's expulsion to Uzbekistan was no longer a realistic prospect because he was not a national of that State. The Government have not provided evidence of any efforts having been made to secure the applicant's admission to a third country. There is no indication that they asked him to specify such a country or that they took any steps to explore that option on their own initiative (compare *Amie and Others*, cited above, § 77). The Court reiterates that detention cannot be said to have been effected with a view to the applicant's deportation if this was no longer feasible (see *Mikolenko v. Estonia*, no. 10664/05, §§ 64-65, 8 October 2009). This was also conceded by the respondent Government.

53. The Court further reiterates that the domestic authorities have an obligation to consider whether removal is a realistic prospect and whether detention with a view to removal is from the outset, or continues to be, justified (see *Amie and Others*, cited above, § 77, and *Louled Massoud*, cited above, § 68). In such circumstances the necessity of procedural safeguards becomes decisive. However, the Court has already established that the applicant did not have any effective remedy by which to contest the lawfulness and length of his detention, and the Government have not pointed to any other normative or practical safeguard. It follows that the Russian legal system did not provide for a procedure capable of preventing the risk of arbitrary detention pending expulsion (see *Azimov*, cited above, §§ 153-54; *Louled Massoud*, cited above, § 71, and, *mutatis mutandis*, *Soldatenko v. Ukraine*, no. 2440/07, § 114, 23 October 2008). In the absence of such safeguards, the applicant spent the entire two-year period,

that is, the maximum period the Russian law stipulates for the enforcement of an expulsion order, in detention.

54. The Court is concerned about the applicant's particularly vulnerable situation. As a stateless person, he was unable to benefit from consular assistance and advice, which would normally be extended by diplomatic staff of an incarcerated individual's country of nationality. Furthermore, he appears to have no financial resources or family connections in Russia and he must have experienced considerable difficulties in contacting and retaining a legal representative. The domestic authorities do not appear to have taken any initiative to accelerate the progress of the removal proceedings and to ensure the effective protection of his right to liberty, although the decision by the Constitutional Court of 17 February 1998 may be read as expressly requiring them to do so (see paragraph 25 above). As a consequence, the applicant was simply left to languish for months and years, locked up in his cell, without any authority taking an active interest in his fate and well-being.

55. Lastly, the Court reiterates that the maximum penalty in the form of deprivation of liberty for an administrative offence under the Code of Administrative Offences is thirty days (see *Azimov*, cited above, § 172) and that detention with a view to expulsion should not be punitive in nature and should also be accompanied by appropriate safeguards, as established by the Russian Constitutional Court (see paragraph 25 above). In this case the "preventive" measure, in terms of its gravity, was much more serious than the "punitive" one, which is abnormal (see *Azimov*, cited above, § 172).

56. The foregoing considerations are sufficient to enable the Court to conclude that the grounds for the applicant's detention – action taken with a view to his expulsion – did not remain valid for the whole period of his detention due to the lack of a realistic prospect of his expulsion and the domestic authorities' failure to conduct the proceedings with due diligence.

57. There has accordingly been a violation of Article 5 § 1 (f) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant asked the Court to determine the amount of compensation in respect of non-pecuniary damage. Having no identity

documents or bank account, he asked the Court to order payment of any award into the bank account of his representative, Ms Tseytlina.

60. The Government considered that the finding of a violation would constitute sufficient just satisfaction.

61. The Court awards the applicant 30,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

62. The applicant also claimed EUR 1,070 for the work of two representatives in the domestic proceedings and before the Court.

63. The Government submitted that the applicant failed to submit supporting documents.

64. 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 have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the amount claimed, that is, EUR 1,070, covering costs under all heads plus any tax that may be chargeable to the applicant.

C. Default interest

65. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

66. Article 46 of the Convention provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

67. The Court reiterates that by Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order

to put an end to the violation found by the Court and to redress as far as possible the effects.

68. The present case has disclosed violations of some of the core rights protected by the Convention – prohibition of ill-treatment and the right to liberty – which were not prevented through domestic legal remedies. A situation similar to the one obtaining in the instant case arose in a case of three stateless persons of Roma origin who had spent almost one year in the same detention centre for aliens in St Petersburg pending their administrative removal from Russia, without judicial review of their detention. That case was terminated by way of a friendly settlement, with the Government undertaking to pay a sum of money to the applicants (see *Lakatosh and Others v. Russia* (dec.), no. 32002/10, 7 June 2011). In *Azimov* and follow-up cases the Court found a violation of Article 5 § 4 of the Convention on account of the fact that during the term of the applicants' detention pending expulsion they did not have at their disposal any procedure for judicial review of its lawfulness in the light of new factors which emerged subsequent to the decision on their initial placement in custody (see *Azimov*, cited above, §§ 153-54).

69. In principle, it is not for the Court to determine possible appropriate measures of redress for a respondent State to carry out in accordance with its obligations under Article 46 of the Convention. With a view, however, to helping the respondent State fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 255, 17 January 2012; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 148, ECHR 2009; and *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V). The Court's concern is to facilitate the rapid and effective suppression of a malfunction in the national system of human-rights protection. In that connection, the Court considers that general measures at the national level are undoubtedly called for in the execution of the present judgment (see *Driza v. Albania*, no. 33771/02, § 125, ECHR 2007-V (extracts), and *Louled Massoud*, cited above, § 47).

A. General measures to prevent similar violations

70. In view of its finding of a violation of Article 5 § 4 in the instant case, the Court considers that it is necessary to indicate the general measures required to prevent other similar violations in the future. It has found a violation of Article 5 § 4 on account of the fact that the applicant, who was held in custody pending his expulsion from Russia, was unable to institute proceedings by which the lawfulness of his detention could be examined by a court and his release ordered if the detention ceased to be justified (see paragraph 43 above).

71. Thus, the Court considers that the respondent State must above all, through appropriate legal and/or other measures, secure in its domestic legal order a mechanism which allows individuals to institute proceedings for the examination of the lawfulness of their detention pending removal in the light of the developments in the removal proceedings. The Court reiterates that although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question (see *A. and Others v. the United Kingdom*, cited above, § 203, and *Idalov v. Russia* [GC], no. 5826/03, § 161, 22 May 2012).

72. The Court has also found a violation of Article 5 § 1 of the Convention on account of the unreasonable duration of the applicant's detention. Accordingly, it recommends that the respondent State envisage taking the necessary general measures to limit detention periods so that they remain connected to the ground of detention applicable in an immigration context (see paragraph 55 above, *Suso Musa v. Malta*, no. 42337/12, § 123, 23 July 2013, and the Constitutional Court's decision no. 6-P cited in paragraph 25 above).

B. Remedial measures in respect of the applicant

73. The Court further notes that, in addition to being stateless, the applicant appears to have no fixed residence and no identity documents. The Court is therefore concerned that following his release, the applicant's situation has remained irregular from the standpoint of Russian immigration law. He thus risks exposure to a new round of prosecution under Article 18.8 of the Code of Administrative Offences, cited in paragraph 23 above.

74. The Court is therefore convinced that it is incumbent upon the Russian Government to avail itself of the necessary tools and procedures in order to prevent the applicant from being re-arrested and put in detention for the offences resulting from his status of a stateless person. Given the variety of means available to achieve this aim and the nature of the issues involved, the Committee of Ministers is better placed than the Court to assess the specific individual measures to be taken. It should thus be left to the Committee of Ministers to supervise, on the basis of the information provided by the respondent State and with due regard to the applicant's evolving situation, the adoption of such measures that are feasible, timely, adequate and sufficient to ensure the maximum possible reparation for the violations found by the Court (see *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 255, ECHR 2013 (extracts)).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 1 (f) of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement and paid into Ms Tseytlina's bank account:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,070 (one thousand and seventy euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 17 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President