

Removal of Chechen man from Austria to Russia would expose him to risk of ill-treatment

In today's Chamber judgment in the case of [I.K. v. Austria](#) (application no. 2964/12), which is not final¹, the European Court of Human Rights held, unanimously:

that there would be **a violation of Article 3 (prohibition of torture and of inhuman or degrading treatment)** of the European Convention on Human Rights if Mr K. was removed to Russia.

The case concerned the complaint by a Russian national of Chechen origin that his removal from Austria to Russia would expose him to the risk of ill-treatment, as his family had been persecuted in Chechnya.

The Court held in particular that there was no indication that Mr K. would be at a lesser risk of persecution upon return to Russia than his mother, who had been granted asylum in Austria, the Austrian courts having found her account convincing. Furthermore, there were recent reports documenting the practice of collective punishment of relatives and suspected supporters of alleged insurgents.

Principal facts

The applicant, I.K., is a Russian national of Chechen origin who was born in 1976 and lives in Vienna. In April 2004, he left Chechnya together with his mother and in November 2004 they arrived in Austria, where they requested asylum. I.K. claimed that he and his family had been persecuted in Chechnya, because his father – who was shot before his eyes – had worked in the security services of former President Maskhadov, a separatist leader. I.K. also stated that he himself had been arrested several times and had been brutally beaten by Russian soldiers in the course of an identity check.

Both asylum requests were dismissed in 2007. I.K. withdrew his appeal against that decision in April 2009, having allegedly received wrong legal advice, but lodged a new asylum request in June 2009, which was eventually dismissed in June 2011. The courts found that he had not submitted any new relevant information which would change the authorities' conclusion in the initial proceedings.

In the meantime, I.K.'s mother, who had maintained her appeal against the initial dismissal of her request, was granted asylum in May 2009. The Asylum Court found it credible that in the event of her return to Russia she would be under threat from State authorities or third parties, referring in particular to the activities of her late husband and the fact that he had been killed.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

I.K. was convicted in Austria of a number of offences, including aggravated bodily harm, and sentenced to three prison sentences of several months between 2005 and 2008. In March 2008, he married a Russian national in Austria and the couple had two children. In 2011, I.K. was treated for a depressive episode. A report from the hospital states that he was suffering from post-traumatic stress disorder, advising against his removal to Russia.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) and Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr K. complained that his removal to Russia would expose him to the risk of ill-treatment and that his mental health would deteriorate. Further relying on Article 8 (right to respect for private and family life), Mr K. also complained that his removal to Russia would separate him from his wife and children, who live in Austria.

The application was lodged with the European Court of Human Rights on 13 January 2012. On 17 January 2012, the Court applied an interim measure under Rule 39 of its Rules of Court and requested the Austrian Government not to remove Mr K. to Russia until further notice.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle **Berro-Lefèvre** (Monaco), *President*,
 Elisabeth **Steiner** (Austria),
 Khanlar **Hajiyev** (Azerbaijan),
 Linos-Alexandre **Sicilianos** (Greece),
 Erik **Møse** (Norway),
 Ksenija **Turković** (Croatia),
 Dmitry **Dedov** (Russia),

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 3

The Court found it appropriate to examine Mr K.'s complaint concerning the risk of ill-treatment under Article 3 alone.

At the time of their assessment of Mr K.'s asylum request, the Austrian authorities had had at their disposal various country reports about Russia's North Caucasus region from international bodies and other Governments, which observed a deterioration in the general security situation in 2009 and serious human rights violations throughout the region. Those reports gave weight to Mr K.'s consistent claim that he would face a real risk of persecution if returned to Russia.

Mr K. had relied on the same reasons for explaining his flight as his mother. However, while she had been granted asylum in 2009 after the Austrian asylum court had considered her account convincing, the authorities had dismissed Mr K.'s second asylum request and had not examined the connections between his and his mother's proceedings. Furthermore, the Austrian Government had not brought forward any argument in their submissions to the Court as regards the discrepancy between the assessment of Mr K.'s and his mother's respective requests. In that light, the Court was not convinced that the Austrian authorities had thoroughly examined his grievances.

The information concerning the position of Mr K.'s father in the security services and the account of his killing had been considered credible in the asylum proceedings of Mr K.'s mother. Given that the national authorities were much better placed to evaluate the statements and evidence brought directly before them, the Court had no reason to doubt the assessment by the Austrian asylum court as to the credibility of the reasons for Mr K.'s mother's – and thus also Mr K.'s – reasons for fleeing Chechnya. Furthermore, Mr K. had provided the Court with a medical report documenting an old facial bone injury corresponding to his account of having been beaten. There was no indication in the documents before the Court that he would be at a lesser risk of persecution upon return to Russia than his mother. Finally, the time that had elapsed since the decision in her asylum proceedings in May 2009 was not long enough to lead to a different conclusion.

The Court had found violations of Articles 2 and 3 of the Convention in numerous judgments in respect of disappearances and ill-treatment in Chechnya. Those cases, although relating to events dating back several years, provided a general background for the Court's assessment of Mr K.'s case. Furthermore, recent reports from international bodies still provided a picture of regularly occurring human rights violations committed by both rebel groups and security forces, and of a climate of impunity and lack of effective investigations of disappearances and acts of ill-treatment. The reports also still referred to the practice of reprisals and collective punishment of relatives and suspected supporters of alleged insurgents.

The Court concluded that Mr K. would face a real and personal risk of being subjected to treatment contrary to Article 3 if returned to Russia. Accordingly, there would be a violation of Article 3 in case of his removal there.

At the same time, the Court considered that Mr K.'s mental health status and the risk of its deterioration did not fall within the remit of Article 3. Furthermore, having regard to its findings under Article 3, the Court did not find it necessary to examine the complaint under Article 8.

The Court considered that its indication to the Austrian Government under Rule 39 of its Rules of Court not to remove Mr K. to Russia had to remain in force until the judgment became final or the Court took a further decision in this regard.

Costs and expenses

The court held that Austria was to pay Mr K. 5,031.23 euros (EUR) in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.