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

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All the conditions required for an up-to-date assessment of the applicant's individual situation having been met, enforcement of a decision to remove him to the Russian Federation would not violate Article 3 of the Convention

In today's **Chamber** judgment[1] in the case of U v. France (application no. 53254/20) the European Court of Human Rights held, unanimously, that there would be:

no violation of Article 3 (prohibition of torture and inhuman and degrading treatment) of the European Convention on Human Rights if the decision to remove the applicant to the Russian Federation were enforced.

The case concerned the procedure to remove the applicant, a Russian national of Chechen origin, to Russia. The applicant's refugee status had been revoked on account of the serious threat his presence in France posed to State security.

The applicant submitted that the implementation of that measure would expose him to treatment in breach of Article 3 of the Convention.

The Court found, firstly, that the French authorities had, at each stage of the proceedings to enforce the removal measure to Russia, conducted a thorough and in-depth examination of the applicant's situation.

Secondly, carrying out its own up-to-date assessment of the applicant's individual situation, the Court considered that he had not demonstrated before it that there were serious, proven grounds to believe that, if he were returned to Russia, he would run a real and present risk of being subjected to treatment in breach of Article 3 of the Convention. It concluded that enforcement of the removal measure in respect of the applicant would not, in the circumstances of the present case, violate Article 3 of the Convention.

The Court also declared his complaints concerning his compulsory residence order inadmissible for non-exhaustion of domestic remedies.

Principal facts

The applicant is a Russian national of Chechen origin who was born in 1968 in the Russian Federation.

The applicant entered France in September 2009. On 15 November 2011 the French Office for the Protection of Refugees and Stateless Persons (OFPRA) rejected his asylum application. On 22 May 2012 the National Asylum Court (CNDA) granted the applicant, and his wife, refugee status.

Criminal proceedings in France and revoking of refugee status

In July 2015 the Strasbourg Criminal Court sentenced the applicant to eight months' imprisonment for condoning terrorism and for threatening to commit a criminal offence against a public-service employee and intimidating behaviour towards the latter, events which had occurred in 2014 and

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.

2015. In September 2015 the Colmar Court of Appeal upheld the applicant's conviction and increased his sentence to one year's imprisonment. It also ordered, as an additional penalty, his permanent exclusion from French territory.

In April 2016 the OFPRA revoked the applicant's refugee status under Article L. 711-6 of the Code regulating the entry and residence of aliens and asylum-seekers (*Code de l'entrée et du séjour des étrangers et du droit d'asile*) on account of the serious threat his presence in France posed to State security. The CNDA upheld that decision.

In August 2016 the Laon Criminal Court convicted the applicant of illegal possession of category-D weapons.

The applicant was placed in pre-trial detention on 7 March 2020, and on 9 March 2020 was sentenced to three months' imprisonment for breaching the terms of his compulsory residence order (*assignation à résidence*). Upon his release, the applicant was once again placed under a compulsory residence order on 21 April 2020. He breached the terms of that order, and was again convicted and sentenced, in April 2020, to five months' imprisonment. In July 2020, the Toulouse Court of Appeal increased his sentence to nine months' imprisonment.

Measures to remove the applicant

In an order of 26 May 2016, the prefect placed the applicant under a compulsory residence order. In 2019 the applicant breached its terms and left France for Belgium, where he applied for asylum. The Belgian authorities returned him to France under Regulation (EU) No. 604/2013 of 26 June 2013 (the Dublin III Regulation). Following the applicant's arrival in France, the Haute-Garonne prefect ordered his placement in administrative detention, which was extended to 28 days by an order of the liberties and detention judge.

On 16 January 2020 the Haute-Garonne prefect ordered that the applicant was to be removed to the country of which he was a national or to any other country to which he would be legally admitted. On 22 January 2020 the Toulouse Administrative Court dismissed the applicant's action to have that order set aside.

In an opinion of 14 February 2020, the CNDA considered that, since the applicant remained a refugee despite his refugee status having been revoked, the order of 16 January 2020 determining the destination country had to be set aside in so far as it concerned his removal to Russia. In a judgment of 8 February 2021, the Bordeaux Administrative Court of Appeal upheld the judgment of 22 February 2020, including the findings concerning the absence of risk in the event of the applicant being returned to Russia. The *Conseil d'État* declared inadmissible an appeal lodged by the applicant against that judgment.

On 21 April 2020, on his release from detention, the applicant was once again placed under a compulsory residence order in the Haute-Garonne *département*. He breached that order, and was accordingly sentenced to nine months' imprisonment. At the end of that period, on 27 November 2020, the Haute-Garonne prefect ordered his placement in administrative detention.

In an order of 11 December 2020, the applicant was placed under a compulsory residence order in the Ardennes *département*. On 31 May 2021 the applicant appealed against that order to the Paris Administrative Court, which dismissed his appeal in a judgment of 1 July 2022.

On 4 July 2022 the applicant applied to the Minister of the Interior to have the compulsory-residence measure revoked. His request, which went unanswered, was deemed to have been rejected.

On 23 October 2023 the applicant was placed in administrative detention. On 26 October 2023 the prefect and the applicant both applied to the liberties and detention judge: the prefect asked for an extension of the administrative detention, and the applicant asked to have the order to place him in

administrative detention set aside. The liberties and detention judge declared the prefect's request inadmissible and ordered the applicant's release.

In two orders of 8 November 2023, the prefect determined Russia as the destination country and held that the applicant was to remain in detention pending his removal to that country.

Applications to the Court and requests for interim measures

On 4 May 2016, and again on 3 March 2020, the Court, in response to successive requests for interim measures, indicated to the Government under Rule 39 of the Rules of Court that the applicant should not be returned to the Russian Federation.

On 8 December 2020, in response to a further request for an interim measure, the Court indicated to the Government that they were not to return the applicant to Russia for the duration of the proceedings before it.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman and degrading treatment), the applicant submitted that his removal to Russia would expose him to treatment in breach of that Article. Relying on Article 8 (right to respect for private and family life), he complained that the compulsory residence order to which he was subject, taken together with his administrative situation following the order for his permanent exclusion from France, had deprived him of all access to employment and breached his right to respect for his private and family life.

The application was lodged with the European Court of Human Rights on 8 December 2020.

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

Georges **Ravarani** (Luxembourg), *President*,
Lado **Chanturia** (Georgia),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
María **Elósegui** (Spain),
Mattias **Guyomar** (France),
Kateřina **Šimáčková** (the Czech Republic),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 3

The Court had already held that, in spite of reports of serious human rights violations in Chechnya, the general situation in the North Caucasus region was not such that any return to the Russian Federation would constitute a violation of Article 3 of the Convention.

In the present case, the Court considered that the applicant's personal situation, and in particular the assessment of the risks that he alleged he would face if the removal measure to Russia were enforced, had been examined in depth by both the administrative authorities and the domestic courts in the context of their review of the implementation of the removal measure.

Firstly, before issuing the order of 16 January 2020 specifying Russia as the country of destination, the relevant administrative authority had examined the applicant's personal situation. Following that examination, the prefect had considered that, while the applicant had submitted that he would be subjected to threats in his country of origin, he had not provided any evidence of a real, personal and present risk of such a nature as to prevent his return.

Secondly, the order specifying the destination country had been subjected to judicial review on three occasions – at first instance, on appeal and by the Court of Cassation. Following an in-depth examination of the applicant's situation, the three appeals had been dismissed in decisions containing relevant and sufficient reasons.

Lastly, the Court noted that the order of 16 January 2020 specifying the country of destination remained in force in the domestic legal framework, given that all of the appeals lodged by the applicant with the administrative courts had been dismissed. The prefect had, on 8 November 2023, issued a fresh order specifying Russia as the country of destination, after reassessing the applicant's individual situation with regard to the risks that he would face if returned to Russia. In order to carry out that up-to-date assessment, he had requested the applicant to provide observations on the destination country. At the close of his examination, he had considered that it had not been demonstrated that the applicant would be exposed to punishment or treatment in breach of Article 3 of the Convention if he were returned to his country of origin. The applicant did not argue that he had challenged that order in the domestic courts.

Having noted that the French authorities had carried out, at each stage of the proceedings, a thorough and in-depth examination of the applicant's situation, the Court reiterated that it was its task to carry out its own up-to-date assessment of the risk of treatment in breach of Article 3 of the Convention in the light of present-day circumstances.

In the first place, the Court noted, as had the Government, that the applicant had merely referred to the CNDA's decision in which his activism in Russia had been detailed, without providing any further details or new information in support of his submissions concerning the alleged threats he would currently face in Russia. While the CNDA had considered it established that the applicant had campaigned for human rights in Russia, it had neither been argued nor established that he had continued his activism since arriving in France in 2009.

Secondly, the Court noted that nearly 12 years had passed since the applicant had been granted refugee status; he had not shown in what way the events which had justified the granting of refugee status, specifically, his activism in the early 2000s, could expose him to a present-day, real risk of being subjected to inhuman or degrading treatment by the Russian authorities.

With regard to the political opinions that the Russian authorities might attribute to the applicant as a result of his links with an activist blogger who had been assassinated in January 2020, the Court considered that the applicant had not provided any information as to why the Russian authorities would be aware of his links with that activist or the well-foundedness of his fears in that connection.

The Court also noted that the applicant's name did not appear on any list of persons wanted by the Russian authorities in connection with terrorist or extremist activities.

The Court pointed out that Russia had never requested the applicant's extradition from France or a copy of the judgment convicting him of condoning terrorism. Nor did the case file show that the Russian authorities had initiated judicial proceedings in respect of the applicant for offences committed on Russian soil or elsewhere. There was no evidence that the Russian authorities currently showed any particular interest in the applicant.

Having carried out its up-to-date assessment, the Court considered that the applicant had not demonstrated before it that there were serious, proven grounds to believe that if he were returned to Russia he would run a real and present risk of being subjected to treatment in breach of Article 3 of the Convention. It concluded that enforcement of the removal measure in respect of the applicant would not, in the circumstances of the present case, violate Article 3 of the Convention.

Article 8

The Court noted that a complaint could only be lodged before it after the domestic authorities had been given the opportunity to rule on the complaint in issue and to prevent or bring to an end the

violations of the Convention. It reiterated that the rule of exhaustion of domestic remedies was an indispensable part of the functioning of the system of protection established by the Convention.

In those circumstances, the Court considered, as argued by the Government, that the applicant should have challenged, within two months, the Administrative Court's decision of 1 July 2022 before the Administrative Court of Appeal and, subsequently, the *Conseil d'État*; the applicant had not shown that he had done so.

The applicant could not therefore be said to have exhausted domestic remedies with regard to his complaints under Articles 3, 5 and 8 of the Convention in respect of the compulsory residence order, and it followed that those complaints had to be declared inadmissible.

Rule 39 of the Rules of Court

The Court considered that the measure indicated to the Government under Rule 39 of the Rules of Court had to remain in force until the present judgment became final or until another related decision was taken by the Court.

The judgment is available only in French.

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