

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

FIFTH SECTION

DECISION

Application no. 53141/19
A.J.B. v. Portugal

The European Court of Human Rights (Fifth Section), sitting on 22 June 2023 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
Lado Chanturia,
Mattias Guyomar*, judges*,

and Sophie Piquet, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 53141/19) against the Portuguese Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 9 October 2019 by a Russian and Portuguese national, Mr A.J.B. ("the applicant"), who was born in 1972, lives in Albufeira and was represented by Ms V. Costa Ramos and Ms L.P. Cordeiro, lawyers practising in Lisbon;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. On 19 May 2014 the applicant was arrested in Albufeira, following an international arrest warrant issued against him by the Russian authorities under the European Convention on Extradition, on charges of kidnapping, punishable by a prison sentence of up to fifteen years. He was put in preventive detention and on 27 June 2014 was released, subject to weekly attendance at the Immigration and Border Service (*Serviço de Estrangeiros e Fronteiras* – hereinafter "the SEF").

2. On 17 March 2015 the applicant's case was examined by the Évora Court of Appeal. On 25 March 2015 he submitted written pleadings against his extradition. He argued that if extradited to Russia, he would face an unfair trial, be detained under harsh conditions and subjected to ill-treatment, and that his life would be at risk. He also alleged that his extradition would breach his right to respect for his family life.

3. On 12 July 2018, following several appeals and motions, the Évora Court of Appeal allowed the extradition.

4. The applicant appealed against that decision to the Supreme Court, which dismissed the appeal on 10 April 2019. On 7 January 2021 the Constitutional Court dismissed a further appeal lodged by the applicant.

5. On 26 April 2021 the applicant acquired Portuguese citizenship by way of naturalisation. He then requested the Évora Court of Appeal to discontinue the extradition proceedings against him. On 3 August 2022 that court decided, pursuant to Article 6 § 1 (c) of the European Extradition Convention and the reservation made by Portugal in this regard, to refuse to hand over the applicant to the Russian authorities on the grounds that he had in the meantime acquired Portuguese citizenship. In this connection, the court mentioned that its decision was the equivalent to a refusal to extradite by the relevant central authority. That decision became final on 29 August 2022.

6. On 6 January 2021 the applicant lodged an application for international protection with the SEF under section 7 of Law no. 27/2008 of 30 June 2008. On 28 September 2021 the SEF decided to discontinue the international protection procedure as being without object, since the applicant had in the meantime acquired Portuguese citizenship (paragraph 5 above). He lodged an appeal against that decision with the Loulé Administrative Court, which dismissed the case on 17 November 2021. On 5 May 2022 an appeal lodged by the applicant with the Southern Administrative Court was dismissed. On 14 July 2022 the Supreme Administrative Court dismissed his further appeal. A subsequent appeal to the Constitutional Court is still pending.

7. Relying on Articles 2, 3 and 6 of the Convention, the applicant alleged that if extradited he would face a serious risk of being a victim of murder, being imprisoned in cruel, inhuman and degrading conditions, and being subjected to unfair proceedings in so far as they would be based on evidence obtained by means of torture.

8. Relying on Article 8 of the Convention, he alleges that his extradition would also entail a breach of his right to respect for his family life.

9. Relying on Article 13 of the Convention, in conjunction with Articles 2, 3 and 6 of the Convention, the applicant alleged that the domestic courts had not conducted a proper assessment of the risks he would face in Russia in the event of his extradition and had not admitted the evidence that he had submitted regarding the risks cited.

10. On 20 December 2022 the applicant informed the Court of the developments described above (paragraphs 5-6 above), claiming that he was still a "victim" within the meaning of Article 34 of the Convention in so far as he ran the risk at any moment of being arrested and extradited to the Russian Federation if he were to travel outside Portugal. Lastly, the applicant argued that there was a structural problem in the Portuguese extradition law, since, *inter alia*, the administrative stage of the extradition procedure before the Minister of Justice, on which the domestic courts based their decision,

had been conducted without any intervention by the person to be extradited and without any assessment of the risks of a violation of Articles 2, 3 or 13 of the Convention, formal assurances being relied upon instead.

THE COURT'S ASSESSMENT

11. The Court reiterates that the word "victim" in the context of Article 34 of the Convention denotes the person directly affected by the act or omission at issue. In other words, the person concerned must be directly affected by it or run the risk of being directly affected by it. It is not therefore possible to claim to be a "victim" of an act which is deprived, temporarily or permanently, of any legal effect (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, §§ 92-93, ECHR 2007-I).

12. In the specific category of deportation cases, the Court has consistently held that an applicant cannot claim to be the "victim" of a deportation measure if it is not enforceable; it has adopted the same stance in cases where execution of the deportation order has been stayed indefinitely or otherwise deprived of legal effect and where any decision by the authorities to proceed with deportation can be appealed against before the relevant courts (ibid., § 93). The same principles apply to extradition cases (see *Atsaev v. the Czech Republic* (dec.), no. 14021/10, 7 July 2015).

13. In the instant case the Court notes that on 3 August 2022, the Évora Court of Appeal decided to refuse the extradition of the applicant to Russia on the grounds of the applicant's acquisition of Portuguese nationality, in accordance with the reservation made by Portugal to the European Extradition Convention (see paragraph 5 above). The Court notes that most European States prohibit the extradition of their own nationals. Since the decision regarding the applicant became final on 29 August 2022, he can no longer claim to be a victim of the breaches alleged in his application. This does not prevent the applicant from lodging a new application before the Court and from making use of the available procedures, including that under Rule 39 of the Rules of Court, in respect of any new circumstances, in compliance with the requirements of Articles 34 and 35 of the Convention (see *Atsaev v. the Czech Republic* (dec.), no. 14021/10, 7 July 2015).

14. The arguments invoked by the applicant in his letter of 20 December 2022 (see paragraph 10 above) do not impose a different approach. Regarding the alleged risk of being arrested outside Portugal and subsequently extradited to the Russian Federation, this is a scenario that would not fall within the jurisdiction of Portugal. Lastly, as to the alleged structural problem of law and practice in Portugal in respect of the assessment of the extradition, the Court has consistently held that the Convention does not provide for the institution of an *actio popularis* and that its task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation

of the Convention (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, 4 December 2015).

15. In view of the foregoing, the application must be rejected in accordance with Articles 34 and 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 13 July 2023.

Sophie Piquet Acting Deputy Registrar	Stéphanie Mourou-Vikström President