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

THIRD SECTION

DECISION

Application no. 40755/16
B.T.
against Russia

The European Court of Human Rights (Third Section), sitting on 5 December 2017 as a Chamber composed of:

Helena Jäderblom, *President,*
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Alena Poláčková,
Georgios A. Serghides,
Jolien Schukking, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 July 2016,

Having regard to the interim measure indicated to the respondent Government under Rule 39 of the Rules of Court,

Having regard to the decision to grant priority to the above application under Rule 41 of the Rules of Court,

Having regard to the information provided by the Government under Rule 54 § 2 (a) of the Rules of Court,

Having deliberated, decides as follows:

PROCEDURE AND FACTS

1. The applicant, Mr B.T., is an Uzbek national who was born in 1977. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 4). He was represented before the Court by Ms N.N. Motuz, a lawyer practising in Simferopol.

2. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation

to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant complained under Article 3 of the Convention about the real risk of ill-treatment in the event of his extradition to Uzbekistan.

4. On 19 July 2016 the applicant's request for an interim measure under Rule 39 of the Rules of Court was granted. It was indicated to the Russian Government that the applicant should not be extradited until further notice. At the same time the Court, acting under Rule 54 § 2 (a) of the Rules of Court, requested the Government to provide factual information regarding the extradition proceedings.

5. On 30 August 2016 the Government provided the requested information, arguing in particular that the applicant did not face any real risk of ill-treatment in Uzbekistan because he did not belong to any vulnerable group and because the Uzbek authorities had provided relevant assurances.

6. The facts of the case, as submitted by the applicant, may be summarised as follows.

7. On 19 December 2013 an investigator in Uzbekistan opened a criminal inquiry into the applicant's actions. On 25 December 2013 he was indicted on charges of trafficking in drugs, a search warrant was issued in his name and his detention was ordered *in absentia*.

8. According to the applicant, at the end of January 2014 he crossed the Russian border and subsequently moved to the Crimea.

9. On 29 June 2015 the applicant was arrested.

10. On 24 July 2015 an extradition request was submitted by the Uzbek authorities.

11. On 7 April 2016 the applicant's extradition was authorised by a deputy Prosecutor General of the Russian Federation. The applicant challenged the decision in court.

12. On 19 May 2016 the extradition order was upheld on appeal.

13. On 28 July 2016 the Supreme Court of the Russian Federation upheld the appeal court's decision. The applicant's extradition authorisation became final and enforceable.

14. In response to the applicant's arguments under Article 3 of the Convention, the Supreme Court stated that the applicant did not face a risk comparable to persons belonging to vulnerable groups identified by the international reports. They considered that he voluntarily left Uzbekistan in pursuance of family life in Russia and was charged with a drug-related offence, which was not a politically or religiously motivated crime. They referred to the assurances of the Uzbek authorities and argued that he had failed to prove that his individual circumstances justified the conclusion that he would face a risk of ill-treatment if extradited to Uzbekistan. In the relevant part the judgment read as follows:

"Having considered the complaints concerning possible torture of B.T. [in Uzbekistan], which would prevent his transfer to Uzbek authorities, [the court] notes the following.

It follows from the World Report 2016 [by Human Rights Watch] on the situation in Uzbekistan, as well as reports on the criminal justice system in Uzbekistan of the UN and international non-governmental organizations, submitted by the representative of B.T., that there are instances of the use of torture, ill-treatment by law enforcement officials, and systematic persecution of political opposition, human rights activists, journalists, [non-orthodox] Muslims and Christians.

Judicial consideration of this complaint by B.T. did not reveal circumstances capable of leading to a conclusion that he would be subjected to the risk of cruel treatment or torture in case of extradition to Uzbekistan.

In his statements after arrest and during the court hearings B.T., an ethnic Uzbek, did not claim that he belonged to any opposition movement or a religious group. He did not justify his departure from Uzbekistan by any persecution on political, religious, ethnic, faith, or social grounds. Neither did he raise these arguments in his appeal. According to B.T.'s statements in court he arrived to Crimea, where his relatives (mother and brother) reside, with the purpose of establishing a family.

The charges of drug-related offences pursued against B.T. also have no political or religious basis.

Under these circumstances the written assurances of [Uzbek authorities], compliant with international legal standards, as well as assurances that the criminal prosecution will be pursued in strict compliance with criminal procedure legislation and international treaties, must be considered sufficient...

Any other conclusion in absence of specific information on the existence of a real risk of violation of [B.T.'s Article 3 rights] would be a mere speculation.

Violations of the said Convention provision in respect of persons charged with politically or religiously motivated crimes do not substantiate the conclusion that similar violations are going to take place in respect of B.T., who is accused of a common criminal offence."

15. On 22 December 2016 the applicant was released on his own recognisance because of the expiry of the maximum statutory period of detention.

COMPLAINT

16. The applicant complained under Article 3 of the Convention of a real risk of his being ill-treated in the event of his extradition to Uzbekistan.

THE LAW

17. The applicant complained about his potential removal to Uzbekistan, invoking Article 3 of the Convention and relying on the Court's case-law concerning removals to that country, as well as Amnesty International report 2015/2016. Article 3 in its relevant part reads as follows:

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

A. General principles

18. The Court reiterates that extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 of the Convention in the receiving country. The establishment of that responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise (see *Soering v. United Kingdom*, 7 July 1989, § 91, Series A no. 161).

19. In determining whether it has been shown that the applicant runs a real risk, if extradited, of suffering treatment proscribed by Article 3, the Court will assess the issue in the light of all the material placed before it and, if necessary, material obtained *proprio motu* (see *Saadi v. Italy* [GC], no. 37201/06, § 128, ECHR 2008). Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the extradition (see *Cruz Varas and Others v. Sweden*, 20 March 1991, §§ 75-76, Series A no. 201, and *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 107, Series A no. 215). However, if the applicant has not been extradited or deported when the Court examines the case, the relevant time will be that of the proceedings before the Court (see *Chahal v. the United Kingdom*, 15 November 1996, §§ 85-86, *Reports of Judgments and Decisions* 1996-V).

20. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others*, cited above, § 108 *in fine*). It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure

complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it (see *Ryabikin v. Russia*, no. 8320/04, § 112, 19 June 2008).

21. As regards the general situation in a particular country, the Court considers that it can attach certain importance to the information contained in recent reports from independent international human rights protection bodies and organisations, or governmental sources (see, for example, *Chahal*, cited above, §§ 99-100; *Müslim v. Turkey*, no. 53566/99, § 67, 26 April 2005; *Said v. the Netherlands*, no. 2345/02, § 54, ECHR 2005-VI; and *Al-Moayad v. Germany* (dec.), no. 35865/03 §§ 65-66, 20 February 2007).

22. At the same time, the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001). Where the sources available to the Court describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 73, ECHR 2005-I).

23. The above and other applicable general principles were extensively set out and refined in the recent Grand Chamber judgments of *F.G. v. Sweden* [GC] (no. 43611/11, §§ 111-27, ECHR 2016), and *J.K. and Others v. Sweden* [GC] (no. 59166/12, §§ 77-105, ECHR 2016).

B. Application of the above principles to the present case

24. The Court observes that the Russian authorities ordered the applicant's extradition to Uzbekistan. The extradition order has not been enforced as a result of an indication by the Court of an interim measure under Rule 39 of the Rules of Court. The Court will therefore assess whether substantial grounds have been shown for believing that the applicant, if returned to Uzbekistan, would face a real risk of being subjected to treatment contrary to Article 3 of the Convention (see *F.G. v. Sweden*, cited above, § 115). In this assessment the Court will have regard to all the circumstances of the case – the material time for the assessment being that of the Court's consideration of the case – taking into account the assessment made by the domestic courts.

25. As regards the general situation in the receiving country, the Court has on several occasions noted the alarming reports on the human rights situation in Uzbekistan (see, among others, *Ismoilov and Others v. Russia*, no. 2947/06, § 121, 24 April 2008; *Muminov v. Russia*, no. 42502/06, § 93, 11 December 2008, *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June

2010; *Yuldashev v. Russia*, no. 1248/09, § 93, 8 July 2010; *Yakubov v. Russia*, no. 7265/10, §§ 81 and 82, 8 November 2011; and *Bakoyev v. Russia*, no. 30225/11, § 114, 5 February 2013, with further references). In recent judgments concerning the same subject, after having examined the latest available information, the Court has found that there was no concrete evidence to demonstrate any fundamental improvement in that area (see *I.U. v. Russia* (no. 48917/15, § 35, 10 January 2017).

26. At the same time, it has been consistently emphasised that reference to a general problem concerning human rights observance in a particular country is normally insufficient to bar extradition (see *Kamyshev v. Ukraine*, no. 3990/06, § 44, 20 May 2010, and *Shakurov v. Russia*, no. 55822/10, § 135, 5 June 2012). Moreover, the Court had previously held the allegations that any criminal suspect in Uzbekistan ran a risk of ill-treatment to be too general (see *Elmuratov v. Russia*, no. 66317/09, § 84, 3 March 2011, and *Bakoyev*, cited above, § 115) and stated that there was no indication that the human rights situation in the requesting country was serious enough to call for a total ban on extradition to it.

27. The Court is mindful of the fact that it had previously found violations of Article 3 of the Convention in cases involving extradition or deportation to Uzbekistan. However, the applicants in those cases had been mostly charged with politically and/or religiously motivated criminal offences (see, for example, *Ismoilov and Others*, cited above, § 122; *Muminov*, cited above, § 94; and *Yuldashev*, cited above, § 84). The Court had further established that individuals whose extradition was sought by the Uzbek authorities on charges of religiously or politically motivated crimes, constituted a vulnerable group facing a real risk of treatment contrary to Article 3 of the Convention in the event of their removal to Uzbekistan (see *Mamazhonov v. Russia* (no. 17239/13, § 141, 23 October 2014). The existence of such risk for that group and the absence of changes in that regard were recently established anew by the judgment in the case of *I.U. v. Russia* (cited above, § 35).

28. Turning to the present case it must be noted that the applicant in his allegations at the national level and before this Court relied on the case-law and international reports pertaining to the persecution of political and religious opposition in Uzbekistan. However, as was appropriately noted by the Supreme Court of the Russian Federation, nothing indicates that he belonged to any such group in his home country or that he fled fearing persecution on such grounds. No such claim was made at the national level, and no such claim has been submitted to this Court. The applicant is accused of a drugs-related offence which is neither politically nor religiously motivated. It is therefore presumed that the applicant does not belong to the above-indicated vulnerable group, whose members face a real risk of treatment contrary to Article 3 of the Convention in the event of their

removal to Uzbekistan. Accordingly, the applicant's personal situation needs to be considered.

29. In this regard the Court observes that beyond a broad reference to ill-treatment in the light of the general practice in the criminal justice system of Uzbekistan, the applicant, both at domestic level and in his submissions before the Court, failed to refer to any individual circumstances and to substantiate his fears of ill-treatment in the event of his extradition to Uzbekistan. He did not refer to any personal experience of ill-treatment at the hands of the Uzbek law-enforcement authorities, nor did he allege that members of his family had been politically or religiously active or persecuted (see, by contrast, *Garayev*, cited above, § 72).

30. Having regard to the material in its possession, the Court is further satisfied that the Supreme Court of the Russian Federation gave proper consideration to the applicant's arguments and dismissed them as unsubstantiated in a detailed and well-reasoned judgment (see paragraph 15 above). In this regard it should be reiterated that where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, among other authorities, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 179-80, 24 March 2011, and *Nizomkhon Dzhurayev v. Russia,* no. 31890/11, § 113, 3 October 2013). As a general principle, the national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned (see, for example, *R.C. v. Sweden,* no. 41827/07, § 52, 9 March 2010, and *F.G. v. Sweden*, cited above, § 118). The Court must be satisfied, however, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or third States, agencies of the United Nations and reputable non-governmental organisations (see, among other authorities, *NA. v. the United Kingdom,* no. 25904/07, § 119, 17 July 2008, and *F.G. v. Sweden*, cited above, § 117). The Court considers that the domestic decisions in the present case, notably the Supreme Court's judgment, satisfy the above requirements and appear to fall in line with the conclusions in this Court's case-law (see *Bakoyev,* cited above, and *Elmuratov*, cited above). The Court can see no reasons to depart from the domestic court's findings in the circumstances of the present case.

31. In the light of the foregoing, the Court concludes that the applicant has not corroborated the allegations of a personal risk of ill-treatment in Uzbekistan, and thus has failed to substantiate his allegations that his extradition would be in violation with Article 3 of the Convention.

32. Accordingly, the application is manifestly ill-founded and must be declared inadmissible and dismissed under Articles 35 §§ 3 and 4 of the Convention.

33. In view of the above, it is appropriate to discontinue the application of Rule 39 of the Rules of Court.

For these reasons, the Court unanimously

Declares the application inadmissible.

Done in English and notified in writing on 11 January 2018.

Fatoş Aracı Deputy Registrar	Helena Jäderblom President