

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

THIRD SECTION

CASE OF BURIYEV v. RUSSIA

(Application no. 42874/18)

JUDGMENT

STRASBOURG

29 March 2022

This judgment is final but it may be subject to editorial revision.



In the case of Buriyev v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

María Elósegui, *President,*
Andreas Zünd,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application no. 42874/18 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") on 11 September 2018 by a Tajik national, Mr Dalerdzhon Bozorovich Buriyev, born in 1998 ("the applicant") who was represented by Mr K. Zharinov, Ms D. Trenina and Ms E. Davidyan, lawyers practising in Moscow;

the decision to give notice of the complaints under Articles 3 and 34 of the Convention to the Russian Government ("the Government"), initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov, and to declare inadmissible the remainder of the application;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court;

the parties' observations;

Having deliberated in private on 8 March 2022,

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

SUBJECT-MATTER OF THE CASE

1. The case concerns the applicant's deportation to Tajikistan despite the interim measure being indicated under Rule 39 of the Rules of Court.

2. In 2017 the applicant was charged with extremist crimes by the Tajik authorities, in particular, with recruiting new members to banned religious and terrorist organisations to overthrow the constitutional order of the Republic of Tajikistan and to create an Islamic state. He was then apprehended and placed in detention in Russia pending extradition. The Court has not been informed of any enforceable extradition order adopted in respect of the applicant upon the Tajik authorities' extradition request.

3. On 18 May 2018 the applicant's presence in Russia was declared undesirable ("the exclusion order"); the applicant became aware of that only on 12 July 2018. He challenged the exclusion order before the domestic courts and the local migration authorities' refusals to grant him refugee status and temporary asylum that he had also requested. In all proceedings the applicant

raised the risk of ill-treatment in case of removal to Tajikistan, with references to recent international reports and Court's case-law. Domestic authorities and courts dismissed his arguments as unsubstantiated, also holding that he didn't qualify for the refugee protection and did not provide convincing evidence concerning potential risk in Tajikistan.

4. On 11 September 2018 the applicant was released from detention pending extradition and on the same day placed in detention pending deportation. Briefly contacted by the applicant on the eve of his sudden release, the applicant's representatives were not provided with information concerning his whereabouts or with a copy of the deportation order.

5. On 11 September 2018 the Court decided to indicate to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not be removed from Russia for the duration of the proceedings before it. The decision was published on the Court's secure website at 8.02 p.m. (local time).

6. On 13 September 2018 at 4.15 a.m. (local time), despite notifications of the domestic authorities about the interim measure adopted in the applicant's case made by the applicant's representatives, the latter was deported to Tajikistan. He was arrested there upon arrival.

7. On 7 December 2018 the applicant's representatives submitted the applicant's handwritten note of 20 November 2018 containing his expressed wish to maintain the application, and also the report of the applicant's lawyer in Tajikistan stating that the applicant had been repeatedly ill-treated by the Tajik law-enforcement agents with the aim of extracting confession.

8. The applicant complained that the Russian authorities had exposed him to a real risk of being subjected to treatment in breach of Article 3 of the Convention by deporting him to Tajikistan. He further complained that his deportation has been in breach of the interim measure indicated by the Court, in violation of Article 34 of the Convention.

9. On 20 August 2019 the applicant's representatives informed the Court that on 7 July 2019 the applicant died of food poisoning while serving his sentence in Tajikistan.

THE COURT'S ASSESSMENT

I. Mrs ISLAMOVA'S STANDING

10. The applicant's mother, Mrs Islamova, expressed her wish to pursue the application following the applicant's death. The Government left the issue to the Court's discretion.

11. With reference to the case-law on the matter (see *Klimov v. Russia,* no. 54436/14, §§ 35-37, 4 October 2016, and *Barakhoyev v. Russia*, no. 8516/08, §§ 22-23, 17 January 2017), and considering that the applicant died in the course of the proceedings before the Court, it can be concluded

that Mrs Islamova has a legitimate interest in pursuing the application in the late applicant's stead and, therefore, has *locus standi* in the proceedings.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

13. The general principles concerning the application of Article 3 have been summarised in *F.G. v. Sweden* [GC], no. 43611/11, §§ 111-27, ECHR 2016, and in the context of removals from Russia to Tajikistan in *Savriddin Dzhurayev v. Russia*, no. 71386/10, §§ 166-76, ECHR 2013 (extracts), and *K.I. v. Russia*, no. 58182/14, §§ 32-48, 7 November 2017.

14. The Court has previously established that individuals against whom the Tajik authorities brought 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 Tajikistan (see *Savriddin Dzhurayev,* and *K.I. v. Russia,* both cited above). In all domestic proceedings in his respect (see paragraph 3 above), the applicant specifically claimed that he faced a real risk of ill-treatment in Tajikistan. Furthermore, the documents relating to the criminal proceedings in Tajikistan were clear as to their basis, namely that the applicant was accused of religiously and politically motivated crimes, qualified as extremist. The Russian authorities were therefore presented with evidence capable of proving that the applicant belonged to a vulnerable group of persons who were systematically exposed to a practice of ill-treatment in Tajikistan in breach of Article 3 of the Convention and whose removal would expose them to a real risk of such ill-treatment.

15. However, as regards their duty to duly assess the applicant's claims, migration authorities dismissed the requests for refugee status and temporary asylum, without rigorous scrutiny and the time-limit allowing for the judicial review was still pending when the applicant was deported. Similarly, the applicant's complaint against exclusion order was examined on merits by the domestic courts only after the enforcement of the deportation order. Taking into account lack of proper notification of the deportation order, and haste with which his deportation was carried out, the applicant also did not have any meaningful opportunity to have the domestic courts review his case in the context of deportation proceedings (see, for similar issue in context of deportation to Uzbekistan, *Yusupov v. Russia* [Committee], no. 30227/18, §§ 48-51, 1 December 2020).

16. Given the failure of the domestic authorities to adequately assess the applicant's claim, and in the light of the actual enforcement of the respective deportation order, the Court is compelled to independently examine whether or not the applicant was exposed to such a risk by his deportation to

Tajikistan. The Court notes that nothing in the parties' submissions indicates that there has been any improvement in either the criminal justice system of Tajikistan in general or the specific treatment of those prosecuted for religiously and politically motivated crimes, therefore, there is no reason in the present case to depart from the earlier findings on the matter.

17. By enforcing the deportation order the Russian authorities thus exposed the applicant to a real risk of being subjected to treatment contrary to Article 3 of the Convention.

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

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

19. It is undisputed by the parties that the applicant's transfer to Tajikistan occurred in the course of routine actions aimed at enforcing a deportation order in his respect.

20. The Court cannot accept the Government's objection concerning lack of time to comply with the measure. The applicant was deported on 13 September 2018, at 4.15 a.m. (local time), meaning more than 32 hours after the notification of the interim measure to the respondent Government; moreover, this time included one full working day on 12 September 2018 (see *Kamaliyevy v. Russia*, no. 52812/07, § 77, 3 June 2010). The Government failed to indicate any particular circumstances objectively impeding compliance with the measure during a lapse of time which, by itself and also when considered in the context of available modern technologies, appears to be amply sufficient for all competent and relevant authorities to have been notified that the applicant's removal to Tajikistan had been stayed by the Court (see *O.O. v. Russia*, no. 36321/16, §§ 62-63, 21 May 2019, and *Yusupov*, cited above, §§ 74-75). Finally, in the present case it cannot be said that the deportation carried out in spite of the interim measure granted resulted from the alleged tardiness of the applicant or his representatives. Contrary to the Government's objection that the Rule 39 request could have been submitted beforehand, there appear to be no indications that the applicant was under imminent risk of removal on the basis of an enforceable order prior to 11 September 2018.

21. Accordingly, in the light of the above considerations, the Court finds that the Russian authorities breached the interim measure indicated under Rule 39 of the Rules of the Court and that they failed to comply with their obligations under Article 34 of the Convention.

IV. RULE 39 OF THE RULES OF COURT

22. The Court reiterates that, in accordance with Article 28 § 2 of the Convention, the present judgment is final. Accordingly, the measure indicated to the Government under Rule 39 comes to an end.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,320 for expenses incurred before the national courts and before the Court by his representatives, Ms Trenina, Mr Zharinov and Ms Davidyan. The Government claimed that the compensation of pecuniary and non-pecuniary damage may not be awarded to the applicant's mother, given non-transferable nature of the rights in question.

24. Given that Mrs Islamova has standing to pursue the application in the applicant's stead, as well as the above findings of violations of the applicant's rights under Articles 3 and 34 of the Convention, the Court, making its assessment on an equitable basis, awards the applicant EUR 30,000 plus any tax that may be chargeable on these amounts. The payments should be made to the applicant's mother, Mrs Islamova (see *Andrushchenko v. Russia* [Committee], no. 33938/08, § 111, 24 March 2020).

25. As to the claims for costs and expenses the Court, taking note of the Government's objection, rejects them since no copies of any legal services agreements concluded between the representatives and the applicant were submitted and, therefore, there is no basis on which to accept that the costs and expenses claimed by the applicant have actually been incurred by him (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-73, 28 November 2017).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* that the applicant's mother, Mrs Islamova, has *locus standi* in the proceedings;

2. *Declares* the complaints under Article 3 of the Convention concerning the applicant's deportation to Tajikistan admissible;

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

4. *Holds* that the respondent State failed to comply with their obligations under Article 34 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay Mrs Mukhabbat Islamova, within three months, EUR 30,000, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	María Elósegui President