

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

THIRD SECTION

CASE OF SAIDOV v. RUSSIA

(Application no. 31872/19)

JUDGMENT

STRASBOURG

26 July 2022

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



In the case of Saidov 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. 31872/19 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 10 June 2019 by an Uzbek national, Mr Sanzharbek Saibbekovich Saidov, born in 1982 and living in Belgorod ("the applicant"), who was represented before the Court by Ms D. Trenina, Ms E. Davidyan and Mr K. Zharinov, lawyers practising in Moscow;

the decision to give notice of the application 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 this office, Mr M. Vinogradov;

the parties' observations;

Having deliberated in private on 5 July 2022,

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

SUBJECT MATTER OF THE CASE

1. The present case under Article 5 § 1 of the Convention concerns the applicant's allegedly unlawful detention between 10 and 24 December 2018, on the ground that the applicable provisions of the domestic law did not provide for the power of an appeal court to extend or order detention pending administrative removal when an initial removal order was annulled by the appeal court.

2. On 13 January 2016 a request for an interim measure staying the applicant's removal from Russia was granted by this Court in another case lodged by the applicant. This measure was in place during all of the material events in the present case.

3. On 26 November 2018 the applicant was arrested for a violation of migration rules.

4. On 27 November 2018 the Belgorodsky District Court of the Belgorod Region ("the District Court") ordered the applicant's administrative removal and detention pending removal. It appears that the applicant had not informed the District Court of the interim measure indicated by the Court in Strasbourg.

5. On 10 December 2018 the Belgorod Regional Court ("the Regional Court"), sitting as an appeal court in a single judge formation, having been informed by the applicant about the interim measure indicated by the Court

in Strasbourg, annulled the above removal order and remitted the case for reconsideration to the first instance. In respect of the applicant's detention it was held that the applicant should stay in the temporary detention centre for aliens until the District Court reconsidered his case.

6. On 24 December 2018 the District Court, referring to the above interim measure indicated by the Court in Strasbourg, terminated the administrative removal proceedings.

7. On the same day the applicant was released.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

8. The Code of Administrative Offences of 2001 ("the Code") contains the following provisions applicable to the detention of persons in the context of the administrative removal proceedings.

Article 27.19. Placement in a specialised facility of foreign nationals and stateless persons subject to administrative removal from the Russian Federation

"1. Placement in a specialised facility of foreign nationals and stateless persons subject to involuntary removal from the Russian Federation consists of transfer ... and temporary holding [these persons] in a specialised facility pending involuntary removal from the Russian Federation.

2. Holding [of a person] in a specialised facility ... is applied in order to ensure enforcement of an involuntary removal order ..."

Article 29.10. Judgment in an administrative offence case

"2. ... A judge in a judgment in an administrative offence case against a foreign national or a stateless person decides whether a foreign national or a stateless person should be placed in a specialised [detention] facility if such persons are sanctioned with an involuntary removal from the Russian Federation ..."

Article 30.7. Decision on a complaint against a judgment in an administrative offence case

"1. Following examination of a complaint against a judgment in an administrative offence case [the appeal court sitting in a single-judge formation] may:

...

4) annul the judgment and remit the case for fresh examination ... in case of a serious breach of the procedural requirements set out in the Code where such breach precluded a full and objective examination of the case in its entirety ..."

9. The Foreigners Act (Law no. 115-FZ of 25 July 2002) contains the following provision:

Article 35.1 Basis of holding of foreign nationals in specialised facilities

"1. Holding of foreign nationals in specialised facilities provides for restrictions on [their] freedom of movement, excluding the possibility to leave these facilities at will, in order to ensure enforcement of [an involuntary removal order] ..."

10. On 23 May 2017 the Constitutional Court of the Russian Federation adopted Judgment 14-P where it declared certain provisions of the Code unconstitutional insofar as they did not allow judicial review of continued detention of stateless persons, whose removal had been ordered, but could not be enforced. The Constitutional Court ordered the federal legislator to amend the Code without delay. It was also prescribed that in the meantime the above persons should have a right to initiate judicial review proceedings once circumstances preventing their removal have been identified, in any event after three months of detention.

11. In their submissions to the Court, the Government provided six judicial decisions of regional courts sitting as appeal courts in administrative removal cases where individuals found guilty of violations of migration rules had been placed in detention facilities pending removal. In all of the decisions the appeal courts released the above individuals following either remittal of the case for reconsideration to the first instance, termination of the enforcement proceedings or acquittal.

THE COURT'S ASSESSMENT

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

12. The Government submitted that the applicant failed to exhaust domestic remedies because he didn't disclose to the District Court information about the interim measure indicated by the Court in Strasbourg and that, after the Regional Court ordered his stay in detention until reconsideration of his case, he failed to make use of the judicial review introduced by the Constitutional Court's Judgment 14-P of 23 May 2017 (paragraph 10 above).

13. The Court does not see any connection between such an oversight by the applicant and his complaint concerning the alleged lack of power of an appeal court (here, the Regional Court) to order detention when annulling an administrative removal order. Even less so given that the applicant had informed the Regional Court of the Court's interim measure. As regards the above judicial remedy introduced by the Constitutional Court, the Court observes that it concerned the continued detention of persons whose removal had been ordered but could not be enforced. On its face, the nature of the complaint raised by the applicant is markedly distinct and the Government has provided no evidence to the contrary.

14. Accordingly, the Court rejects the Government's preliminary objection.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

15. The applicant claimed that his detention from 10 to 24 December 2018 was in violation of national law and, therefore, of the Convention.

16. 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.

17. The general principles assessing whether a deprivation of liberty of an individual is compatible with Article 5 § 1 of the Convention have been summarized in *Khlaifia and Others v. Italy* ([GC], no. 16483/12, §§ 88-92, 15 December 2016), and *Abdolkhani and Karimnia v. Turkey* (no. 30471/08, § 130, 22 September 2009).

18. Turning to the circumstances of the present case, the Court observes that the provisions of the domestic law cited in the paragraphs 8 and 9 above provide that individuals may be placed in a specialised facility for foreign nationals in order to ensure enforcement of an involuntary removal order. Having noted that in its decision of 10 December 2018 the Regional Court ordered the applicant's detention while simultaneously annulling the removal order and remitting the case for reconsideration by the District Court, the Court first needs to establish whether the requirements of "lawfulness" and the "absence of arbitrariness" were met before moving on to examine the issue of whether the applicant's deprivation of liberty was governed by the exceptions set out in Article 5 § 1 (f) of the Convention (see *Ranjbar and Others v. Turkey*, no. 37040/07, § 39, 13 April 2010).

19. In its aforementioned decision the Regional Court did not refer to any provisions of national law that could entitle appeal courts to extend or order detention of a person in respect of whom the administrative removal order was annulled, and the Government in their observations admitted that there were no such provisions. The Court cannot agree with their argument that the implicit, because not restricted, competence of the appeal courts to order detention of a foreign national whenever they might find it necessary was "in accordance with a procedure prescribed by law" and satisfied the general principle of legal certainty. The judicial decisions submitted by the Government in order to illustrate such implicit competence of the appeal courts appeared rather to point to the contrary (see paragraph 11 above).

20. In view of the above, the Court finds that the deprivation of liberty to which the applicant was subjected from 10 to 24 December 2018 did not have a strictly-defined statutory basis circumscribed by adequate safeguards against arbitrariness (see *Ranjbar and Others*, §§ 41 and 43, and *Abdolkhani and Karimnia*, both cited above, § 135). The national system thus failed to protect the applicant from arbitrary detention and, consequently, his detention during this period cannot be considered "lawful" for the purposes of Article 5 of the Convention.

21. The Court concludes that there has been a violation of Article 5 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,380 for the costs and expenses incurred before the Court.

23. Given the above findings of violation of Article 5 § 1 of the Convention the Court, making its assessment on an equitable basis, awards the applicant EUR 3,000, plus any tax that may be chargeable on this amount.

24. 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).

25. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 3,000 (three thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, 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;

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

Done in English, and notified in writing on 26 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	María Elósegui President