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

THIRD SECTION

DECISION

Application no. 52286/14
Abdullazhon Mamadzhanovich ISAKOV
against Russia

The European Court of Human Rights (Third Section), sitting on 5 July 2016 as a Chamber composed of:

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*

and Stephen Phillips, *Section Registrar*,

Having regard to the above application lodged on 22 July 2014,

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 observations submitted by the respondent Government and the observations in reply submitted by Ms N. Yermolayeva,

Having deliberated, decides as follows:

THE FACTS

1. Mr Abdulazhon Mamadzhanovich Isakov was born in 1963 and lived, prior to his disappearance, in Tyumen. He is a stateless person. The application in his name was submitted to the Court by Ms N. Yermolayeva, a lawyer practising in Moscow. The Russian Government ("the

Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

2. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Background information and the Court's judgment in Mr Isakov's earlier case (*Abdulazhon Isakov v. Russia*, no. 14049/08, 8 July 2010)

3. In 1989 Mr Isakov moved from Uzbekistan to the Tyumen Region in Russia.

4. In 1998 the Uzbek authorities opened a criminal case against Mr Isakov on charges of attempting to overthrow the State's constitutional order in Uzbekistan and put his name on the wanted persons' list.

5. On 6 March 2008 Mr Isakov was arrested in Tyumen, Russia, and remanded in custody with a view to extradition.

6. On 12 August 2008 the Russian Prosecutor General's office decided to extradite Mr Isakov to Uzbekistan. The domestic courts at two levels of jurisdiction upheld the extradition order. A final decision on the matter was taken by the Supreme Court of the Russian Federation on 22 December 2008.

7. On 21 March 2008 Mr Isakov lodged an application with the Court in which he complained about his detention in Russia with a view to extradition to Uzbekistan where he faced politically-based persecution by the local authorities. On 30 September 2008 Mr Isakov signed an authority form authorising several lawyers, including Ms Yermolayeva, to represent him in the proceedings before the Court.

8. On 10 November 2008 the Court granted Mr Isakov's request for the application of interim measures under Rule 39 of the Rules of the Court and indicated to the Russian Government that he should not be extradited to Uzbekistan until further notice. On the same date the application was communicated to the Government which were requested to submit observations concerning the risk of ill-treatment if the extradition order in respect of Mr Isakov were enforced, lawfulness and review of his detention in Russia and alleged lack of effective remedies in this respect. The parties' observations were received on 28 July and 2 October 2009 respectively. The Government complied with the Court's request as to the application of interim measures and submission of observations.

9. On 5 March 2010 Mr Isakov was released from custody and on 17 March 2010 he was granted temporary asylum in Russia.

10. On 8 July 2010 the Court delivered a judgment in Mr Isakov's case (see *Abdulazhon Isakov v. Russia*, no. 14049/08, 8 July 2010) where it found, *inter alia*, that in the event of the extradition order against Mr Isakov being enforced, there would be a violation of Article 3 of the Convention.

11. On 1 June 2011 the Presidium of the Supreme Court quashed the decision of 12 August 2008 and the ensuing judicial decisions, including the Supreme Court's decision of 22 December 2008 (see paragraph 6 above).

12. Mr Isakov and his family (wife and children) continued to reside in Tyumen, Russia.

13. On 3 February 2012 the Government informed the Committee of Ministers of the individual measures taken within the framework of the execution of the judgment in Mr Isakov's case. In particular, the Government reported that (1) the judgment had been enforced as regards the payment of non-pecuniary damage and reimbursement of costs and expenses and (2) the extradition-related judicial decisions had been quashed.

14. In September 2013, within the framework of the supervision of the execution of a number of judgments against Russia relating to disappearances and/or forcible transfers and also repeated allegations of such incidents, the Committee adopted an Interim Resolution (CM/ResDh(2013)200) exhorting the Russian authorities to develop without further delay an appropriate mechanism tasked with both preventive and protective functions to ensure that applicants belonging to the risk group benefit from immediate and effective protection against unlawful or irregular removal from the Russian territory.

B. Mr Isakov's disappearance and new proceedings before the Court

15. In the night of 21-22 July 2014 Mr Isakov's car was found damaged on the road and Mr Isakov had disappeared. His family's attempts to establish his whereabouts were to no avail.

16. On 22 July 2014 A.M., Mr Isakov's nephew, reported Mr Isakov's disappearance to the regional department of the interior. Mr Isakov's family retained counsel Kh. to represent them in connection with the investigation into Mr Isakov's disappearance.

17. On 23 July 2014 the Court granted a request lodged by Ms Yermolayeva, under Rule 39 of the Rules of the Court, and indicated to the Government that Mr Isakov should not be extradited, expelled or otherwise involuntarily removed from Russia to Uzbekistan or another country for the duration of the proceedings before the Court. The Government were also requested to furnish any information about Mr Isakov's whereabouts and possible arrest and detention in Russia and/or removal to Uzbekistan. The application was also granted priority under Rule 41 of the Rules of the Court.

18. On 6 August 2014 the Government reported that the investigation into Mr Isakov's disappearance was pending and that his whereabouts were unknown to the authorities.

19. On the same date, relying on the authority form issued by Mr Isakov in 2008, Ms Yermolayeva lodged an application in Mr Isakov's name. She

alleged that Mr Isakov had been abducted by Russian state agents and forcefully removed to Uzbekistan where he would be subjected to treatment contrary to Article 3 of the Convention. Referring to Article 34 of the Convention, she argued that the Government had failed to comply with the Court's indication made under Rule 39 of the Rules of the Court.

20. On 25 August 2014 the senior investigator with the regional investigative committee opened criminal investigation into Mr Isakov's disappearance.

21. On 4 September 2014 the senior investigator in charge of Mr Isakov's disappearance questioned Kh.I., Mr Isakov's brother. Kh.I. submitted that, according to his older sister who lived in Uzbekistan, Mr Isakov was allegedly in Tashkent, Uzbekistan.

22. On 12 September 2014 the President of the Section gave notice of the application to the Government and invited the latter to submit written observations on the admissibility and merits of the case.

23. On 24 October 2014 the senior investigator in charge of Mr Isakov's disappearance questioned Z.I., Mr Isakov's son.

24. On 29 October 2014 the Government submitted the observations.

25. On 8 January 2015 Ms Yermolayeva submitted the observations on the matter maintaining the complaints on Mr Isakov's behalf and claims for just satisfaction.

26. On 12 February 2015 the Government provided comments on the claims for just satisfaction and further observations.

27. On 15 April 2015 the President of the Section invited the parties, under Rule 54 § 2 (c) of the Rules of the Court, to submit further observations on the admissibility and merits of the case. The parties were to comment as to whether the application was compatible *ratione personae* with the provisions of the Convention and the Government's failure to submit a complete investigation file concerning Mr Isakov's alleged abduction and disappearance.

28. On 31 May and 1 June 2015 Ms Yermolayeva and the Government respectively submitted further observations (see paragraphs 34-35 below).

29. Mr Isakov's whereabouts remain unknown to date.

C. Committee of Ministers' supervision of the execution of the judgment in the case of *Mr Isakov*

30. In its decisions adopted at 1214th and 1230th meetings (December 2014 and June 2015), the Committee of Ministers, responding to the situation concerning disappearances and/or forcible transfers, noted that the Russian authorities adopted a number of awareness-raising measures and instructions. Nevertheless, the Committee of Ministers considered that these measures were insufficient and invited the authorities to adopt special protective measures in respect of the applicants who were exposed to such

risks and underlined the need for special measures to ensure rapid and effective investigations into such incidents.

31. On 2-4 December 2014 (CM/Del/Dec(2014)1214E/05 December 2014) at its 1214th meeting (DH), the Committee of Ministers noted as follows, as regards Mr Isakov's situation:

> "As to the investigation of the alleged abductions of Messrs Abdulazhon Isakov and Mukhitdinov reported in July 2014, criminal cases have been opened. No evidence has thus far been obtained regarding the removal of Mr Abdulazhon Isakov from the territory of the Russian Federation. The Russian authorities also insisted that the Committee of Ministers was not competent to supervise this issue as it was already being examined in the adversarial proceedings before the European Court.
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> As regards the Russian authorities' comments with respect to the Committee's competence to supervise the investigations into the recent alleged abductions of Messrs Abdulazhon Isakov and Mukhitdinov, the following factors have to be taken into account. As regards the first case, there already exists a final Court judgment establishing a violation, granting the Committee full competence to look into both individual and general measures, irrespective of any new application made on behalf of the same person to the Court. Such situations are frequent and have never led the Committee to exempt the State concerned from its obligation to keep the Committee informed of the developments. As regards the second case, while it is true that there is no final judgment at the moment, the case is relevant for execution purposes as an example, among others, of the development of the situation and the efficiency of the general measures adopted (see e.g. the Court's indication in the *Savriddin Dzhurayev* judgment (§263)."

COMPLAINTS

32. Ms Yermolayeva maintained that Mr Isakov had been abducted by State agents and transferred to Uzbekistan where he would be subjected to treatment contrary to Article 3 of the Convention.

33. She further maintained that Mr Isakov's alleged transfer to Uzbekistan disclosed a violation of Article 34 of the Convention due to the Government's failure to comply with the Court's indication made under Rule 39 of the Rules of the Court.

THE LAW

A. The Government's preliminary objection

The parties' submissions

34. The Government contended that Mr Isakov's whereabouts were unknown and that it was practically impossible to establish his genuine

intentions or to verify whether his interests were properly represented by Ms Yermolayeva, who had not provided a valid authority form in the instant proceedings before the Court. They further pointed out that the application could have been lodged by Mr Isakov's relatives, as was done in numerous cases concerning disappearances. The Government considered that the application should be rejected as incompatible with the provisions of the Convention *ratione personae*.

35. Ms Yermolayeva argued that she had legal standing to represent Mr Isakov before the Court by virtue of the authority form signed by him in 2008. In view of Mr Isakov's disappearance, it was impossible for him to issue a new authority form and the Court should take into account the will he had expressed previously.

B. The Court's assessment

36. The Court notes that it has developed the following principles as regards the applicant's *locus standi* and in the proceedings before the Court (see, *Lambert and Others v. France* [GC], no. 46043/14, ECHR 2015 (extracts)):

> "89. In the recent cases of *Nencheva and Others v. Bulgaria* (no. 48609/06, 18 June 2013) and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08, ECHR 2014), the Court reiterated the following principles.
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> In order to rely on Article 34 of the Convention, an applicant must be able to claim to be a victim of a violation of the Convention. According to the Court's established case-law, the concept of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act (see *Nencheva and Others*, cited above, § 88). The individual concerned must be able to show that he or she was "directly affected" by the measure complained of (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 96, with further references).
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> 90. An exception is made to this principle where the alleged violation or violations of the Convention are closely linked to a death or disappearance in circumstances allegedly engaging the responsibility of the State. In such cases the Court has recognised the standing of the victim's next-of-kin to submit an application (see *Nencheva and Others*, cited above, § 89, and *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, §§ 98-99, with further references).
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> 91. Where the application is not lodged by the victims themselves, Rule 45 § 3 of the Rules of Court requires a written authority to act, duly signed, to be produced. It is essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victim on whose behalf they purport to act before the Court (see *Post v. the Netherlands* (dec.), no. 21727/08, 20 January 2009; *Nencheva and Others*, cited above, § 83; and *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 102). However, the Convention institutions have held that special considerations may arise in the case of victims of alleged breaches of Articles 2, 3 and 8 of the Convention at the hands of the national authorities. Applications lodged by individuals on behalf of the victim or victims, even though no

valid form of authority was presented, have thus been declared admissible (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 103).

92. Particular consideration has been shown with regard to the victims' vulnerability on account of their age, sex or disability, which rendered them unable to lodge a complaint on the matter with the Court, due regard also being paid to the connections between the person lodging the application and the victim (ibid.).

93. For instance, in the case of *S.P., D.P. and A.T. v. the United Kingdom* (no. 23715/94, Commission decision of 20 May 1996), which concerned, *inter alia*, Article 8 of the Convention, the Commission declared admissible an application lodged by a solicitor on behalf of children whom he had represented in the domestic proceedings, in which he had been instructed by the guardian *ad litem*, after noting in particular that their mother had displayed no interest, that the local authorities had been criticised in the application and that there was no conflict of interests between the solicitor and the children.

In the case of *İlhan v. Turkey* ([GC], no. 22277/93, §§ 54-55, ECHR 2000-VII), where the direct victim, Abdüllatif İlhan, had suffered severe injuries as a result of ill-treatment at the hands of the security forces, the Court held that his brother could be regarded as having validly introduced the application, based on Articles 2 and 3 of the Convention, since it was clear from the facts that Abdüllatif İlhan had consented to the proceedings, there was no conflict of interests between himself and his brother, who had been closely concerned with the incident, and he was in a particularly vulnerable position because of his injuries.

In the case of *Y.F. v. Turkey* (no. 24209/94, § 31, ECHR 2003-IX), in which a husband alleged under Article 8 of the Convention that his wife had been forced to undergo a gynaecological examination following her detention in police custody, the Court found that it was open to the applicant, as a close relative of the victim, to make a complaint concerning allegations by her of violations of the Convention, in particular having regard to her vulnerable position in the special circumstances of the case.

94. Still in the context of Article 8 of the Convention, the Court has also accepted on several occasions that parents who did not have parental rights could apply to it on behalf of their minor children (see, in particular, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, §§ 138-139, ECHR 2000-VIII; *Šneersone and Kampanella v. Italy*, no. 14737/09, § 61, 12 July 2011; *Diamante and Pelliccioni v. San Marino*, no. 32250/08, §§ 146-47, 27 September 2011; *A.K. and L. v. Croatia*, no. 37956/11, §§ 48-50, 8 January 2013; and *Raw and Others v. France*, no. 10131/11, §§ 51-52, 7 March 2013). The key criterion for the Court in these cases was the risk that some of the children's interests might not be brought to its attention and that they would be denied effective protection of their Convention rights.

95. Lastly, the Court recently adopted a similar approach in the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, concerning a young man of Roma origin, seriously disabled and HIV positive, who died in hospital before the application was lodged and had no known next-of-kin and no State-appointed representative. In view of the exceptional circumstances of the case and the seriousness of the allegations, the Court recognised that the Centre for Legal Resources had standing to represent Valentin Câmpeanu. The Court emphasised that to find otherwise would amount to preventing such serious allegations of a violation of the Convention from being examined at an international level (§ 112).

...

> 102. A review of the cases in which the Convention institutions have accepted that a third party may, in exceptional circumstances, act in the name and on behalf of a vulnerable person (see paragraphs 93-95 above) reveals the following two main criteria: the risk that the direct victim will be deprived of effective protection of his or her rights, and the absence of a conflict of interests between the victim and the applicant."

37. In *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania* (no. 2959/11, 24 March 2015), the Court accepted a representative of a person who had died without making an application to the Court. The rationale for that decision, as in the case of *Valentin Câmpeanu*, was that "to find otherwise would amount to preventing such serious allegations of a violation of the Convention from being examined at an international level, with the risk that the respondent State might escape accountability under the Convention" (paragraph 42, referring to *Valentin Câmpeanu*).

38. Turning to the circumstances of the present case, the Court observes, and it is not disputed by the parties, that Mr Isakov has never been in the direct contact with the Court in connection with the present case, and that Ms Yermolayeva does not claim that she acts on his instructions. The authority form submitted by Ms Yermolayeva was completed by Mr Isakov in connection with a previous application lodged with the Court in 2008 (no. 14049/08, referred to above), and cannot constitute a valid form of authority in the present case, which relates to facts which occurred after the judgment in that case. In such circumstances, the Court must therefore ascertain whether it is open for Ms Yermolayeva to act as Mr Isakov's representative.

39. In order to answer this question the Court has to decide whether the principles established in the *Lambert and Others* case are applicable in the present case and, more particularly, whether Mr Isakov can be considered a vulnerable person who was not able to lodge complaints to the Court himself (see *N. and M. v. Russia* (dec.), no. 39496/14, § 59; 26 April 2016).

40. The Court is mindful of the precariousness of Mr Isakov's situation, whose disappearance is at issue in the present case. The Court found in his first application that he had been charged with politically motivated crimes in Uzbekistan, that he would be directly placed in custody in Uzbekistan if extradited and that he would run a serious risk of ill-treatment there (see *Abdulazhon Isakov*, cited above, § 110). The Court accordingly considers that Mr Isakov can be regarded as a vulnerable person who has not been able to lodge the application before the Court. It follows that the criteria established in *Lambert and Others* can be applied to the present case. The Court is thus to determine whether there is a risk of Mr Isakov being deprived of effective protection of his rights (see, for similar reasoning, *N. and M.*, cited above, § 60).

41. The Court takes into account the fact that Mr Isakov has close family members in Russia. Mr Isakov's nephew reported his disappearance to the

regional department of the interior, and his family retained counsel to represent them in the domestic proceedings. Further, in the course of those proceedings, Mr Isakov's son and brother have been questioned.

42. In such circumstances, the Court does not discern any risk of Mr Isakov being deprived of effective protection of his rights since, in accordance with the Court's settled case-law, it remains open to his family members to bring the application on his and their own behalf (see, among other authorities, *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, §§ 111-13, ECHR 2009). The present case is therefore different from the cases of *Centre for Legal Resources on behalf of Valentin Câmpeanu* and *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea* (both cited above), in which the direct victims of the alleged violations had died and had no one to represent them.

43. Regard being had to the above, the Court discerns no exceptional circumstances in the present case that would allow Ms Yermolayeva to act in the name and on behalf of Mr Isakov and concludes that Ms Yermolayeva does not have standing to introduce the application in the name and on behalf of Mr Isakov. It follows that the application is incompatible *ratione personae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and must be rejected pursuant to Article 35 § 4.

44. In view of the above, the interim measure indicated under Rule 39 of the Rules of Court in the present case comes to an end.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 28 July 2016.

Stephen Phillips
Registrar

Luis López Guerra
President