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

THIRD SECTION

DECISION

Application no. 61998/15
M.S.
against Russia

The European Court of Human Rights (Third Section), sitting on 10 October 2017 as a Committee composed of:

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 17 December 2015,

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

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

PROCEDURE AND FACTS

1. The applicant is a Tajikistani national who was born in 1989. 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 E. Davidyan and Ms D.V. Trenina, lawyers practising in Moscow.

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. On 17 December 2015 the applicant's request for an interim measure preventing his removal from Russia for the duration of the proceedings before the Court was granted under Rule 39 of the Rules of Court. The applicant's case was also granted priority (Rule 41).

4. On 31 March 2016 the complaints under Articles 3, 5, and 13 of the Convention were communicated to the Government.

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

A. Extradition proceedings

6. On 4 October 2014 the applicant was charged, *in absentia*, in Tajikistan with publicly supporting extremist activities and organising an extremist group. On 7 October 2014 the Tajik authorities issued a detention order and an arrest warrant for the applicant.

7. On 3 December 2014 the applicant was arrested in Moscow and placed in detention pending extradition.

8. On an unspecified date the Tajik authorities requested the applicant's extradition.

On 3 December 2015 the applicant was released due to expiry of the maximum statutory time-limit for this type of detention.

On 4 February 2016 the applicant was granted temporary asylum in Russia. In view of this fact his extradition was refused on 11 May 2016 by the Deputy Prosecutor General of the Russian Federation.

B. Expulsion proceedings

9. On 3 December 2015, immediately after his release from detention pending extradition, the applicant was arrested again for violation of migration rules.

10. On 4 December 2015 the Dorogomilovskiy District Court of Moscow fined the applicant for violating migration rules and ordered his expulsion from Russia. By the same order the applicant was detained "until the execution of [his] expulsion from the Russian Federation".

11. On 24 December 2015 the Moscow City Court upheld the decision of the District Court on appeal.

12. In view of the applicant having been granted temporary asylum in Russia on 4 February 2016, the Deputy Prosecutor of Moscow requested the City Court to amend the sanction imposed on the applicant.

13. On 10 May 2016 the Deputy President of the City Court removed expulsion from the sanctions imposed by the District Court on 4 December 2016.

14. On 16 May 2016 the applicant was released from detention.

COMPLAINTS

15. The applicant complained under Articles 3 and 13 of the Convention of the real risk of ill-treatment in the event of his removal to Tajikistan and the lack of effective domestic remedies in this regard. He further complained under Article 5 §§ 1 and 4 of the Convention about the alleged arbitrariness of his detention and the lack of periodic judicial review between 3 December 2015 and 12 May 2016 in respect of the lawfulness of his detention pending expulsion.

THE LAW

A. Alleged violation of Article 3 of the Convention

16. The applicant complained under Article 3 of the Convention of the real risk of ill-treatment in the event of his removal to Tajikistan. Article 3 of the Convention reads:

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

17. The Government in their observations argued that following the annulment of the order for his removal from Russia (see paragraph 13 above) the applicant had lost his victim status. The applicant in his observations had expressed a wish to withdraw his complaint under Article 3 in view of the developments in his case.

18. Having regard to the parties' positions the Court considers that, in the present circumstances, it is no longer justified to continue the examination of the application, within the meaning of Article 37 § 1 (c) of the Convention.

19. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights, as defined in the Convention and its Protocols, which require the continued examination of the case.

20. In view of the above, it is appropriate to strike the case out of the list.

B. Alleged violation of Article 13 of the Convention

21. The applicant complained under Article 13 of the Convention of a lack of effective domestic remedies in Russia in respect of his complaint under Article 3 of the Convention. Article 13 of the Convention reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

22. The Court notes that this complaint is intrinsically linked to the one examined above. Accordingly, in view of the findings made under Article 3 of the Convention, the Court does not consider it necessary to examine separately the complaint under Article 13 of the Convention.

C. Alleged violations of Article 5 of the Convention

23. The applicant complained under Article 5 §§ 1 (f) and 4 of the Convention about the arbitrariness of his detention and lack of periodic judicial review between 3 December 2015 and 12 May 2016 of the lawfulness of his detention pending expulsion. Article 5 in the relevant part reads:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition....
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

24. The Court reiterates that the exception contained in sub-paragraph (f) of Article 5 § 1 of the Convention requires only that "action is being taken with a view to deportation or extradition", without any further justification (see, *inter alia*, *Chahal v. the United Kingdom*, 15 November 1996, § 112, *Reports of Judgments and Decisions* 1996-V), and that deprivation of liberty will be justified as long as deportation or extradition proceedings are in progress (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009).

In this regard the Court emphasises that the question of whether or not a period of detention is reasonable cannot be assessed in the abstract but must be assessed in each case according to its special features (see, *mutatis mutandis*, *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-45, ECHR 2006-X) and that the arguments for and against release must not be "general and abstract" (see, for example, *Khudoyorov v. Russia*, no. 6847/02, § 173, ECHR 2005-X (extracts)), but contain references to the specific facts and the applicant's personal circumstances justifying his detention.

25. Turning to the present case, the Court notes that the applicant's complaints concern the period of slightly over five months, during which the applicant was detained pending expulsion between 3 December 2015 and 12 May 2016. During this period the national authorities firstly actively pursued the proceedings aimed at the applicant's expulsion; after he was granted temporary asylum on 4 February 2014, the authorities in the same diligent manner took the necessary steps to ensure the termination of the relevant proceedings and the applicant's release.

26. The Court considers that there is no evidence indicating any arbitrariness in respect of the applicant's detention or, more particularly, bad faith, deception or unjustified delays in respect of the authorities' conduct (see, conversely, *Bozano v. France*, 18 December 1986, § 60, Series A no. 111, and *Čonka v. Belgium*, no. 51564/99, § 41, ECHR 2002‑I).

27. Lastly, the Court notes that the applicant's complaints concerning the availability of periodic judicial review of the lawfulness of his detention pending expulsion are couched in general and abstract terms. Given the expeditiousness of the national proceedings, the consideration of the applicant's claims by the domestic courts, and the initiative demonstrated by the authorities in seeking the applicant's release, together with the relatively short period of detention, the applicant's individual situation was devoid of the deficiencies alleged.

28. Accordingly, having regard to all the material in its possession and the conclusions above, the Court finds that complaints related to the applicant's detention pending expulsion did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this complaint must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases as regards the complaint under Article 3 of the Convention;

Decides that it is not necessary to examine separately the complaint under Article 13 of the Convention;

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 9 November 2017.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President