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

THIRD SECTION

DECISION

Application no. 58221/10
S.K.
against Russia

The European Court of Human Rights (Third Section), sitting on 7 November 2017 as a Chamber composed of:

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

and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 8 October 2010,

Having deliberated, decides as follows:

PROCEDURE

1. The applicant, Mr S.K., is a Tajik national who was born in 1976. The Court decided to grant the applicant anonymity and case-file confidentiality under Rules 33 and 47 § 4 of the Rules of Court.

2. The applicant was represented before the Court by Ms T.K. Dolbneva, a lawyer practising in Moscow.

3. 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.

4. On 8 October 2010 the Court, under Rule 39 of the Rules of Court, indicated to the Russian Government that the applicant should not be extradited to Tajikistan until further notice.

5. On 22 October 2010 the applicant's representative submitted to the Court an application form accompanied by an authority form signed by her and the applicant.

6. On 1 November 2011 the applicant's complaints 1) under Articles 3 and 13 of the Convention concerning the risk of ill-treatment if extradited to Tajikistan and the lack of effective domestic remedies in this regard, 2) under Article 5 § 4 of the Convention concerning the alleged inability to have the alleged lawfulness of his detention reviewed by the domestic courts, and 3) under Article 34 concerning an alleged hindrance by the State of the effective exercise of the applicant's right of application by secret removal to Tajikistan were communicated to the Government.

7. The Government and the applicant filed their written observations on 24 February and 12 April 2012 respectively.

8. On 2 May 2013 the President of the Section decided, under Rule 54 § 2 (c) of the Rules of Court that the parties should be invited to submit further written observations on the admissibility and merits by 28 June 2013. The Government submitted their observations on the date indicated in the Court's letter.

9. By a letter dated 23 July 2013, sent by registered post, the applicant's representative was notified that the period allowed for submission of further observations had expired on 28 June 2013 and that no extension of time had been requested. The applicant's representative's attention was drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application.

10. The applicant's representative received this letter on 15 August 2013. However, no response has been received.

11. The Court received its last letter from the applicant's representative on 12 April 2012. Since that date no subsequent letters from the applicant, his representative or any other person acting in his interests or on his behalf have been submitted to the Court.

THE FACTS

A. Background of the case

12. The applicant, a practicing Muslim, stated that since 1998 he had been persecuted by the Tajik authorities for participation in religious meetings, had been put on the list of wanted persons by the police and had had to go into hiding.

13. In 2002 and 2003 he went twice to Russia, where he worked for approximately six months each time. In March 2005 his mother and wife

were allegedly taken to a police station and questioned about his whereabouts.

14. In June 2005 the applicant left Tajikistan for Russia.

15. In 2009 criminal proceedings were instituted against the applicant in Tajikistan on charges of participation in the Islamic Movement of Turkestan. His pre-trial detention was ordered *in absentia* and an arrest warrant was issued in his name.

B. Extradition and asylum proceedings in Russia

16. On 22 November 2009 the applicant was arrested in Russia under an international arrest warrant. On 24 November 2009 his detention pending extradition was ordered by the Presenenskiy District Court of Moscow.

17. On 25 June 2010 the applicant's extradition was authorised by the Deputy Prosecutor General.

18. The authorisation was upheld by the Moscow City Court on 12 August 2010. However, on 13 October 2010 the Supreme Court of the Russian Federation, referring to, *inter alia*, the Strasbourg Court's case-law, annulled the lower court's decision for failure to consider the applicant's claims of the real risk of ill-treatment at the hands of Tajik authorities.

19. On 1 November 2010 the Moscow City Court dismissed the applicant's appeal against the authorisation of his extradition. There is no evidence that the applicant appealed against that decision.

20. The applicant's asylum claim was dismissed by the migration authorities on 29 September 2010. There is no evidence that the applicant appealed against that decision.

21. On 22 November 2010 the applicant was released owing to the expiry of the time-limits for detention pending extradition. The applicant was ordered by the Russian authorities not to leave his place of residence.

C. Interim measures under Rule 39 of the Rules of Court

22. On 8 October 2010 the applicant lodged a request under Rule 39 of the Rules of Court, asking to have his extradition to Tajikistan stayed. On the same day the Court granted the request and indicated to the Russian Government that the applicant should not be extradited to Tajikistan until further notice.

23. On 20 October 2010 the Russian Government informed the Court that "the authorities of the Russian Federation [had taken] relevant steps to guarantee that Mr S.K. [would] not be extradited to Tajikistan until further notice".

D. The applicant's disappearance

24. On 9 September 2011 the applicant's representative Ms Dolbneva informed the Court that she had lost contact with her client since 23 August 2011. She further stated that following several telephone conversations with the applicant's relatives and neighbours in Tajikistan she feared that the applicant had been secretly transferred across the Russian border.

25. On 27 September 2011 the President of the Section decided, under Rule 54 § 2 (c) of the Rules of Court, to request from the Russian Government information on the applicant's current whereabouts and possible removal to another country.

26. On 17 October 2011 the Russian Government informed the Court that they were not aware of the applicant's whereabouts since he was neither at his place of residence nor was he detained. They further stated that relevant enquiries had been made into allegations of disappearance.

27. In a letter of 25 February 2012 the Government stated that according to the information obtained from Tajik authorities on 28 August 2011 the applicant "came admitting his guilt" to the law-enforcement authorities of Tajikistan in Sogdiyskiy Region.

28. On 12 April 2012 Ms Dolbaneva submitted written observations stating that the Russian authorities' inaction had made the applicant's secret transfer possible. Furthermore, with reference to the information received from the applicant's relatives, she alleged that the applicant's trial had started in Tajikistan.

THE LAW

29. Having regard to the circumstances of the present case the Court considers it necessary first to examine the need to continue the examination of the application according to the criteria set forth in Article 37 of the Convention. This provision reads as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
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> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
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> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.
>
> 2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

30. Recently in the judgment *V.M. and Others v. Belgium* ([GC], no. 60125/11, § 35, 17 November 2016, with further references) the Court stressed that an applicant's representative must not only supply a power of attorney or written authority (Rule 45 § 3 of the Rules of Court) but that it is also important that contact between the applicant and his or her representative be maintained throughout the proceedings. Such contact is essential both in order to learn more about the applicant's particular situation and to confirm the applicant's continuing interest in pursuing the examination of his or her application. Whilst it is true that the applicant's representative has the power to represent him throughout the entire proceedings before the Court, that power does not by itself justify pursuing the examination of the case (see *Ali v. Switzerland*, 5 August 1998, § 32, *Reports of Judgments and Decisions* 1998‑V, and *Ramzy v. the Netherlands* (striking out), no. 25424/05, § 64, 20 July 2010).

31. The Court is mindful that 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, it is prepared to recognise an exception to the general principle that the proceedings must be pursued by an individual "directly affected" by the measure complained of, most notably, the victim's next of kin (see *N. and M. v. Russia* (dec.), nos. 39496/14 and 39727/14, §§ 51-55, 26 April 2016, with further references).

32. The Court recognises the evident difficulties in maintaining contacts with the applicant and pursuance of the proceedings on the applicant's behalf by relatives in situations where an applicant, like in the present case, has been allegedly forcibly and secretly removed from the territory of a Contracting State. However, nothing in the case file indicates the existence of exceptional circumstances justifying departure from the above general principles (compare *N. and M. v. Russia*, cited above, §§ 62-63). It would appear in the present case that the last time the applicant and his lawyer were in contact was on a date prior to 23 August 2011 (paragraph 24 above). At the same time Ms Dolbneva's submissions in 2011 and 2012 (paragraphs 24 and 28) indicate that she was able to maintain contact if not with the applicant but with his relatives in Tajikistan, that they were well aware of the relevant developments, but did not demonstrate their willingness to pursue the proceedings (see, *mutatis mutandis*, *Sevgi Erdoğan v. Turkey* (striking out), no. 28492/95, §§ 35-36, 29 April 2003).

33. Despite the relevance and weight of the above considerations, the Court considers it decisive that in the present case since 12 April 2012 it has received no letters from the applicant, his representative or any other person acting in his interests or on his behalf (paragraph 11 above). It finds it significant that the applicant's representative chose not to reply to the request to submit further written observations on the admissibility and merits of the case by the President of the Section, under Rule 54 § 2 (c) of

the Rules of Court (paragraph 9 above). By a letter dated 23 July 2013, sent by registered post and duly received on 15 August 2013 (paragraph 10 above), Ms Dolbneva was notified that the period allowed for submission of further observations had expired and her attention was drawn to the provisions of Article 37 § 1 of the Convention. However, still no letters were received from her in the following years.

34. The Court considers that, in these circumstances, it is no longer justified to continue the examination of the application, within the meaning of Article 37 § 1 (c) of the Convention.

35. 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 (see in a similar context *V.M. and Others v. Belgium*, cited above, § 40).

36. At the same time the Court reiterates that under Article 37 § 2 of the Convention it may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

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

38. Consequently, indication of an interim measure under Rule 39 of the Rules of Court comes to an end.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases.

Done in English and notified in writing on 30 November 2017.

Stephen Phillips
Registrar

Helena Jäderblom
President