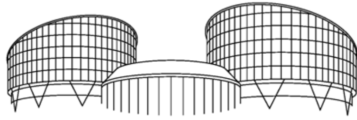

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Inadequate assessment of risks surrounding expulsion of Russian nationals of Chechen origin to Russia: violations of Article 3 of the Convention

Today the European Court of Human Rights has delivered two **Chamber**[1] judgments in the cases of R v. France (application no. 49857/20) and **W v. France** (application no. 1348/21).

In its judgment in **R v. France** (application no. 49857/20), the Court held, unanimously, that there had been a **violation of Article 3 (prohibition of torture and inhuman or degrading treatment)** of the European Convention on Human Rights.

In its judgment in **W v. France** (application no. 1348/21), the Court held, by a majority, that there would be a **violation of Article 3 (prohibition of torture and inhuman or degrading treatment)** of the Convention **if the decision to deport the applicant to the Russian Federation were to be implemented.**

The case of **R v. France** (no. 49857/20) concerned the deportation to Russia of a Russian national of Chechen origin after his refugee status had been revoked.

Having noted that the applicant had remained a refugee, even though his status had been revoked pursuant to Article L. 711-6 of the Immigration and Asylum Code (CESEDA), the Court referred to its case-law according to which the fact of being a refugee was a factor to which the authorities should have particular regard when determining the reality of the alleged risk in the event of an individual's expulsion.

The Court observed that the Administrative Court, the day before the applicant's actual deportation, had rejected the urgent application for suspensive relief lodged by the applicant, without indicating the specific reasoning for that decision. In two judgments of February 2021, subsequent to the deportation, the Administrative Court had dismissed the applicant's action for the setting-aside of the deportation order and the directions specifying the Russian Federation as the destination country. The Court was of the view that this solution had been based on an in-depth assessment of the applicant's situation, but found that, as it had taken place after the applicant's deportation, the Administrative Court's assessment in February 2021 could not have remedied the inadequacy of the earlier risk analysis.

The case of **W v. France** (no. 1348/21) concerned an order to deport the applicant, a Russian national of Chechen origin whose refugee status had been revoked under Article L. 711-4 of the Immigration and Asylum Code, to Russia. The applicant had argued before the Court that his deportation would expose him to risks because the prefecture had provided the consulate of the Russian Federation with details on his personal situation along with the request for readmission.

In view of the serious and established facts which allowed it to determine the existence of a real risk of treatment in breach of Article 3 of the Convention, the Court found that the decision to deport the applicant to the Russian Federation would entail a violation of Article 3 of the Convention if it were to be enforced.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Principal facts, complaints and procedure (R v. France, no. 49857/20)

The applicant, R, is a Russian national of Chechen origin who was born in 1988 in Grozny (Russia).

According to the applicant, he left Russia with his mother and brother in 2002. He entered France in 2004. His mother was granted refugee status by a decision of the French Office for the Protection of Refugees and Stateless Persons (OFPRA). The applicant, then a minor, was placed under the protection of this office on the basis of family unity. His father, who arrived in France in 2008, was also granted refugee status by the OFPRA.

In 2008 the applicant was issued a passport by the Russian authorities. As an adult, he applied to the French authorities for continued refugee protection, which was granted by the OFPRA in 2009.

The applicant had two children, born in 2013 and 2019, with a Russian national who entered France in 2011, according to him, and who was granted refugee status by the OFPRA in 2012. He has been living with her since 2014.

The applicant was convicted twice in 2014 by the Criminal Court for threatening to commit an offence against a person in a position of authority, and for insulting or resisting a public official, and for theft committed as part of an organised criminal group. In late 2015 his home was subjected to an administrative search in connection with the state of emergency declared in France after the attacks of 13 November 2015. On that occasion, items linked to the Daesh terrorist organisation were found at his home.

Shortly afterwards, the applicant was placed under home curfew on the grounds that he was the administrator of a pro-jihad website and that he had expressed the intention of going to Syria to join a group of Daesh fighters. After being arrested and taken into police custody he admitted to being the producer of two videos, one in which he had made death threats against police officers, and the other in which he pledged allegiance to the so-called Islamic State, expressing the intention of transmitting it to a member of that organisation, with a view to joining its ranks in Chechnya. Having spent time in pre-trial detention, the applicant was sentenced by the Criminal Court in early 2017, for participation in a criminal conspiracy to prepare a terrorist act, to six years' imprisonment and a permanent ban from French territory.

The judgment was upheld on appeal on 16 January 2018. The Court of Cassation dismissed his appeal on points of law.

In early 2017 the Criminal Court sentenced the applicant to three months' imprisonment for handling goods obtained as a result of a criminal offence, the relevant act being committed while he was in prison.

On 20 February 2017 the OFPRA, considering that the applicant's presence in France constituted a serious threat to State security, revoked his refugee status pursuant to paragraph 1 of Article L. 711-6 of the Immigration and Asylum Code. That decision was upheld on 8 January 2019 by the National Asylum Court. On 30 September 2019 the *Conseil d'État* did not allow the applicant's appeal on points of law. Subsequently, the Deportation Board ruled in favour of the applicant's expulsion.

In February 2020 the applicant was issued with a deportation order by the prefect and then, in March 2020, with directions setting Russia as the destination country.

In two urgent applications for suspensive relief, the applicant asked the Administrative Court to suspend the enforcement of the deportation and the directions specifying Russia as the destination country. In two decisions of 12 November 2020, the Administrative Court, after a public hearing, dismissed those applications.

On Friday 13 November 2020 the applicant's lawyer applied to the Court for an interim measure to have the applicant's deportation to the Russian Federation suspended. The Court's Registry

informed the applicant's lawyer that the Court was unable to consider the application because it had been received too late in the day and was incomplete. On the same day, the applicant was deported to the Russian Federation.

In two decisions of February 2021 the Administrative Court rejected applications for the setting-aside of the deportation order and the directions specifying Russia as the destination country.

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment) the applicant maintained that his deportation to Russia had put him at risk of being treated in a manner contrary to that Article, and that the risk had materialised after he had been deported on 13 November 2020. Relying on Article 2 (right to life), he complained of the risk he had faced of forced disappearance in Russia upon the enforcement of the deportation order. Relying on Article 8 (right to respect for private and family life), he submitted that his removal had unduly interfered with his right to respect for his private and family life.

The application was lodged with the European Court of Human Rights on 11 May 2021.

Principal facts, complaints and procedure (W v. France, no. 1348/21)

The applicant, W, is a Russian national who was born in 1981 and lives in Orléans (France).

Married to a Russian national and the father of five children, two of whom are minors, the applicant entered France on 21 June 2007.

On 16 November 2007 the OFPRA granted him and his wife refugee status. He received a permanent residence permit with the endorsement "refugee status", valid until November 2017.

On 30 April 2013 the OFPRA adopted a cessation decision stating that he was no longer recognised as a refugee on the grounds that he had returned to Russia for just under a month in 2011, more specifically to St Petersburg to visit his father in hospital, and had not produced any documents to support his statements regarding his father's state of health.

On 3 March 2014 the National Asylum Court set aside that decision, considering that the applicant could not be considered to have voluntarily re-availed himself of the protection of the authorities of his country of origin, since he had provided it with evidence of having travelled to Russia for a period of two weeks to visit his father in hospital.

On 18 September 2015 the OFPRA adopted a new cessation decision, terminating his refugee status. A "white note" from the Directorate General of Internal Security (DGIS) recorded that the applicant had been checked at Amsterdam Schiphol airport (the Netherlands) in April 2014 coming from Türkiye, in possession of a new Russian passport issued by the authorities of his country of origin in 2012. The OFPRA terminated the applicant's refugee status pursuant to Article L. 711-4 of the Immigration and Asylum Code.

In a judgment of 15 November 2016, notified to the applicant on 23 January 2017, the National Asylum Court confirmed the OFPRA's decision, noting in particular that the applicant had travelled to Russia (North Ossetia), for a period of fifteen days, to obtain a new external passport. The fact that he had travelled voluntarily to Russia to obtain that passport confirmed his allegiance to the Russian authorities, which had been recognised as the perpetrators of persecution against him when his asylum application was initially examined in 2007.

In September and November 2017 the applicant applied for the renewal of his permanent residence permit. In a decision of 15 April 2019 the local prefect refused to renew it. In a judgment of 17 November 2020 the Administrative Court set aside that decision. As the prefect had not based his decision on a risk of threats to public order, the renewal of a permanent residence permit issued on

asylum grounds was automatic (*de plein droit*), even if the international protection had been terminated, as long as the alien had resided in France under such status for at least five years. Consequently, the administrative authority was ordered to re-examine the application.

In early 2020 the Minister of the Interior decided to initiate deportation proceedings against the applicant because of his role in the radical Islamist movement in France.

On 10 September 2020 the Deportation Board for the *département* issued an unfavourable opinion against such a measure, noting in particular the lack of recent evidence of the applicant's continued support for jihadist ideology.

On 21 October 2020 the Minister of the Interior issued a deportation order against the applicant, with detailed reasoning. The order noted that according to information communicated to the administrative authority the applicant had undergone paramilitary training in Pakistan in 2010 with a view to acquiring skills in the manufacture, installation and detonation of home-made explosive devices. In a further order of 21 October 2020, also notified on 4 November 2020, the Minister of the Interior gave directions specifying Russia as the destination country. On the same day, the prefect issued an order placing the applicant in administrative detention, which was extended three times. Successive appeals to the liberties and detention judge and then to the Court of Appeal were dismissed.

On 8 November 2020 the applicant lodged an urgent application for suspensive relief with the urgent applications judge of the Paris Administrative Court, seeking the suspension of the deportation order of 21 October 2020. In a decision of 23 November 2020, following a public hearing, the urgent applications judge rejected the application. On the same day the applicant lodged appeals with the Paris Administrative Court requesting it to set aside the above-mentioned deportation order of 21 October 2020 and directions of the same date specifying the destination country. In a decision of 15 January 2021 the Paris Administrative Court took note, of its own motion, of the withdrawal of his appeals against those two orders. On 20 January 2021, the applicant appealed against this decision to the Paris Administrative Court of Appeal.

On 8 January 2021 the applicant requested the Court to indicate an interim measure under Rule 39 of the Rules of Court. In response to a request from the Court, the Government stated that the French authorities had not been in contact with the Russian authorities apart from when they had sent the readmission request and that there were no plans to hand him over to the Russian authorities. In view of this information, the Court denied the applicant's request for an interim measure.

On 20 January 2021 the applicant submitted a new request for an interim measure. On the same day the Court decided to indicate to the Government, under Rule 39, not to send the applicant to the Russian Federation for the duration of the proceedings before it.

On 17 May 2021 the applicant submitted a second application for review to the OFPRA. On 31 May 2021 the OFPRA rejected the application, considering that the applicant had been imprecise in referring to the circumstances in which his family had been threatened by the FSB.

The applicant maintained that his deportation to the Russian Federation would put him at risk of being treated in a manner contrary to Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention.

The application was lodged with the European Court of Human Rights on 8 January 2021.

Composition of the Court

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Arnfinn **Bårdsen** (Norway),
Mattias **Guyomar** (France),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),

and also Martina **Keller**, *Deputy Section Registrar.*

Decision of the Court (R v. France, no. 49857/20)

Article 3

As the Court had previously found, even though serious human rights violations had been reported in Chechnya, the situation was not such that any removal to the Russian Federation would constitute a violation of Article 3 of the Convention. Having regard to the international reports available on the date of the applicant's deportation, the Court did not see any reason to call that conclusion into question.

The Court observed that while the applicant's refugee status had been maintained when he reached adulthood on the basis of Article 1A (2) of the Geneva Convention on the status of refugees, concerning the fear of established persecution, he had not informed the OFPRA that he had obtained a Russian passport in 2008. The OFPRA, having subsequently become aware of that passport, had not seen fit, when terminating his refugee status in 2017, to rely on the exclusion clauses of the Geneva Convention. As a result, the applicant had continued to be a refugee. The National Asylum Court, hearing an appeal against the revocation of his refugee status, had not been entitled to call into question, of its own motion, the fact that he was still a refugee.

As to whether, prior to his deportation, the Russian and Chechen authorities had been aware of his criminal conviction in France for participating in a criminal conspiracy to prepare an act of terrorism, the Court noted that while the Government, in their submission, had not had any particular contact with the Russian authorities outside the administrative procedure of the readmission request for the purpose of obtaining a consular laissez-passer, it could not totally rule out the eventuality that the Russian authorities had known about the judicial proceedings leading to that conviction.

As to the evidence submitted by the applicant to show that the authorities of his country of origin were still interested in him, he had produced, both before the domestic courts and before the Court, testimony by his mother and her cousin to the effect that in October and November 2019 his relatives had been questioned by the Russian authorities about his situation.

The Court observed that the applicant had remained a refugee in spite of having his status revoked pursuant to Article L. 711-6 of the Immigration and Asylum Code. As could be seen from the Court's case-law, followed domestically by the *Conseil d'État*, the fact that the applicant had remained a refugee was a factor to which the authorities should have had particular regard when determining the reality of the alleged risk in the event of his expulsion.

First, the prefect's directions specifying Russia as the destination country mentioned that the applicant's refugee status had been revoked and that he had not provided any justification or any precise explanation of the dangers he would face in the event of a return to his country of origin. That decision did not expressly mention that he remained a refugee.

Secondly, the Administrative Court, the day before the applicant's actual deportation, had rejected his urgent application for suspensive relief, without indicating the specific reasoning for that decision. The mere finding by that court that there was no serious doubt as to the legality of the decision specifying the destination country did not enable the Court to ascertain that it had definitely taken into consideration both the fact that the applicant was a refugee and the fears stemming from his possible identification as belonging to a targeted category on account of his activities related to Islamist terrorism. The Court thus found that it was not in a position to verify that there had been a timely analysis of the risks as required under Article 3 of the Convention, entailing an examination, if necessary of the court's own motion, of any established or potential risks at the time of deportation.

In two judgments of February 2021 the Administrative Court had dismissed the applicant's action for the setting-aside of the deportation order and the directions specifying the Russian Federation as the destination country. The court had taken the view that "in the circumstances of the present case, having regard to the evidence before it, the applicant [could] not validly claim that the decision appealed against [had been] taken in breach of the requirements of Articles 2 and 3 of the European Convention on Human Rights". As could be seen from the reasoning of the Administrative Court, that finding had been based on an in-depth assessment of the applicant's situation. However, as that examination had taken place after the applicant's deportation to Russia, the Administrative Court's assessment in February 2021 could not have remedied the inadequacy of the risk analysis carried out prior to the enforcement of the measure.

The Court thus found that there had been a violation of Article 3 of the Convention.

Articles 2 and 8

The Court considered that it had examined the main legal question raised by the application and concluded that it did not need to rule separately on the other complaints.

Just satisfaction (Article 41)

The Court found that the finding of a violation of Article 3 constituted sufficient just satisfaction and held that France was to pay the applicant 7,920 euros in costs and expenses.

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Decision of the Court (W v. France, no. 1348/21)

Article 3

The Court noted, like the Government, that since being recognised as a refugee by the OFPRA in 2007, the applicant had travelled at least twice to the Russian Federation without encountering any problems. In addition, he had obtained an external Russian passport that he had used to travel to Türkiye, whereas he could have obtained a French refugee's travel permit.

In particular, it could be seen from the OFPRA's 2015 decision to revoke his status, as confirmed by the National Asylum Court, that he was no longer considered to be a refugee at all, as he had voluntarily availed himself of the protection of the Russian authorities after obtaining refugee status. The Court noted that, as he had "voluntarily re-availed himself of the protection of the country of his nationality", he had necessarily ceased to be a refugee completely.

In the main, the applicant had argued that, being suspected by the French authorities of radicalisation and of belonging to the Chechen armed resistance, suspicions that had been notified to the Russian authorities, he risked being arrested and tortured in the event of his return to the Russian Federation. The Court considered that there was evidence before it to the effect that, when

the steps had been taken to deport the applicant, the French authorities had been in direct contact with the Russian authorities and had sent them a copy of the file concerning the applicant. This document indicated the applicant's affiliation to the Chechen radical Islamist movement, his history as a fighter in a Chechen terrorist organisation, and his commitment to international jihad. The applicant had also produced copies of two summonses in his name issued by the Russian Ministry of the Interior in Grozny District, Chechen Republic, following contacts between the prefecture and the Russian consulate. He had added testimony from close relatives in Chechnya to show that the Russian forces paid them frequent visits to ask questions and that they were still looking for him.

In the Court's view, the applicant had shown that there were serious reasons to believe that, if he were deported to the Russian Federation, he would be exposed to a real risk of treatment in breach of Article 3 of the Convention.

The Government contested the authenticity and date of the summonses issued by the Russian Ministry of the Interior in the Grozny District of the Chechen Republic. The Government also stated that some ten deportation orders of the same type as that issued to the applicant had been enforced since 2018 and that the applicant would not be handed over to the Russian authorities on his arrival in the Russian Federation. The Government reiterated that the applicant's fears had been carefully and rigorously examined by the domestic authorities and courts, including at the time of the second application for review of his asylum application that he had lodged with the OFPRA.

The Court noted, first, that the Government had not indicated the reasons for the alleged lack of authenticity of the summonses issued by the Russian Ministry of the Interior, the veracity of this allegation being by no means evident. In addition, they had been issued after the prefecture had faxed the documents concerning the applicant to the Russian authorities.

The Court thus found that there were serious and established reasons to believe that, if he were deported to the Russian Federation, the applicant would be exposed to a real risk of treatment in breach of Article 3 of the Convention. Accordingly, the decision to deport him to the Russian Federation would entail a violation of Article 3 of the Convention.

Having regard to the facts of the case, the arguments of the parties and the conclusion reached by the Court under Article 3 of the Convention, it considered that it had examined the main legal question raised by the application and concluded that that it did not need to rule separately on the other complaints.

Rule 39 of the Rules of Court

The Court decided to continue to indicate to the Government under Rule 39 of the Rules of Court that it was desirable in the interests of the proper conduct of the proceedings not to expel the applicant to Russia until such time as the present judgment became final, or until a further decision was made.

Just satisfaction (Article 41)

The Court found that the finding of a violation of Article 3 constituted sufficient just satisfaction and that France was to pay the applicant 4,500 euros in costs and expenses.

Separate opinion (W v. France, n° 1348/21)

Judges O'Leary, Mourou-Vikström and Guyomar expressed a joint dissenting opinion in the case of *W v. France*. This opinion is annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.