



Missing student risks torture and death if returned to North Korea

The case of [K.J. and Others v. Russia](#) (application nos. 27584/20 and 39768/20) concerned the Russian authorities' removal orders in respect of three North Korean citizens, S.K., K.J. and C.C., to the Democratic People's Republic of Korea (DPRK). It also concerned the detention of S.K. and K.J. in Russia.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

In respect of S.K., a violation of Article 2 (right to life) and Article 3 (prohibition of torture) of the European Convention on Human Rights, and

a violation of Article 5 § 1 (right to liberty and security).

In respect of K.J., a violation of Article 5 §§ 1 and 4 (right to liberty and security/right to have lawfulness of detention decided speedily by a court).

The Court found in particular that by handing S.K. over to the DPRK's officials, the Russian authorities have put him at real risk of torture or death.

K.J. and C.C. are currently residing in Seoul (South Korea) and the Court therefore struck out the part of their application concerning an alleged risk of death and/or ill-treatment in DPRK.

Principal facts

The applicants are two nationals of the Democratic People's Republic of Korea (DPRK), K.J. and C.C., and the Institute for Human Rights (IHR), a non-governmental organisation representing S.K., another DPRK national.

K.J. and C.C. were captured in Russian territorial waters, convicted of illegal fishing and sentenced in April 2019 to two years' and two years and one month's imprisonment respectively in Russia.

Upon release in January 2020 K.J.'s detention pending expulsion to the DPRK was ordered. He was released following the maximum two-year period for being held. C.C.'s detention pending expulsion was ordered on February 2020 and in February 2022 his release was ordered.

In September 2019 S.K. began studying at the Far Eastern Federal University in Vladivostok. After a year, he decided to apply for asylum, contacting the United Nations High Commissioner for Refugees (UNHCR) office for aid. He and his contact there were harassed by North Korean officials following that. IHR alleges that on 10 September 2020 S.K. was taken by police from the town of Artyom in Russia's far east and handed over by Russian Federal Security Service agents to DPRK consular staff. On the same day, the Court indicated an interim measure to the Russian Government not to allow S.K. to be expelled to North Korea.

As he had effectively disappeared, S.K.'s UNHCR contact initiated criminal proceedings, alleging abduction, to no avail.

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.

In July and September 2022 respectively, K.J. and C.C. left Russia for South Korea, which had issued travel documents for them. They have since been residing in Seoul (South Korea).

Complaints, procedure and composition of the Court

Relying on Articles 2 (right to life), 3 (prohibition of torture), and 13 (right to an effective remedy) of the Convention, the applicants complained that if removed to the DPRK they would face torture and death and that they did not have an effective remedy for those complaints.

Under Article 5 (right to liberty and security) K.J. complained that his detention had been arbitrary and prolonged, and the Institute for Human Rights alleged that S.K.'s detention on 10 September 2020 had been unlawful.

The application was lodged with the European Court of Human Rights on 7 July 2020 (K.J. and C.C.) and 10 September 2020 (S.K.).

The Court's procedure for processing of applications against Russia can be found [here](#).

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

Pere **Pastor Vilanova** (Andorra), *President*,
Jolien **Schukking** (the Netherlands),
Yonko **Grozev** (Bulgaria),
Darian **Pavli** (Albania),
Ioannis **Ktistakis** (Greece),
Andreas **Zünd** (Switzerland),
Oddný Mjöll **Arnardóttir** (Iceland),

and also Olga **Chernishova**, *Deputy Section Registrar*.

Decision of the Court

The Court established that it had jurisdiction to deal with the case as the facts giving rise to the alleged violations of the Convention had taken place before 16 September 2022, the date on which Russia ceased to be a Party to the European Convention.

[Striking out applications \(Article 37\)](#)

As K.J. and C.C. had been residing in Seoul since 2022, it was no longer justified to continue the examination of their application in so far as it concerned an alleged risk of death and/or ill-treatment in DPRK. Accordingly, the Court struck that part of the application out of its list of cases.

[Article 2 and 3](#)

The Court reiterated that where there were substantial grounds to believe that an individual would face a real risk of capital punishment, torture, or inhuman or degrading treatment or punishment in the destination country, the Contracting State had an obligation not to expel that person.

S.K. faced an extremely high risk of the death penalty – commonly applied to returnees – and of torture – in reprisal for applying for asylum – if returned to the DPRK. This situation was confirmed by reports by reputable international organisations and was not disputed by the Government. No meaningful steps were taken by the Russian authorities to examine the risks for S.K. if returned. IHR submitted in that connection that as S.K. was missing, North Korean officials must have either returned him to North Korea, kept him incommunicado in the consulate or had him murdered.

As S.K. would be at real risk of torture or death, and the Russian authorities were accountable for his transfer to the DPRK officials, there had been a **violation of Articles 2 and 3** of the Convention.

Article 5

As regards **K.J.'s complaint**, the Court observed that the Russian authorities took no steps to review his detention pending expulsion, in particular failing to assess whether expulsion had remained realistic, despite the passage of time. That detention had therefore exceeded what was reasonably required, in **violation of Article 5 § 1**. The Court had already found that foreign nationals who had been detained in Russia pending their expulsion were not able to have the reasons and lawfulness of their detention reviewed by the national courts. It could see no reason that that did not apply in this case, and so found a **violation of Article 5 § 4**.

Concerning **S.K.'s complaint**, the Court held that his apprehension on 10 September 2020 by the police had not only been unacknowledged but had also manifestly lacked in any legal basis and had accordingly been unlawful and a **violation of Article 5 § 1**.

Article 13

Given its findings under Articles 2 and 3, the Court stated that it was not necessary to examine this part of S.K.'s application separately.

Rule 39 (interim measures)

Given its findings, the Court discontinued the interim measures it had indicated in respect of K.J. and C.C. on 7 July 2020 under Rule 39 of the Rules of Court. However, the Court's indication of 10 September 2020 that S.K. should not be involuntarily removed from Russia to North Korea will remain in force until the present judgment becomes final.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 7,800 euros (EUR) to K.J. and EUR 30,000 to S.K. in respect of non-pecuniary damage and EUR 4,500 to K.J. in respect of costs and expenses.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: [@ECHR_CEDH](http://www.echr.coe.int/RSS/en).

Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

Neil Connolly (tel.: + 33 3 90 21 48 05)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Jane Swift (tel.: + 33 3 88 41 29 04)

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.