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

FIRST SECTION

Application no. 44260/13
Roman Anatolyevich KIM
against Russia
lodged on 21 June 2013

STATEMENT OF FACTS

The applicant, Mr Roman Anatolyevich Kim, is a stateless person of the Korean ethnic origin. He was born in 1962 in Tashkent, the Uzbek SSR of the USSR. Since 1990 he has been living in St Petersburg, Russia.

The applicant is represented before the Court by Mr Y. Serov and Ms O. Tseytlina, lawyers practising in St Petersburg.

A. The facts

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

On 19 July 2011 the police stopped the applicant for an identity check and discovered that he had no identity documents. On the same day a judge of the Sestroretsk District Court of St Petersburg found him guilty of an administrative offence under Article 18.8 of the Code of Administrative Offences (breach of residence regulations in Russia), fined him 2,000 Russian roubles (RUR) and ordered his expulsion from Russia. Pending expulsion, the applicant was placed in the Aliens Detention Centre of the St Petersburg City and Region police directorate.

The conditions of detention in the Aliens Detention Centre have been characterised by the following elements: the applicant has been assigned to Cell 615 measuring 17 square metres, which normally accommodated up to 4 inmates but occasionally up to 7 inmates; there has been no sink or access to water inside the cell; up until March 2013 he was allowed twenty minutes of outdoor exercise once every two or three weeks in a tiny yard; there has been no TV, radio, newspapers or books available; visits from family members were only possible upon authorisation of the director of the centre in a small windowless and unventilated room (Cell 8).

On 7 June 2012 counsel for the applicant sent an inquiry to the Embassy of Uzbekistan in Russia, seeking to find out whether or not the applicant

had Uzbekistani nationality and whether he could be removed to Uzbekistan. No reply was received.

On the same day counsel asked the Federal Migration Service (the "FMS") to inform him what measures had been taken with a view to expelling the applicant from Russia, whether or not his identity had been established and why the applicant had already spent more than eleven months in detention. In reply, the FMS refused to give any information, citing the law on the protection of personal data.

On 14 November 2012 counsel applied to the Sestroretskiy District Court for an order discontinuing the enforcement of the expulsion decision 19 July 2011. He pointed out that the enforcement was impossible since the applicant was not a national of Uzbekistan and since the Uzbekistani authorities would not accept him.

On 10 December 2012 a judge of the Sestroretskiy District Court refused the application, without hearing the parties or the applicant. According to the judge, a failure to take measures with a view to expelling the applicant was not a ground for discontinuing the enforcement of an expulsion decision in accordance with the Code of Administrative Offence. Counsel submitted an appeal, in which he complained in particular about the absence of a periodic judicial review of the applicant's detention in breach of Article 5 § 4 of the Convention and about the State authorities' failure to show special diligence in the conduct of the expulsion proceedings, contrary to the requirements of Article 5 § 1 (f) of the Convention. On 14 March 2013 a judge of the St Petersburg City Court rejected the appeal in a summary fashion.

Counsel also attempted to challenge the applicant's detention as unlawful. By decision of 26 November 2012, the Krasnoselskiy District Court of St Petersburg disallowed the complaint, finding that the decision of 19 July 2011 constituted a sufficient lawful basis for the ensuing detention. It noted in particular that the applicant would be held in custody "until his expulsion from Russia". On 24 January 2013 the St Petersburg City Court upheld the District Court's decision.

In the meantime, on 30 January 2013 the FMS requested, for a first time, information from the Uzbekistan Ministry of Interior on the applicant's nationality. On 25 March 2013 the Ministry replied that the applicant was not a national of Uzbekistan.

As of the date of introduction of the application – 21 June 2013 – the applicant has spent more than one year and eleven months in detention.

B. Relevant domestic law and practice

1. Administrative Offences Code

Article 18.8 of the Administrative Offences Code of the Russian Federation provides that a foreign national who infringes the residence regulations of the Russian Federation, including by living on the territory of the Russian Federation without a valid residence permit or by non-compliance with the established procedure for residence registration, will be liable to punishment by an administrative fine of 500 to 1,000 Russian roubles and possible administrative removal from the Russian Federation.

Under Article 28.3 § 2 (1) a report on the offence described in Article 18.8 is drawn up by a police officer. Article 28.8 requires such a report to be transmitted within one day to a judge or to an officer competent to examine administrative matters. Article 23.1 § 3 provides that the determination of any administrative charge that may result in removal from the Russian Federation shall be made by a judge of a court of general jurisdiction. Article 30.1 § 1 guarantees the right to appeal against a decision on an administrative offence to a court or to a higher court.

Article 32.10 § 5 allows domestic courts to order a foreign national's detention with a view to administrative removal. Article 27.3 § 1 provides that administrative detention can be authorised in exceptional cases if it is necessary for fair and speedy determination of the administrative charge or for execution of the penalty.

2. Orders by the Interior Ministry and the Federal Migration Service

Orders nos. 758 and 240, On the organisation of activities of the Interior Ministry of the Russian Federation, the Federal Migration Service and their local departments relating to deportation or administrative removal from the Russian Federation of foreign nationals and stateless persons, issued by the Interior Ministry and the Federal Migration Service on 12 October 2009, provide that if a foreign national under administrative removal does not have identity documents the interior department in charge of the administrative removal and the respective local department of the Federal Migration Service are to obtain from the consulate of the person's country of nationality or permanent residence travel documents allowing him to return to the country of nationality or permanent residence (paragraph 50). If there is no information about the country of residence of a stateless person under administrative removal, the interior department, after consultation with the Ministry of Foreign Affairs, takes measures to determine in which country that person is to be expelled.

3. Ruling by the Constitutional Court

On 17 February 1998 the Constitutional Court adopted Ruling no. 6-P. It held, in particular, as follows:

> "It follows from Article 22 of the Constitution of the Russian Federation, taken in conjunction with its Article 55 (paragraphs 2 and 3), that detention for an indefinite period cannot be regarded a permissible limitation on the right to liberty and personal security, and is in fact a violation of that right. Therefore the provisions ... concerning detention pending expulsion should not serve as a basis for detention for an indefinite period even when the expulsion of a stateless person is delayed because no State is ready to accept that person... Otherwise detention would turn from a measure necessary to ensure the execution of an expulsion order into a ... punishment which is not provided under Russian law and which is incompatible with the provisions of the Constitution of the Russian Federation."

COMPLAINTS

1. The applicant complains under Article 3 of the Convention about the inhuman and degrading conditions of detention in the Aliens Detention

Centre. He alleges, in particular, that the Centre in which he has been held for almost two years was once designed for short periods of detention not exceeding fifteen days.

2. The applicant complains under Article 5 § 1 (f) of the Convention that his detention has been unlawful. Firstly, given that it has been clearly impossible to expel him to Uzbekistan or any other country, his detention has been unlimited in time and arbitrary. Secondly, the Russian authorities have conducted the administrative removal proceedings with insufficient diligence. The only request for information to the Uzbekistani authorities dated back to January 2013. There is no evidence that any further steps were taken by the authorities to enforce the administrative removal order.

3. The applicant complains under Article 5 § 4 of the Convention that he cannot obtain an effective judicial review of his detention. He submits that neither he nor his counsel were notified of the examination of the complaint first by the Krasnoselskiy District Court on 26 November 2012 and later by the St Petersburg City Court on 24 January 2013 and that it took the City Court more than three months to examine his appeal against the Sestroretskiy District Court's decision of 10 December 2012.

QUESTIONS TO THE PARTIES

1. Have the conditions of the applicant's detention in the Aliens Detention Centre in St Petersburg been compatible with Article 3 of the Convention? The Government are requested to provide original documents relating to the conditions of detention, including the building and cell plans, registers of inmates, food rations and other relevant records.

2. Has the applicant been deprived of his liberty in breach of Article 5 § 1 of the Convention? Has his detention been "lawful" within the meaning of paragraph (f) of this provision (compare *Mikolenko v. Estonia*, no. 10664/05, §§ 59-68, 8 October 2009)? In particular, was there a realistic prospect of the applicant's expulsion to Uzbekistan or other country? Have the administrative removal proceedings been conducted with special diligence?

3. Did the applicant have at his disposal the procedure by which the lawfulness of his detention can be examined by a court and his release ordered, as required by Article 5 § 4 of the Convention?