



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

FIRST SECTION

CASE OF NIZAMOV AND OTHERS v. RUSSIA

(Applications nos. 22636/13, 24034/13, 24334/13 and 24528/13)

JUDGMENT

STRASBOURG

7 May 2014

FINAL

08/09/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Nizamov and Others v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 April 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in four applications (nos. 22636/13, 24034/13, 24334/13 and 24528/13) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Uzbekistani nationals, Mr Avazbek Mukhammad Ugli Nizamov, Mr Khakim Tursunovich Dzhalalbayev, Mr Rakhmatullo Abudullayevich Mukhamedkhodzhayev and Mr Olim Tursunovich Dzhalalbayev (“the applicants”), on 3, 9 (the second and third applicants) and 10 April 2013 respectively.

2. The applicants were represented by Ms R. Magomedova, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged that, if returned to Uzbekistan, they would be exposed to a risk of being subjected to torture and inhuman or degrading treatment.

4. On 4, 11, 12 and 16 April 2013 the Acting President of the First Section to which the cases were allocated decided to apply Rule 39 of the Rules of the Court, indicating to the Government that the applicants should not be removed or extradited to Uzbekistan until further notice, and granted priority treatment to the applications under Rule 41 of the Rules of the Court.

5. On 23 May 2013 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant, Mr Avazbek Mukhammad Ugli Nizamov, was born in 1992. The second applicant, Mr Khakim Tursunovich Dzhallabayev, was born in 1983. The third applicant, Mr Rakhmatullo Abudullayevich Mukhamedkhodzhayev, was born in 1989. The fourth applicant, Mr Olim Tursunovich Dzhallabayev, was born in 1979. The applicants are currently detained in Moscow.

A. The applicants' arrest and extradition proceedings

7. In 2011-12 the applicants moved from Uzbekistan to Russia to seek employment.

8. On 15 October 2012 an investigator with the Uzbek Ministry of the Interior indicted the applicants on the charges of participation in an extremist religious group known as the Islamic Movement of Turkestan and attempting to overthrow the State's constitutional order in Uzbekistan and ordered their arrest. Their names were put on the list of wanted persons.

9. On 15 November 2012 the applicants were arrested at Vnukovo airport in Moscow.

10. On 17 November 2012 the Solntsevskiy District Court of Moscow authorised the applicants' detention pending extradition. On 13 December 2012 the District Court further extended their detention until 15 June 2013.

11. Between 26 March and 1 April 2013 the General Prosecutor of the Russian Federation refused the Uzbek authorities' request for the applicants' extradition citing, as a ground for his decision, Article 464 § 1 (6) of the Russian Code of Criminal Procedure which banned extradition in respect of persons charged with an offence not punishable under the Russian criminal law. The parties did not submit copies of the relevant decisions.

12. Between 27 March and 4 April 2013 the Acting Moscow Prosecutor for Supervision of Legal Compliance for Air and Water Transport ordered the applicants' release.

B. Expulsion proceedings

1. The applicants' re-arrest and proceedings before the District Court

13. The applicants were immediately re-arrested as illegal aliens. The Babushkinskiy District Court of Moscow examined the applicants' cases, imposed an administrative fine of 2,000 Russian roubles on each of them and ordered their expulsion to Uzbekistan. The court noted that the

applicants had failed to leave Russia upon the expiration of the permissible three-month period of residence without a permit. It further noted that the applicants' request for asylum had been refused and that they had not applied for "legalisation" of their stay in Russia.

14. The District Court delivered the relevant decisions on 28 March, 3, 5 and 9 April 2013 respectively.

15. The applicants appealed. They argued, *inter alia*, that their removal to Uzbekistan would be contrary to Article 3 of the Convention and that they would run a risk of being subjected to torture and inhuman and degrading treatment if forcefully returned to Uzbekistan to be tried for the offences they were charged with.

2. Indication of the interim measure under Rule 39

16. Between 4 and 16 April 2013 the Court indicated to the Government, under Rule 39 of the Rules of the Court, that the applicants' removal/expulsion to Uzbekistan should be suspended until further notice.

3. Appeal proceedings

17. On 14 May 2013 the Moscow City Court dismissed the applicants' appeals and upheld the expulsion orders. The court found the applicants liable for their failure, as foreign nationals, to leave Russia upon the expiry of the maximum permissible period of temporary residence in the country. It further noted that the applicants were refused refugee status even though it considered their asylum application to be irrelevant for the purpose of the proceedings. Lastly, referring to the interim measure indicated by the Court to the Government, the City Court suspended the execution of the expulsion orders until further notice.

18. It appears that the applicants are held in custody to date.

C. Application for asylum

19. On 28 December 2012 the first applicant lodged an application seeking asylum in Russia claiming that, if returned to Uzbekistan, he would be subjected to unlawful criminal prosecution on fabricated charges. In the follow-up interview with the migration authorities, the first applicant explained that (1) he had come to Russia to seek employment; (2) he had not been persecuted prior to leaving Uzbekistan; (3) he had not received any direct threats in Uzbekistan; (4) he had not been affiliated with any party or non-governmental organization; and (5) he had been unaware of the criminal proceedings instituted against him in Uzbekistan until his arrest on 15 November 2012.

20. On unspecified dates the second, third and fourth applicants lodged similar applications.

21. On 21 February 2013 the Moscow Federal Migration Service refused to grant refugee status to the second applicant. The parties did not submit a copy of the relevant decision. Nor did they inform the Court whether the second applicant appealed against the decision of 21 February 2013.

22. On 25 February 2013 the Moscow Federal Migration Service dismissed the first applicant's application. The relevant decision stated as follows:

“[The first applicant] did not apply for asylum within one day of his arrival in Russia

According to the information submitted by the Federal Migration Service of Russia, ‘the internal political situation in Uzbekistan is characterised by relative stability. The authorities control it through law-enforcement bodies and traditional institutions of local self-government.

Uzbek foreign policy is sufficiently active. The Republic is recognised by 150 States. It has established diplomatic relations with 88 of them. It has more than 40 embassies and consulates abroad. One of the priorities of Uzbek foreign policy is international cooperation for the purposes of preserving stability and peace at the regional and global levels.

Uzbekistan is a member of major international organisations. It has ratified all international human rights conventions, the provisions of which have been incorporated into the national legislation.

...

As of 1 January 2008, the President's Decree on the abolition of the death penalty has been in force in Uzbekistan. ... Currently the most severe sentence in Uzbekistan is life imprisonment.

...

Uzbekistan has ratified all six major UN human rights treaties. It regularly submits periodic compliance reports to UN bodies. As a whole, the country's parliament has ratified more than 60 international human rights treaties. ...’

According to the materials in the case-file, ... [the first applicant] does not wish to return to [Uzbekistan] for fear of being prosecuted on the charges brought against him in the Republic of Uzbekistan.

It should be noted that the offences he is charged with are punishable under the Russian criminal law and the prescription period for criminal liability for such offences has not expired under the Russian criminal law.

Having instituted criminal proceedings against [the first applicant], the law enforcement authorities of the Republic of Uzbekistan do not intend to prosecute him on account of his belonging to a particular social group, his nationality, religion or political opinion.

Upon arrival in Russia in July 2011, [the first applicant] did not seek refugee status in the Russian Federation. He lodged such an application only after his arrest and placement in [custody].

Regard being had to the above, it follows that [the first applicant] is not running a risk of being subjected to persecution in the Republic of Uzbekistan [on account of

race, religion, nationality, belonging to a social group or political opinion] and does not qualify to be recognised as a refugee

The reasons, as stated by [the first applicant], for his refusal to return to the Republic of Uzbekistan do not justify his fear of being subjected to persecution on account of faith, nationality, ethnicity, belonging to a social group or political opinion.”

23. On 26 April 2013 the Federal Migration Service of the Russian Federation upheld the decision of 26 April 2013. It appears that the first applicant did not challenge the said decisions in court.

24. On 29 March and 9 April 2013 the Moscow Federal Migration Service dismissed the fourth and third applicants’ applications for asylum. It reiterated verbatim the reasoning of the decision of 25 February 2013. It appears that no appeal was lodged against the said decisions.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. The relevant provisions of domestic law and practice are set out in the judgment of *Umirov v. Russia* (no. 17455/11, §§ 41-85, 18 September 2012).

III. RELEVANT INTERNATIONAL MATERIAL

26. In January 2013 Human Rights Watch released its annual World Report for 2013. The chapter entitled “Uzbekistan”, in so far as relevant, reads:

“Uzbekistan’s human rights record remains atrocious, with no meaningful improvements in 2012. Torture is endemic in the criminal justice system. Authorities intensified their crackdown on civil society activists, opposition members, and journalists, and continued to persecute religious believers who worship outside strict state controls.

...

Criminal Justice, Torture, and Ill-Treatment

Torture remains rampant and continues to occur with near-total impunity. Detainees’ rights are violated at each stage of investigations and trials, despite habeas corpus amendments passed in 2008. The government has failed to meaningfully implement recommendations to combat torture made by the UN special rapporteur in 2003 and other international bodies. Suspects are not permitted access to lawyers, a critical safeguard against torture in pre-trial detention. Police coerce confessions from detainees using torture, including beatings with batons and plastic bottles, hanging by the wrists and ankles, rape, and sexual humiliation. Authorities routinely refuse to investigate allegations of abuse ... Human Rights Watch continues to receive regular and credible reports of torture, including suspicious deaths in custody in pre-trial and post-conviction detention.

Freedom of Religion

Although Uzbekistan's Constitution ensures freedom of religion, authorities continued their multi-year campaign of arbitrary detention, arrest, and torture of Muslims who practice their faith outside state controls. Over 200 were arrested or convicted in 2012 on charges related to religious extremism."

27. The chapter on Uzbekistan in the Amnesty International 2013 annual report, released in May of the same year, reads, in so far as relevant, as follows:

"Torture and other ill-treatment

Torture and other ill-treatment of detainees and prisoners by security forces and prison personnel continued to be routine. Scores of reports of torture and other ill-treatment emerged during the year, especially from men and women suspected or convicted of belonging to Islamic movements and Islamist groups and parties or other religious groups, banned in Uzbekistan. As in previous years, the authorities failed to conduct prompt, thorough, and impartial investigations into such reports and into complaints lodged with the Prosecutor General's Office.

...

Counter-terror and security

The authorities continued to seek the extradition of suspected members of Islamic movements and Islamist groups and parties banned in Uzbekistan in the name of security and the fight against terrorism. They also requested the extradition of political opponents, government critics and wealthy individuals out of favour with the regime. Many of these extradition requests were based on fabricated or unreliable evidence. The government offered diplomatic assurances to sending states to secure the returns, pledging free access to detention centres for independent monitors and diplomats. In practice, they did not honour these guarantees. Those forcibly returned to Uzbekistan faced incommunicado detention, torture and other ill-treatment and, after unfair trials, long prison sentences in cruel, inhuman and degrading conditions. The authorities were also accused of attempting assassinations of political opponents living abroad."

28. In their 2013 report "Return to Torture: Extradition, Forcible Returns and Removals to Central Asia", Amnesty International stated as follows:

"Over the past two decades thousands of people across the region have alleged that they have been arbitrarily detained and tortured or ill-treated in custody in order to extract a forced confession or money from relatives. In this period, piecemeal reforms have been introduced in most Central Asia countries with the aim of strengthening the accountability of law enforcement agencies and improving the protection available in the criminal justice system. Nowhere, however, have they had any significant success in eliminating the practices of torture and other ill-treatment that are often used in relation to people suspected of ordinary crimes, and routinely used in relation to political opponents and individuals suspected of involvement in extremism and terrorism-related activities or in banned religious groups.

...

... Detainees are often tortured and ill-treated while being held incommunicado for initial interrogations. Those detained in closed detention facilities run by National

Security Services on charges related to national security or ‘religious extremism’ are at particular risk of torture and other ill-treatment.”

29. For a summary of the relevant reports by the UN institutions and international NGOs on Uzbekistan during the period between 2002 and 2011, see *Zokhidov v. Russia*, no. 67286/10, §§ 107-13, 5 February 2013).

THE LAW

I. JOINDER OF THE APPLICATIONS

30. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their similar factual and legal background.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicants complained that, if returned to Uzbekistan, they would risk being subjected to ill-treatment in breach of Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

32. The Government contested that argument. In their opinion, the applicants’ allegations about the existence of a risk of their being subjected to ill-treatment were hypothetical. They were not relevant to the issue of the legality of their stay in Russia and could not be considered in the course of expulsion proceedings. Besides, the applicants had not even referred to the existence of such a risk when challenging their expulsion. The applicants’ allegations were thoroughly reviewed by the Russian migration authorities, which found them unfounded. The Government also noted that Uzbekistan had ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and was obliged to act in compliance with it. Accordingly, no issue would arise under Article 3 of the Convention if the applicants were to be deported to Uzbekistan.

33. The applicants maintained their complaint. They submitted that the expulsion proceedings had been instituted by Russian authorities in order to circumvent the effect of the refusal to extradite them. They asserted that torture and ill-treatment of prisoners were a common practice of Uzbek law-enforcement and security forces. In this connection they relied on the data published by international human rights NGOs and the US Department of State about the situation in Uzbekistan. They further referred to the Court’s earlier findings in a number of extradition cases against Russia that the

ill-treatment of prisoners who, like themselves, were charged with membership of an extremist religious organisation, was a pervasive and enduring problem in Uzbekistan. As regards the Government's referral to Uzbekistan's ratification of the UN Convention against Torture, they referred to the Court's earlier finding that the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle were not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (see *Saadi v. Italy* [GC], no. 37201/06, § 147, ECHR 2008).

A. Admissibility

34. In so far as the Government may be understood to suggest that the applicants failed to exhaust the effective domestic remedies in respect of their complaint, the Court notes that the applicants raised the issue of the risk of being subjected to ill-treatment if returned to Uzbekistan in the expulsion proceedings (see paragraph 15 above). In their appeal against the expulsion orders, they argued that in view of the nature of the criminal charges against them they would be persecuted for political and religious reasons in Uzbekistan. The Court is therefore satisfied that the applicants duly brought their grievances to the attention of the domestic authorities and dismisses the Governments' objection.

35. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General principles

36. The Court will examine the merits of the applicants' complaint in the light of the general principles reiterated in the case of *Saadi* (see *Saadi*, cited above, §§ 124-36).

2. Application of the principles to the present case

37. Turning to the circumstances of the present case, the Court observes that the Uzbek authorities requested the applicants' arrest on charges of participation in an extremist religious group and attempts to overthrow the State's constitutional order in Uzbekistan. Subsequently, their applications for asylum in Russia were refused. The Russian authorities refused the applicants' extradition, considering that the offences they were charged with

were not punishable under the Russian criminal law. Considered illegal aliens in Russia, the applicants are currently facing expulsion to Uzbekistan, the expulsion order having been suspended following the Court's intervention.

38. Accordingly, the Court's task in the present case is to ascertain whether the foreseeable consequences of the applicants' expulsion to Uzbekistan are such as to bring Article 3 of the Convention into play, the material date for the assessment of that risk being that of the Court's consideration of the case.

39. The Government discerned no circumstances that would preclude the applicants' extradition to Uzbekistan. Relying on the findings made by the Russian migration authorities (see paragraph 22 above), they considered the applicants' allegations of the risk of being subjected to treatment in contravention of Article 3 of the Convention, if expelled to Uzbekistan, hypothetical and unsubstantiated.

40. In this connection the Court observes that it has previously examined on a number of occasions the situation of detainees in Uzbekistan as regards the risk of ill-treatment in the event of extradition or expulsion to Uzbekistan from Russia or another Council of Europe member State. In those earlier cases it has found that reliable international materials have demonstrated the persistence of a serious issue of ill-treatment of detainees, the practice of torture against those in police custody being described as "systematic" and "indiscriminate", and a lack of evidence demonstrating any fundamental improvement in that area (see among many others, *Ismoilov and Others v. Russia*, no. 2947/06, § 121, 24 April 2008; *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; and *Abdulkhakov v. Russia*, no. 14743/11, § 141, 2 October 2012). Against this background, and having regard to the information summarised in paragraphs 26-29 above, the Court cannot but confirm that the ill-treatment of detainees remains a pervasive and enduring problem in Uzbekistan.

41. The Court further observes that it has also dealt with cases lodged by applicants allegedly involved in the activities of unregistered religious organisations, groups or informal associations in Uzbekistan. It has been the Court's consistent view that there was ongoing violent persecution of the member or supporters of such organisations, whose underlying aims appeared to be both religious and political and in contradiction with the policies pursued by the government in Uzbekistan (see, for example, *Karimov v. Russia*, no. 54219/08, §§ 96-102, 29 July 2010, and *Umirov*, cited above, §§ 106-22, 18 September 2012).

42. The Court considers that the present case is similar to the above-mentioned category of cases, the thrust of the applicants' complaint before the Court being that they were accused of participation in a banned religious extremist organisation known as the Islamic Movement of Turkestan and attempting to overthrow the constitutional order of

Uzbekistan. These accusations constituted the basis for both the extradition request and the arrest warrant issued in respect of the applicants. Given that the criminal proceedings against the applicants are still pending, it is most likely that they would be placed in custody directly after their expulsion to Uzbekistan and subsequently prosecuted.

43. Regard being had to the above, the Court considers that in the present case substantial grounds have been shown for believing that there is a real risk that the applicants would be subjected to treatment contrary to Article 3 of the Convention if they were to be expelled to Uzbekistan. The summary and unspecific reasoning adduced by the domestic authorities and the Government before the Court did not dispel the alleged risk of ill-treatment. Nor can that risk be excluded on the basis of other material available to the Court. In this connection, the Court notes that the existence of domestic laws and the ratification of international treaties guaranteeing respect for fundamental rights, relied on by the Government in their arguments, are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention (*Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 128, ECHR 2012).

44. Consequently, the decision to expel the applicants to Uzbekistan would breach Article 3 of the Convention if it were enforced.

II. RULE 39 OF THE RULES OF COURT

45. The Court draws attention to the fact that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

46. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraphs 4 and 16 above) must remain in force until the present judgment becomes final or until the Court takes a further decision in this connection.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

48. Each of the applicants claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

49. The Government submitted that, given that the applicants' rights under the Convention had not been infringed, their claims in respect of damage should be rejected in full. Alternatively, they proposed that the finding of a violation would constitute sufficient just satisfaction.

50. The Court observes that no breach of Article 3 of the Convention has yet occurred in the present case. However, it has found that the decision to extradite the applicants would, if implemented, give rise to a violation of that provision. It considers that its finding regarding Article 3 in itself amounts to adequate just satisfaction for the purposes of Article 41.

B. Costs and expenses

51. The applicants also claimed compensation for the legal costs incurred in the proceedings before the Court, without specifying the amount, which they left to the Court's discretion.

52. The Government considered that the applicants had not substantiated their claims for compensation for costs and expenses and that no award should be made by the Court under this head.

53. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers that no award should be made under this head.

C. Default interest

54. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that the decision to expel the applicants to Uzbekistan would breach Article 3 of the Convention if it were enforced;
4. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to expel/extradite the applicants until such time as the present judgment becomes final or until further order;
5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage the applicants might have sustained;
6. *Dismisses* the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President