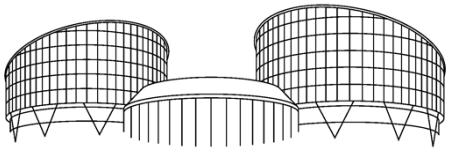

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ALIMURADOV v. RUSSIA

(Application no. 23019/15)

JUDGMENT

STRASBOURG

29 January 2019

This judgment is final but it may be subject to editorial revision.

In the case of Alimuradov v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Alena Poláčková, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 8 January 2019,

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

PROCEDURE

1. The case originated in an application (no. 23019/15) 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 Mr Emil İlqar oğlu Alimuradov ("the applicant") on 29 April 2015.

2. The applicant was represented by Ms O. Tseytlina, a lawyer practising in St Petersburg. The Russian Government ("the Government") were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights.

3. On 23 February 2018 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

5. The applicant was born in Baku, Azerbaijan, in 1992 and came to Russia in 2003, together with his mother and grandmother. He graduated from a secondary school and a vocational training college in St Petersburg. He has no identity documents.

6. On 7 February 2014 the Kirovskiy District Court in St Petersburg found the applicant guilty of illegally residing in Russia, which was an offence Article 18.8 § 3 of the Code of Administrative Offences, imposed a fine on him and ordered his administrative removal from Russia. The judgment described him as a "native" (*уроженец*) and a national of Azerbaijan. Pending his removal, the applicant was to be detained in the

special facility for the detention of aliens (*СУВСИГ УФМС по СПб и ЛО*) located in Krasnoye Selo in the Leningrad Region.

7. On 12 February 2014 the Federal Migration Service requested the Consulate General of Azerbaijan in St Petersburg to submit information about the applicant's nationality. Replying to that inquiry, on 14 April 2014 the Consulate confirmed that the applicant was not a national of that State.

8. On 19 May 2014 a bailiff asked the District Court in St Petersburg to discontinue the enforcement proceedings because the applicant could not be issued with travel documents or removed from Russia.

9. By a judgment of 17 July 2014, as upheld on appeal on 30 October 2014, the St Petersburg courts refused to discontinue the proceedings, finding that the bailiff had not shown that she had taken sufficient measures to secure the applicant's removal.

10. On 7 August 2014 counsel for the applicant asked the St Petersburg City Court to review the Kirovskiy District Court's judgment by way of supervisory review, to annul the sanction of administrative removal and to release the applicant. Counsel pleaded in particular that the applicant's removal was not a realistic prospect and that his continued detention could only be justified if deportation proceedings were genuinely in progress. On 25 November 2014 a deputy president of the City Court acceded to her request. Noting that the applicant was not an Azerbaijani national, the judge found that his removal was not feasible and that his detention was likely to become indefinite. He amended the judgment, replacing the removal with the requirement to leave Russia voluntarily under control.

11. On 27 November 2014 the applicant was released.

12. The applicant described his conditions of detention as follows. From 7 to 20 February 2014 he shared Cell 307 measuring 17 square metres with ten other detainees. It was not furnished, inmates unrolled mattresses for the night. From 20 February to 5 May 2014 he was held in a smaller, seven-square-metre cell (Cell 310), together with five or six persons. Two-tier bunk beds were brought in only in late April 2014. From 5 May to 27 November 2014 he was in Cell 309 measuring seventeen square metres. Initially it had accommodated twelve persons but their number rose to seventeen in November when they started renovating the cells on the seventh and eighth floors of the facility. Detainees had to remain within the floor on which their cell was located; they could not go outside or to other floors. Outdoor exercise was limited to a fifteen-minute walk once a week because there was not enough staff to supervise the detainees. The facility did not have a library, board games, radio or workshop, or offer any other meaningful activities.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. For relevant provisions of the domestic law and practice, see *Kim v. Russia*, no. 44260/13, §§ 23-25, 17 July 2014.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

14. The applicant complained that the conditions of his detention in the Krasnoye Selo facility had been 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 ..."

15. The Government did not submit any comments on this complaint within the established time-limit.

A. Admissibility

16. 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

17. The Court has already found that the conditions of detention in the Krasnoye Selo facility at the material time amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention (see *Kim v. Russia*, no. 44260/13, § 34, 17 July 2014, and *M.S.A. and Others v. Russia*, no. 29957/14 and 8 others, § 58, 12 December 2017).

18. The Government did not dispute the applicant's account of the conditions of his detention. The Court notes that Cell 309 and 310, where the applicant was most recently held, were extremely overcrowded, in particular in the second half of 2014 when more detainees were transferred into Cell 310 from the upper floors. The floor space per detainee was significantly below the relevant minimum standard of 3 sq. m in multi-occupancy accommodation. The Government did not demonstrate the existence of any counterbalancing factors capable of rebutting a strong presumption of a violation of Article 3 (see *Muršić v. Croatia* [GC], no. 7334/13, §§ 136-37, ECHR 2016, and *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 165-67 and 170, ECHR 2016 (extracts)). Further aspects

of the applicant's detention which, taken cumulatively with the problem of overcrowding, the Court considers incompatible with the protection against inhuman and degrading treatment were the virtually non-existent outdoor exercise and the complete absence of any meaningful activities, whether inside or outside the cell (see *Dimitrov and Ribov v. Bulgaria*, no. 34846/08, § 37, 17 November 2015, and *Kim*, cited above, § 31).

19. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

20. The applicant complained under Article 5 § 1 (f) of the Convention that the Russian authorities had not pursued the removal proceedings in good faith because they had been fully aware that his removal had not been a realistic possibility. He also complained that he had not been able to initiate a judicial review of his detention, in breach of Article 5 § 4 of the Convention. The relevant parts of Article 5 read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention ... of a person against whom action is being taken with a view to deportation or extradition.
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

21. The Court considers 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

22. The Court will consider firstly whether there was effective judicial supervision over the lawfulness of the applicant's detention, as required by Article 5 § 4 of the Convention, and secondly whether it was compatible with the requirements of Article 5 § 1 (f) of the Convention (see *Kim*, cited above, § 38).

1. Compliance with Article 5 § 4 of the Convention

23. The Government submitted that the lawfulness of the period of detention from the date on which it had been ordered and until the date of expulsion ought to be presumed. Any alleged breaches of the requirements of good faith or due diligence were amenable to a judicial review in the proceedings under Chapter 25 of the Code of Civil Procedure governing complaints about unlawful actions of State officials.

24. The Court reiterates that the purpose of Article 5 § 4 of the Convention is to guarantee to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected. A remedy must be made available during a person's detention and should be capable of leading, where appropriate, to release (see *Kim*, cited above, § 41, with further references).

25. The Court has found a violation of Article 5 § 4 of the Convention in many cases against Russia on account of the absence of any domestic legal provision which could have allowed the applicant to bring proceedings for judicial review of his detention pending expulsion and to secure, if necessary, his release (see *Kim*, cited above, §§ 39-43; *L.M. and Others v. Russia*, nos. 40081/14, 40088/14 and 40127/14, §§ 140-42, 15 October 2015; *Rakhimov v. Russia*, no. 50552/13, §§ 148-50, 10 July 2014; *Akram Karimov v. Russia*, no. 62892/12, §§ 199-204, 28 May 2014; *Egamberdiyev v. Russia*, no. 34742/13, § 64, 26 June 2014; and *Azimov v. Russia*, no. 67474/11, § 153, 18 April 2013).

26. The proceedings under Chapter 25 of the Code of Civil Procedure do not satisfy the requirements of Article 5 § 4 because, although a civil court may declare unlawful a delay in the removal proceedings, it may not order the detainee's release or set a time-limit for his or her detention (see *Chkhikvishvili v. Russia*, no. 43348/13, §§ 17 and 27, 25 October 2016).

27. As the applicant did not have at his disposal a procedure for a judicial review of the lawfulness of his detention capable of leading to his release, the Court finds that there has been a violation of Article 5 § 4 of the Convention.

2. Compliance with Article 5 § 1 (f) of the Convention

28. The Government submitted that, since reaching the age of majority, the applicant had had many legal options for regularising his stay in Russia. However, he had not produced evidence of any efforts directing at either making his stay in Russia legal or establishing his Azerbaijani nationality. He had been aware that he had been living in Russia illegally. The duration of the proceedings had been accounted for by the time it had taken the authorities to obtain information from the Embassy of Azerbaijan and to consider the bailiff's request to have the enforcement proceedings

discontinued. The Government concluded that there was no breach of Article 5 § 1 (f).

29. The Court reiterates, to avoid being branded as arbitrary, detention under Article 5 § 1 (f) of the Convention must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued. The domestic authorities have an obligation to consider whether removal is a realistic prospect and whether detention with a view to removal is from the outset, or continues to be, justified (see *Kim*, cited above, §§ 49 and 53, with further references).

30. In the present case, the removal order described the applicant as being an Azerbaijani national (see paragraph 6 above). Starting from 14 April 2014 it must have become apparent to the domestic authorities that the applicant was an apatride (see paragraph 7 above). The Court reiterates that detention cannot be said to have been effected with a view to the applicant's removal if it was not a realistic prospect because he was not a national of the State to which the authorities sought to remove him (compare *Kim*, cited above, §§ 52-53, and the case-law cited therein). It does not appear that there was any progress in the enforcement proceedings after 14 April 2014 and until the applicant's release more than seven months later. The Government did not provide evidence of any efforts having been made to secure the applicant's admission to a third country. The authorities had not asked him to specify such a country or taken any steps to explore that option on their own initiative (contrast *Chkhikvishvili*, cited above, § 30). The time it took the authorities to complete the internal procedures cannot justify a lack of genuine progress in the removal proceedings which caused his detention to cease to be lawful.

31. There has accordingly been a violation of Article 5 § 1 (f) of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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."

33. The Government submitted that Article 41 was to be applied in accordance with the established case-law.

A. Damage

34. The applicant asked the Court to determine the amount of compensation in respect of non-pecuniary damage. He also asked the Court to hold that the sums payable to him be transferred to the bank account of his representative Ms Tseytlina, as he did not have any identity document and could not open an account in his own name.

35. The Court awards the applicant 15,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable. It also grants the applicant's request to have the award paid into the account of Ms Tseytlina.

B. Costs and expenses

36. Ms Tseytlina also claimed on behalf of the applicant EUR 1,100 in legal fees for the proceedings before the Court. She asked to have the award transferred to the bank account of the Anti-Discrimination Centre Memorial (ADC Memorial), a non-governmental organisation in Brussels, Belgium.

37. Regard being had to the documents in its possession and its practice in similar cases (see *Mskhiladze v. Russia,* no. 47741/16, § 64, 13 February 2018), the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads, plus any tax that may be chargeable to the applicant, in respect of costs and expenses, payable into the account of the Anti-Discrimination Centre Memorial (ADC Memorial) in Belgium.

C. Default interest

38. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months the following amounts:

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, payable into the bank account of Ms O. Tseytlina;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, payable into the bank account of Anti-Discrimination Centre Memorial;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 29 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Alena Poláčková
Deputy Registrar	President