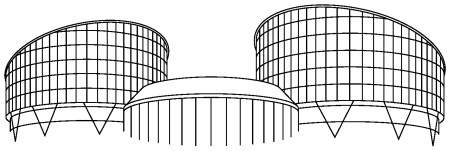

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF R.R. AND A.R. v. RUSSIA

(Applications nos. 67485/17 and 24014/18)

JUDGMENT

STRASBOURG

8 October 2019

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

In the case of R.R. and A.R. v. Russia,

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

Alena Poláčková, *President,*
Dmitry Dedov,
Gilberto Felici, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 17 September 2019,

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

PROCEDURE

1. The case originated in two applications (nos. 67485/17 and 24014/18) 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 an Uzbek national, Mr R.R. and a Tajik national Mr A.R. ("the applicants"), on 13 September 2017 and 24 May 2018 respectively.

2. The applicants were represented by the lawyers indicated in the appended table. 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 13 September 2017 and 24 May 2018 respectively the applicants' requests for interim measures preventing their removal to their countries of origin were granted by the Court under Rule 39 of the Rules of Court. The applicants' cases were granted priority (Rule 41) and confidentiality (Rule 33) and the applicants were granted anonymity (Rule 47 § 4).

4. The applicants submitted complaints under Articles 3, 5 and 13 of the Convention. On 3 September 2018 notice of the above complaints was given to the Government and the remainder of the applications declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are nationals of Tajikistan and Uzbekistan. Their initials, dates of birth, the dates on which their applications were introduced, application numbers, as well as the particulars of the domestic proceedings and other relevant information are set out in the Appendix.

6. On various dates they were charged in their countries of origin with religious and politically motivated crimes, their pre-trial detentions were ordered *in absentia*, and international search warrants were issued by the authorities.

7. Subsequently, the Russian authorities took final decisions to extradite or to expel the applicants, despite their consistent claims that in the event of return to their countries of origin they would face a real risk of being subjected to treatment contrary to Article 3 of the Convention.

II. RELEVANT DOMESTIC LAW AND PRACTICE

8. The relevant domestic and international law is summarised in the Court's judgments on removals from Russia to Tajikistan and Uzbekistan (see *Savriddin Dzhurayev v. Russia*, no. 71386/10, §§ 70-101, ECHR 2013 (extracts), and *Akram Karimov v. Russia*, no. 62892/12, §§ 69-105, 28 May 2014).

III. REPORTS ON TAJIKISTAN AND UZBEKISTAN

9. The references to the relevant reports by the UN agencies and international NGOs on the situation in Tajikistan were cited in the case of *K.I. v. Russia* (no. 58182/14, §§ 2-28, 7 November 2017) and on the situation in Uzbekistan in the cases of *Kholmurodov v. Russia* (no. 58923/14, §§ 46-50, 1 March 2016), and *T.M. and Others v. Russia* ([Committee], no. 31189/15, § 28, 7 November 2017).

10. In respect of Uzbekistan, 2019 World Report by Human Rights Watch indicated that there were certain promising steps to reform the country's human rights record; however, many reforms are yet to be implemented. It further stated that a limited number of persons imprisoned on politically motivated charges had been released in 2016-2018. Furthermore, isolated incidents of security agency officers sentenced for torture and death in custody were cited. Amnesty International Report 2017/2018 reflected similar trends, including judicial independence and effectiveness as the priorities set by the authorities for the systemic reform. At the same time the report stressed that the authorities continued to secure forcible returns, including through extradition proceedings, of Uzbekistani nationals identified as threats to the "constitutional order" or national security.

11. In respect of Tajikistan, World Report by Human Rights Watch indicated that the authorities continued to exert pressure on political and religious dissent. However, it also noted that a certain number of persons extradited from Russia had been pardoned following their withdrawal from religious movements. Amnesty International Report 2017/2018 stated that restrictions were still used to silence critical voices and cited a case of a human rights lawyer allegedly tortured in detention.

THE LAW

I. JOINDER OF THE APPLICATIONS

12. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

13. The applicants complained under Article 3 of the Convention that the national authorities had failed to consider their claims, that they would face a real risk of being subjected to ill-treatment in the event of their extradition/expulsion to their respective countries of origin. Article 3 of the Convention reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

14. The Government contested that argument.

A. Admissibility

15. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. General principles

16. The relevant general principles concerning the application of Article 3 have been summarised by the Court in the judgment in the case of *F.G. v. Sweden* ([GC], no. 43611/11, §§ 111-27, ECHR 2016) and in the context of removals from Russia to Central Asian states in *Mamazhonov v. Russia* (no. 17239/13, §§ 127-35, 23 October 2014).

2. Application of those principles to the present cases

(a) Existence of substantial grounds for believing that the applicant faces a real risk of ill-treatment

17. The Court has previously established that the individuals whose extradition was sought by either Tajik or Uzbek authorities on charges of religiously or politically motivated crimes constituted vulnerable groups facing a real risk of treatment contrary to Article 3 of the Convention in the event of their removal to their respective countries of origin (see *Mamazhonov,* cited above, § 141, and *K.I. v. Russia*, cited above, § 36).

18. Turning to the present cases, it is apparent that in the course of the extradition and expulsion proceedings the applicants consistently and specifically argued that they had been prosecuted for religious extremism and faced a risk of ill-treatment. The Court further observes that documents from the Tajik and Uzbek authorities, i.e. the extradition requests, the bills of indictment and the detention orders, were clear as to their basis - the applicants were accused of religiously and politically motivated crimes. The Tajik and Uzbek authorities thus directly identified them with the groups whose members have previously been found to be at real risk of being subjected to proscribed treatment.

19. In such circumstances, the Court considers that the Russian authorities had at their disposal sufficiently substantiated complaints pointing to a real risk of ill-treatment.

20. The Court is therefore satisfied that the applicants presented the Russian authorities with substantial grounds for believing that they faced a real risk of ill-treatment in their countries of origin.

(b) Duty to assess claims of a real risk of ill-treatment through reliance on sufficient relevant material

21. Having concluded that the applicants had advanced at national level valid claims based on substantial grounds for believing that they faced a real risk of treatment contrary to Article 3 of the Convention, the Court must examine whether the authorities discharged their obligation to assess these claims adequately through reliance on sufficient relevant material.

22. Turning to the present cases, the Court considers that in the extradition and expulsion proceedings the domestic authorities did not carry out a rigorous scrutiny of the applicants' claims that they faced a risk of ill-treatment in their home countries. The Court reaches this conclusion having considered the national courts' simplistic rejections of the applicants' claims.

23. The Court therefore concludes that the Russian authorities failed to assess the applicants' claims adequately through reliance on sufficient relevant material. This failure cleared the way for the applicants' removals.

(c) Existence of a real risk of ill-treatment or danger to life in their countries of origin

24. Given the failure of the domestic authorities to adequately assess the applicants' claims, the Court finds itself compelled to examine independently whether or not the applicants would be exposed to such a risk in the event of their removal to their countries of origin.

25. Court reiterates that previously it had consistently concluded that the removal of an applicant charged with religiously and politically motivated crimes in Uzbekistan and in Tajikistan exposes that applicant to a real risk of ill-treatment in the country of origin (see e.g. *Mamazhonov*, cited above;

Kholmurodov, no. 58923/14, 1 March 2016; *K.I. v. Russia*, no. 58182/14, 7 November 2017; *T.M. and Others v. Russia*, [Committee], no. 31189/15, 7 November 2017; and *B.U. and Others v. Russia*, no. 59609/17, 74677/17, 76379/17, 22 January 2019).

26. While the Court notes with attention the cautious indications of improvement included in the independent reports (see paragraphs 10 and 11, above), nothing in the parties' submissions in the present cases or the relevant material from independent international sources provides at this moment a sufficient basis for a conclusion that the persons prosecuted for religiously and politically motivated crimes no longer run such a risk.

(d) Conclusion

27. The foregoing considerations are sufficient to enable the Court to conclude that there would be a violation of Article 3 of the Convention if the applicants were to be returned to their respective countries of origin.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

28. The applicant in the case *R.R. v. Russia*, no. 67485/17 also complained under Article 5 §§ 1 (f) and 4 of the Convention about allegedly unlawful detention pending removal as well as about an alleged excessive length of the appeal review proceedings for the detention orders of 6 March and 6 June 2017.

29. The Government contested that argument.

A. Article 5 § 1 (f) of the Convention

30. The Court reiterates that the exception contained in sub-paragraph (f) of Article 5 § 1 of the Convention requires only that "action is being taken with a view to deportation or extradition", without any further justification (see, *inter alia*, *Chahal v. the United Kingdom*, 15 November 1996, § 112, *Reports of Judgments and Decisions* 1996-V), and that deprivation of liberty will be justified as long as deportation or extradition proceedings are in progress (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009). If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible (see *Chahal*, cited above § 113; see also *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 74, ECHR 2007-II). In asking whether "action is being taken with a view to deportation", this Court has found that removal must be a realistic prospect (see *A. and Others*, cited above, § 167, and *Amie and Others v. Bulgaria*, no. 58149/08, § 144, 12 February 2013).

31. The question of whether or not a period of detention is reasonable cannot be assessed in the abstract but must be assessed in each case according to its special features (see, *mutatis mutandis*, *McKay v. the United*

Kingdom [GC], no. 543/03, §§ 41-45, ECHR 2006-X) and that the arguments for and against release must not be "general and abstract" (see, for example, *Khudoyorov v. Russia*, no. 6847/02, § 173, ECHR 2005-X (extracts)), but contain references to the specific facts and the applicant's personal circumstances justifying his detention.

32. Turning to the present case the Court notes that the Government in their submissions maintained that the applicant's detention had been justified by the ongoing removal proceedings.

33. The applicant's representative, relying on evidently mistaken references to Article 5 §§ 1 (c) and 3 of the Convention, which govern the pre-trial detention in criminal proceedings, stated that his detention pending extradition had been unlawful in absence of sufficient grounds for it. Neither in the application form, nor in his observations the applicant highlighted facts or supplied legal reasons relevant for the analysis under the above principles under Article 5 § 1 (f) of the Convention. Neither did he allege that the removal proceedings were carried out without requisite diligence, conducted in bad faith or tainted by unjustified delays.

34. In this regards, the Court notes that it cannot examine the application and make its findings in abstract and without relevant submissions from the applicant on whether, in the light of the Convention standard, the progress of the removal proceedings justified his continued detention. Given that the applicant had failed to substantiate his complaint with reference to the pertinent facts and relevant legal arguments, the Court concludes that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be declared inadmissible.

B. Article 5 § 4 of the Convention

35. In the application form the applicant argued that the length of the appeal review proceedings for the detention orders of 6 March 2017 and 6 June 2017 by the Babushkinskiy District Court of Moscow had been excessive and implicitly maintained, that it did not comply with the "speediness" requirement under Article 5 § 4 of the Convention.

36. The Government in their observations stated that the period of the appeal review of the above orders was pre-determined by the need to translate and to furnish the applicant, who has low proficiency of the Russian language, with written translations of the procedural documents.

37. The applicant in his observations did not comment on the above arguments of the Government.

38. The Court reiterates that Article 5 § 4, in guaranteeing to persons arrested or detained a right to have the lawfulness of their detention reviewed, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and to an order terminating it if proved unlawful. The finding

whether or not the relevant decision was taken "speedily" within the meaning of that provision depends on the particular features of the case. That does not mean, however, that the complexity of a given dossier – even exceptional – absolves the national authorities from their essential obligation under this provision (see *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

39. The Government pointed to the need for translation of documents as the particular feature of the case crucial for the examination of compliance with the "speediness" requirement under Article 5 § 4 of the Convention. The Court notes that affording the applicant, who had low proficiency of the Russian language, an opportunity to consult the documents in his native language on its face appears to be a valid consideration under the Convention. The applicant in his submission preferred not to provide any comments to the contrary.

40. Similarly to the above complaint, the Court does not find it appropriate to rule in abstract and without relevant submissions from the applicant on whether, in the light of the Convention standard, the length of the appeal review for the detention orders of 6 March 2017 and 6 June 2017 had been excessive given the need to provide the applicant with the written translations of the relevant documents. Accordingly, the Court concludes that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be declared inadmissible.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

41. The applicant in the case *R.R. v. Russia*, no. 67485/17 submitted further complaints under Article 3 of the Convention related to the conditions of his detention and transportation. The Court having regard to all of the available material, the parties' submissions and its case-law on the matter concludes that these complaints are manifestly ill-founded and must be rejected under Article 35 § 3 (a) of the Convention.

V. APPLICATION OF THE INTERIM MEASURES UNDER RULE 39 OF THE RULES OF COURT

42. On 13 September 2017 and 24 May 2018 respectively the Court indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicants should not be removed from Russia to their respective countries of origin for the duration of the proceedings before the Court.

43. In this connection the Court reiterates that, in accordance with Article 28 § 2 of the Convention, the present judgment is final.

44. Accordingly, the Court considers that the measures indicated to the Government under Rule 39 of the Rules of Court come to an end.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicants claimed between 5,000 euros (EUR) and EUR 50,000 in respect of non-pecuniary damage.

47. The Government stated that the awards should be made in compliance with the Court's well-established case-law.

48. In the light of the nature of the established violations of Article 3 of the Convention and the specific facts of the present case, the Court considers that finding that there would be a violation of Article 3 of the Convention if the applicants were to be returned to their respective countries of origin constitutes sufficient just satisfaction in respect of any non-pecuniary damage suffered (see, to similar effect, *J.K. and Others v. Sweden* [GC], no. 59166/12, § 127, ECHR 2016).

B. Costs and expenses

49. The applicant in the case *R.R. v. Russia*, no. 67485/17 also claimed EUR 22,898 for the costs and expenses incurred before the domestic courts and the Court. The applicant in the case *A.R. v. Russia*, no. 24014/18 also claimed EUR 1,740 for the costs and expenses incurred before the Court.

50. The Government stated that the cases fall under the established case-law of the Court, the representatives have extensive experience in these cases and that the amounts should be reduced accordingly.

51. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable that the sums indicated in the appended table be awarded and that these sums should be payable directly to the applicants' representatives.

C. Default interest

52. 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 complaints under Article 3 of the Convention concerning the applicants' pending removal to their respective countries of origin admissible and the remainder of the complaints inadmissible;

3. *Holds* that there would be a violation of Article 3 of the Convention if the applicants were to be returned to their respective countries of origin;

4. *Holds* that the finding that there would be a violation of Article 3 of the Convention in case of the applicants' return to their respective countries of origin constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants in this regard;

5. *Holds*
   (a) that in respect of costs and expenses the respondent State is to pay directly to the applicants' representatives, within three months, the amounts indicated in the appended table, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 8 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Alena Poláčková President

APPENDIX

No.	Application no., lodged on, application title, date of birth, nationality, represented by	Dates of detention and release	Removal proceedings (type, progress, outcome)	Refugee and/or temporary asylum proceedings	Other relevant information	Just satisfaction award
1.	67485/17 13/09/2017 **R.R. v. Russia** 03/06/1980 Uzbekistan Ms R. Magomedova Ms O. Golub	**Detention pending extradition** 7 February 2017 – arrested and subsequently detained 6 March 2017 - extension of detention by the Babushkinskiy District Court of Moscow; reviewed on appeal on 27 April 2017 by the Moscow City Court 6 June 2017 - extension of detention by the Babushkinskiy District Court of Moscow; reviewed on appeal on 1 August 2017 by the Moscow City Court 4 August 2017 - extension of detention 7 September 2017 – released due to annulment	**Extradition proceedings** December 2014 - charged with extremist crimes by the Uzbek authorities, international search warrant issued, detention order in absentia international search warrant by the Uzbek authorities 23 February 2017 – extradition request by the Uzbek authorities 24 July 2017 – extradition request granted by the Russian Prosecutor General's Office 7 September 2017 – extradition order annulled by the Moscow City Court 5 December 2017 - the Supreme Court of the Russian Federation annulled the lower court's judgment 22 January 2018 - extradition	**Refugee status proceedings** 5 February 2016 – refugee status refused by the final administrative decision of the migration authorities **Temporary asylum proceedings** 14 September 2017 - request of temporary asylum 10 October 2017 - temporary asylum refused by the migration authorities 9 July 2018 - the complaint against the refusal lodged with the superior administrative	13 September 2017 - – interim measure preventing the applicant's removal	EUR 1,500 to Ms Magomedova and Ms Golub jointly, in respect of costs and expenses

No.	Application no., lodged on, application title, date of birth, nationality, represented by	Dates of detention and release	Removal proceedings (type, progress, outcome)	Refugee and/or temporary asylum proceedings	Other relevant information	Just satisfaction award
		of extradition authorisation **Detention pending expulsion** 9 September 2017 – arrest 11 September 2017 – detention pending expulsion ordered by the Babushkinskiy District Court of Moscow The applicant is still in detention	order upheld by the Moscow City Court 27 March 2018 - the Supreme Court of the Russian Federation upheld the lower court's judgment **Expulsion proceedings** 11 September 2017 – administrative removal ordered by the Babushkinskiy District Court of Moscow 6 October 2017 - lower court's decision upheld by the Moscow City Court 13 June 2018 - the Moscow City Court stayed the enforcement of the expulsion order pending proceedings before this Court	authority		
2.	24014/18 24/05/2018 **A.R. v. Russia** 15/06/1978	**Detention pending extradition** 03 January 2018 - arrest unspecified date - released	**Extradition proceedings** January 2009 - charged with extremist crimes by the Tajik authorities, international search	**Refugee status proceedings** 25 May 2018 - asylum request	2002-2008 – the applicant served a criminal sentence for manslaughter in Russia	EUR 1,740 to Ms Trenina, Ms Davidyan and Mr Zharinov jointly, in respect of costs and

No.	**Application no., lodged on, application title, date of birth, nationality, represented by**	**Dates of detention and release**	**Removal proceedings (type, progress, outcome)**	**Refugee and/or temporary asylum proceedings**	**Other relevant information**	**Just satisfaction award**
	Tajikistan Ms D. Trenina Ms E. Davidyan Mr K. Zharinov	**Detention pending expulsion** 8 May 2018 - arrest 8 May 2018 – detention pending expulsion ordered by the Karasukskiy District Court of Novosibirsk Region The applicant is still in detention	warrant issued, detention order in absentia 30 March 2018 – Tajik authorities requested that the applicant be detained pending extradition **Expulsion proceedings** 8 May 2018 - administrative removal ordered by the Karasukskiy District Court of Novosibirsk Region 25 May 2018 - lower court's decision upheld by the Novosibirsk Regional Court		2010 – federal search warrant on suspicion of murder in Russia 24 May 2018 – interim measure preventing the applicant's removal	expenses