



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

## THIRD SECTION

### DECISION

Application no. 56368/17  
Khudoberdi Turgunaliyevich NURMATOV (ALI FERUZ)  
against Russia

The European Court of Human Rights (Third Section), sitting on  
2 October 2018 as a Committee composed of:

Alena Poláčková, *President*,

Dmitry Dedov,

Jolien Schukking, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 4 August 2017,

Having deliberated, decides as follows:

## FACTS AND PROCEDURE

1. The applicant, Mr Khudoberdi Turgunaliyevich Nurmatov, is an Uzbek national, who was born in 1987 and lives in Göttingen. He was represented before the Court by Mr K. N. Koroteyev, a lawyer practising in Moscow.

2. 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. The applicant complained under Article 3 of the Convention about his administrative removal from Russia to Uzbekistan and under Article 5 §§ 1 and 4 of the Convention about allegedly unlawful detention pending expulsion.

4. On 4 August 2017, the Court decided, in the interests of the parties and the proper conduct of the proceedings before it, to indicate to the Russian Government, under Rule 39, that the applicant should not be removed to Uzbekistan for the duration of the proceedings before the Court.

5. On 20 December 2017 the above complaints were communicated to the Government, who submitted their observations on admissibility and merits of the case.

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

#### **A. Relevant background information**

7. The applicant was a journalist and a regular contributor to *Novaya Gazeta*, a weekly newspaper with national coverage prominently engaging in investigative journalism of social and political issues. He is known to the general public under the name Ali Feruz. The applicant is openly gay.

8. In July 2011 the applicant moved to Russia, where in February 2012 he allegedly lost his Uzbek passport. In 2012 the applicant started dating a man.

#### **B. Refugee status and temporary asylum proceedings**

9. In 2015 the applicant applied for asylum in Russia. In a final administrative decision dated 21 April 2016, the Federal Migration Service of the Russian Federation dismissed the applicant's application. The decision stated that the applicant's family ties did not justify granting him asylum and neither did his sexual orientation. The decision reads in the relevant part: "the mere fact of the applicant's belonging to a particular social group (non-traditional sexual orientation) does not justify his application for asylum".

10. In the course of 2016 the applicant's employer, *Novaya Gazeta*, made a number of attempts to regularise the applicant's residence in Russia, but to no avail.

11. In 2016 the applicant applied for temporary asylum. He referred to his ill-treatment in Uzbekistan in 2008 and to his homosexuality as grounds precluding his removal to Uzbekistan. Between August 2016 and April 2017 his application was rejected, annulled and reconsidered three times, until it was dismissed by the Migration Department of the Ministry of Interior of the Russian Federation on 27 April 2017.

12. On 20 October 2017 the Basmanny District Court of Moscow dismissed his complaint against the above decision.

#### **C. First set of expulsion proceedings**

13. On 16 March 2017 the applicant was arrested at the entrance of the house where he lives and driven to the Department of Interior for the Presnenskiy District of Moscow. He was charged with failure to leave

Russia although the time-limit for his visa-free stay had expired, an administrative offence carrying a penalty of mandatory expulsion.

14. On 17 April 2017 a judge of the Presnenskiy District Court of Moscow referred the case back to the police and the applicant was released.

15. On 1 August 2017 the applicant was again arrested in Moscow, as he was leaving the offices of *Novaya Gazeta*. He was again charged with the above administrative offence.

16. On the same day the Basmanny District Court of Moscow found the applicant guilty as charged, sentenced him to a fine of less than 100 euros and ordered his expulsion to Uzbekistan. The applicant was placed in detention pending expulsion.

17. On 4 August 2017 the applicant appealed. He relied, in particular, on the risk of ill-treatment in Uzbekistan on account of his homosexuality, on his family ties in Russia to his mother, who is a Russian national, and on his professional engagement with *Novaya Gazeta*.

18. On that day the applicant also asked the Court under Rule 39 of the Rules of Court to indicate an interim measure to the Russian Government preventing his removal to Uzbekistan. The Court granted the request on the same day.

19. On 8 August 2017 the Moscow City Court dismissed the applicant's appeal and upheld the expulsion order of 1 August 2017. However, in view of the Court's decision under Rule 39 of the Rules of Court, the City Court found that the expulsion order should not be enforced until the Court has decided the case. The City Court ordered that the applicant should stay in detention pending expulsion.

20. On 22 January 2018 the Russian Supreme Court granted the applicant's and the Russian ombudsperson's applications for supervisory review of the expulsion order. Referring to the lack of sufficient reasons in the appeal judgment of the Moscow City Court and the appeal court's failure to set the time-limit for the applicant's detention the Supreme Court annulled the appeal judgment and ordered reconsideration.

21. On 2 February 2018 the Moscow City Court repeatedly upheld the judgment of 1 August 2018.

#### **D. Second set of expulsion proceedings**

22. On 21 November 2017 the Basmanny District Court of Moscow found the applicant guilty of illegal labour in Russia, sentenced him to a fine of less than 100 euros and ordered his expulsion to Uzbekistan. The applicant was placed in detention pending expulsion; however, in view of the above interim measure the enforcement of the order was suspended.

23. On 30 November 2017 the Moscow City Court upheld the lower court's decision on appeal.

### **E. The applicant's departure from Russia**

24. On 26 October 2017 and 12 December 2017 the applicant's lawyer requested the Federal Bailiffs' Service to allow the applicant to leave Russia for Germany which had agreed to accept him. However, in view of the ongoing administrative proceedings no action has been taken until February 2018.

25. On 15 February 2018 the applicant was released from the detention facility and left Russia for Germany, where he was subsequently granted asylum.

### **THE LAW**

26. As regards the applicant's complaints under Article 3 of the Convention concerning his removal from Russia to Uzbekistan, the Court notes that the applicant availed himself to a possibility to voluntarily leave Russia. Accordingly, after departing for Germany on 15 February 2018 and granting of asylum in that country, the applicant no longer faces any risk of being expelled from Russia to his country of origin.

27. Having regard to the parties' arguments the Court considers that, in the present circumstances, it is no longer justified to continue the examination of the application, within the meaning of Article 37 § 1 (c) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights, as defined in the Convention and its Protocols, which require the continued examination of the case.

28. In view of the above, it is appropriate to strike the case out of the list as regards the applicant's complaints under Article 3 of the Convention.

29. As regards the applicant's complaints under Article 5 §§ 1 and 4 of the Convention about allegedly unlawful detention pending expulsion and lack of judicial review of that detention, the Court notes that the applicant had spent in detention slightly over six months and that during that period the domestic courts several times considered and ruled on that issue.

30. The Court reiterates at the outset 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).

31. In the present case the authorities actively and diligently pursued the administrative removal proceedings and there is no evidence indicating any

arbitrariness in respect of the applicant's detention or, more particularly, bad faith, deception or unjustified delays in respect of the authorities' conduct (see, conversely, *Bozano v. France*, 18 December 1986, § 60, Series A no. 111, and *Čonka v. Belgium*, no. 51564/99, § 41, ECHR 2002-I).

32. The Court further notes that the applicant's complaint concerning the availability of periodic judicial review of the lawfulness of his detention pending expulsion is couched in general and abstract terms. Given the expeditiousness of the national proceedings, the consideration of the applicant's claims by the domestic courts, the fact that the detention has been ordered and upheld in several judicial decisions, together with the relatively short period of detention, the applicant's individual situation was devoid of the deficiencies alleged.

33. Accordingly, having regard to all the material in its possession and the conclusions above, the Court finds that complaints under Article 5 §§ 1 and 4 of the Convention not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these complaint must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

*Decides* to strike the application out of its list of cases as regards the applicant's complaints under Article 3 of the Convention.

*Declares* the remainder of the application inadmissible;

Done in English and notified in writing on 25 October 2018.

Fatoş Aracı  
Deputy Registrar

Alena Poláčeková  
President