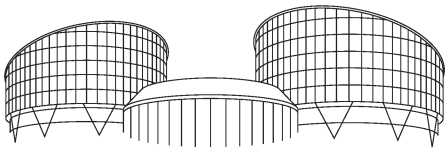

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF FOZIL NAZAROV v. RUSSIA

*(*Application no. 74759/13*)*

JUDGMENT

STRASBOURG

11 December 2014

FINAL

20/04/2015

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

In the case of Fozil Nazarov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 18 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 74759/13) 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 an Uzbek national, Mr Fozil Akbarovich Nazarov ("the applicant"), on 28 November 2013.

2. The applicant, who had been granted legal aid, was represented by Mr I. Vasilyev, 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 applicant maintained that if he were to be involuntarily returned to Uzbekistan, he would be at risk of ill-treatment.

4. On 29 November 2013 the Acting President of the Section to which the case was allocated indicated to the respondent Government that the applicant should not be expelled or otherwise involuntarily removed to Uzbekistan or any other country for the duration of the proceedings before the Court (Rule 39 of the Rules of Court).

5. On 13 February 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1986 and lives in the Moscow Region.

7. The applicant came to Russia from Uzbekistan in 2010. In 2012 he lost his Uzbek passport.

8. On 20 January 2013 the Karshi Town Interior Department of Uzbekistan put the applicant's name on the list of wanted individuals, on account of criminal charges brought against him for membership of a religious extremist organisation, attempted overthrow of the constitutional order of Uzbekistan, and terrorism.

9. On 9 June 2013, at the request of the Uzbek authorities, the applicant's name was added to the Russian federal list of wanted persons.

10. On 31 October 2013 the applicant was arrested in the Moscow Region, where he lived with his wife and two children.

11. On 2 November 2013 the Serpukhov Town prosecutor's office noticed that the applicant was wanted by the Uzbek authorities and was therefore liable to extradition to Uzbekistan. At the same time, given that the applicant had violated immigration regulations in Russia, the prosecutor's office ordered that the Serpukhov District Interior Department take measures to ensure his administrative removal to Uzbekistan.

12. On the same day the Serpukhov District Interior Department drew up a report on the commission of an offence under Article 18.8 of the Administrative Offences Code.

13. On 2 November 2013 the Serpukhov Town Court of the Moscow Region found that the applicant had infringed the immigration regulations and was therefore guilty of an offence under Article 18.8 of the Administrative Offences Code. The court ordered the applicant's administrative removal to Uzbekistan and his detention pending such removal. The applicant was not assisted by counsel during the hearing before the Town Court.

14. On 12 November 2013 the applicant lodged an application for refugee status. He submitted that he was being persecuted in Uzbekistan for his religious beliefs and that he feared torture and ill-treatment in Uzbekistan in the criminal proceedings against him.

15. On 14 November 2013 counsel for the applicant appealed against the administrative removal order of 2 November 2013. He submitted, in particular, that the applicant had lodged an application for refugee status and could not therefore be removed to Uzbekistan as long as that application was pending. He further argued that the applicant would be exposed to a real risk of torture in Uzbekistan. To substantiate the risk of ill-treatment he relied on the Court's case law and reports by United Nations institutions about widespread ill-treatment in detention facilities.

16. On 28 November 2013 the Moscow Regional Court upheld the administrative removal order on appeal. In reply to the applicant's argument about pending refugee status proceedings it noted that, pursuant to the Refugees Act, a person who had applied for refugee status could not – indeed – be returned to his country of origin against his will. However, in

the present case the applicant had not applied for refugee status immediately after his arrival in Russia. Given that the application for refugee status had been lodged after the administrative removal order had been made, the pending refugee status proceedings could not prevent the applicant's administrative removal. The applicant's allegations about the risk of ill-treatment or persecution for religious beliefs were hypothetical and unsubstantiated.

17. On 22 January 2014 the Moscow Region Department of the Federal Migration Service rejected the applicant's application for refugee status.

18. On 21 February 2014 the applicant challenged the decision of 22 January 2014 before the Federal Migration Service. He has not yet received any reply.

19. On 6 August 2014 the applicant lodged an application for temporary asylum. It appears that the proceedings are pending.

20. The applicant is currently in detention awaiting administrative removal to Uzbekistan.

II. RELEVANT DOMESTIC LAW

1. Administrative removal

21. Under Article 3.2 § 1 (7) of the Administrative Offences Code, administrative removal constitutes an administrative penalty. In Article 3.10 § 1, administrative removal is defined as the forced and controlled removal of a foreign national or a stateless person across the Russian border. Under Article 3.10 § 5, for the purposes of execution of the decision concerning administrative removal, a judge may order the detention of the foreign national or stateless person in a special facility.

22. Article 18.8 provides that any foreign national who infringes the residence regulations of the Russian Federation – for example by living in the territory without a valid residence permit, or by non-compliance with the established procedure for residence registration – will be liable to an administrative fine of 2,000 to 5,000 roubles (RUB) and possible administrative removal. Article 23.1 § 3 provides that any administrative charge that may result in removal from the Russian Federation must be determined by a judge of a court of general jurisdiction. Article 30.1 § 1 guarantees the right to lodge an appeal before a court or a higher court against a decision on an administrative offence.

2. Extradition proceedings

23. For a summary of the relevant provisions on extradition proceedings, see *Kasymakhunov v. Russia* (no. 29604/12, §§ 74-80, 14 November 2013).

3. Refugee status proceedings

24. For a summary of the relevant provisions of the Refugees Act, see *Kasymakhunov v. Russia* (cited above, §§ 83-87).

III. INTERNATIONAL MATERIAL

25. For a summary of the reports on Uzbekistan by the UN institutions and by NGOs published between 2002 and 2011, see *Abdulkhakov v. Russia*, no. 14743/11, §§ 99-107, 2 October 2012.

26. For a summary of the latest reports dating from the period 2012 to 2014, see *Rakhimov v. Russia*, no. 50552/13, §§ 64-73, 10 July 2014.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant complained, under Article 3 of the Convention, that his extradition or administrative removal to Uzbekistan, if enforced, would expose him to a real risk of torture and ill-treatment. Article 3 of the Convention reads as follows:

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

A. Admissibility

28. The Court notes that the application 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. Submissions by the parties

29. The Government submitted that the extradition proceedings against the applicant had been discontinued because the Uzbek authorities had not produced a detention order or an extradition request in respect of the applicant. The domestic courts had then ordered his administrative removal to Uzbekistan because his residence in Russia had been unlawful. The Government drew the Court's attention to the fact that the applicant had not applied for refugee status immediately after his arrival in Russia. His application for refugee status had been lodged only after the administrative

removal order had been issued against him. Moreover, the applicant had not referred to the risk of ill-treatment in Uzbekistan either upon arrest or before the Serpukhov Town Court. It had not been until the appeal proceedings before the Moscow Regional Court that the applicant had for the first time mentioned the risk of ill-treatment. His allegations had been examined and rejected by the Regional Court as unsubstantiated.

30. The applicant submitted that the extradition proceedings had not been officially discontinued. He claimed that he was therefore still at risk of being extradited to Uzbekistan. Moreover, he had not had the assistance of either a lawyer or an interpreter during the hearing of 2 November 2013 before the Serpukhov Town Court. He had not been given an opportunity to study the case-file before the hearing and had therefore not known that the prosecutor had requested his administrative removal. It was for that reason that he had not complained about the risk of ill-treatment before the Town Court. He had, however, brought his fears of ill-treatment in Uzbekistan to the attention of the authorities both in his appeal against the administrative removal order and in the refugee status proceedings. He had relied on reports by UN agencies and respected international NGOs, and also on the Court's case-law, which clearly demonstrated that individuals who, like him, were charged with membership of an extremist organisation or the attempted overthrow of the government on account of their membership of unregistered religious organisations, were at an increased risk of ill-treatment.

2. The Court's assessment

31. The Court will examine the merits of the applicant's complaint under Article 3 in the light of the applicable general principles reiterated in, among other cases, *Umirov v. Russia* (no. 17455/11, §§ 92-100, 18 September 2012, with further references).

32. The Court observes that the applicant was arrested with a view to his extradition to Uzbekistan. The Government claimed that the extradition proceedings had been discontinued on procedural grounds but did not submit any documents in support of that claim. It is therefore not clear from the case file whether the extradition proceedings have in fact been discontinued or are still pending. However, it is clear that instead of proceeding with the applicant's extradition, the Russian authorities chose to order his administrative removal to Uzbekistan. Moreover, although it appears that the refugee status proceedings initiated by the applicant are still pending, the domestic courts held that it was possible to proceed with the administrative removal without waiting for their outcome (see paragraph 16 above). The administrative removal order accordingly became enforceable, but it was not enforced as a result of the indication by the Court of the application of an interim measure under Rule 39 of the Rules of Court.

33. The Court will therefore examine whether the applicant faces the risk of ill-treatment if returned to Uzbekistan.

34. The Court has had occasion to deal with a number of cases raising the issue of the risk of ill-treatment in the event of extradition or expulsion to Uzbekistan from Russia or another Council of Europe member State. It has found, through reference to material originating from various sources, that the general situation with regard to human rights in Uzbekistan is alarming, that (as reliable international evidence has demonstrated) there is a persistent and serious issue as regards the ill-treatment of detainees – with the practice of torture against those in police custody being described as "systematic" and "indiscriminate" – and that there is no concrete evidence demonstrating any fundamental improvement in that area (see, among many others, *Ismoilov and Others v. Russia*, no. 2947/06, § 121, 24 April 2008; *Muminov v. Russia*, no. 42502/06, §§ 93-96, 11 December 2008; *Garayev v. Azerbaijan*, no. 53688/08, § 71, 10 June 2010; *Karimov v. Russia*, no. 54219/08, § 99, 29 July 2010; *Yakubov v. Russia*, no. 7265/10, §§ 81 and 82, 8 November 2011; *Rustamov v. Russia*, no. 11209/10, § 125, 3 July 2012; *Abdulkhakov v. Russia*, cited above, § 141, 2 October 2012; *Zokhidov v. Russia*, no. 67286/10, § 134, 5 February 2013; and *Kasymakhunov*, cited above, § 122).

35. As regards the applicant's personal situation, the Court observes that he is wanted by the Uzbek authorities on charges of membership of a religious extremist organisation, the attempted overthrow of the constitutional order of Uzbekistan, and terrorism. The Court has examined a number of cases in which the applicants were accused of criminal offences on account of their involvement with prohibited religious organisations in Uzbekistan (see *Abdulazhon Isakov v. Russia*, no. 14049/08, § 110, 8 July 2010; *Sultanov v. Russia*, no. 15303/09, § 113, 4 November 2010; *Ergashev v. Russia*, no. 12106/09, § 113, 20 December 2011; *Umirov,* cited above, §§ 114-116; *Abdulkhakov,* cited above, §§ 142 and 143; *Ermakov v. Russia*, no. 43165/10, § 203, 7 November 2013; and *Nizamov and Others v. Russia*, nos. 22636/13, 24034/13, 24334/13 and 24528/13, §§ 41 and 42, 7 May 2014). The Court has found that such persons were at an increased risk of ill-treatment and that their extradition or expulsion to Uzbekistan would give rise to a violation of Article 3.

36. The Court notes that the applicant brought his fears of ill-treatment in Uzbekistan to the attention of the domestic courts. It is true that he first raised the ill-treatment issue in his appeal against the administrative removal order. However, the Court does not find this unreasonable, given that the applicant only became aware of the risk of being returned to his home country when he learnt about the decision ordering his administrative removal to Uzbekistan (see, for similar reasoning, *Yakubov,* cited above, § 75). In considering his appeal, however, the court rejected the applicant's arguments concerning the risk of ill-treatment for two reasons: firstly,

because he had not applied for refugee status immediately after his arrival in Russia, and secondly because his allegations were unsubstantiated (see paragraph 16 above).

37. As regards the appeal court's reference to the applicant's failure to apply for refugee status in due time, the Court reiterates its constant approach that whilst a person's failure to seek asylum immediately after arrival in another country may be relevant for the assessment of the credibility of his or her allegations, it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion. The conduct of the person concerned, however undesirable or dangerous, cannot be taken into account, with the consequence that the protection afforded by Article 3 of the Convention is broader than that provided for in Articles 32 and 33 of the 1951 United Nations Convention relating to the Status of Refugees (see *Yakubov,* cited above, § 74, with further references). The Court notes that in the present case the applicant arrived in Russia in 2010, at which time no charges were pending against him, and applied for refugee status shortly after he had learned about such charges. Moreover, the domestic authorities' findings as regards the applicant's failure to apply for refugee status in due time did not, as such, negate his allegations under Article 3 of the Convention.

38. As regards the appeal court's reference to the failure to adduce convincing evidence pertaining to the existence of a risk, the Court reiterates, yet again, that requesting that an applicant produce "indisputable" evidence of the risk of ill-treatment in the requesting country would be tantamount to asking him to prove the existence of a future event, which is impossible, and would place a clearly disproportionate burden on him (see *Rustamov*, cited above, § 117). Any such allegation always concerns an eventuality, something which may or may not occur in the future. Consequently, such allegations cannot be proven in the same way as past events. The applicant must only be required to show, with reference to specific facts relevant to him and to the class of people he belongs to, that there is a high likelihood that he would be ill-treated (see *Azimov v. Russia*, no. 67474/11, § 128, 18 April 2013). Detailed submissions to that effect were made by the applicant in the present case. In particular, he relied on international reports and the Court's case-law (see paragraph 15 above). The Court is struck by the summary reasoning put forward by the domestic courts when rejecting the applicant's arguments and their refusal to take into account evidence originating from reliable sources, such as international reports and the Court's case-law. In such circumstances, the Court is not convinced that the issue of the risk of ill-treatment was subjected to rigorous scrutiny in the domestic proceedings.

39. In view of the above considerations, the Court finds that the Government have not put forward any facts or argument capable of persuading it to reach a conclusion different from the conclusion made in

the similar cases cited in paragraph 35 above. Having regard to the available material disclosing a real risk of ill-treatment to persons who are – like the applicant – accused of criminal offences on account of their involvement in prohibited religious organisations in Uzbekistan, and to the absence of sufficient safeguards to dispel this risk, the Court concludes that the applicant's forcible return to Uzbekistan would expose him to a real risk of treatment contrary to Article 3 of the Convention and would therefore give rise to a violation of that Article.

II. RULE 39 OF THE RULES OF COURT

40. The Court notes 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 no referral of the case to the Grand Chamber has been requested; or (c) the Panel of the Grand Chamber rejects any request for referral under Article 43 of the Convention.

41. The Court notes that the applicant is currently detained in Russia and is still formally liable to administrative removal pursuant to the final judgments of the Russian courts in this case. Having regard to the finding that he would be exposed to a serious risk of being subjected to torture or inhuman or degrading treatment in Uzbekistan, the Court considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 4 above) must remain in force until the present judgment becomes final or until further order.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage for the suffering and anguish he had endured through exposure to the risk of being subjected to ill-treatment and as a result of the actions and decisions of the Russian authorities.

44. The Government argued that, if a Court were to find a violation of the applicant's Convention rights, such finding of a violation would constitute sufficient just satisfaction.

45. The Court observes that no breach of Article 3 has yet occurred in the present case. However, it found that the decision to return the applicant to Uzbekistan 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 (see, for example, *Daoudi v. France*, no. 19576/08, § 82, 3 December 2009; *Yakubov*, cited above, § 111; and *Nizamov and Others*, cited above, § 50).

B. Costs and expenses

46. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that the forced return of the applicant to Uzbekistan would give rise to a violation of Article 3 of the Convention;

3. *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 or otherwise involuntarily remove the applicant from Russia to Uzbekistan or another country until such time as the present judgment becomes final or until further order;

4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 11 December 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President