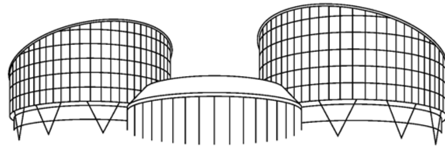

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MAINOV v. RUSSIA

(Application no. 11556/17)

JUDGMENT

STRASBOURG

15 May 2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Mainov v. Russia,

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

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 10 April 2018,

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

PROCEDURE

1. The case originated in an application (no. 11556/17) 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 Olimzhon Mirzokarimovich Mainov (“the applicant”) on 25 January 2017.

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 6 July 2017 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government’s objection, the Court rejects it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

6. The applicant was born in 1967 in the Tajikistan Soviet Socialist Republic of the Soviet Union and came to Russia in 1993. He is an apatride.

7. On 31 July 2014 the applicant was arrested for vagrancy. On 2 August 2014 the Kalininskiy District Court in St Petersburg sentenced him to a fine and administrative removal from Russia. The court also directed that he should be detained until expulsion in the special facility for the detention of aliens in the Leningrad Region (*СУВСИГ по СПб и ЛО*) in Krasnoye Selo.

The decision described the applicant as being “a native (*уроженец*) of the Tajikistan Republic”.

8. By letters dated 11 August and 18 November 2014, the Federal Migration Service asked the Embassy of Tajikistan in Moscow to issue a laissez-passer document enabling the applicant’s return to Tajikistan. No reply was received.

9. On an unspecified date the applicant was fingerprinted. It was discovered that he had been registered in the police database under a different name. On 11 February 2015 the Federal Migration Service used that name to request a laissez-passer from the Embassy of Tajikistan. It did not receive a response.

10. On 10 September 2015 the Federal Migration Service again attempted to obtain a travel document for the applicant using his original name. The Embassy did not reply.

11. On 28 July 2016 the governor of the detention centre asked the Kalininskiy District Court to discontinue the enforcement of the judgment on the ground that the two-year limitation period in respect of the applicant’s offence had expired. On 29 July 2016 the District Court granted the application. The applicant was released on 13 August 2016.

12. While in detention, the applicant was held in standard six-person cells (Cells 509, 402, 516 and 615) measuring 27.4 square metres which were furnished with three two-tier bunk beds, six bed stands, six chairs and a table. Between October 2014 and February 2015 he was also held in a smaller cell (Cell 514, 13 sq. m, two beds) and a larger cell (Cell 315, 40.2 sq. m, four two-tier bunk beds).

13. Cell 402, in which he stayed from February to September 2015, was a so-called “closed cell”. The steel door with a peephole and a hatch for serving food remained under lock at all times and he was not allowed to leave the cell, except for short and infrequent outdoor exercise. For the first two months, he had been alone in that cell.

14. The applicant complained about dim lighting, poor quality of food, insufficient outdoor exercise in cramped conditions, a lack of medical assistance and a shortage of meaningful activities. The Government disputed the applicant’s allegations and submitted copies of contracts with the catering, cleaning and laundering companies and a copy of visitors’ register from the medical unit.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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

16. 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 ..."

17. The Court reiterates that, for the purpose of calculating the six-month time-limit, the detention should be regarded as a "continuing situation" as long as it has been effected in substantially similar conditions. However, a significant change in the detention regime – such as a move from a communal cell to solitary confinement – has been held by the Court to put an end to the "continuous situation" (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 77-78, 10 January 2012, and *Fetisov and Others v. Russia*, nos. 43710/07 and 3 others, § 77 *in fine*, 17 January 2012).

18. The conditions of the applicant's detention in the so-called "closed cell" were substantially different from those in the other cells in that the applicant had been locked inside the cell for a major part of the time (see paragraph 13 above). His detention in that cell must therefore be taken to constitute a distinct period that calls for a separate application of the six-month rule (see *Zakharkin v. Russia*, no. 1555/04, § 115, 10 June 2010). Since that period ended in September 2015, that is to say more than six months before the introduction of the application on 25 January 2017, the part of the complaint concerning the applicant's detention prior to the former date has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

19. As regards the remaining period of the applicant's detention, it cannot be established to the standard of proof required under the Convention that the standard six-person cells had been affected by severe overcrowding of the kind that could entail, on its own, a violation of Article 3 (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 163-67, ECHR 2016 (extracts), and *Fetisov and Others*, cited above, § 134). Nor can it be found that the cumulative effect of the other aspects of the detention which the applicant complained about reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 (compare with the Court's findings in respect of the same detention facility at the relevant period of time, *Mskhiladze v. Russia*, no. 47741/16, §§ 38-39, 13 February 2018, and contrast with the Court's findings in respect of a previous period, *Kim v. Russia*, no. 44260/13, §§ 17-22, 31-35, 17 July 2014, and *M.S.A. and Others v. Russia*, no. 29957/14 and 8 others, § 58, 12 December 2017). It

follows that the remainder of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 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 aware that his removal had not been a realistic possibility. 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."

21. The Government submitted a summary of decisions taken in the removal proceedings and denied that there was a breach of Article 5 § 1 of the Convention.

A. Admissibility

22. 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

23. The Court reiterates that, 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 (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009, and *Kim*, cited above, § 49).

24. The Court notes that the applicant remained in preventive detention pending the enforcement of the removal order for more than two years. The only measure the Russian authorities deployed during that period was the sending of several letters of request to the Embassy of Tajikistan, seeking to obtain a laissez-passer document for the applicant. However, in doing so, they merely followed the established procedure in blatant disregard for the

fact that the applicant was not a national of that State and that Tajikistan had no legal obligation to admit him. 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). 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 with *Chkhikvishvili v. Russia*, no. 43348/13, § 30, 25 October 2016). Moreover, the Russian authorities did not seek to elucidate the reasons for a mismatch between the applicant's name and the record in their database. They did not interview the applicant in that connection, they did not establish whether the entry in the database had been erroneous or whether the applicant had used a different name in the past.

25. Lastly, the Court reiterates that preventive detention with a view to removal should not be punitive in nature. The maximum punishment for an administrative offence being thirty days, it was abnormal that the applicant spent more than two years in custody in the framework of a "preventive" measure (see *Kim*, cited above, § 55). The Court also notes that, following the District Court's decision of 29 July 2016 ordering the discontinuation of the enforcement proceedings, the applicant was released more than two weeks later, on 13 August 2016. The Government did not explain what the legal basis for his detention in that period had been.

26. In the light of the above considerations, the Court finds that the applicant's detention was not carried out in good faith due to the lack of a realistic prospect of his expulsion and the domestic authorities' failure to conduct the proceedings with due diligence.

27. There has accordingly been a violation of Article 5 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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."

29. 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.

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

31. The Court awards the applicant 7,500 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.

A. Costs and expenses

32. Ms Tseytlina also claimed on behalf of the applicant EUR 1,300 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.

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

34. Regard being had to the documents in its possession and its practice in similar cases (see *Mskhiladze*, cited above, § 64), 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.

B. Default interest

35. 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 complaint relating to the applicant's detention pending removal admissible and the remainder of the application inadmissible;

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

3. *Holds*

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

      (i) EUR 7,500 (seven thousand five hundred 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;

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

Done in English, and notified in writing on 15 May 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President