



[ECtHR - Kim v Russia](#)

This case concerns a person born in 1962 in Uzbekistan, who has been residing in Russia since 1990. After the fall of the Soviet Union, the applicant did not acquire a new citizenship, and was therefore stateless. He was arrested and detained until expulsion because of his undocumented status, and released after two years based on the expiry of the time-limit for enforcement of the expulsion order. The applicant brought the case to the ECtHR on the grounds that appeal procedures and the conditions of his detention had been inadequate. The Court ruled that there had been a violation of Articles 3 and 5 ECHR.

Case status: Decided

Case number: Application no. 44260/13

Date of decision: 17/07/2014

State: Russian Federation

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: Turkish, English

Applicant's country of birth: Russian Federation

Applicant's country of residence: Russian Federation

Legal instruments: European Convention on Human Rights (ECHR)

Key aspects: Detention, Procedural safeguards

Relevant Legislative Provisions:

Article 5(4), Article 5(1)(f) and Article 3 of the European Convention on Human Rights

Facts

The applicant was undocumented and stopped by the police. He was fined and detained until his expulsion. Several requests to the Embassy of Uzbekistan remained unanswered. The applicant applied for an order discontinuing the enforcement of the expulsion order since the Uzbek authorities do not accept the applicant as a citizen, which was rejected by the Court. According to the judge, a

failure to take measures to expel the applicant was not a ground for discontinuing the enforcement of the order. This order was appealed based on the absence of a periodic judicial review of the applicant's detention in breach of Art. 5 § 1(f) of the Convention. Counsel also attempted to challenge the applicant's detention as unlawful which was disallowed by the District Court of St. Petersburg. Later, the Embassy of Uzbekistan informed the Federal Migration Service that the applicant was not a national of Uzbekistan. The applicant was released on the basis of expiry of the two-year time - limit for enforcement.

Legal arguments by the applicant

Para 40: The applicant submitted that Russian law does not provide for any possibility to obtain a meaningful judicial review of the detention of an individual who is detained pending administrative expulsion.

Para 47: The applicant submitted that the Russian authorities had not conducted the expulsion proceedings with due diligence. (...) Finally, the applicant pointed out that he had been kept in detention pending expulsion: thus, there had been no complex extradition proceedings and the only issue to be determined had been whether at least one State was willing and able to receive him.

Legal arguments by the opposing party

Paras 39 and 46: The Government acknowledged a violation of Art. 5 § 4 and Art. 5 §1 (f).

Decision & Reasoning

Para 42: Given that the applicant spent more than two years in custody, new issues affecting the lawfulness of the detention might have arisen in the meantime. In particular, the applicant sought to argue before the courts that his detention had ceased to be lawful after it had transpired that it was impossible to expel him to Uzbekistan. By virtue of Article 5 § 4 the applicant was entitled to apply to a "court" having jurisdiction to decide "speedily" whether or not his deprivation of liberty had become "unlawful" in the light of new factors which emerged subsequently to the decision on his initial placement in custody (see Azimov, cited above, §§ 151-152, with further references).

Para 43: The Court observes that no automatic periodic extension of the

applicant's detention or any judicial review thereof took place during the entire two-year period that he remained in custody. The applicant's attempts to seek any form of review were likewise unfruitful: two District Courts and the St Petersburg City Court refused to deal with the substance of his complaint about unlawful detention, finding that there was no need to vary the custodial measure or to review its lawfulness in the light of the new circumstances. The Court lastly notes that in the Azimov case, which featured a similar complaint, the Government did not point to any domestic legal provision which could have allowed the applicant to bring proceedings for judicial review of his detention pending expulsion

Para 49: To avoid being branded as arbitrary, detention under Article 5 § 1 (f) 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.

Para 54: The Court is concerned about the applicant's particularly vulnerable situation. As a stateless person, he was unable to benefit from consular assistance and advice, which would normally be extended by diplomatic staff of an incarcerated individual's country of nationality. Furthermore, he appears to have no financial resources or family connections in Russia and he must have experienced considerable difficulties in contacting and retaining a legal representative. The domestic authorities do not appear to have taken any initiative to accelerate the progress of the removal proceedings and to ensure the effective protection of his right to liberty, although the decision by the Constitutional Court of 17 February 1998 may be read as expressly requiring them to do so (see paragraph 25 above). As a consequence, the applicant was simply left to languish for months and years, locked up in his cell, without any authority taking an active interest in his fate and well-being.

Decision documents

[CASE%20OF%20KIM%20v.%20RUSSIA.pdf](#)

Outcome

The Court also held, unanimously, that there had been violations of Article 3 of the Convention on account of the applicant's conditions of detention and of Article 5 § 4 on account of the lack of adequate review procedures for detention pending expulsion.

Links to other relevant materials related to the case (blogs, analysis,

articles, reports, etc.)

ENS, Blog entry by Adrian Berry, Kim v Russia – The unlawful detention of stateless persons in immigration proceedings, 30 October 2014 :

<https://www.statelessness.eu/blog/kim-v-russia-%E2%80%93-unlawful-deten...>

Article and Human Rights Report by ADC Memorial, Human Rights Report of ADC Memorial Violations of the Rights of Stateless Persons and Foreign Citizens in Light of the ECHR Judgment in “Kim v Russia”, 15 April 2014 :

<https://adcmemorial.org/www/publications/human-rights-report-of-adc-mem...>

Article by ADC Memorial, ECtHR considered treatment of detainees in the Russian Federation unacceptable, 22 July 2014 :

<https://adcmemorial.org/www/9591.html?lang=en>