



### Russia - Constitutional Court - Judgment No. 378-

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The Applicant was born in Uzbekistan in 1974 and obtained Russian citizenship in 2005. In 2017, he was convicted of an extremist crime for organisation of an extremist religious community (Nur movement) branch in the city of Blagoveshchensk and sentenced to imprisonment. In January 2019, his Russian citizenship was removed because of the conviction. After being released from prison in April 2019, the Applicant did not have any identification documents except for certificate of release, as his Russian passport was withheld. He did not have a chance to acquire any other documents to legalise his stay in Russia or leave the country, since he was arrested and placed in the migration detention centre five minutes after his release from the prison. As a result, Russian state court of civil jurisdiction declared the Applicant guilty of an administrative offence for violation of rules of stay in the Russian Federation under Article 18.8 of the Code of Administrative Offenses of the Russian Federation ("**CAO**") and prescribed a punishment in the form of penalty and administrative expulsion from the Russian territory.

Russian authorities contacted Uzbekistan to expel him there, however Uzbekistan did not agree to accept the Applicant. As a result, the Applicant remained in custody for about two years, since Russian law does not have provisions granting stateless individuals the right to challenge their detention nor requiring the courts to determine its duration when ordering the detention. Following unsuccessful challenges of his detention in the Russian state courts of civil jurisdiction, the Applicant filed a complaint with the Russian Constitutional Court challenging the constitutionality of the relevant legal provisions. The Constitutional Court dismissed the appeal finding all the challenged provisions were constitutional because its earlier [judgment No. 14-P/2017](#) of 25 May 2017 already provided stateless individuals a right to challenge their further detention three months after the date of the decision to detain and expel them. The Constitutional Court also contacted

Uzbekistan authorities again and they finally agreed to receive the Applicant in Uzbekistan.

**Case name (in original language) :** Дело о проверке конституционности положений части 5 статьи 3.10, части 1.1 статьи 18.8 и части 1 статьи 27.19 Кодекса Российской Федерации об административных правонарушениях в связи с жалобой лица без гражданства Е.Л. Кима

**Case status:** Decided

**Case number:** Judgment № 378-О

**Citation:** Russian Constitutional Court Judgment No.378-О dated 12.03.2021

**Date of decision:** 12/03/2021

**State:** Russian Federation

**Court / UN Treaty Body:** Constitutional Court of the Russian Federation  
(Конституционный суд Российской Федерации)

**Language(s) the decision is available in:** Russian

**Applicant's country of birth:** Uzbekistan

**Applicant's country of residence:** Russian Federation

**Key aspects:** Country of return, Deportation and removal, Deprivation of nationality, Detention

**Relevant Legislative Provisions:**

Art. 3.10, 18.8, 27.19 of the Code of Administrative Offences of the Russian Federation

## **Facts**

The applicant, Mr Evgeny Kim was born in Uzbekistan, in the Soviet Republic in 1974. In 2005, he was granted Russian citizenship since he was born in Uzbekistan and had USSR citizenship. He received his Russian passport in 2006. In 2017, he was convicted of an extremist crime for organisation of an extremist religious community (Nur movement) branch in the city of Blagoveshchensk and sentenced to three years and nine months imprisonment under Article 282 of the Russian Criminal Code ("**Incitement of Hatred or Enmity, as Well as Abasement of Human Dignity**") and Article 282.2 of the Russian Criminal Code ("**Organizing the Activity of an Extremist Community**").

In January 2019, Russian internal affairs authorities removed Mr Kim's Russian citizenship. He was not notified within one month of the date of decision, as

prescribed by law. In April 2019, a few days before his release from prison, he was notified that his grant of Russian citizenship was invalidated retroactively as a result of his conviction and his Russian passport would be withheld after his release from prison.

After being released from prison, Mr Kim did not have any identification documents except a certificate of release. He did not have a chance to acquire any other documents to legalise his stay in Russia or leave the country, as he was arrested and placed in a special migration detention centre five minutes after his release.

Mr Kim was charged with violation of the rules of stay in the Russian Federation under Article 18.8 of the CAO for the absence of documents confirming the right to stay in Russia. He was ordered to be expelled. He was put in a temporary migration detention centre while Russian authorities tried to contact Uzbekistan. Uzbekistan did not agree to Mr Kim's removal, making the expulsion impossible. Mr Kim remained in custody for approximately two years, as Russian law does not have provisions (i) requiring the duration of the detention to be specified in the court judgment that ordered the detention or (ii) granting stateless individuals the right to challenge their detention.

Mr Kim repeatedly appealed his expulsion and detention, but the Russian courts refused to reverse the ruling and release him.

### **Legal arguments by the applicant**

Mr Kim challenged the constitutionality of three provisions of the CAO:

- Article 18.8 – *"Violation by a foreign citizen or a stateless individual of rules of entrance in the Russian Federation or of regime of stay in the Russian Federation"*. This was challenged on the ground that it allowed prosecution of persons who were *"not given a real opportunity to voluntarily leave the territory of Russia and (or) obtain documents allowing to stay on its territory on legal grounds"*.
- Article 3.10– *"Administrative expulsion out of the Russian Federation of a foreign citizen or a stateless individual"* This was challenged on the grounds that stateless individuals can be put into migration detention facilities without determining whether it is possible to expel these persons out of the Russian Federation and without setting a specific period of detention. At the same time, the Applicant argued that there were no *"appropriate legal guarantees of*

*judicial control over the legality of such detention"* as Russian law does not formally provide for the right of stateless individuals to challenge their detention.

- Article 27.19 – *"Placement in special centres of foreign citizens and stateless individuals subject to administrative expulsion out of the Russian Federation"*. This was challenged on the same grounds as Article 3.10.

### **Legal arguments by the opposing party**

Not indicated in the judgment.

### **Decision & Reasoning**

The application was dismissed and all three provisions were held to be constitutional.

With regard to Article 18.8 of the CAO, the court held that the provision was lawful and did not breach the Russian Constitution. The judgment stated that when deciding whether to expel stateless individuals out of the Russian Federation in connection with violation of the rules of stay in the Russian Federation, the Russian courts should take into account the factual circumstances of the case to take necessary and proportionate decisions. From a humanitarian perspective, the courts should also take into account the *"family status and other extraordinary, [and/or] noteworthy circumstances"*. Further, the court noted that in some cases, the expulsion *"may contradict the goals of administrative responsibility and lead to excessive restriction of constitutional rights and freedoms"*. Therefore, the courts are obliged to consider all valid circumstances due to which a person cannot legalise his stay in Russia or leave the country. The judgment did not proceed to explore the Applicant's personal circumstances or the circumstances surrounding his inability to legalise his stay.

In particular, the Constitutional Court stated as follows:

*"Assessing the possibility of applying administrative expulsion out of the Russian Federation for foreign citizens and stateless individuals for violations of the legal regime of stay (residence) in the territory of the Russian Federation, the Constitutional Court of the Russian Federation consistently pointed out that its consolidation as a mandatory punishment for certain migration offenses does not contradict of the Constitution of the Russian Federation, and the accuracy and clarity*

*of the rules on imposing punishments prevent excessive discretion and abuse in the process of applying administrative sanctions; the courts, not limiting themselves to establishing only formal grounds for the application of the law, must investigate and evaluate the real circumstances in order to recognize the relevant decisions in relation to a foreign citizen or stateless individual as necessary and proportionate; the migration rules adopted for foreign citizens do not exclude the necessity, for humanitarian reasons, to take into account family status and other extraordinary, noteworthy circumstances when considering the question as to the need of deportation out of the Russian Federation and as to the temporary residence on its territory; administrative expulsion out of the Russian Federation under certain circumstances may be contrary to the goals of administrative liability and lead to excessive restriction of constitutional rights and freedoms (decrees of February 17, 1998 No. 6-P, of February 14, 2013 No. 4-P and of February 25, 2014 No. 4-P; definitions of May 12, 2006 No. 155-O, of June 4, 2013 No. 902-O, of March 5, 2014 No. 628-O, of September 28, 2017 No. 1808-O, of February 27, 2020 year No. 524-O, etc.)."*

As a result, the Constitutional Court found that Article 18.8 of the CAO is in line with the Russian Constitution.

The Constitutional Court also found that Articles 3.10 and 27.19 were constitutional. Article 3.10 provides for the expulsion of foreign and stateless persons, and Article 27.19 provides for detention of foreign and stateless persons prior to expulsion. The articles do not expressly refer to rights of stateless persons to challenge their detention nor do they require the duration of detention be specified in the order for detention. The Constitutional Court found that the articles were constitutional because there was already a legal right to challenge immigration detention after three months. This legal right arose as a consequence of the Constitutional Court's earlier [judgment No. 14-P/2017 of 25 May 2017](#). That case involved a challenge to other interrelated articles of the CAO, which also failed to provide a right to challenge indefinite immigration detention. In particular, [judgment No. 14-P/2017 of 25 May 2017](#) suggested some reforms and provided for a temporary solution having immediate direct effect until the suggested legislative amendments are implemented. Specifically:

- the absence of a right to challenge the legality of immigration detention prior to expulsion contradicts the Russian Constitution (as determined by challenge of different CAO articles, than those challenged in judgment 378-O);

- the CAO should be amended so that it ensures reasonable judicial control over the timeframes of the detention of stateless persons subject to forced expulsion;
- legislators may stipulate in the CAO that judges must establish specific timeframes for the application of the detention; and
- before the amendments to the relevant law are made, foreign and stateless individuals can challenge the legality of their further detention three months after the decision on their expulsion and detention has been made.

The amendments to the relevant legislation are still pending as of November 2022.

Given the above, the Constitutional Court held that Articles 3.10 and 27.19 of the CAO are in line with the Russian Constitution as foreign and stateless individuals' right to challenge the legality of their further detention in a special migration centre was already established by its previous [judgment No. 14-P/2017](#).

### **Decision documents**

[Russia - Constitutional Court Judgment No. 378-O dated 12.03.2021](#)

### **Outcome**

The challenge was dismissed.

The judgment affirmed the position of the Constitutional Court expressed in its [judgment No. 14-P/2017](#). Relevant amendments to the legislation ordered by the Constitutional Court as to the term of detention and the right to challenge the detention are still pending (as of November 2022).

After a request sent by the Russian Constitutional Court, Uzbekistan confirmed its readiness to welcome Mr Kim on its territory by way of readmission.

### **Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)**

<https://memohrc.org/ru/blogs/opredelenie-konstitucionnogo-suda-po-delu-kima-zakonodatelnaya-problema-ne-reshena-no-evgeniy>

<https://www.advgazeta.ru/novosti/ks-razobratsya-s-administrativnym-vydvorenim-lits-bez-grazhdanstva/>

<https://adcmemorial.org/en/news/human-rights-report-of-anti-discrimination-centre-memorial-violations-of-the-rights-of-stateless-persons-and-foreign-citizens-in-temporary-foreign-national-detention-centers-in-light-of-the-echr-judgm/>

[https://www.forum18.org/archive.php?article\\_id=2585](https://www.forum18.org/archive.php?article_id=2585)