

## SECRETARIAT GENERAL

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Meeting: 1318<sup>th</sup> meeting (June 2018) (DH)

Item reference: Action plan (16/04/2018)

Communication from the Russian Federation concerning the case of KIM v. Russian Federation (Application No. 44260/13)

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Réunion : 1318<sup>e</sup> réunion (juin 2018) (DH)

Référence du point : Plan d'action

Communication de la Fédération de Russie concernant l'affaire KIM c. Fédération de Russie (Requête n° 44260/13) (*anglais uniquement*)

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DGI

16 AVR. 2018

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

Prepared for the 1318th DH meeting  
of the CMCE (5-7 June 2018)

**Updated Action Plan  
of the Russian authorities on prevention of violations of  
citizens' rights (*Kim* group of cases)**

*no. 67474/11 "Azimov v. Russia", no. 44260/13 "Kim v. Russia",  
no. 34742/13 "Egamberdiyev v. Russia", no. 62892/12 "Akram Karimov v. Russia",  
no. 20110/13 "Ismailov v. Russia", no. 50552/13 "Rakhimov v. Russia", no. 66373/13  
"Khalikov v. Russia", no. 68900/13 "Eshonkulov v. Russia", no. 43348/13  
"Chkhikvishvili v. Russia",*

**Violation**

The European Court of Human Rights ("the European Court") has delivered several judgments where it found violations of Article 5 §§ 1 and 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") related to applicants' detention in temporary detention centres for foreigners ("special institutions"): based on judgments delivered by national courts that contained no indication of the terms of application of the relevant measure (all judgments of the group under review); in the absence of real prospects of the applicant's actual expulsion ("*Kim v. Russia*", "*Chkhikvishvili v. Russia*"); excessively long detention of the applicants in special institutions ("*Azimov v. Russia*", "*Akram Karimov v. Russia*", "*Ismailov v. Russia*", "*Rakhimov v. Russia*", "*Khalikov v. Russia*", "*Eshonkulov v. Russia*"); inconsistency of the declared purpose of the applicant's deprivation of liberty with the factual circumstances ("*Azimov v. Russia*"), as well as related to the absence of the possibility for the applicants to challenge the lawfulness of applying the measure in the form of detention in the special institution (all the judgments).

The European Court also found the following violations: in the judgments "*Kim v. Russia*", "*Rakhimov v. Russia*" - of Article 3 of the Convention due to the failure to provide the proper conditions of detention in the special institution (R.A. Kim) and in the division of Internal Affairs (N.N. Rakhimov), in the judgment "*Eshonkulov v. Russia*" - of Article 6 § 2 of the Convention due to violation of the applicant's right to presumption of innocence; in the judgments "*Azimov v. Russia*", "*Egamberdiyev v. Russia*", "*Akram Karimov v. Russia*", "*Ismailov v. Russia*", "*Rakhimov v. Russia*", "*Khalikov v. Russia*", "*Eshonkulov v. Russia*" it was decided that removal of the applicants from the territory of the Russian Federation will constitute a violation of Article 3 of the Convention due to the risk of their ill-treatment.

**Individual Measures:**

1. As informed earlier, the compensations awarded by the European Court have been paid to all the applicants except D.D. Chkhikvishvili (DH-DD(2017)425).

In the reporting period on the basis of the power of attorney presented by D.D. Chkhikvishvili the sum of compensation awarded to him in the amount of 320 744 rubles (EUR 5,000 transferred into Russian rubles at the rate of the Bank of Russia on the day of the payment) was fully transferred to the bank account of the representative of the applicant - Tirsikh V.V. (payment order of 13 June 2017 no. 860837). The delay in payment was due to reasons beyond the control of the Russian authorities due to the applicant's initial submission of inadequate documents (in the submitted power of attorney, the person whose first name and patronymic did not coincide with the name and patronymic of the person who was the applicant in the case was indicated as the principal). After the provision of duly executed documents, payment of compensation was, as noted above, promptly implemented in full.

## 2. Information about the current situation of the applicants:

2.1. It is recalled that R.A. Kim, Kh.Sh. Ismailov, A.A. Karimov, F.Yu. Egamberdiyev, N.N. Rakhimov, Zh.S. Eshonkulov, S.U. Khalikov have been released from the special institutions where they had been detained and are currently at large.

Applicant D.D. Chkhikvishvili restored his Georgian nationality and obtained a Georgian passport in February 2014. After that, he was deported from Russia. The Committee of Ministers of the Council of Europe ("the CMCE") found that no additional individual measures were required in the case of "Chkhikvishvili v. Russia" (CM/Del/Dec(2017)128/H46-26).

The information on N.Sh. Azimov's situation was submitted to the CMCE in the framework of the "Garabayev" group of cases (DH-DD(2014)58, DH-DD(2014)151, DH-DD(2014)1431, DH-DD(2017)425).

2.2. As regards R.A. Kim's situation it is recalled that the decision of the national court of 19 July 2011 on the administrative expulsion of R.A. Kim can no longer be executed as the statutory limitation for its execution has expired<sup>1</sup>.

After his release (as of April 2018) R.A. Kim has not born administrative or criminal responsibility, there are no proceedings on administrative expulsion or deportation.

R.A. Kim and his representatives did not apply to courts with regard to entry into force of the European Court's judgment, including issues concerning violation of his rights due to application of administrative expulsion procedures.

Thus, currently there is no threat of application of administrative expulsion procedures against R.A. Kim.

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<sup>1</sup> Pursuant to Article 31.9 § 1 of the Code of Administrative Offences of the Russian Federation, the statutory time limit for execution of judgments concerning administrative offences is two years.

**2.3.** As was informed earlier, the authorities have taken all possible measures for settling the immigration status of R.A. Kim in Russia.

In particular, on 16 October 2015, a division of the Department of the Federal Migration Service (“the UFMS”) of Russia for the city of Saint Petersburg and the Leningrad Region, located in the Central District of Saint Petersburg delivered a legal conclusion as to establishing identity of R.A. Kim<sup>2</sup>.

According to this legal conclusion, the documents examined during the procedure for establishing the identity show existence of his possibility to apply for conferment of Russian nationality pursuant to Articles 41.1 and 41.3 of Federal law of 31 May 2002 no. 62-FZ “On Nationality of the Russian Federation” (“the Federal Law”) if he presented witness testimony as to his permanent residence in the territory of the Russian Federation (except for periods of detention in penal institutions).

Currently, R.A. Kim has the possibility to apply to the Russian migration authorities for obtaining Russian nationality by providing necessary documents, and to regulate his migration status.

At the same time, as of April 2018 the current whereabouts of the applicant are unknown, he does not reside at the address reported by him to the migration authority when the measures were being taken aiming at establishing his identity.

The migration authorities of the Russian Federation have taken all possible measures to inform R.A. Kim on the procedure of the methods concerning regulation of his migration status.

Therefore, any additional measures aiming to regulate his migration status may be taken by the authorities only after receipt an application from R.A. Kim or from his representatives (providing Russian nationality or any other types of permitted stay in the territory of the Russian Federation is possible based on a relevant application). Meanwhile, as of April 2018 neither the applicant nor his representatives have applied to the bodies of the Russian Federal Migration Service.

### **General Measures:**

**3.** Copies of the European Court judgments in the “Kim” group of cases were sent to the competent state authorities which sent them to their respective structural divisions and regional offices, with the necessary guidance for taking on consideration the European Court’s *ratio decidendi* in practice.

Unofficial translations of the mentioned judgments of the European Court were published in Russian on official websites of the Supreme Court, the Prosecutor General’s

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<sup>2</sup> Pursuant to Article 10.1 of Federal Law no. 115-FZ of 25 July 2002 *On Legal Status of Foreign Nationals in the Russian Federation*.

Office, automated information and search system of the Ministry of Internal Affairs of Russia STRAS Yurist, legal reference systems Consultant Plus and Garant.

4. Within the framework of execution of the respective judgments of the European Court and implementation of Decree of the President of the Russian Federation of 20 May 2011 “On Monitoring of Law Enforcement in the Russian Federation” proposals on reforming the Russian legislation have been prepared. As a result, the Government of the Russian Federation by its resolution of 26 October 2016 no. 2831-r approved the plan of the legislative work of the Government of the Russian Federation for 2017. The plan provided for development by the Ministry of the Internal Affairs of Russia of a draft law “On Amendments to the Code of the Russian Federation on Administrative Offences of the Russian Federation” (regarding the setting, extension and suspension of the terms of detention of persons in special institutions for administrative expulsion and deportation, as well as the procedure for appealing against the relevant decisions).

On 23 May 2017 the Constitutional Court of the Russian Federation (“the Constitutional Court”) delivered its judgment no. 14-P<sup>3</sup>, which prescribed the federal legislator to amend the Code of the Russian Federation on Administrative Offences (“the CAO RF”) as to providing effective judicial control over the time periods of detention in special institutions of persons subject to forced expulsion from the territory of the Russian Federation. It was also noted that the federal legislator was entitled to establish a special migration status for an apatriote, where a judgment on forced expulsion of such person from the territory of the Russian Federation could not be enforced due to the absence of a state ready to accept such person as of the moment when the issue of lawfulness of such person’s further detention in a special institution is examined.

The draft law “On Amendments to the Code of the Russian Federation on Administrative Offences”, prepared by the Ministry of the Internal Affairs of Russia taking into account *ratio decidendi* of the European Court and the Constitutional Court, was introduced by the Government of the Russian Federation to the State Duma of the Federal Assembly of the Russian Federation on 4 November 2017 and was adopted by the resolution of the State Duma in the first hearing on 21 December 2017.

5. The mentioned draft law provides, *inter alia*, for the following:

- Application of the measure in the form of detention in special institutions must be applied by courts in a balanced manner, based on a reasoned motion, taking into account the nature of the administrative offence committed by a foreigner or stateless person, these persons’ previous behaviour, the length of their residence (stay) in the Russian Federation, their family/marital status, existence of a lawful source of income and residential premises in the territory of the Russian Federation, the type of their activity and

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<sup>3</sup> Judgment of the Constitutional Court of the Russian Federation of 23 May 2017 no. 14-P “On the case regarding checking of constitutionality of provisions of Articles 31.7 and 31.9 of the Code of the Russian Federation on Administrative Offences in connection with the complaint lodged by stateless person N.G. Mskhiladze”.

their profession, applications for conferment of Russian nationality and other relevant circumstances.

In doing so, the court is entitled to request additional documents, materials and data at its discretion.

- Detention in special institutions may take place only on the basis of a court order clearly indicating the time periods for such detention.

There are envisaged the maximum periods of detention in special institutions and the procedure for extension of these periods is determined in detail (particularly it is envisaged that the respective extension may take place only on the basis of reasoned motions and in-depth examination by the court of all the circumstances with delivering reasoned decisions).

A foreigner or stateless person shall not be subject to administrative expulsion in case there are discovered any circumstances that show the absence of a factual possibility of execution of a judgment on imposing administrative punishment in the form of administrative expulsion from the Russian Federation, including the absence of a state that is ready to accept such persons, if all the measures, provided for by the legislation of the Russian Federation and international treaties of the Russian Federation for establishing such state, have been exhausted.

- Participation in court proceedings of a person as to whom a motion has been filed on application of the measure in the form of detention in a special institution, as well as a list of persons invited for the participation in the proceedings.

- The procedure of appealing against the respective court judgments as well as the special provision concerning the right of persons to apply to court regarding the lawfulness of placement to, and justification of further detention in a special institution.

- Clear and urgent procedures for execution of the court decisions of the respective category.

Adoption of the draft law is expected till the end of 2018.

6. Adoption of general measures for providing proper conditions of detention in special institutions take place within the framework of execution of the judgment on the application “Adeishvili (Mazmishvili) v. Russia”. A detailed action plan of the Russian Government has been sent earlier (DH-DD(2016)417)).

7. Taking general measures to address the failure to ensure proper conditions of detention in the temporary detention facilities and in the agencies of internal affairs take place within the framework of execution of the judgments in the “Fedotov” group of cases and the pilot judgment “Ananyev and Others v. Russia”.

8. Taking general measures aimed to exclude the risk of ill-treatment of the applicants during forced removal from the territory of the Russian Federation take place within the framework of execution of the judgment in the “Garabayev” group of cases.

### **Conclusion:**

1. The Russian authorities believe that the individual measures taken have eliminated as far as possible the violations in respect of R.A. Kim, I.Sh. Azimov, D.D. Chkhikvishvili, Kh.Sh. Ismailov, A.A. Karimov, F.Yu. Egamberdiyev, N.N. Rakhimov, Zh.S. Eshonkulov, S.U. Khalikov, as regards individual measures concerning an aspect of the “Kim” group of cases. Accordingly, the Russian authorities complied with their obligations under Article 46 of the Convention, and the Committee of Ministers of the Council of Europe can close examination of these issues.

With regard to the individual measures in respect of I.Sh. Azimov, Kh.Sh. Ismailov, A.A. Karimov, F.Yu. Egamberdiyev, N.N. Rakhimov, Zh.S. Eshonkulov, S.U. Khalikov, aimed at eliminating the risk of their forced removal from the territory of the Russian Federation, the work is carried out within the framework of the “Garabayev” group of cases.

2. The work on adoption of general measures continues in the framework of the planned activities.