



Order for deportation of refugee after status revoked: Court accepts principle on condition of full and up-to-date prior assessment of actual risk

In today's **Chamber judgment**¹ in the case of [K.I. v. France](#) (application no. 5560/19) the European Court of Human Rights held, unanimously, that there would be:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights under its procedural aspect if, having had his refugee status withdrawn, the applicant were to be returned to his country of origin without any prior assessment by the French authorities of the actual and current risk that he claimed to be facing in the event of his deportation.

The case concerned a Russian national of Chechen origin who arrived in France when he was still a minor and obtained refugee status. After being convicted for a terrorism offence and on the grounds that his presence in France represented a serious threat to French society, the French Office for Refugees and Stateless Persons (OFPRA) revoked his status in July 2020 under Article L. 711-6 of the Immigration and Asylum Code and his deportation to Russia was ordered.

The Court began by observing that both under the case-law of the Court of Justice of the European Union (CJEU) and under that of the French *Conseil d'État*, the withdrawal of refugee status had no bearing on the fact of being a refugee. The question whether the applicant remained a refugee thus should have been given specific consideration by the national authorities when they examined, under Article 3 of the Convention, the reality of the risk that he faced in the event of deportation to his country of origin. The Court found that both when his deportation was ordered and when it was reviewed by a court, the French authorities, in assessing the risks that he faced on his return to Russia, had not specifically taken account of the fact that the applicant could be presumed to have remained a refugee in spite of the withdrawal of his status.

The Court concluded that there would be a violation of Article 3 of the Convention in its procedural aspect if the applicant were to be returned to Russia without any prior assessment by the French authorities of the actual and current risk that he claimed to be facing in the event of his deportation being enforced.

Principal facts

The applicant, Mr K.I., arrived in France in August 2011 at the age of 17. In 2013 the OFPRA granted him refugee status. Just over nine months after obtaining refugee status, K.I. was arrested by the French authorities on the basis of a judicial warrant issued in an investigation into a criminal conspiracy to commit an act of terrorism. He was placed under judicial investigation with four compatriots and remanded in custody. He was accused in particular of having travelled to a combat

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

zone in Syria for the purpose of undergoing military training in the handling of military weapons and of having fought as a member of a jihadist group.

In 2015 the Paris Criminal Court sentenced K.I. to five years' imprisonment for participation in a criminal conspiracy to commit an act of terrorism between 1 September 2012 and 19 November 2013, in France and also in Germany, Poland, Ukraine, Turkey and Syria, by preparing and organising his departure together with an accomplice to the combat zone in Syria, with the help of their various contacts, and by travelling to that destination.

On 18 November 2015 the Prefect of Essonne issued a deportation order on the basis of the serious threat that K.I. represented for public safety. On 14 January 2016 he lodged an appeal with the Versailles Administrative Court to have the deportation order annulled. On 23 June 2016 the OFPRA revoked K.I.'s refugee status under Article L. 711 6 2° of the Immigration and Asylum Code on the grounds that he had been convicted with final effect in France for a terrorism offence and that his presence in France constituted a serious threat to society.

On 14 December 2016 K.I. lodged an appeal with the National Asylum Court (CNDA) seeking the annulment of the OFPRA's decision of 23 June 2016. In its defence, the OFPRA submitted that this appeal should be dismissed. It argued, primarily, that the exclusion clause provided for in Article 1(F)(a) of the Geneva Convention should be applied to the applicant on the grounds that the actions attributable to the armed group that he had joined in Syria were comparable to crimes against humanity and war crimes, and that the acts of terrorism for which he had been convicted in France could be characterised as acts contrary to the purposes and principles of the United Nations. In the alternative, the OFPRA argued that his in France constituted a serious threat to State security and for society.

Since his release from prison on 11 December 2017, K.I. has been placed under a compulsory residence order. According to him, he has been obliged to report to the police station three times a day.

On 11 January 2019 the CNDA upheld the OFPRA's decision to withdraw his international protection. On 25 January 2019 K.I. applied to the European Court of Human Rights for an interim measure, under Rule 39 of its Rules of Procedure, to stop the French Government from deporting him to Russia. On 28 January 2019 the duty judge took the decision to grant the request up to 4 February 2019 and to seek information from the Government.

On 28 January 2019, while still under a compulsory residence order, K.I. was arrested. The Prefect of Seine Maritime issued an order for his placement in the Lille Lesquin administrative detention centre in order to ensure the enforcement of the deportation order.

On 4 February 2019 the Court's duty judge decided to discontinue the application of Rule 39 and informed K.I. that his application was premature because there was no enforceable deportation decision against him, the relevant order not being accompanied by directions as to the country of destination. On 25 February 2019 the Prefect of Seine Maritime made an order specifying the Russian Federation as the country of destination, or any country in which K.I. would be legally admissible.

On 27 February 2019 K.I. filed a new request for an interim measure with the Court. On the same day, the duty judge decided to temporarily apply Rule 39 again, up to and including 8 March 2019. On 1 March 2019 the urgent applications judge of the Lille Administrative Court dismissed an urgent application lodged by the applicant on 27 February 2019 seeking a stay of execution of the order of 25 February 2019. On 16 May 2019 the Lille Administrative Court rejected the applicant's appeal for annulment of the order of 25 February 2019 specifying Russia as the country of destination.

On 26 May 2020 the Prefect of Dordogne issued a compulsory residence order against the applicant with a requirement to report to the police station three times a day.

On 29 July 2020 the *Conseil d'État* dismissed the applicant's appeal against the decision of the CNDA of 11 January 2019 upholding the OFPRA's decision to revoke his refugee status.

The Government explained that the applicant, still under a compulsory residence order, was accommodated and supported financially by the State. The applicant alleged that he only had two close relatives still in Chechnya and that the male members of his family had either died or were beneficiaries of international protection in Europe.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicant argued that his deportation to Russia would expose him to treatment in breach of that Article of the Convention.

The application was lodged with the European Court of Human Rights on 25 January 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Ganna **Yudkivska** (Ukraine),
Stéphanie **Mourou-Vikström** (Monaco),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),
Mattias **Guyomar** (France),

and also Victor **Soloveytchik**, *Section Registrar*.

Decision of the Court

Article 3

As regards the general situation in the North Caucasus region, the Court had previously found that the situation was not such that any return to the Russian Federation would constitute a violation of Article 3 of the Convention.

The Court noted that the applicant could not be compared to asylum-seekers who had just fled their country and who were vulnerable because of everything they had been through during their recent migration. He had arrived in France in 2011 and had been granted refugee status in January 2013. This status had been revoked in 2016 following his criminal conviction in 2015 for acts committed in France, Germany, Poland, Ukraine, Turkey and Syria between 1 September 2012 and 19 November 2013, and the fact that he had spent almost two months in a combat zone in Syria shortly after obtaining his refugee status. He had left for Syria after thorough and lengthy preparation. The Court therefore took the view that it was not apparent from the facts of the case that the applicant could be regarded as vulnerable, having regard to the distribution of the burden of proof in cases concerning Article 3 of the Convention.

On 14 May 2019, two days before the Lille Administrative Court had ruled on the risks that the applicant claimed to be facing in the event of his return to Russia, the CJEU had held that the "fact of being" a refugee was not affected by the revocation of refugee status on grounds of a threat to the security or society of the host member State. Subsequently, in a judgment of 19 June 2020, the *Conseil d'État* had applied the case-law of the CJEU.

The Court noted that it was clear from both the case-law of the CJEU and that of the *Conseil d'État* that the applicant remained a refugee even though formal recognition of his refugee status had

been withdrawn on the basis of Article L. 711-6 of the Immigration and Asylum Code, as the CNDA had not accepted the OFPRA's submission that the exclusion clause should be applied to him.

According to the Court's case-law, the fact of being a refugee was a factor that had to be taken into account by the domestic authorities when they examined whether the risk that the person claimed to be facing in the event of expulsion was real. The Court noted that the French authorities, when they had issued and subsequently reviewed the decision to deport him to the Russian Federation, had not taken into consideration that the fact of being a refugee *per se* was not affected by the withdrawal of the formal recognition of refugee status. The Court thus concluded that the French authorities and the domestic courts had not assessed the risks that the applicant would face if the deportation order were to be enforced.

The Court did not rule out the possibility that, following a thorough and full examination of the applicant's personal situation and verification of whether or not he was still a refugee, the French authorities might still have reached the same conclusion as the Lille Administrative Court, namely that there was no risk to him under Article 3 of the Convention if he were deported to Russia. The Court noted, however, that the CNDA had already advised against the expulsion of certain individuals to their country of nationality on the grounds that, although they had lost refugee status, they had remained refugees. In the relevant opinions, the CNDA had found that the impugned decisions determining the country of destination had disregarded France's obligation to uphold the right to protection of refugees against *refoulement*, under Article 4 and Article 19 § 2 of the EU Charter of Fundamental Rights and Article 3 of the Convention.

The Court concluded that there would be a violation of Article 3 of the Convention, under its procedural aspect, if the applicant were deported to Russia without a full and up-to-date assessment by the French authorities of the risk that he would face in the event of his return.

Article 2

Having regard to the facts, to the parties' arguments and to the conclusion reached by the Court under Article 3 of the Convention, the Court found that it was not necessary to examine the admissibility or merits of the complaint under Article 2 of the Convention.

Just satisfaction (Article 41)

The Court took the view that its finding to the effect that the applicant's deportation would entail a violation of the Convention, if enforced without an up-to-date assessment of the actual risks faced by him in Russia, constituted sufficient just satisfaction.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.