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## ECtHR T.M and Others v. Russia (no. 31189/15 and 5 others)

**Country of Applicant:**

Uzbekistan

**Date of Decision:**

07-11-2017

**Citation:**

T.M and Others v. Russia (no. 31189/15 and 5 others), 7 November 2017

**Court Name:**

European Court of Human Rights (Third Section)

**Keywords:**[Detention](#) [1][Real risk](#) [2][Inhuman or degrading treatment or punishment](#) [3][Political Opinion](#) [4][Religion](#) [5]**Headnote:**

Prospective extradition of Applicants, members of an established vulnerable group under ECtHR, to a country where the risk of ill-treatment is real shall trigger a violation of Article 3 ECHR. Detention orders not meeting Article 5§1(f) ECHR objective threshold are and should be deemed as unlawful. The plurality of domestic remedies with the same objective does not prescribe their use by the Applicant for the purposes of Article 35§1 ECHR.

**Facts:**

The case originated in six applications against the Russian Federation subsequently joined by the Court under Rule 42§1 of the Court because of their similar nature of the facts presented and the identity of the legal issues risen.

The six Applicants (living in Russia) are Uzbek nationals charged for religiously and politically motivated crimes by the domestic authorities, who filed an extradition request to Russia. Russia subsequently commenced extradition procedures, despite the individuals' allegations that this would entail a high risk of them being subjected to ill-treatment in Uzbekistan. While the procedure was pending, one of the Applicants was kept in detention for two years.

The Applicants challenged the Russian authorities' decision before the ECtHR suggesting that their removal would trigger a violation of Article 3 ECHR and denounced their failure to consider their relevant claims. They also complained about the lack of effective relevant domestic remedies under Article 13 ECHR. Furthermore, the detained individual complained about the arbitrariness of his detention under Article 5 ECHR.

The Government contested the Applicants' claims under Article 3 ECHR arguing that they had not exhausted the domestic remedies and that the detention was in total compliance with Russian law, therefore not unlawful.

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### **Decision & Reasoning:**

The Court upheld the Applicants' claims confirming that their removal would trigger a violation of Article 3 ECHR and agreed that the Applicant's detention was in breach of Article 5§1 ECHR. Regarding the applications' contested admissibility under Article 3 ECHR, the Court dismissed the Government's claim and held that the plurality of domestic remedies with the same objective does not prescribe their use by the individual. It was further explained that ECtHR regards individuals whose extradition is sought by Uzbekistan on charges of religiously or politically motivated crimes, as members of a particular group facing a real risk of ill-treatment in the event of removal. Given the extradition's context, the Applicants fall into this particular category making their claim substantiated enough.

As per the procedural part of Article 3 ECHR the Court found that the domestic courts had failed to carry out an effective examination of the Applicant's claims by relying on Uzbekistan's diplomatic assurances, which are generally considered inadequate by the ECtHR. After examining relevant material, which endorsed the Applicants' claims, it held that there was no need to examine the complaints under Article 13 ECHR as well.

Regarding the complaint under Article 5§1 ECHR, the Court found that detention did not meet the legal threshold because the relevant data showed that no progress had been achieved in the extradition proceedings, therefore the length of the detention was neither lawful nor proportionate.

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### **Outcome:**

Application granted (violation of Articles 3 and 5 ECHR)

The Court held that Russia was to pay:

1. Four of the Applicants 1,500 EUR in respect of costs and expenses
2. Two of the Applicants 1,500 EUR in respects of costs and expenses to all the representatives jointly
3. The detained Applicant 5,000 EUR in respect of non-pecuniary damage

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### **Observations/Comments:**

The International Commission of Jurists questioned the quality of the assurances given by Central Asian States ? Uzbekistan being one of them ? which have been proved insufficient to protect from

ill-treatment. Moreover, it was attested that Russian courts rarely carry out independent assessment of risks.

The Court cited several similar cases relating to extradition from Russia, including *T.M. v. Russia* no. 31189/15 25 June 2015, *V.N. v. Russia* no. 49973/15 11 October 2015, *F.N. v. Russia*, no. 54813/15, *B.S. v. Russia* (no. 38250/16), *K.R. v. Russia* (no. 40014/16), *S.U. v. Russia*, no. 55625/15.

This summary was completed by Odyssefs Platonas, LLM Student at Queen Mary University.

### **Case Law Cited:**

Mukhitdinov v. Russia (no. 20999/14), 21 May 2015

ECtHR - Kholmurodov v Russia, Application No. 58923/14, 1 March 2016

ECtHR - Jasinskis v Latvia, Application no. 45744/08, 21 December 2010

[ECtHR - Tadzhibayev v. Russia, Application no. 17724/14, 1 December 2015](#) [6]

[ECtHR - Chahal v. The United Kingdom, Application No. 22414/93, 15 November 1996](#) [7]

[ECtHR ? J.K. v. and Others v. Sweden, Application No. 59166/12, 23 August 2016](#) [8]

ECtHR - Mamazonov v. Russia (no. 17239/13), 23 October 2014

[ECtHR- A. and others v. the United Kingdom, Application no. 3455/05, 19 February 2009](#) [9]

Abdulkhakov v. Russia (no. 14743/11)

### **Attachment(s):**



[CASE OF T.M. AND OTHERS v. RUSSIA.pdf](#)[10]

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### **Other sources cited:**

Reports on Uzbekistan by International Non-Governmental Human Rights Organizations.

Amnesty International report [Fast-track to Torture: Abductions and Forcible Returns from Russia to Uzbekistan 21 April 2016](#) [11]

### **Authentic Language:**

English

### **State Party:**

Russia

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### **Links:**

[1] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A27](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A27)

[2] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A202](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A202)

[3] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A43](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A43)

[4] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A201](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A201)

[5] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A198](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A198)

[6] <https://www.asylumlawdatabase.eu/en/content/ecthr-tadzhibayev-v-russia-application-no-1772414-1-december-2015>

[7] <https://www.asylumlawdatabase.eu/en/content/ecthr-chahal-v-united-kingdom-application-no-2241493-15-november-1996>

[8] <https://www.asylumlawdatabase.eu/en/content/ecthr-%E2%80%93jk-v-and-others-v-sweden-application-no-5916612-23-august-2016>

[9] <https://www.asylumlawdatabase.eu/en/content/ecthr-and-others-v-united-kingdom-application-no-345505-19-february-2009>

[10]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20T.M.%20AND%20OTHER>

[11] <https://www.amnesty.org/en/documents/eur62/3740/2016/en/>