

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 17 February 1998 No. 6-II

in the case concerning the review of the constitutionality of Section 2, Article 31 of the Law of the USSR of 24 June 1981 “On the Legal Status of Aliens in the USSR” in connection with complaints of Yahya Dashti Ghafoor.

Moscow, 17 February 1998

The Constitutional Court of the Russian Federation composed of Presiding Judge N. T. Vedernikov, and Judges E. M. Ametistov, M. V. Baglay, Yu. M. Danilov, V. D. Zorkin, V. O. Luchin, V. I. Oleynik, O. S. Khokhryakova,

in the attendance of attorney N. S. Savinova, representative of Yahya Dashti Ghafoor as a party who submitted his complaints to the Constitutional Court of the Russian Federation; and, Representative of the Council of the Federation attorney Yu. M. Timokhov,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 2 and 3 of Article 3, Subsection 3, Section 2 of Article 22, Articles 36, 74, 96, 97, 99 and 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of the provisions of Section 2, Article 31 of the Law of the USSR “On the Legal Status of Aliens in the USSR” of 24 June 1981.

The reason for the consideration of the case is a complaint of Yahya Dashti Ghafoor, a stateless person, about violation of his constitutional right to liberty and security of person by the provisions of Section 2, Article 31 of the Law of the USSR “On the Legal Status of Aliens in the USSR”.

The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicant are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur E. M. Ametistov, statements by the parties’ representatives; interventions by the invited representatives V. V. Kolesnikov of the Ministry of Internal Affairs of the Russian Federation, I. A. Budanov of the Office of the Prosecutor General of the Russian Federation, S. V. Burlik of the Federal Migration Service of Russia,

V. A. Pavlovsky of the Ministry of Foreign Affairs of the Russian Federation; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. On 18 February 1997, Yahya Dashti Ghafoor, a stateless person who resided in the Russian Federation, was detained under an expulsion order issued by the Visa and Registration Department of the Central Internal Affairs Department of Moscow and sanctioned by the Prosecutor of Moscow. He was to be expelled from the Russian Federation under guard. For more than two months he was held in custody at Rehabilitation Centre No. 1 of the Central Internal Affairs Department of Moscow and was expelled to Sweden on 29 April 1997.

The expulsion of Yahya Dashti Ghafoor from the Russian Federation was based on Section 2, Article 31, Law of the USSR "On the Legal Status of Aliens in the USSR", according to which a foreign citizen or a stateless person shall leave the country within a period stipulated in an expulsion decision. A person evading exit in such circumstances may be held in detention and expelled subject to a sanction of a prosecutor; and detention is permitted for a period necessary for the expulsion to be effected.

The complainant does not challenge the constitutionality of the whole of Section 2, Article 31 of the Law, but only the provision which permits to detain foreign citizens and stateless persons subject to a sanction of a prosecutor for a period necessary for expulsion. In his opinion, this provision violates the constitutional right of every person to liberty and security of person and therefore is inconsistent with Article 22 of the Constitution of the Russian Federation. Consequently, only the provision referred to above is the subject of review by the Constitutional Court of the Russian Federation.

Pursuant to Sections 1 and 3, Article 3 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation refrains from establishing and examining the facts in the present case, does not review the legality or validity of the expulsion order issued in respect of the complainant, but considers whether the provisions of Section 2, Article 31 of the Law of the USSR "On the Legal Status of Aliens in the USSR" are in conformity with the Constitution of the Russian Federation.

2. According to Section 1, Article 96 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", citizens, associations of citizens, and other persons listed in the Federal Law may complain to the Constitutional Court of the Russian Federation about violations of their constitutional rights and freedoms by a law applied or to be applied in their case.

This norm taken together with Articles 46, Section 32 of Article 17, Section 3 of Article 62 and Section 4 of Article 125 of the Constitution of the Russian Federation guarantees everyone, including foreigners and stateless persons, the right to protect their rights and freedoms by means of constitutional adjudication if a law violates their rights and freedoms guaranteed by the Constitution of the Russian Federation. Therefore the stateless person Yahya Dashti Ghafoor has a proper standing to submit a complaint to the Constitutional Court of the Russian Federation. As the challenged provision of the Law affects the complainant's constitutional right and it was applied in his case, the complaint satisfies the admissibility criteria of Article 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation".

3. Pursuant to Article 22 of the Constitution of the Russian Federation, everyone shall have the right to liberty and security of person (Section 1); arrest, detention and remand in custody shall be allowed only by a decision of a court, and prior to a court decision a person may be detained for a period of no more than 48 hours (Section 2).

This Article implies that the constitutional requirements for the use of the abovementioned coercive measures also apply to detention effected in order to ensure enforcement of administrative expulsion from the Russian Federation.

4. According to Section 3, Article 62 of the Constitution of the Russian Federation, foreign citizens and stateless persons in the Russian Federation shall enjoy rights and bear responsibilities equal to the rights and responsibilities of citizens of the Russian Federation unless provided otherwise by federal law or an international agreement of the Russian Federation. This Article together with Section 2 of Article 17 and other Articles of the Constitution of the Russian Federation concerning the rights and freedoms of man and citizen implies that the exclusive rights and obligations of the citizen of the Russian Federation are only those which arise and are exercised by virtue of special relations between the State and its citizens. The literal meaning of Articles 22 and 46 of the Constitution of the Russian Federation (especially considering the use of such terms as "everyone" and "a person"), systemic interpretation of these Articles in relation with other provisions of Chapter 2, "Rights and Freedoms of Man and Citizen", of the Constitution of the Russian Federation, as well as generally recognized principles and norms of international law stipulate that the liberty and security of person and access to court are personal inalienable rights of every person irrespectively of citizenship. Consequently, they shall be guaranteed equally to foreign citizens, stateless persons, and citizens of the Russian Federation.

5. The Universal Declaration of Human Rights of 10 December 1948 proclaims that everyone has the right to life, liberty and the security of person (Article 3); no one shall be

subject to arbitrary arrest, detention or exile (Article 9); and everyone has the right to an effective remedy by competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law (Article 8).

Pursuant to Subsection “a”, Section 1, Article 5 of the Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in which They Live, of 13 December 1985, aliens shall enjoy, in accordance with domestic law and subject to the relevant international obligations of the State in which they are present, the right to security of person; no alien shall be subjected to arbitrary arrest or detention.

The International Covenant on Civil and Political Rights of 19 December 1966 also prescribes that everyone has the right to liberty and security of person and no one shall be subjected to arbitrary arrest or detention (Section 1, Article 9). Further, it states that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful (Section 4, Article 9); and that each State Party to the Covenant undertakes to develop the possibilities of judicial remedy (Subsection “b”, Section 3, Article 2).

Thus, the rights of every person to liberty and security of person and access to court in case of detention irrespectively of citizenship belong to the generally recognized principles and norms of international law, which are an integral part of the Russian legal system as stipulated by Section 4, Article 15 of the Constitution of the Russian Federation.

6. Pursuant to Section 2, Article 22 of the Constitution of the Russian Federation, in case of expulsion from the Russian Federation, a foreign citizen or a stateless person, who is present within the territory of the Russian Federation, may be detained for a period necessary for expulsion but for no more than 48 hours in the absence of a court decision. A person may be detained for a period beyond the prescribed time limit only by a court decision and only on condition that otherwise it would be impossible to effect expulsion.

In these cases a court decision does not only guarantee protection against arbitrary prolongation of a detention term for more than 48 hours, but also against unlawful detention as such, since a court in any case shall evaluate the legality and reasonableness of detention.

Article 22 of the Constitution of the Russian Federation together with Sections 2 and 3 of Article 55 imply that detention for an uncertain period is not only an impermissible restriction on the liberty and security of person, but (in its very essence) denial of the right itself. Consequently, the provisions of the Law of the USSR “On the Legal Status of Aliens in the USSR” challenged by the complainant, which permit detention for a period necessary for expulsion, are not to be considered as a ground for detention for an uncertain period of time,

even when expulsion is hindered by the fact that no State is willing to accept a person to be expelled. Otherwise detention as a necessary measure to ensure enforcement of an expulsion decision would turn into a separate kind of punishment not provided for by the legislation of the Russian Federation and not compliant with the mentioned norms of the Constitution of the Russian Federation.

Taking into account the considerations above, the provisions of Section 2, Article 31, Law of the USSR “On the Legal Status of Aliens in the USSR”, in its literal meaning is regarded in law-enforcement practice as a ground for detention of a person for a period over 48 hours without a court decision. These provisions violate every person’s constitutional right to liberty and security of person and access to court and therefore do not conform to Articles 22 and 46 of the Constitution of the Russian Federation.

Concluding from the above and pursuant to Sections 1 and 2, Article 71, Articles 72, 75 and 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize the provisions of Section 2, Article 31 of the Law of the USSR “On the Legal Status of Aliens in the USSR”, under which a foreign citizen or a stateless person in relation to whom a decision on expulsion from the Russian Federation was issued and sanctioned by a prosecutor and who is evading exit may be detained for a period necessary for expulsion, as non-conforming to the Constitution of the Russian Federation, its Articles 22 and 46. These provisions are unconstitutional to the extent that they allow prolongation of a detention period for more than 48 hours without a court decision.

2. The Federal Assembly shall define the procedure of detention of foreign citizens and stateless persons subjected to expulsion from the Russian Federation and evading exit, in accordance with the Constitution of the Russian Federation and taking this Judgment into consideration.

3. Pursuant to Sections 1 and 2. Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, and shall be directly applicable.

4. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be published in the Collection of Laws of the Russian Federation and Rossiyskaya Gazeta. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

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