



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF M.A. AND OTHERS v. BULGARIA

(Application no. 5115/18)

JUDGMENT

Art 2 and Art 3 • Expulsion • Lack of effective guarantees against *refoulement* to China of Muslim Uighurs at risk of arbitrary detention, ill-treatment and death • Domestic authorities' approach offering no guarantees of rigorous assessment of the relevant risks

STRASBOURG

20 February 2020

FINAL

20/06/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of M.A. and Others v. Bulgaria,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Síofra O’Leary, *President*,

Ganna Yudkivska,

Yonko Grozev,

Mārtiņš Mits,

Lətif Hüseynov,

Lado Chanturia,

Anja Seibert-Fohr, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having regard to:

the application against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Chinese nationals, Mr M.A. (“the first applicant”), Mr. A.N. (“the second applicant”), Mr Y.M. (“the third applicant”), Mr S.H. (“the fourth applicant”), and Mr A.A. (“the fifth applicant”) (together “the applicants”), on 26 January 2018;

the decision to give notice to the Bulgarian Government (“the Government”) of the complaints that the applicants would face arbitrary detention or ill-treatment and could be sentenced to death if they were to be returned to China, and to declare inadmissible the remainder of the application;

the decision not to have the applicants’ names disclosed;

the decision on an interim measure under Rule 39 of the Rules of Court, indicating to the respondent Government that the applicants should not be removed to China;

the parties’ observations;

Having deliberated in private on 28 January 2020,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

The case concerns the intended expulsion on national security grounds of five Uighurs to China, where they would allegedly be at risk of death or ill-treatment. The applicants complained, in particular, of a breach of Articles 2 and 3 of the Convention.

THE FACTS

1. The applicants were born in 1983, 1994, 1991, 1994 and 1989 respectively. They were represented by Ms I. Savova, a lawyer practising in Sofia.

2. The Government were represented by their Agent, Ms I. Nedyalkova, from the Ministry of Justice.

3. The applicants are Uighur Muslims from the Xinjiang Uighur Autonomous Region (hereinafter “the XUAR”).

I. THE APPLICANTS’ FLIGHT FROM CHINA AND ARRIVAL IN TURKEY

4. The applicants’ individual accounts, as presented by them before the Bulgarian authorities and the Court, are as follows.

A. The second applicant

5. On numerous occasions the second applicant witnessed violence and harassment on the part of the authorities against ethnic Uighurs in the XUAR.

6. After graduating from school in 2013, the applicant opened a mobile phone repair shop. Soon after that, he was visited by security agents, who told him to start collecting data on his clients for them. He refused because this was unlawful, and the agents told him that they would close his shop and arrest him. Three days later they visited him again and renewed their threats.

7. Fearing for his safety, the applicant decided to flee and left his city. When he contacted his mother by telephone, she told him that charges had been brought against him for disloyalty to the communist party and failure to cooperate with the authorities. The applicant’s mother advised him to leave the country. At some point his mother and sister were arrested.

8. In December 2013 the second applicant arrived in Malaysia. Several months later, with a false Turkish passport, he arrived in Turkey. During his stay there he worked in a mobile phone shop.

B. The third applicant

9. The third applicant’s family was being monitored by the police because in the 1940s his grandfather had fought against the communist authorities in the Chinese Civil War. Additionally, his family members were not authorised to have passports.

10. In 2002, when the applicant was a child, all members of his family were arrested because they had been praying. His father remained in detention for two months and was fined for teaching his children to pray.

11. In July 2009 violent riots involving the Uighurs broke out in the XUAR capital, Urumqi. Sometime later, the applicant discussed those events over the Internet with a friend of his. Several days thereafter, he was arrested for doing so and kept in detention for about two months. He was

tortured, which necessitated treatment in hospital, and repeatedly questioned. Initially, his family was not informed of his arrest. When they found out, they paid a bribe to have him released. After that he was obliged to report every week to the police.

12. In July 2011 the third applicant was arrested for wearing a beard.

13. For some time the applicant helped with the family business, and in 2012 he opened a mobile phone shop.

14. In 2013 the applicant started secretly teaching the Uighur language to children. After this became known to the authorities, they visited his house to arrest him, but did not find him. His parents contacted him and told him to flee.

15. The applicant managed to leave China illegally and, after passing through Vietnam, Cambodia and Thailand, in February 2014 arrived in Malaysia. Several months later, having obtained a false Turkish passport, he arrived in Turkey. The Turkish authorities issued him with a residence permit.

16. In 2015 the applicant contacted his family in the XUAR. His father told him that if he returned he would be sentenced to life imprisonment or to death.

17. In Turkey the applicant worked and married an Uighur woman (who did not arrive in Bulgaria with him). In 2017 he lost his job.

C. The fourth applicant

18. In 2009 the applicant and his wife were arrested because they had had a child soon after getting married, which was contrary to the Chinese family planning policy. The applicant was held in detention for two months and fined. He was arrested and held in detention on two subsequent occasions, when his second and third children were born.

19. Fearing further persecution, the applicant and his wife decided to flee from China. In August 2013 they entered Vietnam, and arrived in Malaysia *via* Cambodia and Thailand.

20. In September 2014 the applicant arrived lawfully in Turkey, and his wife joined him in 2016. Both of them worked for half a year in a textile factory. The applicant's wife did not arrive with him in Bulgaria. In 2016 the applicant was told by a friend that two of his brothers had been arrested after he had left China.

D. The first and fifth applicants

21. The first and fifth applicants also fled alleged persecution by the authorities in the XUAR. They arrived in Turkey on different dates.

II. THE APPLICANTS' ARRIVAL IN BULGARIA

22. According to the applicants, in 2017 the relations between Turkey and China were improving and the Turkish authorities undertook to deport Uighurs residing in the country back to China. The applicants therefore decided to leave Turkey.

23. On 26 July 2017 they crossed the Bulgarian-Turkish border unlawfully and were apprehended by the Bulgarian border police.

24. On 27 July 2017 the head of the local border police office issued five decisions, ordering the applicants' "repatriation to the country of origin, the transit country or a third country" – a measure under section 41(1) of the Aliens Act (see paragraph 45 below). Those decisions were served on the applicants through an interpreter from Turkish. They were amenable to judicial review within fourteen days, but the applicants failed to seek such a review.

25. Charges related to the applicants' unlawful entry into Bulgaria were brought against them, and on 27 July 2017 they reached a settlement with the prosecution authorities. The settlement was approved on the same day by the Elhovo District Court. Under that settlement the applicants acknowledged having committed the offence of unlawfully entering the country and accepted short suspended prison sentences and a fine.

26. The applicants were then placed in a centre for the detention of aliens. It is unclear when their detention ended.

27. On 30 November 2017 the applicants were taken to the Chinese embassy in Sofia to establish their identities, and on 18 January 2018 the embassy issued them with travel documents.

III. ASYLUM PROCEEDINGS

28. On 1 December 2017 the applicants applied for asylum. On 8 December 2017 they were interviewed by an official from the State Refugees Agency who, in five decisions dated 18 December 2017, rejected the asylum applications. The applicants applied for a judicial review.

29. On 26 January 2018 the Haskovo Administrative Court (hereinafter "the Administrative Court") held hearings on the applicants' applications, and on 29 January 2018 delivered judgments upholding the above-mentioned decisions. The applicants were legally represented in those proceedings.

30. After examining the applicants' individual accounts given by them and summarised in paragraphs 5 to 20 above, the Administrative Court found that the applicants had not shown that they had been persecuted in their country of origin, within the meaning of section 8(1) of the Asylum and Refugees Act, or that they were at risk of any such persecution in the future. The applicants had made assumptions on the risk they faced, based

on widely-known facts about the situation in the XUAR, and even though there had certainly been clashes between Uighurs and Han Chinese in the area, the Chinese authorities were justified in taking counter-terrorism measures in response to the violent actions of Uighur separatists. The applicants had not shown that they had been forced to leave or stay out of their country of origin because they faced a real risk of suffering death or ill-treatment as a result of an internal or international conflict, as defined in section 9(1) of the Asylum and Refugees Act. Such a risk had to be specific and real, which was not the case. The applicants had presented a letter by an Uighur organisation, the International Uighur Human Rights and Democracy Foundation, describing the situation in the XUAR, but according to the Administrative Court the information it contained did not prove any individual risk for them.

31. The Administrative Court also pointed out that it had not been shown that any problems the applicants had had with the authorities before leaving China had been due to their ethnicity or religion. They had been allowed to receive education and to lead normal lives. The fourth applicant had had problems because he had disagreed with the Chinese family planning policy and had breached the relevant laws, and the third applicant had also breached the law by teaching the Uighur language. The fourth applicant's problem with the authorities was irrelevant for his asylum application. Lastly, there was no indication that Turkey had intended to repatriate Chinese Uighurs; on the contrary, it was making efforts to protect Turkic minorities in other countries.

32. At their interviews with representatives of the State Refugees Agency the second, third and fourth applicants were assisted by interpreters from Turkish. When, in the ensuing judicial-review proceedings, they complained about the lack of interpretation from Uighur, the Administrative Court pointed out that they had themselves stated that they understood Turkish, that they had lived for some time in Turkey, and that the accounts given by them in the judicial proceedings had not differed from those given before the State Refugees Agency; this disproved the allegations that they had been unable to tell their stories. In the judicial-review proceedings interpreters from Uighur were present. The third applicant objected to the participation of the interpreter appointed in his case, saying that he did not trust him because the interpreter was a Chinese national. The Administrative Court considered however that the applicant had not sufficiently substantiated the reasons for his mistrust. It pointed out that no other interpreter from Uighur could be ensured, whereas the applicant had insisted on the presence of such an interpreter. The fourth applicant, to whom the same interpreter had been assigned, did not object. Another interpreter was appointed in the case of the second applicant.

33. Lastly, the Administrative Court pointed out that the fact that the applicants had been detained during their interviews with a representative of

the State Refugees Agency was irrelevant for its assessment of the lawfulness of the decisions which were being contested, and did not in itself amount to a procedural violation in the context of the asylum proceedings.

IV. EXPULSION PROCEEDINGS

34. In parallel proceedings, in five decisions dated 24 January 2018 the head of the State Agency for National Security ordered the applicants' expulsion on national security grounds. The applicants applied for the judicial review of those decisions. In the ensuing proceedings they were assisted by interpreters to whom they did not object. The State Agency for National Security presented to the competent court – the Supreme Administrative Court – documents summarising the relevant factual grounds.

35. The Government presented the judgments given by the Supreme Administrative Court in the cases of the second, third and fourth applicants on 8, 13 and 14 May 2019. Their applications for judicial review were dismissed.

36. In the three judgments, which contain almost identical reasoning, it was noted that after leaving China the second, third and fourth applicants had stayed in Syria, where they had undergone training “for the organisation of the East Turkistan Islamic Movement (ETIM), considered to be terrorist”. The applicants had been in telephone contact with a “high-placed ETIM member in Afghanistan”, as well as with human traffickers in Turkey and Thailand. The telephone contacts had put the second, third and fourth applicants in touch with “people having direct telephone contacts with members of the terrorist organisation Islamic State”. The second, third and fourth applicants had also been in contact with two Uighurs holding Swedish nationality, who had undertaken to transfer the group to Western Europe. The Swedish nationals had been “connected with Islamic State”, with one of them maintaining an “active close link” with a former Guantanamo prisoner of Uighur origin.

37. The Supreme Administrative Court considered the above facts sufficient for its own assessment, noting that the primary data on which they were based were confidential. It pointed out that in proceedings concerning expulsion on national security grounds, it was permissible to restrict access to such primary data in order to protect classified information.

38. The Supreme Administrative Court concluded that the State Agency for National Security had convincingly shown that the second, third and fourth applicants could pose a threat to Bulgaria's national security. This was so because of their “connections with representatives of terrorist organisations” and the training they had received in Syria. Although it had not been established that they had undertaken any specific activity against Bulgaria, their illegal entry into the country as a part of an organised group

was a sufficient indication in that regard. The “complicated immigration situation” in the country and the “escalation of the refugee and migration crisis in the whole of Europe” leading to a “higher risk of terrorist attack” were also to be taken into account.

39. Lastly, the Supreme Administrative Court referred to the claims of the second, third and fourth applicants about the risks they would face if returned to China. It pointed out that the applicants had not put forward any arguments in that regard. In any event, the question whether or not they would be removed to China or another country concerned the implementation, not the lawfulness, of the measures against them. As concerns the fourth applicant, the Supreme Administrative Court instructed the head of the State Agency for National Security to issue an expulsion order indicating “the State to which the alien should not be expelled”.

40. The Government submitted in addition a letter from the State Agency for National Security dated 17 May 2018, stating that it had “acquired data” showing that the second, third and fourth applicants were members of the East Turkestan Islamic Movement – “a terrorist, separatist organisation founded by radical Uighur Muslims in Western China”.

V. INTERNATIONAL ACTION IN DEFENCE OF THE APPLICANTS

41. In December 2017 two Uighur organisations – the World Uighur Congress based in Munich, Germany, and the International Uighur Human Rights and Democracy Foundation, based in Washington DC, sent letters to the State Refugees Agency, supporting the applicants’ asylum applications. They pointed out that the applicants had a “well-founded fear of being persecuted” in China, and that they had fled Turkey in fear for their security there.

42. On 22 December 2017 Amnesty International sent a letter to the Bulgarian Minister of the Interior, urging him to ensure that the applicants would not be forcibly returned to China. The organisation pointed out that, if returned, the applicants “would be at real risk of serious human rights violations”. It stated that it had documented numerous cases of Uighur asylum-seekers whose applications had been rejected and who had been forcibly returned to China, where they had been “detained, reportedly tortured and in some cases sentenced to death and executed”. Some of those cases were described in the letter.

43. On 16 January 2018 several members of the European Parliament urged the Bulgarian authorities not to deport the applicants to China. They pointed out that, if returned, the applicants would risk arbitrary detention, enforced disappearance or torture.

RELEVANT LEGAL AND FACTUAL FRAMEWORK

I. RELEVANT DOMESTIC LAW AND PRACTICE

44. The relevant domestic law on asylum and humanitarian protection has been summarised in *Auad v. Bulgaria* (no. 46390/10, §§ 27-31, 11 October 2011), and the domestic law and practice concerning expulsion on national security grounds under the Aliens Act 1998 has been summarised in *Auad* (cited above, §§ 32-40) and *M.M. v. Bulgaria* (no. 75832/13, §§ 24-28, 8 June 2017).

45. In addition, the Aliens Act provides for repatriation “to the country of origin, the transit country or a third country” (until 2016 the measure was defined as “escorting of an alien to the border of the Republic of Bulgaria”) in cases, in particular, where an alien has entered the country unlawfully (section 41(1) of the Act).

II. RELEVANT COUNTRY INFORMATION

A. Information provided by the Bulgarian Ministry of Foreign Affairs

46. In an information note drawn up for the purposes of the present proceedings, the Bulgarian Ministry of Foreign Affairs provided the following background information on the XUAR:

“Currently about 22 million people are living in the Xinjiang Uighur Autonomous Region, out of which approximately 9 million are Uighurs, mostly Sunni Muslims. ...

After 2009 and especially after the Arab Spring movement and the rise of ISIS in Syria and Iraq, parts of the population radicalised and the number of terrorist attacks carried out by Uighurs on Chinese territory increased. This led to the reinforcement of the measures already in force, and the introduction of many new security measures in the region, such as the collecting and safekeeping of Chinese Uighurs’ passports to limit their travelling abroad, the introduction of restrictions on the celebration of Muslim holidays, the total ban on the access to foreign Muslim literature, the ban on the Islamic veil and on long beards, etc. All these measures, in addition to the low levels of education of the Uighur population and its specific ways of life, aggravated further its isolation and its self-radicalisation, as well as [its] separatist inclination.

In this region was born and is currently influential the terrorist organisation East Turkestan Islamic Movement, whose aims are the secession of the region from China and the creation of a theocratic State. In 2013 the Chinese Government declared the [East Turkestan Islamic Movement] a terrorist organisation.

The Chinese authorities consider the radicalisation of the Uighurs among the gravest national security challenges, and take active steps for the repatriation of all Chinese Uighurs who have unlawfully left the country.”

B. United Kingdom Government Report

47. The United Kingdom Home Office Country Policy and Information Note on “China: Opposition to the state”, issued in November 2018, says the following on the situation in the XUAR:

“2.4.29 In May 2014, China launched its ‘Strike Hard Campaign against Violent Terrorism’ in the Xinjiang region. This campaign targets anyone who the State believe challenges state security, ethnic unity and social stability.

2.4.30 Uighurs and other Muslim minority groups who support, or are perceived to support, independence or promote extremism are reportedly arrested, detained, tortured and, in some cases, executed. Since April 2017 the authorities have detained thousands of Uighurs and other Muslims and forced them to undergo ‘patriotic education’ in re-education camps where they are also at risk of torture and other ill-treatment. Initially this was for short periods, but now it appears people are being detained for an open-ended period. There is no data available on how many people are in long term detention, but estimates range from tens of thousands to more than a million. ...

2.4.31 Authorities view a wide range of behaviours in the region as being linked to ‘extremist’ activity and it appears this can include non-threatening expressions of Uighur identity, including religion, culture and language. There are reports that authorities also tend to be highly suspicious of Uighurs and other Muslim ethnic minorities in Xinjiang who have family overseas or who have travelled overseas. ...

2.4.32 Persons who [support], or are perceived to, support independence for XUAR and have come to the attention or are likely to come to the attention of the authorities, or a Uighur or other Muslim from XUAR who can show that he or she will on return be likely to be forced into internment in a ‘re-education camp’ are likely to be at risk of persecution and/or serious harm.”

C. United States Government Reports

48. The United States Department of State 2018 Country Report on Human Rights Practices in China, published in March 2019, says in respect of the XUAR:

“The government ‘sinicization’ campaign resulted in ethnically based restrictions on movement, including curtailed ability of ethnic Uighurs to travel freely or obtain travel documents; greater surveillance and presence of armed police in Xinjiang; and legislative restrictions on cultural and religious practices. ...

In 2017 the Xinjiang government also implemented new ‘Deradicalization Regulations,’ codifying efforts to ‘contain and eradicate extremism,’ according to *Xinhua*. The broad definition of extremism resulted in the reported detention since 2017 of 800,000 to possibly more than two million Uighurs, ethnic Kazakhs, and other Muslims in ‘transformation through education’ centers, or internment camps, designed to instill patriotism and erase their religious and ethnic identities. This included many of those ordered to return to China from studying or working abroad. International media reported security officials in the centers abused, tortured, and killed some detainees. ...

Outside of the internment camps, the government implemented severe restrictions on expressions of minorities' culture, language, and religious identity, including regulations prohibiting behaviors the government considered signs of 'extremism' such as growing 'abnormal' beards, wearing of veils in public places, and suddenly stopping smoking and drinking alcohol, among other behaviors. The regulations banned the use of some Islamic names when naming children and set punishments for the teaching of religion to children. Authorities conducted 'household surveys' and 'home stays' in which officials or volunteers forcibly lived in Uighurs' homes and monitored families for signs of 'extremism'. ...

Uighurs and other religious minorities continued to be sentenced to long prison terms and in some cases executed without due process on charges of separatism and endangering state security. The government constructed new prisons in Xinjiang to alleviate the overcapacity of existing facilities, according to credible sources. ...

The government pressured foreign countries to repatriate or deny visas to Uighurs who had left the country, and repatriated Uighurs faced the risk of imprisonment and mistreatment upon return. Some Uighurs who were forcibly repatriated disappeared after arriving in China. Family members of Uighurs studying overseas were also pressured to convince students to return to China, and returning students were detained or forced to attend re-education camps, according to overseas media."

49. The Department of State 2017 Country Reports on Terrorism, issued in September 2018, describe the situation in the XUAR as follows:

"Referring to 'terrorism, separatism, and extremism' as 'three evil forces' that threaten domestic stability, China continued enhancing domestic counterterrorism efforts and called for greater regional cooperation to combat terrorism. During March-April [2018], China initiated a major security campaign in the Xinjiang Uighur Autonomous Region (XUAR) that targeted Uighur and other Muslim ethnic groups and was reportedly aimed at rooting out what officials describe as 'separatist, extremist, and terrorist activity.' The campaign included detentions widely reported to number in the thousands, along with intensified use of traditional policing measures, the deployment of high-tech surveillance and monitoring systems, the involuntary collection of DNA and other biometric data, and the closure of mosques.

China's primary counterterrorism focus remained on ethnic Uighur extremists Beijing ascribes to the East Turkistan Islamic Movement (ETIM). China maintains that ETIM is responsible for much of the violence in the XUAR, despite a lack of independent information that ETIM is active in China. China's response to the threat of terrorism remained difficult to distinguish from its suppression of activities its leadership deems separatist in nature or politically subversive to the Chinese Community Party. In response to alleged separatist or subversive concerns, China intensified its security and surveillance in the XUAR, including the implementation of stricter security controls, restrictions on travel, and curbs on religious practice. ...

Beyond China's borders, China pursued security and counterterrorism cooperation with countries that drew a similarly broad definition of 'extremism' and raised human rights concerns. For example, Egyptian authorities arrested and deported at least 34 Chinese-nationality Uighurs in July, reportedly following a Chinese government order that Uighur students in Egypt return to China. Those Uighurs who returned were reportedly sent to re-education camps, where at least two have died."

50. The Department of State 2018 Country Reports on Terrorism, issued in October 2018, state in addition the following:

“In a notable shift from previous years, China announced that no violent terrorist incidents occurred in the XUAR in 2018 owing to ‘new counter-extremism policies,’ – thus publicly justifying Beijing’s repressive campaign in Xinjiang. ...

In October, the XUAR regional government amended existing regulations to state that authorities can use “vocational skills training centers” to “de-radicalize” people suspected of extremism. Satellite imagery analysis, eyewitness accounts, and human rights groups document the use of razor wire, guard towers, and single points of egress consistent with imprisonment. Previous rules made no reference to vocational centers and the change retroactively provided legal cover for the mass detention of Uyghurs and other minorities in the XUAR that began in 2017. ... International media reports also began to emerge regarding the mass transfer of Uyghurs to China’s interior due to overcrowding at the camps, and described draconian detention conditions in the facilities including torture and deaths.”

D. International Non-Governmental Organisations’ Reports

51. In its World Report 2018, Human Rights Watch also commented on the situation in the XUAR:

“Authorities increasingly restricted and punished Uyghurs’ foreign ties. Since October 2016, authorities have arbitrarily recalled passports from residents of Xinjiang. Since about April, 2017 authorities have arbitrarily detained thousands of Uyghurs and other Muslims in centers where they were forced to undergo ‘patriotic’ education.

Authorities also ordered Uyghur students studying abroad, including in Egypt, to return to Xinjiang; and in July, Egyptian authorities rounded up those who had failed to return, possibly at China’s behest. By September, about 20 Uyghurs were forcibly repatriated to Xinjiang while 12 were released. Some of those who returned were detained; a Xinjiang court sentenced Islamic scholar Hebibulla Tohti to 10 years in prison after he returned with a doctorate degree from Egypt’s Al-Azhar University.”

52. In its World Report 2019, the organisation made the following additional comments:

“With unprecedented levels of control over religious practices, authorities have effectively outlawed the practice of Islam in the region. ...

The government has barred Turkic Muslims from contacting people abroad, and has pressured some Uyghurs and ethnic Kazakhs living outside the country to return to China, while requiring others to provide detailed personal information about their lives abroad.”

53. A Human Rights Watch report on the situation in the XUAR, published in September 2018 and entitled “Eradicating ideological viruses: China’s campaign of repression against Xinjiang’s Muslims”, stated the following:

“Authorities have sought to justify harsh treatment in the name of maintaining stability and security in Xinjiang, and to ‘strike at’ those deemed terrorists and extremists in a ‘precise’ and ‘in-depth’ manner. Xinjiang officials claim the root of these problems is the ‘problematic ideas’ of Turkic Muslims. These ideas include what authorities describe as extreme religious dogmas, but also any non-Han Chinese

sense of identity, be it Islamic, Turkic, Uyghur, or Kazakh. Authorities insist that such beliefs and affinities must be ‘corrected’ or ‘eradicated’.

The Xinjiang authorities have made foreign ties a punishable offense, targeting people with connections to an official list of ‘26 sensitive countries’, including Kazakhstan, Turkey, Malaysia, and Indonesia. People who have been to these countries, have families, or otherwise communicate with people there, have been interrogated, detained, and even tried and imprisoned. ...

The Chinese government’s restrictions on the practice of Islam in Xinjiang are among the strictest and most comprehensive in the world. ... The Chinese government has sought to justify many repressive measures as being necessary to eliminate what it considers to be terrorism and extremism in the region. ...

The Chinese government continues to lobby foreign governments and inter-governmental agencies to label East Turkistan Islamic Movement (ETIM) and other Uyghur organizations and individuals, including those that peacefully advocate Uyghur independence, as terrorists, and sought foreign cooperation in what it says to be counterterrorism efforts in Xinjiang. In April 2018, for example, it sought but failed to block the accreditation of Dolkun Isa, a Uyghur rights activist, for a UN forum claiming he is a ‘terrorist’.

There have been a number of reported violent incidents in Xinjiang – notably the Urumqi market bombing in 2014 – and violence attributed to Uyghurs in Beijing in 2013 and Kunming in 2014. Most reports about these and other violent incidents generally describe the events as premeditated attacks, often as terrorism. The Chinese government has blamed some of them on foreign groups including ETIM, though the groups’ existence, strength, and threat level has been debated. ...

Under the Strike Hard Campaign, Chinese authorities have stepped up the use of arbitrary detention. Individuals taken into custody by the police are first interrogated, then either transferred to detention centers or taken directly to political education camps. In detention centers, they are held before being tried; those not convicted and sentenced to prison terms are sent to political education camps or released.

Detainees described torture and ill-treatment in detention centers that included beatings, being hung from ceilings and walls, and prolonged shackling. ...”

54. According to Amnesty International’s Annual Report 2017-18:

“In May, there were media reports that the Chinese authorities in the XUAR had initiated a policy to compel all Uighurs studying abroad to return to China. Six Uighurs who had studied in Turkey but had returned to the XUAR were given prison sentences ranging from 5 to 12 years on undefined charges. In April, Chinese authorities detained relatives of several students in Egypt to coerce them to return home by May. Reports were received that some who returned were tortured and imprisoned. In July, the Egyptian authorities began a massive round-up of hundreds of Chinese nationals in Egypt, mainly Uighurs. Of these, at least 22 Uighurs were forcibly returned to China.

Buzainafu Abudourexiti, a Uighur woman who returned to China in 2015 after studying for two years in Egypt, was detained in March and sentenced in June to seven years’ imprisonment after a secret trial.”

III. RELEVANT DEVELOPMENTS AT THE UNITED NATIONS ORGANISATION

55. In its Concluding observations on China's combined fourteenth to seventeenth periodic reports, issued in August 2018 (CERD/C/CHN/CO/14-17), the United Nations Committee on the Elimination of Racial Discrimination ("the CERD") expressed its concern as follows:

"Numerous reports of detention of large numbers of ethnic Uighurs and other Muslim minorities held incommunicado and often for long periods, without being charged or tried, under the pretext of countering terrorism and religious extremism. The Committee regrets that there is no official data on how many people are in long-term detention or who have been forced to spend varying periods in political 're-education camps' for even non-threatening expressions of Muslim ethno-religious culture like daily greetings. Estimates about them range from tens of thousands to upwards of a million. ...

Reports that many Uighurs abroad who left China have allegedly been returned to the country against their will. There are fears about the current safety of those involuntarily returned to China."

56. The CERD thus recommended that the State party:

"Halt the practice of detaining individuals who have not been lawfully charged, tried and convicted for a criminal offence in any extra-legal detention facilities;

Immediately release individuals currently detained under these circumstances, and allow those wrongfully held to seek redress; ...

Disclose the current location and status of Uighur students, refugees and asylum seekers who returned to China pursuant to a demand by the State party over the past five years."

THE LAW

I. WITHDRAWAL OF THE COMPLAINTS BY SOME OF THE APPLICANTS

57. In a letter dated 20 March 2019 the applicants' representative informed the Court that the first and fifth applicants had left Bulgaria and had abandoned the procedure before the Court.

58. In these circumstances, noting that the first and fifth applicants no longer intend to pursue their application, the Court considers, in accordance with Article 37 § 1 (a) of the Convention, that it is no longer justified to continue the examination of the application in so far as those two applicants are concerned. Accordingly, that part of the application is to be struck out of the list.

59. Accordingly, when it indicates hereinafter "the applicants", the Court will be referring to the second, third and fourth applicants.

II. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

60. The applicants complained that, if returned to China, they would face persecution, ill-treatment and arbitrary detention and could even be executed. They relied on Articles 2 and 3 of the Convention.

61. Those Convention provisions read as follows:

Article 2

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

62. The Government argued that the applicants had failed to exhaust available domestic remedies, because they had not applied for a judicial review of the decisions of 27 July 2017 ordering their repatriation. In such proceedings the applicants could have additionally sought a stay of the enforcement of the decisions at issue. In response, the applicants pointed out that the decisions had not been interpreted to them in a language they understood, and that, being placed in detention, they had not had any effective access to a lawyer. They considered in addition that in the proceedings indicated by the Government, the national courts would not have examined their arguments about the risk of persecution in China.

63. The Court does not find it necessary to determine whether the applicants were capable of lodging applications for judicial review of the decisions at issue immediately after having arrived in Bulgaria and while in detention, and whether the remedy could have been effective. What it finds important is that subsequently the State Agency for National Security ordered the applicants’ expulsion, and that the expulsion decisions, which were subject to judicial review following applications from the applicants, have entered into force (see paragraphs 34-39 above). Since the repatriation and the expulsion decisions seem to represent equally valid grounds for the

applicants' removal from Bulgaria, whether or not the applicants could challenge and have the former of these quashed appears irrelevant; as noted, the latter – the expulsion decisions – are in force, and it would appear that only the Court's decision to impose an interim measure under Rule 39 of the Rules of Court currently prevents the applicants' removal. Accordingly, given that whether or not the applicants could have resorted to the remedy indicated by the Government is irrelevant for their situation in Bulgaria, the Court dismisses the objection of non-exhaustion of domestic remedies.

64. The Court notes furthermore that the complaints under examination are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Arguments of the parties

65. The parties' observations were submitted before the Supreme Administrative Court upheld the expulsion decisions against the applicants in May 2019. The parties have not commented on those judgments.

66. The Government, while acknowledging that the general situation in the XUAR could give rise to "concern" about breaches of the Uighur population's human rights, argued that that situation "did not seem to amount to systemic exposure of Uighurs to a practice of ill-treatment". The applicants' personal stories did not demonstrate a real risk of ill-treatment; they were not facing a particularly high risk because of any membership of a political group or a party, or for being human rights activists, intellectuals or religious leaders. Moreover, the applicants' stories were not corroborated by any specific evidence. The Government argued additionally that "at least to some extent" the Chinese authorities' current campaign in the XUAR was aimed at fighting extremism and terrorism. Lastly, on the question whether the applicants' removal to China or to a third country was being envisaged, the Government pointed out that "different options" were still open.

67. The applicants considered it clear that in the XUAR the Chinese authorities were committing "flagrant violations of basic human rights", targeting a category of citizens much broader than the categories enumerated by the Government, namely political and human rights activists, intellectuals or religious leaders. The applicants reiterated their argument that, if removed to China, they would face ill-treatment and possible death. They pointed out that they were unable to present any evidence of the persecution they had suffered before fleeing China because, the measures against them being unlawful, no documents existed. Lastly, the applicants pointed out that the Bulgarian authorities had discussed only the possibility of removing them to China and had not mentioned any third country.

2. *The Court's assessment*

68. As in earlier similar cases, the Court finds that the issues raised by the applicants under Articles 2 and 3 of the Convention are indissociable (see *F.G. v. Sweden* [GC], no. 43611/11, § 110, 23 March 2016, and *L.M. and Others v. Russia*, nos. 40081/14 and 2 others, § 108, 15 October 2015). It will therefore examine them together.

69. The general principles under Article 3 of the Convention concerning removal of aliens, including the assessment of the existence of a real risk and the distribution of the burden of proof, have been summarised in *J.K. and Others v. Sweden* [GC], no. 59166/12, §§ 77-105, 23 August 2016). They also apply with regard to Article 2 of the Convention (see *L.M. and Others*, cited above, § 108). In § 86 of *J.K. and Others* the Court noted in particular the following (citations omitted):

“The assessment of the existence of a real risk must necessarily be a rigorous one ... The assessment must focus on the foreseeable consequences of the applicant's removal to the country of destination, in the light of the general situation there and of his or her personal circumstances. In this connection, and where it is relevant to do so, the Court will have regard to whether there is a general situation of violence existing in the country of destination.

It is for the Court to consider in an expulsion case whether, in all the circumstances of the case before it, substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of being subjected to treatment contrary to Article 3 of the Convention. If the existence of such a risk is established, the applicant's removal would necessarily breach Article 3, regardless of whether the risk emanates from a general situation of violence, a personal characteristic of the applicant, or a combination of the two. However, it is clear that not every situation of general violence will give rise to such a risk. On the contrary, the Court has made it clear that a general situation of violence would only be of sufficient intensity to create such a risk ‘in the most extreme cases’ where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return.”

70. The Court must point out at the outset that it is acutely conscious of the difficulties faced by States in protecting their populations from terrorist violence, which constitutes, in itself, a grave threat to human rights (see, among other authorities, *Lawless v. Ireland* (no. 3), 1 July 1961, §§ 28-30, Series A no. 3; *Öcalan v. Turkey* [GC], no. 46221/99, § 179, ECHR 2005-IV; and *Auad*, cited above, § 95). Faced with such a threat, the Court considers it legitimate for Contracting States to take a firm stand against those who contribute to terrorist acts, which it cannot condone in any circumstances (see *Daoudi v. France*, no. 19576/08, § 65, 3 December 2009, and *O.D. v. Bulgaria*, no. 34016/18, § 45, 10 October 2019). However, even where, as in this case, a person is alleged to have connections with terrorist organisations, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see *A.M. v. France*, no. 12148/18, § 112, 29 April 2019). Thus, whenever substantial grounds have been shown for believing that an individual would

face a real risk of being subjected to treatment contrary to Article 3 if removed to another State, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion or extradition (see *Ismoilov and Others v. Russia*, no. 2947/06, § 126, 24 April 2008).

71. The above means also that any considerations in the present case having to do with the question whether the applicants presented a risk to the national security of Bulgaria – as alleged by the State Agency for National Security and accepted by the Supreme Administrative Court (see paragraphs 34-38 above) – are irrelevant for the Court's examination (see *Auad*, § 101, and *O.D.*, § 47, both cited above). The salient issue is whether substantial grounds have been shown for believing that there is a real risk that the applicants will face ill-treatment or death if the decisions for their repatriation or expulsion are implemented and they are removed to China.

72. The applicants' allegations about the risk they would face were examined at the domestic level in the proceedings under the Asylum and Refugees Act. The domestic authorities – the State Refugees Agency and the Administrative Court – found that no such risk had been proven: the applicants had not shown that they had had to leave China due to persecution based on their ethnicity or religion; they had received education and had led normal lives but had breached the law; the Chinese authorities were taking anti-terrorist action in response to violence by Uighur separatists (see paragraphs 30-31 above). However, in the subsequent proceedings which were directly relevant for the applicants' *refoulement* the Supreme Administrative Court failed to examine their allegations that they faced a risk of ill-treatment in case of expulsion (see paragraph 39 above). In these circumstances, the Court is called upon to assess the situation in the receiving country and the risk faced by the applicants in the light of the requirements of Articles 2 and 3, taking into account all the material placed before it, including material obtained *proprio motu* (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, §§ 115-16, ECHR 2012).

73. The relevant information on the current situation in the XUAR cited in paragraphs 47-54 shows that the Chinese authorities have proceeded with the detention of hundreds of thousands or even millions of Uighurs in "re-education camps", where instances of ill-treatment and torture of the detainees have been reported. According to the United States Department of State, some detainees have even been killed by security officials (see paragraph 48 above).

74. The sources cited above indicate that the governmental repression against Uighurs is being justified with the need to combat terrorism and extremism, and that suspicions of separatism or endangering State security can lead to long prison terms or the death penalty without due process (see paragraphs 48 and 53 above). It is significant in that regard that, according to the Bulgarian authorities, prior to arriving in Bulgaria, the applicants had

undergone training for the East Turkistan Islamic Movement – which, according to the same authorities, is a separatist organisation active in Western China, and which is considered by the Chinese Government to be a terrorist organisation (see paragraphs 36, 40 and 46 above).

75. It is in addition reported that many Uighurs who have returned to China after having left it, or who were forcibly repatriated, have been detained in “re-education camps”, or otherwise faced the risk of imprisonment and mistreatment. The United Kingdom Home Office considered that Uighurs from the XUAR who could show that upon their return to China they would be forced into such a camp were “likely to be at risk of persecution and/or serious harm” (see paragraph 47 above). Furthermore, Human Rights Watch cited the example of an Islamic scholar who had been sentenced to ten-years’ imprisonment upon his return to the XUAR (see paragraph 51 above), and Amnesty International reported on a similar case of an Uighur woman imprisoned after a secret trial (see paragraph 54 above). In its December 2017 letter to the Bulgarian authorities, the latter organisation also stated that many Uighurs who had been forcibly returned to the XUAR had been “detained, reportedly tortured and in some cases sentenced to death and executed” (see paragraph 42 above). Amnesty International also reported on the case of six Uighurs who, having returned from Turkey, had been imprisoned on undefined charges (see paragraph 54 above). There were also reports of people who had returned to the XUAR and had disappeared (see paragraph 48 above), or had died after being placed in “re-education camps” (see paragraph 49 above).

76. In August 2018 the CERD, a United Nations body, also expressed concern as to the fate of Uighur students, refugees and asylum-seekers involuntarily returned to China, and urged the Chinese government to disclose those people’s location and status (see paragraphs 55-56 above).

77. In view of the above, in light of the information about the general situation in the XUAR and the applicants’ individual circumstances (namely their being suspected of terrorism and having fled China), the Court finds substantial grounds for believing that the applicants would be at real risk of arbitrary detention and imprisonment, as well as ill-treatment and even death, if they were removed to their country of origin.

78. The Court must thus examine whether any effective guarantees exist that protect the applicants against arbitrary *refoulement* by the Bulgarian authorities to China, be it direct or indirect (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 286, ECHR 2011). The domestic authorities have not specified whether they envisaged the applicants’ removal to their home country or to a third country, and according to the Government “different options” were open (see paragraph 66 above). The applicants, for their part, contended that the only possible destination country which had been discussed was China (see paragraph 67 above).

79. No destination country was indicated in the initial decisions for the applicants' repatriation, which merely repeated the formula under the Aliens Act – "the country of origin, the transit country or a third country" (see paragraph 24 above).

80. Nor did the expulsion decisions against the applicants indicate a destination country (see paragraph 34 above). The Supreme Administrative Court considered that the determination of such a country and the assessment of any risk the applicants would face if returned to China, as per section 44a of the Aliens Act (for a description of that provision and the relevant domestic practice under it, see *Auad*, cited above, § 38), fell to be carried out in the process of implementation of the expulsion decisions (see paragraph 39 above).

81. In *Auad* (cited above, § 106) the Court criticised such an approach, finding that it offered no guarantees that the Bulgarian authorities would examine with the necessary rigour the question of the risk the applicant would face if returned to the country he had fled (Lebanon). The Court pointed out additionally that the Government had not explained exactly how the immigration authorities would apply section 44a of the Aliens Act when implementing expulsion decisions. It was thus unclear by reference to what standards and on the basis of what information the authorities would make a determination, if any, of the relevant risk. Lastly, the Court observed that there was no indication as to whether, if the authorities chose to send the applicant to a third country, they would properly examine whether he would in turn be sent from there to Lebanon without due consideration for the risk of ill-treatment.

82. The Court finds the above considerations on the implementation of the expulsion decisions equally valid in the case at hand, and notes that the Government have not provided any information that could lead it to a different conclusion.

83. There appear thus to be no effective guarantees, in the process of implementation of the repatriation or the expulsion decisions against the applicants, that they would not be removed to China. The Court has already found above that the applicants could not return safely to their country of origin, where there were substantial grounds to believe that they would be subjected to arbitrary detention and ill-treatment, and even risk death.

84. Accordingly, the Court concludes that, if implemented, the applicants' removal to China, on the basis of the repatriation or the expulsion decisions against them issued by the Bulgarian authorities, would be in breach of Articles 2 and 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

85. The applicants complained under Article 13, taken in conjunction with Articles 2 and 3 of the Convention, that the proceedings under the

Asylum and Refugees Act had not represented an effective domestic remedy for their grievances.

86. However, having regard to the facts of the case, the submissions of the parties and its findings under Articles 2 and 3 of the Convention, the Court considers that it has examined the main legal questions raised in the present application and that there is no need to give a separate ruling on the remaining complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

IV. RULE 39 OF THE RULES OF COURT

87. The Court reiterates that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if referral of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

88. The indication made to the Government under Rule 39 of the Rules of Court should remain in force until the present judgment becomes final or until the Court takes a further decision in this connection (see operative part).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

90. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the application out of its list of cases in so far as the first and fifth applicants are concerned;
2. *Declares* the complaints under Articles 2 and 3 of the Convention, in so far as the second, third and fourth applicants are concerned, admissible;
3. *Holds* that, should the second, third and fourth applicants be removed to China, there would be a violation of Articles 2 and 3 of the Convention;

4. *Holds* that it is not necessary to examine the admissibility and merits of the complaint under Article 13 of the Convention;
5. *Decides* to indicate to the Government under Rule 39 of the Rules of Court, in the interests of the proper conduct of the proceedings, not to remove the applicants until such time as the present judgment becomes final or until further notice.

Done in English, and notified in writing on 20 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Síofra O’Leary
President