



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

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**CHAMBER JUDGMENT
NOLAN AND K. v. RUSSIA**

The European Court of Human Rights has today notified in writing its Chamber judgment^[1] in the case of ***Nolan and K. v. Russia*** (application no. [2512/04](#)) concerning the applicant's expulsion from Russia.

The Court held:

- by six votes to one, that the Russian Government **failed to comply with Article 38 § 1 (a)** (obligation to furnish necessary facilities for the examination of the case) of the European Convention on Human Rights;
- unanimously, that there had been a **violation of Article 5 §§ 1 and 5** (right to liberty and security) of the Convention;
- unanimously, that there had been a **violation of Article 8** (right to respect for private and family life) in respect of Mr Nolan and his son;
- unanimously, that there had been a **violation of Article 9** (freedom of thought, conscience and religion); and,
- by six votes to one, that there had been a **violation of Article 1 of Protocol No. 7** to the Convention (procedural safeguards relating to expulsion of aliens).

Under Article 41 (just satisfaction), the Court awarded Mr Nolan 7,000 euros (EUR) in respect of non-pecuniary damage and EUR 810 for costs and expenses. ([The judgment is available only in English.](#))

1. Principal facts

The applicants, Patrick Francis Nolan, and his son, K., are citizens of the United States of America who were born in 1967 and 2001 respectively and live in Tbilisi (Georgia). Mr Nolan is the sole custodial parent of K. He is a member of and missionary for the Unification Church, a spiritual movement founded by Mr Sun Myung Moon in 1954.

In 1994 the Unification Church invited Mr Nolan to assist in its activities in Russia. He was granted leave to stay by the Ministry of Foreign Affairs of the Russian Federation, renewable on a yearly basis. He was based in Rostov-on-Don (Southern Russia) where he worked with local branches of the Family Federation for World Peace and Unification (FFWPU).

In January 2000 the Concept of National Security of the Russian Federation was amended by the acting President of the Russian Federation, to read: "Ensuring the national security of the Russian Federation also includes opposing the negative influence of foreign religious organisations and missionaries...".

In August 2001 the Rostov FFWPU was dissolved by the District Court on the ground that, for more than three consecutive years, it had failed to notify the registration authorities of the continuation of its activities.

In October 2001 Mr Nolan was summoned by the Rostov police who demanded his passport and stamped it to the effect that his residence registration was “terminated”.

The applicant subsequently obtained registration with the police through other FFWPU branches, first in Novorossiysk and then in Krasnodar. His residence registration in Krasnodar was valid until 19 June 2002.

On 19 May 2002 Mr Nolan travelled to Cyprus. His son stayed in Russia with his nanny. On his way back, on arrival at Moscow airport on the night of 2 June 2002, passport control directed Mr Nolan to the airport transit hall. Asked to wait, he was locked in a small room with no phone, ventilation or windows. Informed that his visa had been cancelled, he was told to lie down and sleep until the morning.

On the morning of 3 June 2002, after knocking and shouting for 20 minutes, the applicant was allowed to leave under guard and use the toilet. He was told that he would not be allowed to cross the Russian border, without further explanation.

Mr Nolan bought a ticket to Tallinn (Estonia) and was accompanied by a border guard until he boarded his flight. His passport was returned to him, but not his visa.

In June 2002 Mr Nolan sent letters to several official bodies, asking why he had been denied entry and detained. He also complained that he had been detained for over nine hours, and that as a result his 11-month-old son had been left behind in Russia without his parents. He requested assistance to be reunited with him. Many of his complaints did not receive a response.

In July 2002, although in possession of a new valid multiple-entry visa, he was denied entry when trying to cross the Finnish-Russian border.

In August 2002 Mr Nolan challenged the decision refusing his return to Russia and in March 2003 Moscow Regional Court dismissed his complaint. The judgment, relying on a report of 18 February 2002 by Russian Federal Security Service (FSB) experts, stated that “the [applicant’s] activities in our country are of a destructive nature and pose a threat to the security of the Russian Federation.” As to Mr Nolan’s overnight detention, the Regional Court ruled that the applicant had not been deprived of his liberty. It further noted that the Russian authorities had not prevented the applicant from reuniting with his son in any country other than Russia.

The Supreme Court of the Russian Federation also subsequently dismissed Mr Nolan’s appeal, basing their decision on the administrative competence of the FSB and the Border Control in the field of national security and border control.

On 12 April 2003 the applicant was reunited with his son; his nanny, a Ukrainian national, having brought him to Ukraine.

Despite repeated requests by the European Court, the Russian Government has failed to provide a copy of the FSB report of 18 February 2002 in order to clarify why the applicant was expelled from Russia.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 December 2003 and declared partly admissible on 30 November 2006.

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

Christos **Rozakis** (Greece), **President**,
Nina **Vajić** (Croatia),
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),

Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

3. Summary of the judgment²

Complaints

Relying in particular on Articles 5, 8 and 38 § 1 (a) and Article 1 of Protocol No. 7, Mr Nolan complained that, on the basis of a report which the Russian authorities have never produced, he was detained overnight at Moscow airport, expelled from Russia even though he had a valid visa and separated from his infant son for ten months. Mr Nolan further complains that he was prevented from re-entering Russia in order to punish him for manifesting and spreading his religion, in breach of Articles 9 (freedom of thought, conscience and religion) and 14.

Decision of the Court

Article 38 § 1 (a)

The Court noted that, despite its repeated requests, the Russian Government had failed to produce a copy of the FSB's report of 18 February 2002 – which apparently served as the basis for Mr Nolan's expulsion – on the ground that Russian law did not lay down a procedure for communicating classified information to an international organisation.

The Court found that the Russian Government could have addressed those concerns by editing out the sensitive passages or supplying a summary of the relevant factual grounds, and concluded that, in not doing so, the Government had fallen short of their obligation to cooperate with the Court, in breach of Article 38 § 1 (a).

Article 5 §§ 1 and 5

The Court found that the conditions of Mr Nolan's overnight stay in the Moscow Airport transit hall had been equivalent in practice to a deprivation of liberty, for which the Russian authorities had been responsible.

Given the lack of accessibility and foreseeability of the Border Crossing Guidelines, the Court concluded that the national system had failed to protect Mr Nolan from arbitrary deprivation of liberty, in violation of Article 5 § 1.

The Court further found that the applicant had not had an enforceable right to compensation, the Russian courts not having considered that Mr Nolan had been deprived of his liberty. The Court therefore concluded that there had been a violation of Article 5 § 5.

The Court held that it was not necessary to examine the complaint under Article 5 § 4.

Article 8

The Court observed that the ten months period of physical separation between K. and his father had directly resulted from a combination of Mr Nolan's expulsion from Russia by the authorities and their failure to notify him of that decision. Mr Nolan had in effect had no opportunity to make arrangements for his son to leave Russia.

Consequently the Court found that there had been a violation of Article 8, on the account of the Government's failure to assess the impact of their decisions on the welfare of the applicant's son.

Article 9

The Russian Government had consistently maintained that the threat to national security had been posed by the applicant's "activities" rather than "religious beliefs". However, it had never specified the nature of those activities and had refused to produce the FSB report which could have clarified the factual grounds for Mr Nolan's expulsion.

Given the primary religious nature of the applicant's activities and the general policy as set out in the Concept of National Security of the Russian Federation, that is to say that foreign missionaries posed a threat to national security, the Court considered it established that Mr Nolan's banning from Russia had been designed to repress the exercise of his right to freedom of religion. However, since the interests of national security were deliberately omitted as a permitted ground for restrictions on the exercise of the right to freedom of religion in Article 9 of the Convention, such interests could not be relied upon as a justification for the measures taken by the Russian authorities against Mr Nolan.

Finding that the Russian Government had not put forward any plausible legal or factual justification for Mr Nolan's expulsion on account of his religious activities, the Court found that there had been a violation of Article 9.

The Court held that it was not necessary to examine the complaint under Article 14 taken in conjunction with Article 9.

Article 1 of Protocol No. 7

The Court found that Mr Nolan, at the relevant time a lawful resident with a valid annual multiple-entry visa, could be considered to have been expelled from Russia. Furthermore, Mr Nolan had been living in the country since 1994 and, his son still a resident, he could legitimately have expected to continue his residence there.

The Court observed that the Russian Government had not corroborated their claim that Mr Nolan's expulsion had been necessary in the interests of national security or public order, an exception permitted under paragraph 2 of Article 1 of Protocol No. 7. Accordingly, there was no reason to apply that exception and the applicant should have been allowed to exercise the procedural safeguards set out in paragraph 1 prior to his expulsion. The Government, however, had not provided any explanation as to why the decision to expel Mr Nolan of 18 February 2002 had not been communicated to him until such time as he had effectively been removed from the country three months later. Nor had he been allowed to have his case reviewed. The Court therefore found a violation of Article 1 of Protocol No. 7.

Judge Kovler expressed a partly dissenting opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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.

^[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

² This summary by the Registry does not bind the Court.