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

FIRST SECTION

CASE OF Y v. RUSSIA

(Application no. 20113/07)

JUDGMENT

STRASBOURG

4 December 2008

FINAL

04/03/2009

This judgment may be subject to editorial revision.

In the case of Y v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 20113/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr and Mrs Y ("the applicants"), on 14 May 2007. The President of the Chamber decided that their names should not be disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicants, who had been granted legal aid, were represented by Ms Tseytlina, a lawyer practising in St. Petersburg, and Mrs Oshirova. The Russian Government ("the Government") were represented by their Agent, Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants complained about the first applicant's deportation to China, about his unlawful detention, about the disruption of their family life and about the absence of domestic remedies. They referred to Articles 3, 5, 8 and 13 of the Convention and to Article 1 of Protocol No. 7.

4. On 6 September 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention) and to grant priority to the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, Mr and Mrs Y, are married. The first applicant is a Chinese national, who was born in 1934. The second applicant is a Russian national, who was born in 1951. Prior to the first applicant's deportation to China in May 2007, both applicants lived in St. Petersburg (Russia).

A. The circumstances of the case

1. The first applicant's requests for asylum

(a) Events prior to 2003

6. Between 1962 and 1996 the first applicant was a professor at a university in Beijing. In the 1950s he studied for several years at the Leningrad Technological University and thereafter retained close academic contacts with Russia. In 1996 he retired, but maintained working contacts with Russian colleagues. Between 1996 and 2000 he came to St. Petersburg on several occasions on business.

7. The first applicant submitted that since 1992 he had been a follower of the Falun Gong movement, and in 1996 had started to spread information about the movement in Russia.

8. In June 2001 the first applicant arrived in St. Petersburg on a business invitation from a Chinese company with an office in St. Petersburg. In 2002 the invitation was extended until May 2003.

9. Between July 2001 and May 2003 the first applicant took up temporary residence in the Admiralteyskiy district of St. Petersburg. In January 2004 he obtained a new temporary residence permit in the Vyborgskiy district of the Leningradskiy Region.

10. On 13 March 2003 he was granted refugee status under the mandate of the United Nations High Commissioner for Refugees (UNHCR) Office in Moscow.

(b) Proceedings at the Department on Migration Affairs

11. On 30 April 2003 the first applicant applied for asylum at the Department on Migration Affairs of the Ministry of the Interior in St. Petersburg ("the Migration Department"). On 11 December 2003 he was questioned by an official from that Department. He claimed that he could not return to China for fear of persecution as he had been an active member of the Falun Gong movement since 1992 or 1994. He explained that although the Falun Gong movement did not have a clear structure, he followed the directions for practice of the technique and explained them to

others. Practitioners performed exercises in groups with a view to physical and mental well-being. There were no lists of members and nobody checked who was present; sessions took place in public parks, or in members' apartments. The applicant stated that although he had not personally faced any problems in China and that the situation was tolerable when he left in 2001, the authorities had cracked down on the movement in the ensuing two years and his name had been included on "black lists". He also explained that before 2003 he had had other grounds entitling him to remain in Russia, but that when his work permit was coming to an end he realised that he could not return to China as he risked persecution. The Chinese trading company which had invited him to work in Russia as their representative had ceased their activities and he had had no contact with the director in Beijing for a considerable time. The first applicant also alleged that the Chinese Consulate in Russia was looking for him and that he was obliged to constantly change his place of residence. He had published articles and attended international meetings of Falun Gong adherents. He referred to his UNHCR mandate refugee card and a series of documents that attested to the Chinese Government's policy of persecution of Falun Gong members which had started in 1999 (see paragraph 49 below).

12. On 30 April 2004 the Migration Department refused to grant the first applicant refugee status. It cast doubt on the applicant's credibility and the relevance of the facts to which he had referred. It noted that the crackdown on the Falun Gong movement in China had started in 1999, but that between 1999 and 2001 the first applicant had not faced any problems there. He had obtained a passport and exit visa without any difficulty. Although he claimed to have published articles on Falun Gong, he could not provide any copies or indicate where and when they had been published. The claim that he had attended international meetings was also found to be false. His fears about being on "black lists" were not supported by any relevant evidence and were based on what the Migration Department termed incoherent statements, including a reference to direct contacts with the Chinese Consulate in St. Petersburg.

13. The Migration Department also noted that the applicant's knowledge of the Falun Gong structure and its basic principles were of a general nature and that he could not describe in detail his own activities as an "active member", despite the fact that he had allegedly practised the technique for many years and spoke very good Russian. His description of his own activities was limited to "doing gymnastics" in parks and private flats. It was also noted that the applicant had applied for asylum more than two years after his arrival and one month before the expiry of his temporary residence permit, which in the light of his circumstances could not be extended, and that he was probably trying to obtain a right to remain. Finally, the Department referred to information from Russian Government sources such as the Federal Migration Service (the FMS), the Ministry of

Foreign Affairs and the ITAR-TASS news agency which described the Falun Gong movement as a "pseudo-Buddhist sect of a totalitarian nature" and cited Chinese news reports about criminal acts committed by its followers and the damage caused to its members, for example by inciting followers to commit suicide or to refuse to accept medical aid. Several publications by Russian history and Eastern studies scholars likewise classified Falun Gong as a sect, referring to such traits of the teaching as the ideas of "exclusiveness" of the truth, the presence of a "deified leader" who was regarded as the only source of wisdom, the expectation that the end of the world was imminent, the need for its members to adhere to a strict code of behaviour and the use of specific symbols. These sources found that the information about ill-treatment of Falun Gong members in China mostly originated from the movement itself and that the Chinese authorities were right to take measures to curb its activities.

14. The applicant's claim that the Chinese consulate had been looking for him and that he had had to change his place of residence was also found to be untrue, as he had only changed his address once in three years.

15. The Department concluded that the first applicant had used the procedure to obtain a residence permit in Russia and that there was no reason to believe that he faced a real danger of persecution in China. He was informed of that decision on 20 May 2004 and appealed to a court.

16. In March 2005 the first applicant suffered a stroke and appears to have been admitted to hospital in St. Petersburg for several days. After leaving hospital he stayed at the second applicant's home.

17. On 5 April 2005 the applicants married in the Leningrad Region. The first applicant produced a document showing that his previous marriage had ended in divorce in China in 2003.

(c) Appeal to the courts

18. During proceedings in the Dzerzhinskiy District Court the first applicant testified that he had been a member of the Falun Gong movement since 1996, was known to the Chinese authorities as such and had been on a "black list" of activists since 1995 or 1996. He also stated that he was well known to the Chinese authorities because he had practiced Falun Gong at the university in Beijing. In 1999 his house had been searched by police and literature related to Falun Gong activities had been seized. As to his departure from China in 2001, he claimed that he had only managed to obtain a passport with the assistance of a friend from the university. He denied having attended international seminars organised for adherents of the movement.

19. The district court heard evidence from several followers of Falun Gong in St. Petersburg and Ukraine, who confirmed that they knew the first applicant as a "consultant" and active practitioner who had participated in group sessions, assisted in setting up local branches and translated from

Chinese. One witness stated that they had engaged in activities in public such as presenting Falun Gong principles, and that the first applicant could have been photographed on such occasions by the Chinese secret services, although it was also the case that Falun Gong members were not permitted to stage meetings in front of the Chinese consulate. The applicants' marriage was not mentioned in the proceedings, in which the UNHCR did not participate.

20. On 2 March 2006 the Dzerzhinskiy District Court of St. Petersburg upheld the decision of the Migration Department. It found that the first applicant was not under any personal threat of persecution in China because there was no reason to believe that he was a particularly active member of the movement or that his name was known to the Chinese authorities. It noted that there were no direct links between the Falun Gong groups in Russia and China. The first applicant was not one of the co-founders of the Russian NGO Falun Dafa. His statements about his own role and the "black lists" were contradictory. The district court also doubted his credibility in view of the numerous discrepancies in his accounts to the Migration Department and the court and the two years he had spent in Russia before applying for asylum.

21. The first applicant appealed against that decision. On 19 September 2006 the St. Petersburg City Court upheld the decision of the district court.

(d) Requests for temporary asylum and appeal

22. On 20 September 2006 the first applicant applied to the Migration Department for temporary asylum. He referred to his fears of persecution in China and to his marriage with the second applicant. He did not mention the deterioration of his health.

23. On 26 September 2006 the Migration Department rejected the request after noting that he had used the same arguments as in his application for refugee status. The first applicant was informed that unless he had other legal grounds for remaining or intended to appeal, he should leave Russian territory within one month after receipt of the notification. He appealed to a court in October 2006, stating, without any further details, that he had participated in demonstrations and pickets in Russia in front of the Chinese consulate and that his picture had been taken by consulate staff.

24. On 26 January 2007 the Dzerzhinskiy District Court of St. Petersburg upheld the decision of the Department, noting that the first applicant had not submitted any new grounds following the refusal of his request for refugee status. The first applicant appealed, but on 24 April 2007 the St. Petersburg City Court upheld the decision of the district court.

2. The first applicant's deportation

25. On 24 April 2007 the first applicant attempted to lodge a new request for temporary asylum. He claimed that he had been incapacitated by

a stroke, required constant assistance and could not leave his apartment. He also referred to his marriage with the second applicant. His request was sent by registered mail to the Migration Department, which received it on 2 May 2007.

26. On 2 May 2007 the head of the Migration Department issued a deportation order under section 13 of the Refugees Act. The order stated that on 24 April 2007 the St. Petersburg City Court, sitting as the final appellate court, had rejected the request for territorial asylum. On 3 May 2007 the order was countersigned by the head of the FMS. The applicants were not informed of the order.

27. On 11 May 2007 District Hospital no. 117 of St. Petersburg confirmed that the first applicant had suffered a stroke in March 2005 and required constant assistance.

28. At about 11.30 a.m. on 13 May 2007 officials from the Migration Department entered the applicants' apartment in St. Petersburg. According to the second applicant, they did not produce any documents, but told them that the FMS had ordered the first applicant's deportation to China. According to the second applicant, the officials carried the first applicant out of the apartment because he was unable to walk. They put him in a police car and drove off. The second applicant alleged that she was not allowed to accompany her husband or to contact a lawyer.

29. The Government referred to statements by the officials and doctor present at the scene, indicating that the applicants had immediately been informed of the nature of the proceedings, that the first applicant had been able to walk unaided and that a doctor had examined him and found him fit to travel. They also denied that the second applicant had been prevented from using the telephone.

30. It would appear that in the presence of the officials the second applicant then called Mrs Oshirova, her representative, and informed her that her husband was being deported.

31. Later that day the second applicant went to the Vyborg police station no. 58 to complain that her husband had been kidnapped. In the evening of 13 May 2007 a police officer called her and informed her that her husband had been detained by Migration Department officials in order to deport him to China.

32. On 15 May 2007 the President of the Section turned down a request by the second applicant dated 14 May 2007 for the Court to apply Rule 39 of the Rules of Court in order to prevent the first applicant's deportation to China.

33. On the same date the applicants' counsel was informed by the Migration Department that the first applicant had been deported to China from Moscow at 8 p.m. on 13 May 2007, and had arrived in Beijing on 14 May 2007.

3. Subsequent proceedings

(a) Proceedings related to the applicants' marriage

34. On 29 June 2007, in response to a letter of 10 May 2007, the General Consulate of China in St. Petersburg informed the Migration Department that the first applicant had been married in China to a Chinese national and that the marriage had not been dissolved in 2003.

35. The letter was then forwarded to the prosecutor's office. On 10 September 2007 the Vsevolzhsk Town Prosecutor's Office applied to the Vsevolzhsk Town Court for an order dissolving the marriage between the applicants as being null and void.

36. On 10 December 2007 the Vsevolzhsk Town Court declared the marriage null and void *ab initio*, as the first applicant's previous marriage in China had not been dissolved beforehand.

37. The second applicant appealed against that decision to the Leningrad Regional Court. She argued that at the wedding ceremony the first applicant had submitted a certificate of divorce which had not been found to be invalid and that the information from the Chinese consulate could not be regarded as a valid ground for dissolving the marriage. She surmised that the proceedings had been brought with the aim of discrediting the applicants' application under Article 8 to the European Court of Human Rights.

38. On 13 March 2008 the Leningradskiy Regional Court quashed the decision of 10 December 2007, due to an error in jurisdiction, since cases concerning family affairs should be reviewed by peace magistrates.

39. On 10 June 2008 the peace magistrate of circuit no. 37 in St. Petersburg rejected the prosecutor's motion to declare the marriage null and void, in view of incompleteness of information about the alleged invalidity of the divorce certificate. The prosecutor and the Migration Department appealed against that decision. It appears that the proceedings are pending.

(b) Proceedings related to the lawfulness of the first applicant's deportation

40. On 30 May 2007 the second applicant submitted an application to the St. Petersburg City Prosecutor's Office for a criminal investigation into the circumstances of her husband's deportation. She complained of abuse of power and unlawful detention. She asked for a copy of the deportation documents and enquired about the first applicant's whereabouts stating that she had not received a copy of the deportation order.

41. On 21 August 2007 and in October 2007 the first applicant lodged complaints about the actions of the Migration Department and the FMS with the Dzerzhinskiy District Court, which, however, rejected them on 4 December 2007. It found that the decision to deport the first applicant had been lawful, that he had been deported in accordance with the law and there had been no violations of the applicants' rights.

42. The court found it established, on the basis of the decisions of the migration authorities and courts, that there had been no legal obstacles to the first applicant's deportation to China. Under section 13 of the Refugees Act and section 25(10) of the Entry Procedure Act the first applicant had been informed that he had to leave Russia, if he had no other legal grounds to remain, or risk deportation. The first applicant had been aware that the courts had upheld, in decisions that were final, the refusal of his applications for refugee status and temporary asylum. The court also examined in detail the question whether the first applicant had submitted a second application for asylum before his deportation. It questioned officials from the department and examined a copy of the postal receipts and of the application itself. It found this part of the claim unsubstantiated, because Mrs Oshirova did not have power to sign the application on behalf of the first applicant and the Migration Department had not officially received the application by that time (as the letter had been sent to other premises which did not process individual applications).

43. The second applicant testified that her husband had suffered a stroke in March 2005 that had left him partially paralysed. For some time afterwards he had not left the flat. She also explained that he took no medication and refused to be taken to a hospital because as a "practitioner [of Falun Gong] he preferred to heal himself by doing exercises".

44. As to the deportation procedure, the court questioned two Migration Department officials and Doctor Sh, a neurologist practising in St. Petersburg. The witnesses stated that they had arrived at the applicants' apartment on 13 May 2007 and accompanied the first applicant on the flight to Beijing via Moscow. They maintained that the first applicant had been immediately notified of the decision to deport him and had received a copy which he had countersigned. He had been allowed to collect his belongings, had been examined by the doctor in his apartment and the doctor had accompanied him throughout the flight. The officials denied that they had prevented the second applicant from making telephone calls and the court established that she had in fact called Mrs Oshirova from her mobile phone. The officials also stated that the first applicant was able to walk, although he required assistance in using his left hand, that he had received food and drink and that he had made no complaints or requests during the flight. The court examined a certificate issued by Doctor Sh. on 13 May 2007 which stated that the first applicant suffered from grade III arterial hypertension, cerebrovascular disease, atherosclerosis and left-side hemiparesis, as a consequence of a stroke in 2005. None of these conditions, in the doctor's opinion, prevented the first applicant from taking the flight.

45. The court established that the first applicant had been informed of the deportation order and had received a copy. Mrs Oshirova had been invited to examine it at the offices of the Migration Department and had done so on 20 September 2007. The court examined a document drawn up

on 13 May 2007 and countersigned by the first applicant which stated the reasons and legal grounds for the deportation.

46. The court further examined the second applicant's complaint of a breach of the right to respect of family life. The second applicant stated that she had received very little information about her husband after his deportation and explained that he had called her about three days after his arrival in China and left a mobile number, which, however, could not be reached most of the time. After that she had spoken to him on a few occasions. The first applicant was staying with his son, but she did not have his address. The second applicant also stated that he had been placed under house arrest and that his passport had been taken from him. The court noted that the first applicant had never applied for a residence permit as the spouse of a Russian national and that in the absence of other legal grounds for remaining his marriage to the second applicant did not ultimately exclude his deportation. The court also took into account the information from the Migration Department concerning the alleged forging of the divorce certificate, the discrepancy between the date of the divorce as indicated by the first applicant and the actual document, and the pending proceedings to declare the marriage null and void.

47. Finally, it rejected the second applicant's request for the Migration Department's assistance to help find her husband in China. It noted that the first applicant had not applied to the Russian consular bodies or other authorities with a request for a visa.

48. The first applicant appealed, but on 15 January 2008 the St. Petersburg City Court upheld the decision of the district court.

B. Background information about the situation of the Falun Gong movement in China

49. The applicants submitted a number of publications by overseas Falun Gong groups which spoke of systematic persecution and ill-treatment by the authorities of persons known to be followers. Below are the relevant extracts from the UK Home Office Operational Guidance Note on Chinese asylum seekers, complete with a review of recent jurisprudence, and extracts from the Amnesty International Annual Report 1996 and of the United States Department of State Country Report on Human Rights Practices of 2006.

1. United Kingdom: Home Office, Operational Guidance Note: China, 21 November 2006.

50. Falun Gong/Falun Dafa

3.6.1 Most claimants apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Chinese authorities due to their involvement with Falun Gong/Falun Dafa. The Falun Gong movement was

established in 1992. Based on the Chinese ancient art of qigong or energy cultivation and fused with elements of other religions it emphasises high moral standards and good health amongst its followers who combine gentle exercises with meditation. Despite the spiritual component within Falun Gong, it does not consider itself a religion and has no clergy or places of worship.

6.2 Treatment. Estimates of the number of Falun Gong (or Wheel of the Law, also known as Falun Dafa) practitioners have varied widely; the Government claimed that prior to its crackdown on the Falun Gong beginning in 1999, there might have been as many as 2.1 million adherents of Falun Gong in the country. The number has declined as a result of the crackdown, but according to reliable estimates there are still hundreds of thousands of practitioners in the country.

6.3 The arrest, detention, and imprisonment of Falun Gong practitioners continued during 2006, and there have been credible reports of deaths due to torture and abuse. There have also been reports that practitioners who refuse to recant their beliefs are sometimes subjected to harsh treatment in prisons, extra-judicial re-education through labour camps and 'legal education' centres. Due to the strength of the Government's campaign against Falun Gong there were very few public activities from Falun Gong activists within China during 2006.

6.4 Given the lack of judicial transparency, the number and treatment of Falun Gong practitioners in confinement is difficult to confirm. Nevertheless, there is substantial evidence from foreign diplomats, international human rights groups, and human rights activists in Hong Kong that the crackdowns on the Falun Gong have been widespread and violent, particularly in the period immediately following prohibition. Overseas Falun Gong sources claim that more than 1,000 people detained in connection with the Falun Gong have died since the organisation was banned in 1999, mostly as a result of torture or ill-treatment.

6.5 In addition to reports of harassment and detention of adherents, the Falun Gong movement has claimed that family members of practitioners are also subject to harassment. There are accounts of family members allegedly being arrested in order to pressure adherents who are wanted by authorities into surrendering, or otherwise punished for the adherents' Falun Gong activities. However, it is unclear to what extent that these accounts are accurate and whether they are part of a systemic national practice or are the work of zealous local officials.

6.6 The UNHCR reported in January 2005 that there is no evidence to suggest that all Falun Gong members are being systematically targeted by the Chinese authorities (especially in view of the large numbers involved). Therefore, membership of Falun Gong alone would not give rise to refugee status, although a prominent role in certain overt activities (such as proselytising or organising demonstrations) which brings the member to the attention of the authorities may do so.

6.7 Members are not 'sought out' at home by the Chinese authorities; however, even lower level members may risk longer-term detention if they go out and practice in public. Likely punishment would be detention in 're-education through labour' camps and (extra-judicial) beatings that often accompany such detention. Thus, the likelihood of members/practitioners returning to China and engaging in public activities is low. ...

3.6.10 Caselaw. **L (China) v SSHD [2004] EWCA (Civ) 1441**. The Court of Appeal found that there are no Falun Gong membership lists and anyone can become a member or cease to be a member at any time and practise Falun Gong exercises by him/herself in the privacy of his/her home without significant risk of being ill-treated.

[2005] **UKIAT 00122 LL (Falun Gong – Convention Reason – Risk) China CG** Heard: 29 July 2005 Promulgated: 9 August 2005 The AIT found that in the absence of special factors, there will not normally be any risk sufficient to amount to 'real risk' from the Chinese authorities for a person who practices Falun Gong in private and with discretion. The IAT also found that if on the established facts it is held that there is a real risk of persecutory ill-treatment by reason of Falun Gong activities, then it is by reason of imputed political opinion and thus engages a 1951 Convention reason as well as Article 3.

[**2002] UKIAT 04134 MH (Risk-Return-Falun Gong) China CG** Heard: 25 July 2002 Notified 3 September 2002 The IAT accepted that ordinary Falun Gong practitioners have on a significant number of occasions been subjected to human rights abuses of various kinds, however, it is only in respect of Falun Gong activists that the scale and level of interference with their human rights has been sufficient to warrant a conclusion that upon return they would face a real risk, as opposed to a possible risk, of persecution or serious harm.

3.6.11 Conclusion. There is widespread repression of Falun Gong by the Chinese authorities and Falun Gong practitioners/activists may face ill-treatment in China if they come to the attention of the Chinese authorities. Falun Gong practitioners and in particular Falun Gong activists who have come to the attention of the authorities are likely to face ill-treatment that may amount to persecution in China and therefore are likely to qualify for a grant of asylum under the 1951 Convention by reason of imputed political opinion.

3.6.12 However, the Court of Appeal found in **L (China) v SSHD [2004] EWCA (Civ) 1441** that anyone can become a member or cease to be a member of Falun Gong at any time and can practise Falun Gong exercises on their own in the privacy of their home without significant risk of being ill-treated. The IAT found in **[2005] UKIAT 00122** that there will not normally be any real risk from the Chinese authorities for a person who practices Falun Gong in private and with discretion. Therefore, ordinary Falun Gong practitioners who have not come to the attention of the Chinese authorities are unlikely to qualify for a grant of asylum or Humanitarian Protection.

2. Extract from the Amnesty International Annual Report, 2006

51. The crackdown on the Falun Gong spiritual movement was renewed in April. A Beijing official clarified that since the group had been banned as a 'heretical organization', any activities linked to Falun Gong were illegal. Many Falun Gong practitioners reportedly remained in detention where they were at high risk of torture or ill-treatment.

3. Extract from the US Department of State, U.S. Department of State Country Report on Human Rights Practices 2006 - China (includes Tibet, Hong Kong, and Macau), 6 March 2007.

52. "Public Falun Gong activity in the country remained negligible, and practitioners based abroad reported that the government's crackdown against the group continued. Since the government banned the Falun Gong in 1999, the mere belief in the discipline (even without any public manifestation of its tenets) has been sufficient grounds for practitioners to receive punishments ranging from loss of employment to imprisonment. Although the vast majority of practitioners detained have been released, many were detained again after release. Falun Gong sources estimated that at least 6,000 Falun Gong practitioners had been sentenced to prison,

more than 100,000 practitioners sentenced to reeducation through labor, and almost 3,000 had died from torture while in custody. Some foreign observers estimated that Falun Gong adherents constituted at least half of the 250,000 officially recorded inmates in reeducation-through-labor camps, while Falun Gong sources overseas placed the number even higher. In March UN Special Rapporteur Nowak reported that Falun Gong practitioners accounted for 66 percent of victims of alleged torture while in government custody.

Falun Gong members identified by the government as 'core leaders' have been singled out for particularly harsh treatment. More than a dozen Falun Gong members have been sentenced to prison for the crime of 'endangering state security', but the great majority of Falun Gong members convicted by the courts since 1999 have been sentenced to prison for 'organizing or using a sect to undermine the implementation of the law', a less serious offense. Most practitioners, however, were punished administratively. Some practitioners were sentenced to reeducation through labor. ... Apart from reeducation through labor, some Falun Gong members were sent to 'legal education' centers specifically established to 'rehabilitate' practitioners who refused to recant their belief voluntarily after release from reeducation-through-labor camps. Government officials denied the existence of such 'legal education' centers. In addition, hundreds of Falun Gong practitioners have been confined to mental hospitals, according to overseas groups.

Allegations of abuse of Falun Gong practitioners by the police and other security personnel continued during the year. In addition, multiple allegations of government-sanctioned organ harvesting from Falun Gong prisoners surfaced. In April overseas Falun Gong groups claimed that a hospital in Sujiatun, Shenyang, had been the site of a 'concentration camp' and of mass organ harvesting, including from live prisoners. The government opened the facility to diplomatic observers and foreign journalists, who found nothing inconsistent with the operation of a hospital.

Police continued to detain current and former Falun Gong practitioners and place them in reeducation camps. Police reportedly had quotas for Falun Gong arrests and targeted former practitioners, even if they were no longer practicing. The government continued its use of high-pressure tactics and mandatory anti-Falun Gong study sessions to force practitioners to renounce Falun Gong. Even practitioners who had not protested or made other public demonstrations of belief reportedly were forced to attend anti-Falun Gong classes or were sent directly to reeducation-through-labor camps. These tactics reportedly resulted in large numbers of practitioners signing pledges to renounce the movement."

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW AND PRACTICE

1. The 1951 Geneva Convention

53. Article 33 of the UN Convention on the Status of Refugees of 1951, which was ratified by Russia on 2 February 1993, provides as follows:

"1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. ..."

2. Refugees Act

54. The Refugees Act (Law no. 4258-I of 19 February 1993 with subsequent amendments) incorporated the definition of the term "refugee" contained in Article 1 of the 1951 Geneva Convention as amended by the 1967 Protocol relating to the Status of Refugees. The Act defines a refugee as a person who is not a Russian national and who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, ethnic origin, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (section 1 § 1 (1)).

55. The Act does not apply to persons suspected on reasonable grounds of a crime against peace, a war crime, a crime against humanity, or a serious non-political crime outside the country of refuge prior to his admission to that country as a person seeking refugee status (section 2 § 1 (1, 2)).

56. A person who has applied for refugee status or who has been granted such status cannot be returned to the State where his life or freedom would be imperilled on account of his race, religion, nationality, membership of a particular social group or political opinion. Decisions of the migration service may be appealed to a higher ranking authority or to a court. During the appeal process the applicant enjoys all the rights of a person whose application for refugee status is being considered (section 10).

57. If a person satisfies the criteria established in section 1 § 1 (1), or if he does not satisfy such criteria but cannot be expelled or deported from Russia for humanitarian reasons, he may be granted temporary asylum (section 12 § 2). A person who has been granted temporary asylum cannot be returned against his will to the country of his nationality or to the country of his former habitual residence (section 12 § 4).

58. A person who has been refused refugee status or temporary asylum after appeal who has no other legal grounds for remaining in Russia and refuses to leave voluntarily will be expelled (deported) from Russia in accordance with the relevant national and international legislation (section 13 § 2).

3. The Deportation Procedure

59. A competent authority, such as the Ministry of Foreign Affairs or the Federal Security Service, may issue a decision that a foreign national's presence on Russian territory is undesirable. Such a decision may also be issued if a foreign national is unlawfully residing on Russian territory, or if his or her residence is lawful but creates a real threat to the defensive capacity or security of the State, to public order or health, etc. If such a

decision has been taken, the foreign national must leave Russia or face deportation. The decision also forms the legal basis for a subsequent refusal of re-entry into Russia (section 25(10) of the Law on the Procedure for Entering and Leaving the Russian Federation, no. 114-FZ of 15 August 1996, as amended on 10 January 2003, "the Entry Procedure Act").

60. The deportation procedure is set out in the Order of the Ministry of the Interior no. 533 (*Приказ МВД РФ от 26 августа 2004 г. № 533 «Об организации деятельности органов внутренних дел Российской Федерации и Федеральной Миграционной службы по депортации либо административному выдворению за пределы Российской Федерации иностранного гражданина либо лица без гражданства»*). The document distinguishes between two types of procedure: deportation and administrative expulsion. Deportation concerns foreign nationals who fail to leave the territory within the prescribed time-limit. This group includes persons whose applications for refugee status or temporary asylum have been turned down in a final decision and who have no other legal grounds entitling them to remain (section II of the Order).

61. The deportation order is made by the Federal Migration Service following submissions by a local branch of the migration service or of the Ministry of the Interior. The deportation order is explained to the person concerned, who is requested to sign an acknowledgement of receipt and receives a copy of the order. The order is executed by local Ministry of the Interior officials.

62. Section III of the Order also lays down the procedure for the administrative expulsion of persons in respect of whom a judge has ordered deportation as punishment for an administrative offence related to the registration of residence requirements (under Articles 18.8, 18.10 and 18.11 of the Administrative Offences Code).

4. Residence permit for spouses

63. The Law on the Legal Status of Foreign Nationals in the Russian Federation, no. 115-FZ of 25 July 2002 ("the Foreign Nationals Act") introduced the requirement of residence permits for foreign nationals.

64. A foreign national married to a Russian national living on Russian territory is entitled to a residence permit (section 6 § 3 (4)).

65. A residence permit may be refused only in exhaustively defined cases, in particular if the foreign national advocates a violent change to the constitutional foundations of the Russian Federation or otherwise poses a threat to the security of the Russian Federation or its citizens (section 7 (1)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

66. The applicants complained that the first applicant's deportation to China had been in violation of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

67. The Government argued that the applicants' claim should be dismissed for failure to exhaust domestic remedies, as domestic proceedings were still pending when the complaint was lodged.

68. The applicants argued that they had appealed against the actions of the authorities and that final decisions had been rendered on most of the issues by the time the complaint was lodged. The proceedings that were still pending had been brought after the deportation had already taken place.

69. As to the issue of exhaustion, the Court notes that by the time of the first applicant's deportation the domestic proceedings had been completed. As the Government themselves argued, these proceedings examined whether his return to China would entail a breach of Article 3 and served as the legal basis for the first applicant's deportation.

70. As to proceedings concerning the lawfulness and conditions of removal from a Contracting State, it is to be recalled that in determining whether the applicant in a given case has exhausted domestic remedies for the purposes of Article 35 § 1 of the Convention, a remedy will only be effective if it has suspensive effect (see *Jabari v. Turkey* (dec.), no. 40035/98, 28 October, 1999). Conversely, where a remedy does have suspensive effect, the applicant will normally be required to exhaust that remedy (see *Bahaddar v. the Netherlands*, 19 February 1998, §§ 47 and 48, *Reports of Judgments and Decisions* 1998-I). The proceedings in question started after the applicant had already been deported and could not have had any suspensive effect. The Government's preliminary objection in this respect is therefore dismissed,

71. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Whether the first applicant was in danger of ill-treatment in China

a) Arguments of the parties

72. The applicants submitted that the first applicant's deportation to China had exposed him to a real risk of ill-treatment. They contested the assessment of his asylum claims by the relevant Russian authorities and stressed that the first applicant had been granted UNHCR mandate refugee status, as the authorities had been well aware. They referred to the information about the first applicant's deportation that had been published in Falun Gong newsletters over the world, which, they said, had made him more vulnerable to persecution by the Chinese authorities.

73. The Government insisted that the first applicant had been deported after a thorough evaluation of his claims at several levels of domestic jurisdictions. Referring to inconsistencies in his statements to the migration authorities and the courts, they questioned the first applicant's credibility in so far as he had alleged that he was a prominent member of the movement and was liable to be singled out for ill-treatment. They urged the Court to be cautious when evaluating information about the alleged persecution of Falun Gong practitioners coming from the organisation's overseas groups. As to the UNCHR decision to recognise the first applicant as a refugee under its mandate, the Government stressed that it had been taken completely outside the national procedure for the determination of refugee status. They noted that the first applicant was aware that his requests for refugee status and subsequently territorial asylum had been turned down and that he had an obligation to leave Russia or bear the consequences and be deported but that there was no indication that the UNHCR had considered the option of resettling him in a third country.

b) The Court's assessment

i. General principles

α. Responsibility of Contracting States in the event of expulsion

74. It is the Court's settled case-law that as a matter of well-established international law, and subject to their treaty obligations, including those arising from the Convention, Contracting States have the right to control the entry, residence and removal of aliens (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94, and *Boujlifa v. France*, 21 October 1997, § 42, *Reports* 1997-VI). In addition, neither the Convention nor its Protocols confer the right to political asylum (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 102, Series A no. 215, and *Ahmed v. Austria*,

17 December 1996, § 38, *Reports* 1996-VI, cited in *Saadi v. Italy*, [GC], no. 37201/06, § 124, 28 February 2008,).

75. However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case Article 3 implies an obligation not to deport the person in question to that country (see *Soering v. the United Kingdom*, 7 July 1989, §§ 90-91, Series A no. 161; *Vilvarajah and Others*, cited above, § 103; *Ahmed*, cited above, § 39; *H.L.R. v. France*, 29 April 1997, § 34, *Reports* 1997-III; *Jabari v. Turkey*, no. 40035/98, § 38, ECHR 2000-VIII; *Salah Sheekh v. the Netherlands*, no. 1948/04, § 135, 11 January 2007; and *Saadi*, cited above, § 125).

β. Material used to assess the risk of exposure to treatment contrary to Article 3 of the Convention

76. In determining whether substantial grounds have been shown for believing that there is a real risk of treatment incompatible with Article 3, the Court will take as its basis all the material placed before it or, if necessary, material obtained *proprio motu* (see *H.L.R. v. France*, cited above, § 37, and *Hilal v. the United Kingdom*, no. 45276/99, § 60, ECHR 2001-II). In cases such as the present the Court's examination of the existence of a real risk must necessarily be a rigorous one (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, § 96, *Reports* 1996-V, and *Saadi*, cited above, § 128).

77. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see *N. v. Finland*, no. 38885/02, § 167, 26 July 2005). Where such evidence is adduced, it is for the Government to dispel any doubts about it.

78. In order to determine whether there is a risk of ill-treatment, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there and his personal circumstances (see *Vilvarajah and Others*, cited above, § 108 *in fine;* and *Saadi*, cited above, *§§* 128-129).

79. To that end, as regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human-rights-protection associations such as Amnesty International, or governmental sources, including the US State Department (see, for example, *Chahal*, cited above, §§ 99-100; *Müslim v. Turkey*, no. 53566/99, § 67, 26 April 2005; *Said v. the Netherlands*, no. 2345/02, § 54, 5 July 2005; and *Al-Moayad v. Germany* (dec.), no. 35865/03, §§ 65-66, 20 February 2007). At the same

time, it has held that the mere possibility of ill-treatment on account of an unsettled situation in the receiving country does not in itself give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, § 111, and *Fatgan Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001) and that, where the sources available to it describe a general situation, an applicant's specific allegations in a particular case require corroboration by other evidence (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 73, ECHR 2005-I; *Müslim*, cited above, § 68; and *Saadi*, cited above, § 131).

80. Exceptionally, however, in cases where an applicant alleges that he or she is a member of a group systematically exposed to a practice of ill-treatment, the Court has considered that the protection of Article 3 of the Convention enters into play when the applicant establishes that there are serious reasons to believe in the existence of the practice in question and his or her membership of the group concerned (see *Saadi v. Italy*, cited above, § 132). In those circumstances, the Court will not then insist that the applicant show the existence of further special distinguishing features if to do so would render illusory the protection offered by Article 3. This will be determined in the light of the applicant's account and the information on the situation in the country of destination in respect of the group in question (see *Salah Sheekh*, cited above, § 148). The Court's findings in that case as to the treatment of the Ashraf clan in certain parts of Somalia, and the fact that the applicant's membership of the Ashraf clan was not disputed, were sufficient for the Court to conclude that his expulsion would be in violation of Article 3.

81. With regard to the material date, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion; the Court is not precluded, however, from having regard to information which comes to light subsequent to the expulsion. This may be of value in confirming or refuting the appreciation that has been made by the Contracting Party of the well-foundedness or otherwise of the applicant's fears (see *Cruz Varas and Others v. Sweden*, 20 March 1991, §§ 75-76, Series A no. 201, and *Vilvarajah and Others*, cited above, § 107).

γ. The concepts of "inhuman or degrading treatment"

82. According to the Court's settled case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII; *Mouisel v. France*,

no. 67263/01, § 37, ECHR 2002-IX; and *Jalloh v. Germany* [GC], no. 54810/00, § 67, 11 July 2006).

ii. Application to the present case

83. In the light of the principles enumerated above the Court will examine whether in the particular circumstances of the case there existed a real risk of ill-treatment at the time of the first applicant's deportation to China. It will, however, take into account the events that occurred after his deportation.

84. While it accepts that there are reports of serious violations of human rights in China for those identified as Falun Gong practitioners, especially those who hold a prominent place in the movement, the Court has to establish whether the first applicant's personal situation was such that his return to China contravened Article 3 of the Convention.

85. It finds that the evaluation by the Russian authorities of the risk to which the first applicant would be subjected in China was based on the assumptions that his involvement with the movement has not led to any persecution prior to his departure to Russia in 2001, that his activities in Russia were not such as to bring him to the attention of the Chinese consular authorities and that there was a difference in treatment between active members and ordinary practitioners. Neither the Migration Department nor the courts doubted that the first applicant was a follower of the Falun Dafa in Russia. However, after examining the first and second applicant's statements and other evidence, they found that he was not known to the Chinese authorities as an active member of the Falun Gong and that his involvement could not be regarded as putting him at real risk of ill-treatment upon his return.

86. International reports on the situation of Falun Gong practitioners in China likewise show that although Falun Gong members are under a threat of persecution, every case should be assessed on an individual basis, in so far as the risk of ill-treatment is involved (see the United Kingdom documents cited above in paragraph 50 and the UNHCR report quoted in it).

87. The Court notes that when determining the refugee-status and asylum claims the domestic authorities found that the first applicant had been unable to give significant details of his practice in China and that he had faced no persecution or problems associated with leaving the country prior to 2001. It is also noteworthy that the first applicant was unable to indicate any examples of persecution among members of the Falung Gong in the university whom he had personally known through professional or other channels. It was also established that there were no direct links between the circles of practitioners in Russia and in China and that there were no other indications that he would be considered by the Chinese authorities to be an active member of the movement.

88. The Court also notes the doubts of the domestic authorities about the veracity of some of the first applicant's statements. In particular, the first applicant initially stated that he had faced no problems in China and had left the country without hindrance. However, before the district court, he stated that in 1999 his house had been searched by the police and religious literature had been seized and that he had only obtained a passport through the help of friends at the university (see paragraph 17 above). The failure to mention such an important aspect of his claim has not been explained in any way. His account for the delay in submitting the asylum claim focused on the difficulties he was having renewing his residence permit through the Chinese trade company that employed him in St. Petersburg. He was unable to produce any publications or indicate any international Falun Gong meetings which he had attended. He did not adduce any reliable evidence in support of his claims that his activities, either in China or in Russia, would put him at real risk of being treated in a way that was incompatible with Article 3.

89. Furthermore, it follows from the second applicant's statement to the Dzerzhinskiy District Court that after returning to China the first applicant had moved in with his son and there was no information that he had been subjected to treatment in breach of Article 3.

90. Finally, as to the first applicant's refugee status delivered by the UNHCR Office in Moscow in March 2003 under its mandate, the Court finds it extremely regrettable that the first applicant should have been deported without the UNHCR Office first being informed. It recognises, however that the first applicant's status was delivered before the domestic refugee-status determination started, that it was not clear whether the same grounds served as a basis for both claims and that the UNHCR did not intervene in any way during the subsequent appeals or proceedings. Taking into account the difference in the scope of protection afforded by Article 3 of the Convention and by the UN Convention on the Protection of refugees and the particular circumstances of the present case, the Court does not find that this fact alone justifies altering its conclusions as to the well-foundedness of the first applicant's claim under Article 3.

91. On the basis of the foregoing considerations the Court concludes that it has not been established that there were sufficient grounds for believing that the first applicant faced a real risk of treatment contrary to Article 3 of the Convention upon his return to China.

2. Whether the conditions of the first applicant's deportation amounted to a violation of Article 3

92. The question remains whether, in view of his medical condition, the first applicant's removal from Russia in itself entailed a breach of Article 3.

93. The Court notes, firstly, that the first applicant's medical condition was raised before the authorities in his third request for asylum, but was not

taken into consideration at the time of the deportation order of 2 May 2006 (see paragraph 39 above). Further, the arrangements for the first applicant's deportation were examined by the Dzerzhinskiy District Court, which issued its decision on 4 December 2007. In those proceedings it was established that the first applicant had been examined by a neurologist and found to be fit to travel. The doctor's credentials and conclusions have been found to be valid and well-founded. During the flight the first applicant was accompanied by the doctor and provided with food and drink (see paragraph 41 above).

94. Furthermore, it has not been alleged that the first applicant's medical condition was of such an exceptional nature that humanitarian considerations prevented his removal, or that the required treatment would not be available to him in China (see *Bensaid v. the United Kingdom*, no. 44599/98, §§ 36-40, ECHR 2001-I, and *Arcila Henao v. the Netherlands* (dec.), no. 13699/03, 24 June 2003).

95. The Court acknowledges that the deportation procedure may have caused the first applicant significant stress and mental anguish. However, in the above circumstances and taking into account the high threshold set by Article 3 of the Convention, the Court does not find that his removal from Russia involved a violation of Article 3 on account of his medical condition either.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

96. The applicants complained of a violation of Article 5 § 1 (f) of the Convention, which, in so far as relevant, provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

97. The Government contested that argument.

98. The Court finds that that the first applicant's claim under Article 5 concerns essentially the question of the legal grounds of his deportation, and does not raise any separate issues related to detention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to its Article 35 § 4.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

99. The applicants further complained that the first applicant's deportation to China had violated their right to respect of their family life. They relied on Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

100. The Government asked the Court to declare this part of the application inadmissible for failure to exhaust domestic remedies. They stressed that the applicants could have sought a residence permit for the first applicant under section 6 of the Foreign Nationals' Act. They also disputed the applicability of Article 8 to the relationship in question in view of the pending proceedings to declare the applicants' marriage null and void on account of the invalid certificate of divorce that was submitted by the first applicant at the time of the marriage.

101. The applicants considered that the Government's argument of non-exhaustion essentially meant that they had *de facto* waived their right to apply for regularisation. They disputed that their situation was comparable to a waiver. As to the merits of the claim, they argued that their marriage was valid, and that notwithstanding the outcome of the domestic proceedings they had maintained a family union since 2005. The first applicant's deportation amounted to an interference with that right. Referring to the Court's judgment in *Liu and Liu v. Russia* (no. 42086/05, § 66, 6 December 2007), they argued that this interference was unlawful, did not pursue any legitimate aims and was not necessary in a democratic society.

102. The first issue is whether domestic remedies have been exhausted. However in the present case the Court finds it unnecessary to examine whether the applicants have complied with the requirement of exhaustion of domestic remedies since the application is in any event manifestly ill-founded for the following reasons.

103. By way of introduction the Court notes that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. The Court reiterates that in the context of both positive and negative obligations the State must strike a fair balance between the competing interests of the individual and of the community as a whole. However, in both contexts the State enjoys a certain margin of appreciation. Where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect a married couple's choice of

country for their matrimonial residence or to authorise family reunion on its territory (see *Gül v. Switzerland*, judgment of 19 February 1996, § 38 *Reports* 1996-I). However, the removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life, as guaranteed by Article 8 § 1 of the Convention (see *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001-IX).

104. Factors to be taken into account in this context are the extent to which family life is effectively ruptured, the extent of the ties in the Contracting State, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them, whether there are factors of immigration control (for instance, a history of breaches of immigration law) or considerations of public order weighing in favour of exclusion (see *Solomon v. the Netherlands* (dec.), no. 44328/98, 5 September 2000). Another important consideration is whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious (see *Jerry Olajide Sarumi v. the United Kingdom* (dec.), no. 43279/98, 26 January 1999; and *Andrey Sheabashov v. Latvia* (dec.), no. 50065/99, 22 May 1999). Where this is the case the removal of the non-national family member would be incompatible with Article 8 only in exceptional circumstances (see *Abdulaziz, Cabales and Balkandali*, cited above, § 68; *Mitchell v. the United Kingdom* (dec.), no. 40447/98, 24 November 1998; and *Ajayi and Others v. the United Kingdom* (dec.), no. 27663/95, 22 June 1999; *Rodrigues da Silva and Hoogkamer*, cited above, ibid.).

105. Turning to the present case, the Court observes that the applicants married on 5 April 2005. Prior to that date the first applicant had no legal grounds entitling him to remain in Russia, except for the pending appeal against the decision of the Migration Department of 20 May 2004 concerning his refugee status. The Court can assume that the applicants were engaged in a genuine family relationship. However, while under the provisions of Russian law the first applicant could not be deported while the appeal proceedings were pending, it is clear that his immigration status prior to 5 April 2005 gave him no expectation that he would obtain a right to residence permit.

106. Furthermore, the Court discerns no exceptional personal circumstances which would have precluded the first applicant's removal once his claims for both refugee status and territorial asylum had been rejected and the appeal process exhausted. While his ties with Russia were obviously important, they were not of such a compelling nature as to make his return to his native country unfeasible. The first applicant had spent most of his life and academic career in China and had family members there. In any event, the applicants had never sought to obtain a residence

permit for the first applicant as the spouse of a Russian national and therefore the question of whether he would have received such a permit remained open. The question whether the second applicant could join her husband in China, should she choose to do so, also remains open.

107. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

108. The Court has examined other complaints submitted by the applicants under Article 13 of the Convention and Article 1 of Protocol No. 7. However, having regard to all the material in its possession, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint about ill-treatment admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention.

Done in English, and notified in writing on 4 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President