



## X v. Germany

App. No. 54646/17

**Country:** Germany

**Region:** Europe

**Year:** 2018

**Court:** The European Court of Human Rights

**Health Topics:** Prisons, Public safety

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Freedom of movement and residence

### Facts

The applicant, a Russian national, arrived in Germany in 2002. In 2002 and 2011, the competent domestic authorities denied the applicant's asylum requests. In 2012, the applicant was granted a residence permit, which was later prolonged until March 2018. In 2014, the Federal Office for the Protection of the Constitution investigated the applicant due to his ties to the "radical Islamic scene." Later that same year, the applicant was ordered not to leave Germany because it was feared that he would travel to Syria to join the "Islamic State." In 2017, the police, acting on intelligence, launched an official investigation and searched the applicant's apartment. Police seized several smartphones, tablets and other devices that contained 42,000 pictures and 1,000 videos of violent acts in an Islamic context. The applicant was also in possession of a manual for building explosive devices.

On March 13, 2017, the Bremen Administration ordered the applicant's deportation to Russia since he was a threat to national security. Based on intelligence gathered by security agencies, it was assessed that the applicant would be willing to participate in or carry out a terrorist attack in Germany, although he had not yet reached the planning stage for such an attack. It was determined that "this abstract risk was sufficient to overrule the applicant's right to respect for private and family life." There would be no risk under Article 3 since the Russian authorities would not be informed about the intelligence that had been gathered.

The applicant challenged the deportation decision before the Federal Administrative Court and applied for an interim measure suspending his deportation for the duration of the main proceedings. At the Court's request, the German Foreign Office informed the court on the applicant's expected treatment in Russia based on conversations with employees of the Russian NGO "Committee Against Torture." The German Foreign Office stated that it could be expected that the applicant would be questioned and monitored by security agencies in Russia, but that it would be highly unlikely that the applicant would be tortured pre-emptively.

On July 13, 2017, the Federal Administrative Court refused to grant the interim measure. The Court, after considering that the Russian authorities would in fact be notified about the intelligence gathered against the applicant, concluded that the overall assessment of the security risk posed by the applicant was correct. However, due to the risk of torture and ill treatment, the applicant could not be deported to his home region of Dagestan but could be deported to another part of Russia. On July 26, 2017, the Federal Constitutional Court refused to grant an interim measure or to admit the applicant's constitutional complaint for adjudication.

The applicant complained under Article 3 of the convention that if he were deported to Russia, he would be put under surveillance, detained, tortured or "disappear" due to his classification as a "Gefährder" in Germany.

The following are the relevant provisions:

Section 58a of the Residence Act (Aufenthaltsgesetz): "(1) The supreme Land authority may, based on an assessment of the facts and without a prior expulsion order, issue a deportation order for a foreigner in order to avert a special danger to the security of the Federal Republic of Germany or a terrorist threat. The deportation order shall be immediately enforceable; no notice of intention to deport shall be necessary."

### Decision and Reasoning

The Court states that Article 3 implies an obligation not to deport a person to a country where there are substantial grounds to believe that the person, if deported, faces a real risk of being subjected to treatment

contrary to Article 3. Furthermore, it is not possible to weigh the likelihood of ill treatment against the reasons put forward to the deportation. However, the Court recognizes the difficulties that States face in protecting their citizens against terrorism and acknowledges that States must be allowed to deport non-nationals that pose a threat to national security.

The approach to be used in assessing the risk of exposure to treatment contrary to Article 3 is outlined in the case of *Saadi v. Italy* (no. 37201/06, §§ 128-33, ECHR 2008). The court must consider whether the applicant has produced evidence to show substantial grounds for believing that there is a real risk of treatment incompatible with Article 3. When determining whether there is a risk of ill-treatment, the Court must consider the general situation in the receiving country and the applicant's personal circumstances there. The Court may use reports from independent international human rights protection associations to assess the general situation in a particular country.

The Court finds that the Federal Administrative Court properly assessed in detail the information and reports available to it, and additionally requested further information from the German Foreign Office, among other sources. That court concluded that even if there was a risk of torture and ill-treatment in the region of Dagestan, where the applicant was born, there was no such risk in other regions of Russia. The Court agrees with this conclusion and observes that the applicant has no connection with the conflicts in the Northern Caucasus since he left Dagestan when he was three years old. The Court concludes that these reports cannot establish that the applicant would face the risk of torture or ill-treatment if returned to Moscow.

The Court states that it must consider whether the new information, which the applicant obtained from the Russian NGO "Memorial" that was not available during the domestic proceedings, is capable of calling into question the conclusions of the Federal Administrative Court. The Court states that it considers both NGOs equally credible, but that neither NGO referred to previous similar deportations in order to substantiate their assertions. Therefore, the Court concludes that there is no reason to depart from the decisions of the domestic courts. The Court holds that there are no substantial grounds for believing that the applicant "would be exposed to a real risk of being subjected to treatment contrary to Article 3 if deported to Moscow."

### **Decision Excerpts**

"...It is no part of this Court's function under Article 3 of the Convention to review whether an individual is in fact such a threat; its only task is to consider whether that individual's deportation would be compatible with his or her rights under the Convention." (Para 27)

"[T]he 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 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." (Para 28)