

ECtHR - L.M. and others v. Russia

The applicants, a stateless Palestinian from Syria and two Syrian nationals, entered Russia in 2013 and were kept in a detention centre before their expulsion to Syria. The Court held that the Government's actions breached the applicant's rights provided under Articles 2 and 3. The Court also stated that Articles 5(4) and 5(1)(f) had been violated with regards to their detention. The Court also held that the restricted contact with their respective representatives had breached Article 34 of the Convention.

Case name (in original language) : L.M. and others v. Russia Applications Nos. 40081/14, 40088/14 and 40127/14

Case status: Decided

Case number: 40081/14, 40088/14 and 40127/14

Citation: European Court of Human Rights, L.M. and others v. Russia (Applications Nos. 40081/14, 40088/14 and 40127/ 15 October 201514)

Date of decision: 15/10/2015

State: Russian Federation

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: English

Applicant's country of birth: Syria

Applicant's country of residence: Russian Federation

Legal instruments: European Convention on Human Rights (ECHR), European Union law, Other international law

Key aspects: Deportation and removal, Detention, Residence permit, Statelessness and asylum

Relevant Legislative Provisions:

Articles 2, 3, 5.1, 5.4 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) ("the Convention")

Section 34(5) of the Foreigners Act (Law no. 115-FZ of 25 July 2002), Article 3.10 of the Code of Administrative Offences, Refugees Act of Russia (Law no. 4258-I of 19

February 1993)

Russia - Foreigners Act (Law no.115-FZ of 25 July 2002) - Section 34(5)

Russia - Code of Administrative Offences - Articles 3.9

Russia - Code of Administrative Offences - 3.10(1)(2)(5)

Russia - Code of Administrative Offences - 27.1(1)

Russia - Code of Administrative Offences - 27.19(2)

Russia - Code of Administrative Offences - 31.9(1)

Russia - Constitution - Article 22

Russia - Refugees Act of Russia (Law no. 4258-I of 19 February 1993)

Russia - Decree No. 1306 of the Russian Government

Facts

The applicants, a stateless Palestinian from Syria who entered Russia in February 2013 and two Syrian nationals, entered Russia on 21 April 2013. The applicants were arrested by the Federal Migration Service (FMS) in April 2014 and were held at a foreign national detention centre.

The applicants were found guilty of administrative offences by the Maloyaroslavets District Court in May 2014. Those included a breach of immigration rules and working without a permit. The applicants stated in their defence that they feared for their lives in case they were returned to Syria, due to the country's ongoing conflict. Nonetheless, the Court ordered their expulsion to Syria and the additional payment of fines.

The Kaluga Regional Court rejected the applicants' appeal to the expulsion order. Later on, in May 2014, they applied for refugee status and requested temporary asylum in Russia. FMS questioned them in June 2014 regarding the reasons why they were seeking asylum. The applicants claimed that they had fled the Syrian conflict and highlighted the life-endangering circumstances, in case of their return.

In July, two of the applicants withdrew their temporary asylum applications and refugee status. The FMS rejected the third applicant's request on the basis that he

did not face a real threat of persecution. The same applicant escaped in August 2014 from the detention centre where he was held, according to the relevant Russian authorities. The two applicants who had previously withdrawn their applications, re-submitted new ones requesting refugee status. Once again, they withdrew their applications.

In May 2014, the three applicants applied with the ECtHR alleging that their deportation to Syria would be in breach of their rights under Articles 2 and 3 ECHR. Additionally, they claimed that they had no effective domestic remedies available contrary to Article 13 ECHR and that their detention in Russia was in breach of their rights under Articles 3 and 5 ECHR. They also complained under Article 34 ECHR that the restrictions on communicating with their representatives and using interpreting services had hindered their effective access to the Court.

Legal arguments by the applicant

The applicants argued that the question of their expulsion to Syria had been considered and decided primarily within the framework of the administrative proceedings, in which they had submitted extensive documents and arguments pointing to the danger of a violation of Articles 2 and 3 in the event of their return. The judicial decisions of 15 and 16 April and 27 May 2014 had failed to take these arguments into account and had made no effort to dispel them. Documents substantiating this included UNHCR and FMS documents, other relevant information and their own detailed statements. One of the applicants was a stateless Palestinian and was therefore in particular need of international protection, the other two applicants were from Aleppo, where fierce fighting had been raging since 2013.

In addition to general country of origin information speaking of widespread and general violence against civilians, this position had been based on the UNHCR individual assessment letters of the applicants' situation and supported by the official position of the Federal Bailiff Service and FMS relied on by the applicants about the impossibility of returning to Syria and well-foundedness of their asylum requests.

In the circumstances, the judicial decisions to maintain the administrative expulsion as an additional sanction had not been based on an individualised assessment and had failed to take into account the relevant important factors.

As to the available remedies, the applicants argued that their claims of a possible breach of Articles 2 and 3 in the event of their return should have been taken into account in the context of the proceedings concerning administrative expulsion. In so far as the Government claimed that the procedure for refugee status and temporary asylum constituted an effective remedy to be used, the applicants stressed that the system in Russia had a number of serious drawbacks which had made it inaccessible for them in practice. The remedies had been inaccessible in practice, and therefore unavailable to the applicants.

The applicants next stressed that the “retractions” signed by them at the detention centre had been obtained under duress and in the absence of contact with their representatives, without any understanding of what they had been doing. This was confirmed by the applicants’ subsequent submissions and statements. In the applicants’ view, the above circumstances also disclosed a breach of Article 13, since they had failed to obtain a meaningful review of their claims of fear for life and security if returned, in any of the procedures used.

Moreover, the applicants alleged that their confinement in the detention centre had prevented them from effectively participating in the proceedings for the determination of their refugee and asylum status. While they had lodged the relevant requests, they alleged that on two occasions they had been forced to sign papers withdrawing their applications; these withdrawals were later retracted by them as made under duress and in the absence of an interpreter or advice.

Legal arguments by the opposing party

The Government claimed that the applicants had failed to exhaust domestic remedies. At the time of lodging their complaints, their applications for asylum and/or temporary asylum had not yet been considered in the final instance. Furthermore, they had not lodged their requests until after their arrest for breaching immigration rules.

The Government further argued that during the administrative expulsion proceedings, notably during the court hearings, the applicants had only provided general and summary information about the reasons allegedly preventing their return. By way of example, the Government submitted copies of two court decisions where Syrian nationals had been able to obtain reversal of the expulsion orders.

Lastly, the Government stressed that on 17 July and 15 October 2014 the applicants had lodged requests not to have their applications for refugee status and temporary asylum reviewed. This inconsistency had prevented the FMS from examining their complaints on the merits. The examination of A.A.'s complaint had been left incomplete in view of his escape from the detention centre in August 2014 and the absence of any contact with the authorities since then. The Government were of the opinion that a further examination of A.A.'s complaint was impossible in the circumstances.

In view of the above, the Government was of the opinion that the applicants' claims under Articles 2 and 3 should be dismissed for non-exhaustion of domestic remedies or as manifestly ill-founded. The Court first noted that Russian legislation prohibits the removal of persons whose requests for refugee status and/or temporary asylum are pending, implying that the applicants' withdrawal was a personal choice, not exhausting domestic remedies. The Court further claimed that the successful outcome of proceedings for the determination of refugee status and/or temporary asylum could offer a real possibility for applicants to regularise their situation and obtain formal guarantees of non-refoulement for the duration of that status.

The Court also recognised that the applicants' statements in relation to their fear of an Article 3 violation, were rather general. The applicants do not speak Russian and, while they seem to have had access to an interpreter, had no legal representative to assist them. The Court therefore recognised that the applicants' participation ability was relatively limited.

In the circumstances, the Court is bound to conclude that the proceedings concerning the determination of the applicants' refugee and asylum status were not accessible to them in practice in the present case and therefore, in any event, could not be considered as a remedy to be used. Accordingly, the Court dismisses the Government's objection of non-exhaustion.

The Court further noted that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

Decision & Reasoning

The Court ruled that the complaints under Articles 2 and 3 concerning the applicants' expulsion, and under Articles 5 and 13 admissible, and the remainder of the applications inadmissible. It also decided that the forced return of the applicants to Syria would give rise to a violation of Articles 2 and/or 3 of the Convention. In its reasoning, the Court noted that one of the applicants is a stateless Palestinian and according to UNHCR, "nearly all the areas hosting large numbers of Palestinian refugees are directly affected by the conflict". This group was regarded by the UNHCR as being in need of international protection.

It was not necessary to examine the complaint under Article 13, in conjunction with Articles 2 and/or 3 of the Convention. The court also ruled that there had been a violation of Article 5 § 4 and 5 § 1 (f) of the Convention. It was decided that Russia had failed to comply with its obligations under Article 34 of the Convention and therefore had to ensure the immediate release of the applicants.

The Court also decided that the Russian government has to pay the sums of EUR 9,000 and EUR 8,600 to each applicant.

Decision documents

[CASE%20OF%20L.M.%20AND%20OTHERS%20v.%20RUSSIA.pdf](#)

Outcome

The Court held that there was a breach of Articles 2 and 3 and Articles 5(4) and 5(1)(f), as well as Article 34 of the Convention.

The Court rejected the applicants' complaint under Article 3 of the Convention, concerning the conditions of their detention.

The Court held that Russia was to ensure immediate release the applicants and awarded EUR 9,000 to each of the applicants in respect of non-pecuniary damage and EUR 8,600 jointly to the applicants in respect of costs and expenses.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

The UNHCR report of 1 July 2014 entitled “Syrian Refugees in Europe: What Europe Can Do to Ensure Protection and Solidarity”:

<https://www.refworld.org/docid/53b69f574.html>

The Human Rights Watch World Report 2014 (31 January 2014):

https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_re...

The report “Country Information and Guidance, Syria: Security and humanitarian situation” published by the UK Home Office in December 2014:

<https://www.justice.gov/sites/default/files/pages/attachments/2015/09/0...>

8th Report of the independent international commission of inquiry on the Syrian Arab Republic (A/HRC/27/60, 13 August 2014):

<https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A.HRC.27.60...>

Secretary-General of the United Nations, Twelfth report on the implementation of Security Council resolutions 2139 (2014), 2165 (2014) and 2191 (2014) on Syria, 19 February 2015

UNHCR, Position on Returns to the Syrian Arab Republic, 2 March 2012

UNHCR, International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update III, 27 October 2014

Laura Létourneau-Tremblay, Expulsion of Refugees from Russia to Syria Would Violate International Obligation, RefLaw, 6 January 2016:

<http://www.reflaw.org/expulsion-of-refugees-from-russia-to-syria-would-...>

A. Kubal, Refugees or Migrant Workers? A case study of undocumented Syrians in Russia LM and Others v Russia, Journal of Immigration, Asylum and Nationality Law, 30 (4), 265-282, 28 July 2016

Caselaw cited

Kudeshkina v. Russia (no. 2), Application no. 28727/1, Akdivar v Turkey, Application No. 21893/93, Scozzari and Giunta v. Italy [GC], (Application nos. 39221/98 and 41963/98), Mente and others v. Turkey, no. 23186/94, Lebedev v. Russia, (no. 4493/04)

Gayratbek Saliyev v. Russia, (no. 39093/13), H.L.R. v. France, Application no. 24573/94, Gebremedhin (Gaberamadhien) v France, Application No. 25389/05, Saadi v. Royaume-Uni [GC], Application No. 13229/03, Maestri v. Italy [GC], Application No. 39748/98, K.A.B. v. Sweden, Application No. 886/11 [27], Kozhayev v. Russia, Application No. 60045/10, Broniowski v. Poland [GC], Application No. 31443/96, Shtukaturv v. Russia, (no. 44009/05), Paladi v. Moldova [GC], Application No. 39806/05, Y. v. Russia, Application No. 20113/07, M.A. v Cyprus, Application No. 41872/10, Khaydarov v. Russia, Application No. 21055/09, Gaforov v. Russia, Application No. 25404/09, Kaboulov v. Ukraine, Application No. 41015/04, Sufi and Elmi v. the United Kingdom, Application Nos. 8319/07 and 11449/07, Scoppola v. Italy (no. 2) [GC], Application No. 10249/03, Hirsi Jamaa and Others v Italy [GC], Application No. 27765/09, NA v UK, Application No. 25904/07, A. and Others v. the United Kingdom [GC], Application No. 3455/05, Brumsrescu v. Romania, no. 28342/95, Labsi v. Slovakia, Application no. 33809/08, Amirov v. Russia, Application no. 51857/13, 27 November 2014, Egamberdiyev v. Russia, Application no. 34742/13, Cotlets v. Romania, Application no. 38565/97, Knyazev v. Russia, Application no. 25948/05, Zakharkin v. Russia, Application no. 1555/04, , Melnikov v. Russia, Application no. 23610/03, Rustamov v. Russia, Application no. 11209/10, Akram Karimov v. Russia, Application no. 62892/12, Khodzhayev v. Russia, Application no. 52466/08,

Jelisis v. Bosnia and Herzegovina, Application no. 41183/02, Croke v. Ireland, Application no. 33267/96, Rakhimov v. Russia, Application no. 50552/13, Khalikov v. Russia, Application no. 66373/13, Shakurov v. Russia, Application no. 55822/10, Assanidze v. Georgia [GC], Application no. 71503/0, Ewalaka-Koumou v. Russia, Application no. 20953/03, 4 February 2010, Kim v. Russia, Application no. 44260/13, Kasymakhunov v. Russia, Application no. 29604/12, Öcalan v. Turkey [GC] (no. 46221/99, ECHR 12 May 2005), Del Rio Prada v Spain (no. 42750/09), Mamatkulov and Askarov v. Turkey [GC], nos. 46827/99 and 46951/99, ECHR 2005, Volkov v. Ukraine (Application no. 217722/11, Azimov v. Russia, no. 67474/11, Tukhtamurodov v. Russia (no. 21762/14), Mamazhonov v. Russia (no. 17239/13), 23 October 2014, Abdolkhani and Karimnia v. Turkey, (no. 30471/08), 22 September 2009, AM & AM (Somalia) v. Secretary of State for the Home Department, CG [2008] UKAIT 00091

Third party interventions

UNHCR

Federal Bailiff Service