



## [Russia - Supreme Court of Russian Federation, judgment №57-АД15-1](#)

The applicant is a stateless person, who committed an administrative offence of drug abuse, and was sentenced to administrative detention and expulsion. The Court considered that in his specific circumstances, which included statelessness and long-term residence in Russia since childhood, expulsion would be a disproportionate measure at risk of violating Russia's international human rights commitments, and reduced the sentence to administrative detention only.

**Case status:** Decided

**Case number:** №57-АД15-1

**Citation:** [http://vsrf.ru/stor\\_pdf.php?id=1236878](http://vsrf.ru/stor_pdf.php?id=1236878)

**Date of decision:** 16/02/2015

**State:** Russian Federation

**Court / UN Treaty Body:** Supreme Court

**Language(s) the decision is available in:** Russian

**Applicant's country of birth:** Ukraine

**Applicant's country of residence:** Russian Federation

**Legal instruments:** European Convention on Human Rights (ECHR), International Covenant on Civil and Political Rights (ICCPR), Other international law

**Key aspects:** Access to social and economic rights, Country of return, Deportation and removal, Protection, Respect for private and family life

**Relevant Legislative Provisions:**

Article 7 of the International Covenant of 16 December 1966 on Civil and Political Rights

Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984

Article 3 of the Convention for the Protection of Human Rights and Fundamental

## Freedoms

### **Facts**

The applicant, who is stateless, was caught using morphine without a doctor's prescription in July 2014, and was sentenced to 10 days of administrative detention, and an expulsion order was issued against him.

### **Decision & Reasoning**

"When imposing an administrative penalty on an individual, the nature of the administrative offence committed by him, the identity of the perpetrator, his living and financial situation, the circumstances mitigating administrative responsibility, and circumstances aggravating administrative responsibility ought to be taken into account [...]"

"The imposition of an additional punishment in the form of expulsion from the Russian Federation should be based on evidence confirming the actual need to apply such a measure of responsibility to a person against whom the administrative measure has been directed, as well as its proportionality as a way of achieving balance of public and private interests in the framework of proceedings on cases concerning administrative offences."

"Article 7 of the International Covenant of 16 December 1966 on Civil and Political Rights establishes that no one should be subjected to torture or cruel, inhuman or degrading treatment or punishment."

"By virtue of Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, no State Party shall expel, return (refoulement) or extradite any person to another State if there are serious reasons to believe that he might be in danger of being subjected to torture there."

“Article 7 of the International Covenant on Civil and Political Rights, as interpreted by the UN Human Rights Committee, and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, precludes expelling a person if there are serious grounds for believing that in the state of destination he may be subjected not only to torture, but also to inhuman or degrading treatment or punishment.”

“According to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights, inhuman treatment or punishment refers to cases where such treatment or punishment, as a rule, may be of a deliberate nature, last for several hours or when as a result of such treatment or punishment a person may be undergo real physical harm or deep physical or mental suffering. Degrading treatment or punishment is defined as, in particular, such treatment or punishment that causes a person to feel fear, anxiety and their own inferiority.”

“By virtue of Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as interpreted by the UN Committee against Torture, when assessing the presence or absence of the above circumstances, it is necessary to take into account the general situation regarding the observance of human rights and freedoms in the State of destination, as well as the specific circumstances of the case, which in their totality may indicate the presence or absence of serious grounds to believe that the person may be subjected to the aforementioned treatment or punishment.”

“[During the applicant’s sentencing, the judge], has taken into account that at the place of his residence the applicant is considered of satisfactory character, he incurred criminal liability, and his case was frequently the topic of concern at the Community Council of his municipality called "Village Chernyavka". Taking these circumstances into account, the judge of the [municipality] considered it necessary to hold [the applicant] administratively responsible, in the form of administrative detention with an expulsion order from the Russian Federation.”

“At the same time, during the proceedings [the applicant] declared that he has been residing in Russia since he was a child, he is a stateless person, and there are currently military hostilities in the territory of Ukraine in the town of Horlivka, Donetsk region, where he was born and lived until 1993. Therefore expulsion would

entail a real threat and danger to his life.

“The applicant’s statement ought to be considered reasonable.”

“In addition, by virtue of the provisions of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950), everyone has the right to respect for his private and family life. Public authorities should not interfere with the exercise of this right, except in cases where such interference is prescribed by law and is necessary in a democratic society in the interests of national security and public order, the economic well-being of the country, in order to prevent disorder or crime, to protect health or morality, or to protect the rights and freedoms of others persons.”

“From the case file it follows that the mother of [the applicant] lives in the [same municipality] and is a national of Russian [...]”

“Taking into account the legal position expressed in the Resolutions of the Constitutional Court of the Russian Federation on the possibility to consider the specific circumstances of the case an assign an administrative punishment which not provided for as a specific sanction for the relevant offence in the corresponding article of the Code of Administrative Offences of the Russian Federation, the decision [concerning the applicant] are subject to change by excluding [...] the administrative punishment in the form of an administrative expulsion from the Russian Federation.”

### **Decision documents**

[SupremeCourt\\_16Feb2015.pdf](#)

### **Outcome**

The Court altered the sentence so as not to include expulsion of the applicant.