



Expulsion from Russia to Syria would violate the European Convention on Human Rights

The case of [L.M. and Others v. Russia](#) (application nos. 40081/14, 40088/14, and 40127/14) concerned the impending expulsion of three men to Syria from Russia and their detention pending expulsion in Russia.

In today's **Chamber** judgment¹ in the case, the European Court of Human Rights held, unanimously: that the applicants' forced return to Syria would give rise to a **violation of Article 2 (right to life) and/or Article 3 (prohibition of torture and of inhuman or degrading treatment)** of the European Convention on Human Rights;

that there had been a **violation of Article 5 § 1 (f) (right to liberty and security) and Article 5 § 4 (right to have lawfulness of detention decided speedily by a court);** and

that Russia had **failed to comply with its obligations under Article 34 (right of individual petition).**

This was the first time that the Court addressed in a judgment the issue of returns to Syria in the current situation. The Court found that, in view of international reports about the crisis in Syria and additional information about the applicants' individual situation, the applicants had put forward a well-founded allegation that their return to Syria would expose them to a real risk to their lives and personal security.

Having regard to its finding that the applicants' detention, since the last decision by the Russian courts confirming their expulsion order in May 2014, had been in breach of Article 5, the Court held, in application of Article 46 (binding force and execution of judgments), that Russia was to ensure the immediate release of two of the applicants who had so far remained in detention.

Principal facts

The applicants, L.M., a stateless Palestinian from Syria, and A.A. and M.A., Syrian nationals, were born in 1988, 1987, and 1994 respectively. At the time of lodging their applications they were detained in a detention centre for foreign nationals in Maloyaroslavets, Kaluga Region (Russia).

The applicants entered Russia in 2013. In March 2014 A.A. sought refugee status in Russia and, according to the Russian Government, the request was dismissed. In April 2014 all three applicants were arrested at a clothing factory in Maloyaroslavets. The district court subsequently found them guilty of administrative offences, namely the breach of residence rules and working without a permit. The court ordered their expulsion to Syria and their detention pending expulsion. L.M. and M.A. have since then remained in the detention centre for foreign nationals, while A.A. escaped in August 2014, his subsequent whereabouts being unknown.

On 27 May 2014 the regional court rejected the applicants' appeals against the expulsion orders, following which the orders became enforceable. Their expulsion was stayed, however, in view of an interim measure applied by the European Court of Human Rights (under Rule 39 of its Rules of

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Court) indicating to the Russian Government that the applicants should not be expelled to Syria for the duration of the proceedings before the Court.

In parallel to the expulsion proceedings, following their arrest, all three applicants applied for refugee status and submitted requests for temporary asylum. They indicated that their reasons for leaving Syria were the war and danger to their lives. It appears that the proceedings in respect of L.M. and A.A. were terminated by the Federal Migration Service in December 2014. M.A.'s requests for refugee status and temporary asylum were both refused and his appeal was rejected by the regional court in November 2014.

Complaints, procedure and composition of the Court

The applicants complained that their expulsion to Syria, if carried out, would be in breach of their rights under Article 2 (right to life) and Article 3 (prohibition of torture and of inhuman or degrading treatment), and that they had no effective domestic remedies available in respect of these complaints, in breach of Article 13 (right to an effective remedy). They further complained that the conditions of their detention were in breach of Article 3. The applicants moreover relied on Article 5 § 1 (f) (right to liberty and security) and Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), complaining that they had no access to effective judicial review of their continued detention and that the court decisions ordering their detention did not stipulate the maximum length of that detention. Finally, relying on Article 34 (right of individual petition), the applicants complained that restrictions placed on their contact with their representatives and a lack of interpreting services had interfered with their ability to communicate effectively with the European Court of Human Rights.

The applications were lodged with the European Court of Human Rights on 29 May and 30 May 2014 respectively.

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

András Sajó (Hungary), *President*,
Mirjana Lazarova Trajkovska ("The former Yugoslav Republic of Macedonia"),
Julia Laffranque (Estonia),
Paulo Pinto de Albuquerque (Portugal),
Linos-Alexandre Sicilianos (Greece),
Erik Møse (Norway),
Dmitry Dedov (Russia),

and also Søren Nielsen, *Section Registrar*.

Decision of the Court

Article 2 and Article 3

As regards the admissibility of the complaints, the Court dismissed an objection by the Russian Government to the effect that the applicants had failed to exhaust the domestic remedies, as at the time of lodging their complaints their applications for refugee status and/or temporary asylum had not yet been considered in the final instance.

The Court noted in particular that the decisions of the regional court of 27 May 2014 confirming the expulsion orders were final and remained valid in respect of all three applicants. The proceedings concerning refugee status and asylum were unsuccessful, or remained unfinished. Moreover, certain aspects of the applicants' confinement in the detention centre had prevented them from effectively participating in the proceedings for the determination of their refugee and asylum status.

As regards the alleged violation of the Convention in the event of the applicants' expulsion to Syria, the Court found that the applicants had presented the Russian authorities with substantial grounds for believing that they faced a real risk to their lives and personal security if expelled. In the proceedings by which they had challenged the expulsion orders, they had argued that they originated from Aleppo and Damascus, where heavy and indiscriminate fighting had been raging since 2012. They had then submitted additional and individualised information about the risks in the event of return in the proceedings aimed at obtaining refugee status. Moreover, the need for international protection for asylum seekers from Syria had been recognised by a report of the Russian Federal Migration Service.

The Court was not persuaded that the applicants' allegations had been duly examined by the Russian authorities in any set of proceedings. In the proceedings resulting in the expulsion order, the scope of the review by the national courts had been largely confined to establishing that the applicants' presence in Russia had been illegal. Both the district court and the regional court had avoided engaging in any in-depth discussion about the dangers referred to by the applicants and the wide range of international sources on the current situation in Syria. The Court underlined that, in view of the absolute nature of the prohibition of inhuman or degrading treatment under Article 3, it was not possible to weigh the risk of such treatment against the reasons put forward for expulsion. The Court found the Russian courts' approach in the applicants' case particularly regretful since there had been cases in Russia, including before the Russian Supreme Court, in which the courts, when considering administrative offences in the immigration sphere, had taken into account and given sufficient weight to the arguments advanced by the claimants that they would risk being ill-treated if returned. As a result of such examination, the expulsion orders could be lifted.

The European Court of Human Rights had not yet adopted a judgment to evaluate the allegations of a risk of danger to life or of ill-treatment in the context of the ongoing conflict in Syria. This was undoubtedly in part due to the fact that most European countries did not at present carry out involuntary returns to Syria. In October 2014 the United Nations High Commissioner for Refugees (UNHCR) had welcomed the protection practices of many European States with respect to Syrian nationals, including *de facto* moratoria on returns to Syria. The latest UN reports described the situation as a "humanitarian crisis" and spoke of "immeasurable suffering" of civilians, massive violations of human rights by all parties and the resulting displacement of almost half of the country's population.

The applicants originated from Aleppo and Damascus, where particularly heavy fighting had been raging. M.A. had referred to the killing of his relatives by armed militia who had taken over the district where he had lived, and had stated that he feared being killed too. L.M. was a stateless Palestinian. According to the 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.

The Court concluded that the applicants had put forward a well-founded allegation that their return to Syria would be in breach of Articles 2 and/or 3 of the Convention. The Russian Government had not presented any information that could dispel these allegations, nor referred to any special circumstances which could ensure sufficient protection for the applicants if returned.

Accordingly, the **applicants' expulsion to Syria, if carried out, would be in breach of Articles 2 and/or 3 of the Convention.**

The Court did not consider it necessary to examine the applicants' complaints separately under Article 13.

As regards the complaint under Article 3 about the conditions of the applicants' detention, the Court did not find, in the light of the material submitted by the parties, that those conditions disclosed any

appearance of a violation of the Convention. It therefore declared this part of the application inadmissible.

Article 5

The Court had found a violation of Article 5 § 4 in a number of cases against Russia on account of the lack of any provision under national law which could have allowed a claimant to bring proceedings for a judicial review of his detention pending expulsion. As in those cases, the applicants did not have at their disposal a procedure for judicial review of the lawfulness of their detention. Accordingly, there had been a **violation of Article 5 § 4** in respect of all three of them.

As regards the complaint under Article 5 § 1, the Court was satisfied that initially the applicants' detention pending expulsion had been ordered by the district court in connection with an offence punishable by expulsion and thus in compliance with national law. Furthermore, during the initial period of the applicants' detention the authorities had still been investigating whether their removal would be possible. However, in their pleadings before the regional court, the applicants had submitted sufficient information, with reference to the relevant Russian sources, that their expulsion to Syria could not be carried out. The regional court had failed to address these allegations and had confirmed the expulsion orders. Consequently, after the decisions of 27 May 2014, it could no longer be said that the applicants were persons "against whom action [was] being taken with a view to deportation or extradition" within the meaning of Article 5 § 1 (f). Even though no real action had been taken since May 2014 with a view to expulsion, they had remained in detention without any indication of a time-limit. There had accordingly been a violation of Article 5 § 1.

Article 34

As regards the complaints under Article 34, the Court observed that the applicants had been denied meetings with their lawyers and representatives. Moreover, the applicants claimed that they had been forced to sign statements in Russian, withdrawing their asylum requests, which they had later retracted as signed under duress and without their understanding. The Court noted with concern that there had not been any meaningful reaction from the relevant authorities to these complaints. Furthermore there was sufficient evidence that the applicants' communication with their representatives had been seriously obstructed. The Court considered that those restrictions had constituted an interference with the exercise of their right of individual petition and that therefore Russia had failed to comply with its obligations under Article 34.

Application of Article 46

In view of its finding of a violation of Article 5 § 1 on account of the applicants' detention after 27 May 2014, the Court considered it necessary to indicate individual measures for the execution of the judgment, in application of Article 46 (binding force and execution of judgments). It held that Russia was to ensure the immediate release of those two applicants who had so far remained in detention.

Just satisfaction (Article 41)

The Court held that Russia was to pay each of the applicants 9,000 euros (EUR) in respect of non-pecuniary damage and to the applicants jointly EUR 8,600 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.