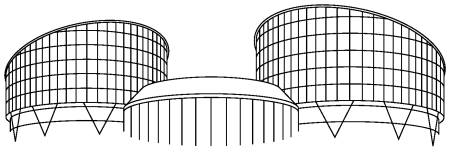

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF M.S.A. AND OTHERS v. RUSSIA

(Application no. 29957/14 and 8 others – see appended list)

JUDGMENT

This version was rectified on 11 January 2018
under Rule 81 of the Rules of the Court.

STRASBOURG

12 December 2017

This judgment is final but it may be subject to editorial revision.

In the case of M.S.A. and Others v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 21 November 2017,

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

PROCEDURE

1. The case originated in nine applications (nos. 29957/14, 29961/14, 53980/15, 10583/16, 10796/16, 10803/16, 19980/16, 35675/16 and 38237/16) 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 twelve Syrian nationals. The details of the applicants' individual cases are set out in the Appendix.

2. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicants alleged, in particular, that their being returned to Syria would breach their rights guaranteed by Articles 2 and 3 of the Convention, and that they had had no effective remedies in respect of these complaints, in breach of Article 13 of the Convention. Two of the applicants, M.S.A. and R.K., also complained under Article 3 of the Convention that they had been detained in inhuman and degrading conditions in a detention centre for foreigners. All the applicants also alleged that their detention in Russia had been in breach of Article 5 of the Convention. Furthermore, one of the applicants, H.R., complained under Article 6 of the Convention that he had not been provided with a lawyer during the administrative proceedings concerning his removal, and other applicants, B.Z., H.D. and S.W., complained that their right to meet with their lawyer whilst in detention had been restricted, in breach of Article 34 of the Convention.

4. On various dates the Court decided to indicate to the Russian Government, under Rule 39 of the Rules of Court, that the applicants should not be expelled to Syria for the duration of the proceedings before the Court. The applicants' cases were also granted priority (under Rule 41) and confidentiality (under Rule 33), and the applicants were granted anonymity (under Rule 47 § 4).

5. Between 19 March 2015 and 13 September 2016 the applications were communicated to the Government.

6. On 16 June 2017 the Government was informed that the Court envisaged assigning the applications to a Committee of three judges. On 30 June 2017 the Government objected to the applications being examined by a Committee. After considering the Government's objection, the Court rejected it. In accordance with Article 26 § 1 of the Convention as amended by Protocol No. 14, the applications were assigned to a Committee of three judges. It was also decided that the Committee would rule on the admissibility and merits of the applications at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants are Syrian nationals. Their initials, dates of birth, application numbers and the other details of their cases are set out in the Appendix. At the time of lodging their applications the applicants were detained at detention centres for foreign nationals run by the Federal Migration Service (hereinafter "the FMS") in different towns in Russia.

8. The facts of the cases, as submitted by the applicants, may be summarised as follows.

A. The applicants' arrest and expulsion proceedings

9. On various dates between 2012 and 2016 the applicants came to Russia on various visas and did not leave when the period of their stay had expired. They were apprehended by the police and/or officers of the FMS in various regions in Russia for breaching the applicable immigration regulations, and placed in detention centres for foreigners (see the Appendix for the applicants' dates of detention and details of the relevant proceedings). The domestic courts in the respective regions examined their cases and found the applicants guilty of breaching various immigration regulations. Some of the applicants lodged appeals, but they were rejected by the domestic courts, whereas other applicants eventually had their expulsion orders quashed by the appeal courts. One of the applicants did not appeal against his expulsion order (see the Appendix for the details of individual cases)

B. Proceedings for refugee status and asylum in Russia

10. All the applicants sought to obtain refugee status and/or temporary asylum in Russia. Some of the applicants voluntarily withdrew their requests and others' requests were rejected, first by the FMS and then by the domestic courts which examined the appeals against the FMS's refusals. Only Y.A.'s request for temporary asylum was granted (see the Appendix for details).

C. Departure for a third country

11. According to the information provided by their lawyers, while the proceedings before the Court were ongoing, six of the applicants (M.S.A., R.K., H.R., B.Z., S.W. and A.A.) left Russia of their own volition on various dates to go to third countries, where they settled (see the Appendix for details).

D. Conditions of detention of M.S.A. and R.K.

12. Between 24 January 2014 and 10 June 2014 M.S.A. and R.K. were detained in a detention centre for foreign nationals run by the FMS in Krasnoye Selo, in the Leningrad Region.

13. According to their submissions, the centre was based in an eight-storey building with windows covered with grills; five of the storeys were designed to accommodate 176 people in total. Each storey comprised around ten to eleven cells. The centre was severely overcrowded during the whole period of the applicants' detention. In particular, according to a report of the Human Rights Ombudsman in Saint Petersburg, on 26 February 2014 the centre accommodated 400 foreign nationals.

14. Both applicants were detained in cell no. 511, located on the fifth storey, which measured around 9 square metres and was designed to accommodate six people. All places in the cell were occupied during the whole period of their detention. Thus, each detainee had no more than 1.5 square metres of personal space, despite the statutory requirement that each detainee in a detention centre for foreign nationals have at least 4.5 square metres of personal space. The cell was furnished with three bunk beds and two bedside tables. There was no dining table in the cell.

15. The food was of poor quality, with no fruit or vegetables, and included pork, which the applicants could not eat for religious reasons. No alternative food was offered instead of pork, so they were deprived of any meal when pork was served. There were no kitchen and dining facilities in the centre. Food was delivered to the centre in containers and served cold in the cells. Detainees were forced to eat on their beds because there were no tables in the cells. This shortage in food was exacerbated by arbitrary

restrictions on the contents of food parcels delivered from outside. Detainees were not allowed to receive fermented milk products, home-cooked food, fruit or vegetables.

16. Detainees had no free access to drinking water or devices to boil tap water. The cell where M.S.A. and R.K. were detained was only lit by one light bulb, and the detainees were not allowed to switch on the light after 10 p.m.

17. The applicants and other inmates could move around on that storey to get to sanitary facilities, but they were not allowed to leave the storey or enter other detainees' cells. At the two ends of the common corridor there were bathrooms, each equipped with three lavatories, two washbasins and two showers. The storey was under the control of a dozen "chosen" inmates who, with the tacit consent of the centre's administration, dictated their rules to others and created an atmosphere of fear, violence and extortion. One of the bathrooms was for their exclusive use. The other seventy to eighty inmates had to use the other bathroom.

18. Outdoor exercise was sporadic and lasted around 15-20 minutes. In winter, the applicants did not go outside, as they did not possess winter clothes. In the period April-May 2014 they were able to enjoy outdoor exercise only four times. Outdoor exercise took place in a closed yard measuring around 50 metres in length and 10 metres in width. There was gravel on the ground, and there were no benches, plants or sports equipment.

19. The facility did not offer any activities, and no library was available.

E. Access to a lawyer

20. During the administrative hearing concerning his removal from Russia on 26 February 2016, H.R. was not represented by a lawyer.

21. According to the lawyer representing B.Z., H.D. and S.W., on 25 March 2015 he was not allowed to meet with them in the detention centre.

II. RELEVANT DOMESTIC LAW AND PRACTICE

22. The relevant domestic law and practice relating to the expulsion and detention of foreign nationals in Russia, refugee status, and temporary asylum, and the situation of Syrian nationals in the country, is summarised in the Court's leading judgment in the case of *L.M. and Others v. Russia*, nos. 40081/14 and 2 others, §§ 61– 75, 15 October 2015, and in the follow-up case of *S.K. v. Russia*, no. 52722/15, §§ 23-41, 14 February 2017.

III. OTHER RELEVANT MATERIAL

23. A summary of the recent (issued between November 2015 and October 2016) international and national reports concerning the humanitarian situation in Syria is provided in the case of *S.K.v. Russia*, cited above, §§ 46-47.

THE LAW

I. JOINDER OF THE APPLICATIONS

24. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their similar factual and legal background.

II. THE APPLICATIONS TO BE STRUCK OUT OF THE LIST

25. The representatives of M.S.A., R.K., H.R., B.Z., S.W. and A.A. informed the Court that these applicants had left Russia and settled in third countries (see the Appendix for details).

26. As regards M.S.A. and R.K., the Government submitted that they were no longer exposed to a risk of death or ill-treatment because they had left Russia for Germany. Therefore, their applications should be struck out of the Court's list of cases. As regards each of the six above-mentioned applicants, the Government submitted that, even though their respective representatives were aware of their whereabouts, the applicants themselves had not confirmed their intention to pursue their applications. Therefore, in the Government's view, each of the six present applications should be dismissed by the Court.

27. The Court will first address the Government's argument concerning the alleged lack of intention on the part of the six applicants to pursue their applications.

28. The Court reiterates that an applicant's representative must not only supply a power of attorney or written authority (Rule 45 § 3 of the Rules of Court), but that it is also important that contact between an applicant and his or her representative be maintained throughout the proceedings. Such contact is essential, both in order to learn more about the applicant's particular situation and to confirm the applicant's continuing interest in pursuing the examination of his or her application (see *V.M. and Others v.* Belgium [GC], no. 60125/11, § 35, 17 November 2016). In the present case, from the correspondence with their representatives, the Court observes that M.S.A., R.K., H.R., B.Z., S.W. and A.A have maintained contact with

their lawyers, and they continue to be interested in pursuing their applications. It therefore dismisses the Government's request to dismiss these six applications for alleged loss of interest.

29. As regards the Government's request to strike out the applications of M.S.A. and R.K., the Court notes that the relevant part of Article 37 § 1 of the Convention provides that:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> ...
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application..."

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

30. The Court notes from the submissions of the representatives of M.S.A. and R.K. and H.R., B.Z., S.W. and A.A. that these applicants left Russia for safe third countries and settled there (see the Appendix for details). Thus, it considers that they no longer face expulsion to Syria and a risk of death and/or ill-treatment there.

31. As regards N.K. and members of his family on 11 January 2017 the Government submitted that the domestic court had quashed the order for their removal from Russia, and had ordered their release on 20 May 2016. They further submitted that the applicants had requested temporary asylum in Russia. The applicants acknowledged these facts, but argued that their stay in Russia had not been regularised and that they remained at risk of expulsion, as the Russian authorities could initiate new proceedings at any moment.

32. The Court notes that the order for the removal of N.K. and his family has been quashed, they are no longer in detention, but their immigration status had not been allegedly regularised. However, it highlights that previously it concluded in similar circumstances that where an applicant has not been granted a residence permit, it has nevertheless considered it no longer justified to continue examining his or her case by virtue of Article 37 § 1 (c) of the Convention, and has decided to strike it out of its list of cases. This is because it has been clear from the information available that at that time, and for a considerable time to come, the applicant would not be at risk of being expelled and subjected to treatment allegedly in breach of Article 3 of the Convention, and because the applicant could challenge a future removal before the domestic authorities (see *F.G. v. Sweden* [GC], no. 43611/11, § 74, ECHR 2016, with further references). The Court notes that the situation of N.K. and the members of his family is largely similar to the situation in the above cases.

33. The Court considers that it is no longer justified to continue the examination of the above applications as regards their complaints of a risk of death and/or ill-treatment under Articles 2 and 3 of the Convention (see *Rakhmonov v. Russia*, 11673/15, 31 May 2016) and the closely linked complaints under Article 13 of the Convention. The Court is further satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue its examination of this part of the six applications (Article 37 § 1, *in fine*). Accordingly, the Court decides to strike the applications of M.S.A., R.K., H.R., B.Z., S.W., A.A, and N.K. and the members of his family out of its list of cases in so far as they concern complaints of death and/or ill-treatment in the event of the applicants' expulsion to Syria from Russia and the alleged absence of effective domestic remedies in respect of these claims.

34. The above findings do not prevent these applicants from lodging new applications with the Court in the future and making use of the available procedures – including the one under Rule 39 of the Rules of Court – in respect of any new circumstances.

III. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION ON ACCOUNT OF ORDERED EXPULSION TO SYRIA (THE APPLICATIONS OF H.D. AND Y.A.)

35. H.D. and Y.A. complained that their expulsion to Syria, if carried out, would be in breach of their right to life and the prohibition on torture, inhuman and degrading treatment provided for in Articles 2 and 3 of the Convention. The relevant provisions read as follows:

Article 2

"1. Everyone's right to life shall be protected by law. ..."

Article 3

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

A. H.D.'s application (no. 10796/16)

36. The Government submitted that the applicant had been residing in Russia illegally since 1 September 2013, using his brother's passport, and he had not taken any steps to legalise his status in the country for several years. His complaint under Articles 2 and 3 of the Convention should be dismissed for non-exhaustion of domestic remedies. In particular, he had not appealed against the removal decision issued by the court on 12 May 2015, even though his right to appeal had been explicitly noted in the text of the decision. Furthermore, the applicant's arguments concerning his poor

knowledge of the Russian language and his lack of understanding of the expulsion proceedings were inaccurate and contradictory, since he had been assisted by an interpreter during the expulsion hearing, had resided and worked in Russia since 2013, and his application for temporary asylum had been submitted in Russian. Moreover, even assuming that a lawyer had assisted him in submitting his request for temporary asylum, that lawyer could also have asked to restore the time-limit for lodging an appeal against the expulsion decision at that time. However, he had only done so on 12 February 2016 and the appeal court had refused his request, stating that the expulsion decision had been served on the applicant on the day when it had been issued, and the lack of any action on the part of the applicant was unjustified. Moreover, the applicant had not appealed against the immigration authorities' refusal to grant him temporary asylum. Lastly, his request for refugee status had been ongoing at the time of his application to the Court.

37. H.D. submitted that he had not been able to appeal against the removal order of 12 May 2015 promptly because he did not know Russian, had not been familiar with the Russian legal system, and had not had the financial means to retain a lawyer. The removal proceedings in question had been conducted in Russian and he had not in fact been provided with an interpreter, even though the text of the removal decision stated otherwise. On 2 September 2015 his lawyer, M., had filed the application for temporary asylum on his behalf. At the end of February 2016 M. had been informed about the refusal by the immigration authorities in the Republic of Dagestan to grant the applicant temporary asylum. In March 2016 M. had unsuccessfully appealed against that refusal to the FMS of Russia, and on 20 June 2016 he had submitted an appeal to the court. As regards the application for refugee status, the applicant had submitted it on 24 February 2016, but it would not have prevented his expulsion.

38. The Court notes at the outset that it was not informed by either the Government or the applicant about the outcome of the temporary asylum and refugee status proceedings (see the Appendix for details). Therefore, in these circumstances, the Court finds that it is not possible to examine the Government's objection as to non-exhaustion or determine whether or not the applicant failed to exhaust domestic remedies with regard to those proceedings.

39. As regards the expulsion proceedings, the Court reiterates that an ordinary appeal against removal imposed by a first-instance court, having an automatic suspensive effect, is in principle an effective remedy to be exhausted, and no further appeal is required (see *S.K.v. Russia*, cited above, §§ 80-81). The Court notes that the applicant in fact participated in two expulsion hearings, firstly using his brother's name, which he had assumed, and then his own (see the Appendix for details). He did not submit an ordinary appeal against the expulsion order of either 12 May 2015 or

13 July 2015. His submissions indicate that he failed to appeal because he could not effectively follow the expulsion proceedings, as they were conducted in Russian and he did not have a good command of it. However, according to the text of the removal decisions, the applicant was assisted by interpreters, A.M. and N.M. respectively, during the two hearings in question. There appear to be no grounds for the Court to doubt either the authenticity of those decisions or the quality of A.M. and N.M.'s interpreting. Nor did the applicant challenge those decisions or complain about the interpreters. Moreover, as of 2 September 2015 the applicant was represented by M., who visited him in the detention centre and assisted him in applying for temporary asylum. The Court also observes that as early as September 2015 M. was able to request that the time-limit for submitting an appeal against the expulsion decision be restored. However, M. failed to do so at that time, and he did not provide any explanation to the Court as to why he had requested to reopen the appeal proceedings in the applicant's case only five months later, in February 2016. Lastly, the applicant did not contend that an ordinary appeal had been otherwise unavailable to him, or that it would have been an ineffective remedy in his case.

40. Accordingly, in these circumstances, the Court considers that H.D. did not exhaust domestic remedies with regard to his complaints under Articles 2 and 3 of the Convention, and rejects them under Article 35 § 1 of the Convention.

41. Taking the above finding into consideration, the Court also finds it appropriate to discontinue the application of Rule 39 of the Rules of Court in respect of H.D.

42. The above finding does not prevent H.D. from lodging a new application with the Court in the future and making use of the available procedures – including the one under Rule 39 of the Rules of Court – in respect of any new circumstances.

B. Y.A.'s application (no. 38237/16)

43. The Government submitted that on 24 June 2016 Y.A. had been granted temporary asylum. His stay in Russia had been authorised until 24 June 2017 and his removal from Russia had been prohibited. They therefore claimed that the applicant had lost his victim status in respect of his complaints under Articles 2 and 3 of the Convention.

44. The applicant acknowledged that he had received temporary asylum in Russia. However, he maintained his complaint.

45. The Court reiterates that, in principle, a successful application for temporary asylum would be capable of suspending the enforcement of administrative removal (see *S.K. v. Russia*, cited above, § 94, and *Tukhtamurodov v. Russia* (dec.), no. 21762/14, 20 January 2015). Furthermore, a person granted temporary asylum in Russia can seek to

renew this and appeal against any adverse decision (see *Tukhtamurodov*, cited above, § 37).

46. Y.A. has not informed the Court that he has been unable to renew his temporary asylum.

47. Therefore, in the light of the parties' submissions and the circumstances of Y.A.'s case, the Court observes that, as matters currently stand, Y.A. no longer faces an imminent risk of removal to Syria from Russia, and the factual and legal circumstances at the heart of his complaint are no longer valid. Consequently, the applicant can no longer claim to be a victim within the meaning of Article 34 of the Convention in respect of his claim that he would be subjected to ill-treatment in Syria (see *Tukhtamurodov*, cited above, § 38).

48. It follows that this part of Y.A.'s application must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention. In view of the above, the Court also considers it appropriate to discontinue the application of Rule 39 of the Rules of Court.

49. The above findings do not prevent Y.A. from lodging a new application with the Court and making use of the available procedures – including the one under Rule 39 of the Rules of Court – in respect of any new circumstances, in compliance with the requirements of Articles 34 and 35 of the Convention (see *Dobrov v. Ukraine* (dec.), no. 42409/09, 14 June 2011, and *Bakoyev v. Russia*, no. 30225/11, § 100, 5 February 2013).

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

50. H.D. and Y.A. also complained that they had not had at their disposal effective domestic remedies in respect of their claims, in breach of Article 13 of the Convention, which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

51. The Government contested that argument.

52. The Court notes that this complaint is closely linked to the one examined above under Articles 2 and 3 of the Convention. The Court therefore declares it inadmissible in the cases of H.D. and Y.A.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION (CONDITIONS OF DETENTION OF M.S.A. AND R.K.)

53. M.S.A. and R.K. (application nos. 29957/14 and 29961/14) further complained that the conditions of their detention in the detention centre for

foreign nationals had been incompatible with 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

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

B. Merits

55. The Government submitted that there had been no violation of Article 3 of the Convention on account of the conditions of detention of M.S.A. and R.K. in the detention centre for foreign nationals, because the conditions of their detention had been in full compliance with the domestic standards regulating such centres. The Government also submitted that the duration of their stay there had been relatively short, but did not make any further observations on the merits of the present complaint.

56. The applicants' submissions regarding the conditions of their detention are presented in paragraphs 12-19 above.

57. The Court notes that it examined complaints concerning the conditions of detention in a detention centre for foreign nationals in Krasnoye Selo, in the Leningrad Region, between 2011 and 2013, and established that they had fallen short of the requirements of Article 3 of the Convention (see *Kim v. Russia*, no. 44260/13, §§ 17-22, 31-35, 17 July 2014).

58. Having regard to the detailed information submitted by M.S.A. and R.K., and to the fact that the Government have not put forward any fact or argument capable of persuading the Court to reach a different conclusion in the present case, and given its own findings in the case of *Kim*, cited above, the Court finds that M.S.A. and R.K. were detained in cramped and inadequate conditions in the detention centre for foreign nationals in Krasnoye Selo, in the Leningrad Region. The Court therefore considers that the applicants were subjected to inhuman and degrading treatment in breach of Article 3 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

59. The applicants complained that their detention pending expulsion proceedings had been arbitrary and prolonged, and that they had not had

access to effective judicial review of their detention. They relied on Article 5 § 1 (f) and Article 5 § 4 of the Convention. The relevant parts of Article 5 of the Convention read as follows:

> "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.
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful ..."

A. Scope of Y.A.'s application (no. 38237/16)

60. The Court notes that Y.A. did not raise his complaint under Article 5 of the Convention in his original application, and therefore it was not communicated to the Government and the Government did not comment on it. In his observations, Y.A. made new submissions regarding the alleged violation of his rights under Article 5 of the Convention. However, he did not provide an explanation as to why he had failed to raise this complaint at an earlier stage, before communication of his case to the Government. Accordingly, the Court considers that the Article 5 complaint lodged by the applicant later in the proceedings does not constitute a mere elaboration on his original complaints to the Court, and therefore it is not appropriate to deal with this newly raised matter in the present case (see *Rafig Aliyev v. Azerbaijan*, no. 45875/06, §§ 69-70, 6 December 2011, with further references).

B. Admissibility

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

C. Merits

62. The Government submitted that the detention pending expulsion had been lawful, as it had been ordered by a court, and that even though no time-limit for the applicants' detention had been set, the maximum duration

of an administrative penalty was two years. The applicants could seek supervisory review of the expulsion and ensuing detention orders in the event of a significant change in their circumstances.

63. The applicants disputed that argument.

64. The court reiterates that any deprivation of liberty under the second limb of Article 5 § 1 (f) of the Convention will only be justified for as long as deportation or extradition proceedings are in progress. If such proceedings are not carried out promptly, the detention will cease to be permissible under Article 5 § 1 (f) of the Convention (see *L.M. and Others v. Russia*, cited above, § 146). To avoid being branded as arbitrary, detention under Article 5 § 1 (f) of the Convention must be carried out in good faith; it must be closely connected to the grounds of detention relied on by the Government, the place and conditions of detention must be appropriate, and the length of the detention must not exceed that reasonably required for the purpose pursued (ibid.).

65. Having regard to the information submitted by the applicants (see the Appendix for details), the Court finds that at first all the applicants in question were detained for breaching immigration regulations with a view to being expelled, and their detention was presumably carried out in good faith and in compliance with Article 5 § 1 (f) of the Convention. However, the Court notes that the length of detention in most of the applicants' cases, except for those of A.A. and N.K. and the members of N.K.'s family, was between eleven and fifteen months. In certain cases the detention lasted more than two years, and for some applicants it is still continuing (see the Appendix for details). N.K. and the members of his family were detained for less than three months, whereas A.A. was detained for about seven months. Accordingly, in the Court's view, and given its findings of recurrent violations of Article 5 of the Convention in respect of foreigners detained in Russia with a view to administrative expulsion (see *L.M. and Others v. Russia*, cited above, §§ 141-42 and 149-52, with further references, and *S.K. v. Russia*, cited above, §§ 108-09 and § 116), the length of detention in all of the applicants' cases, except that of N.K. and the members of his family and that of A.A., exceeded what was reasonably required for the purpose pursued. Furthermore, again, apart from N.K. and the members of his family and A.A., it does not appear that the applicants had access to judicial and periodic reviews of their continued detention, in breach of Article 5 § 4 of the Convention.

66. Accordingly, the Court concludes that there has been a violation of Article 5 § 1 (f) and Article 5 § 4 of the Convention in respect of M.S.A., R.K., H.R., B.Z., S.W. and H.D., but that there has been no violation of Article 5 § 1 (f) or Article 5 § 4 of the Convention in respect of N.K. and the members of his family or A.A.

VII. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION IN RESPECT OF H.R.

67. H.R. also complained under Article 6 §§ 1 and 3 (c) of the Convention that the overall fairness of the administrative proceedings concerning his stay and removal from Russia had been undermined because he had not been provided with a lawyer. He relied on Article 6 §§ 1 and 3 (c) of the Convention, the relevant parts of which read as follows:

> "1. In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ..."

68. The Government submitted that the expulsion proceedings had not concerned the determination of either the applicant's civil rights or criminal charges against him. In particular, they stated:

> "... [T]he fact that the exclusion order incidentally had major repercussions on the applicant's private and family life or on his prospects of employment cannot suffice to bring those proceedings within the scope of civil rights protected by Article 6 § 1 of the Convention ..."

Referring to *Renna v. France*, no. 32809/96, 26 February 1997, they further submitted:

> "... the Court noted that, in general, exclusion orders are not classified as criminal within the Member States of the Council of Europe. Such orders, which in most States may also be made by the administrative authorities, constitute a special preventative measure for the purposes of immigration control and do not concern the determination of a criminal charge against the applicant for the purposes of Article 6 § 1. The fact that they are imposed in the context of criminal proceedings cannot alter their essentially preventative nature."

69. The applicant submitted that he had not been able to appeal against the expulsion order promptly, owing to the fact that there had been no lawyer present at the expulsion hearing. He also submitted that, in general, administrative expulsion proceedings in Russia were conducted in breach of the principle of equality of arms.

70. The Court reiterates that decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations or of a criminal charge against him, within the meaning of Article 6 § 1 of the Convention (see *Maaouia v. France* [GC], no. 39652/98, §§ 38-41, ECHR 2000 X, and, specifically in the context of expulsion proceedings in Russia, see *Muminov v. Russia*, no. 42502/06,

§ 126, 11 December 2008). Here, the proceedings against the applicant concerned his removal from Russia and were conducted in accordance with the applicable provisions of the Code of Administrative Offences. They did not concern his civil rights or obligations and did not involve any criminal charge against him. Accordingly, in the light of the above factors, and given the fact that the applicant has not put forward any fact or argument capable of persuading the Court to reach a different conclusion in the present case (see paragraph 69 above), the Court finds that his complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4 of the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION IN RESPECT OF B.Z., H.D. AND S.W.

71. B.Z., H.D. and S.W. complained that the restriction on their contact with their representative had hindered their right of application, in breach of Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

72. The Government submitted that the representative of B.Z. and H.D. had complained to the FMS and a prosecutor about obstacles he had faced in meeting with B.Z. and H.D., but he had lodged the application with the Court before his complaints had been examined by the domestic authorities. Therefore, the complaint under Article 34 of the Convention should be dismissed for non-exhaustion of domestic remedies. With regard to S.W., the Government submitted that he had not asked to meet with his representative.

73. M., the lawyer of B.Z., H.D. and S.W., submitted that refusals to allow meetings between lawyers and foreigners in the detention centre had been common, and that he had not been permitted to meet either B.Z., H.D. or S.W. in the detention centre, despite his making complaints to various official bodies, including the domestic courts.

74. The Court notes that, apart from a general statement concerning the refusals of his requests to meet with B.Z., H.D. and S.W., M. did not provide any details concerning the circumstances under which such refusals had taken place, specifically in respect of B.Z., H.D. and S.W. (see paragraph 21 above). The Court notes that M. did provide a copy of his complaint to the immigration authorities concerning the lack of access to Syrian nationals in the detention centre, and the texts of the judgments in which the domestic courts examined his respective complaints, but none of

these documents concern B.Z., H.D. or S.W. In these circumstances, the Court finds that the complaint by B.Z., H.D. and S.W. under Article 34 of the Convention is not properly substantiated, and as such does not merit further examination.

75. Accordingly, the Court holds that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IX. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

76. Lastly, the applicants raised additional complaints with reference to various Articles of the Convention and its Protocols. The Court has examined these complaints as submitted by the applicants. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, 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 applications is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

X. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

78. All the applicants, except M.S.A. and R.K., claimed between 10,000 and 15,000 euros (EUR) in respect of non-pecuniary damage. M.S.A. and R.K. claimed compensation in respect of non-pecuniary damage, but left the amount of any award to the discretion of the Court.

79. The Government submitted that either no awards should be made (in the cases of S.A., R.K. S.W. and A.A.), or that awards, if made, should be in compliance with the Court's established case-law (in the cases of H.R., B.Z., H.D. and Y.A.).

80. As regards finding violations under Article 3 of the Convention on account of the inadequate conditions of detention of M.S.A. and R.K., and under Article 5 in respect of all the applicants, except A.A., Y.A., and N.K. and the members of his family, the Court considers that these applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of violation, and that compensation therefore has to be

awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the sum of EUR 9,750 each to M.S.A. and R.K., and EUR 7,500 each to H.R., B.Z., S.W. and H.D. under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

81. M.S.A. and R.K., represented by Ms O. Tseytlina, also claimed each EUR 200 for costs and expenses incurred before the Court.

82. The Government submitted that the claims were not supported by any proof of payment.

83. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to grant the above claims of M.S.A. and R.K. in full and to award each of them the sum of EUR 200 to cover costs under all heads. These sums should be paid directly to their representative Ms O. Tseytlina.

C. Default interest

84. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

XI. APPLICATION OF ARTICLE 46 OF THE CONVENTION

85. The relevant parts of Article 46 of the Convention read as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

86. The general principles concerning the application of Article 46 of the Convention and the indication by the Court of general or individual measures to the respondent State are summarised in the case of *L.M. and Others v. Russia*, cited above, §§ 165-67.

87. In the present case, according to the information made available to the Court by the parties, it appears that H.D. still remains in detention, where he has been for a prolonged period of time (see the Appendix for details). Accordingly, in the light of its finding of a violation of Article 5 §1 (f) of the Convention, the Court considers it necessary to indicate to the respondent Government individual measures for the execution of this judgment and to ensure the immediate release of H.D. from detention.

XII. APPLICATION OF AN INTERIM MEASURE UNDER RULE 39 OF THE RULES OF COURT

88. On various dates the Court indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicants should not be extradited, expelled or otherwise involuntarily removed from Russia to Syria for the duration of the proceedings before the Court.

89. In this connection, the Court reiterates that, in accordance with Article 28 § 2 of the Convention, the present judgment is final.

90. Accordingly, the Court considers that the measures indicated to the Government under Rule 39 of the Rules of Court come to an end.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join applications;

2. *Decides* to strike the applications of M.S.A., R.K., H.R., B.Z., S.W., A.A and N.K. and others out of its list of cases in so far as they concern complaints under Articles 2 and 3 of the Convention concerning the risk of death and/or ill-treatment in the event of the applicants being expelled to Syria from Russia and the alleged absence of effective domestic remedies in respect of these claims under Article 13 of the Convention;

3. *Declares* the complaints concerning the risk of death and/or ill-treatment in the event of expulsion to Syria from Russia and the alleged absence of effective domestic remedies in respect of these claims under Article 13 of the Convention inadmissible in respect of H.D. and Y.A.;

4. *Declares* the complaints under Article 3 of the Convention concerning the conditions of detention of M.S.A. and R.K. admissible;

5. *Declares* the complaints under Article 5 of the Convention in respect of M.S.A., R.K., H.R., B.Z., H.D., S.W., A.A., and N.K. and the members of N.K.'s family admissible;

6. *Decides* not to examine the complaint under Article 5 of the Convention in respect of Y.A.;

7. *Declares* the complaints under Article 6 §§ 1 and 3 (c) of the Convention in respect of H.R. and the complaints under Article 34 of the Convention in respect of B.Z., H.D. and S.W. inadmissible;

8. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of detention of M.S.A. and R.K.;

9. *Holds* that there has been a violation of Article 5 §§ 1 (f) and 4 of the Convention in respect of M.S.A., R.K., H.R., B.Z., H.D., and S.W., but no violation in respect of N.K. and the members of N.K.'s family and A.A;

10. *Holds* that the respondent State is to ensure the immediate release of H.D.;

11. *Holds*

(a) that the respondent State is to pay the applicants within three months[1] the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 9,750 (nine thousand seven hundred and fifty euros) each to M.S.A. and R.K., and EUR 7,500 (seven thousand five hundred euros) each to H.R., B.Z., H.D. and S.W., plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 200 (two hundred euros) each to M.S.A. and R.K., plus any tax that may be chargeable, in respect of costs and expenses to be paid directly to their representative Ms O. Tseytlina;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

12. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President

1. Rectified on 11 January 2018: the text "within three months" has been added.

ANNEX
List of Applications and Awards under Rule 41

No.	Application no., Title of application, lodged on	Initials and Date of Birth / Represented by	Dates of Detention-Release/Duration	Removal Proceedings	Refugee Status /Temporary Asylum Proceedings	Voluntary Departure to a Third County	Just Satisfaction granted
1.	29957/14 *M.S.A. v. Russia* 16 April 2014	**M.S.A.** 11 August 1987 Olga TSEYTLINA	1) 26 July 2013 – 24 January 2014; 6 months 2) 24 January 2014 – 10 June 2014; about 5 months	1) Vyborgskiy Town Court of the Leningrad Region, 20 December 2013 (conviction of illegal border crossing, sentenced to six months' imprisonment); 2) Vyborgskiy Town Court of the Leningrad Region, 24 January 2014 – expulsion order; Leningrad Regional Court, 2 June 2014 2014 (expulsion order quashed, release ordered).	Granted temporary asylum on 18 June 2015 (until 1 June 2016)	In Germany since September 2015	EUR 9,750 in respect of non-pecuniary damage; EUR 200 in respect of costs and expenses.
2.	29961/14 *R.K. v. Russia* 15 April 2014	**R.K.** 25 November 1974 Olga TSEYTLINA	1) 26 July 2013 – 24 January 2014; 6 months 2) 24 January 2014 – 10 June 2014; about 5 months	1) same as above; 2) same as above;			EUR 9,750 in respect of non-pecuniary damage; EUR 200 in respect of costs

			3) 19 June 2015 – 08 September 2015. about 3 months	3) Suoyarvi District Court of the Republic of Karelia, 20 June 2015 (expulsion order) Supreme Court of Karelia, 8 September 2015 – expulsion order quashed, release ordered.			and expenses.
3.	53980/15 *H.R. v. Russia* 30 October 2015	**H.R.** 23 January 1993 Shamil Magomedovich MAGOMEDOV	26 February 2015 – 5 June 2016 (escaped) 1 year and 3 months	Soviet District Court of Makhachkala, 26 February 2015 – expulsion order; no appeal lodged at the time. Soviet District Court of Makhachkala, 17 October 2015, appeal not allowed as time-barred.	Request for temporary asylum refused on 29 September 2015.	In Sweden since unknown date, presumably since late summer 2016.	EUR 7,500 in respect of non-pecuniary damage;
4.	10583/16 *B.Z. v. Russia* 24 February 2016	**B.Z.** 08 March 1993 Shamil Magomedovich MAGOMEDOV	1) 29 – 30 July 2013 1 day 2) 03 May 2015 - mid-June 2016 (escaped) 1 year and 1 month Allegedly the applicant was refused visits by the	1) Soviet District Court of Makhachkala, 30 July 2013 (convicted of illegal border crossing ordered to leave Russia voluntarily within 15 days). 2) Soviet District Court of Makhachkala, 3 June 2015 – expulsion order, no appeal lodged at the time. Supreme Court of the Republic of Dagestan, 14 March 2016, appeal not allowed as time-barred.	Request for temporary asylum refused on 17 December 2015. Request for refugee status lodged on 23 February 2016, outcome unknown.	In Sweden since unknown date, presumably since late summer 2016.	EUR 7,500 in respect of non-pecuniary damage;

			representative while in detention				
5.	10796/16 *H.D. v. Russia* 24 February 2016	**H.D.** 01 January 1986 Shamil Magomedovich MAGOMEDOV	12 May 2015 – presumably, currently 2 years and 2 months Allegedly the applicant was refused visits by the representative while in detention	Soviet District Court of Makhachkala, 12 May 2015 – expulsion order (under the brother's name as the applicant was using his brother's passport at the time, the applicant was assisted by interpreter A.M. during the hearing), no appeal lodged at the time Since 2 September 2015 the applicant was represented by Mr Magomedov Karabudakhenskiy District Court of Makhachkala), 13 July 2015– expulsion order (under the applicant's own name, the applicant was assisted by interpreter N.M. during the hearing) Request to restore deadline for appeal against expulsion order lodged on 12 February 2016; Supreme Court of the Republic of Dagestan, 14 May 2016 – refusal to restore deadline for appeal.	Request for temporary asylum rejected, 14 December 2015; Appeal not allowed by FMS Russia as time barred, 20 April 2016; outcome in court unknown. Application for refugee status, 23 February 2016, outcome unknown.		EUR 7,500 in respect of non-pecuniary damage.

6.	10803/16 *S.W. v. Russia* 24 February 2016	**S.W.** 01 January 1997 Shamil Magomedovich MAGOMEDOV	18 August 2015 – October 2016 1 year and 2 months Allegedly the applicant was refused visits by the representative while in detention	Sovetskiy District Court of Makhachkala 18 August 2015 – expulsion order; Supreme Court of the Republic of Dagestan, 28 August 2015, confirmed.	Request for temporary asylum request rejected, 18 December 2015; Appeal not allowed by FMS Russia as time barred, 20 April 2016; outcome in court unknown. Application for refugee status, 23 February 2016, outcome unknown.	In Sweden, since October 2016.	EUR 7,500 in respect of non-pecuniary damage;
7.	19980/16 *N.K. and Others v. Russia* 13 April 2016	**N.K. and Others** N.K. 25 March 1945 K.R. 17 April 1957 A.K. 03 May 1987 Rolan Malikovich ALIYEV	21 March – 20 May 2016; 2 months	Oktyabrskiy District Court of Murmansk, 21 March 2016; Murmansk Regional Court, 05 April 2014 removal order confirmed; Murmansk Regional Court, 20 May 2016 - removal order quashed and release ordered in supervisory proceedings.	Request for temporary asylum lodged on 23-24 November 2016, outcome unknown. No information on their current legal status in Russia.		

8.	35675/16 *A.A. v. Russia* 23 June 2016	**A.A.** 01 January 1991 Eleonora DAVIDYAN	09 June 2016 – 10 June 2016; 15 June 2016 – January 2017 about 7 months	Oktyabrskiy District Court of Izhevsk, 09 June 2016 – expulsion ordered; Supreme Court of the Udmurt Republic, 10 June 2016 – expulsion order quashed, release ordered (for failure to consider asylum proceedings underway). Oktyabrskiy District Court of Izhevsk, 15 June 2016 – expulsion ordered; Supreme Court of the Republic of Udmurtiya, 27 June 2016, confirmed.	Request for temporary asylum refused on 7 December 2016, appeal lodged, outcome unknown; Request for refugee status refused on 8 December 2016;	In Lebanon, since January 2017.	
9.	38237/16 *Y.A. v. Russia* 5 July 2016	**Y.A.** 01 January 1982 Roza Saidovna MAGOMEDOVA	11 May 2016 – 24 November 2016 About 6 months but 5 of them while having a lawful status in Russia.	Kuzminskiy District Court of Moscow, 11 May 2016 - expulsion order; Moscow City Court, 24 November 2016 (expulsion order quashed, release ordered).	Granted temporary asylum in Russia on 24 June 2016 until 24 June 2017 by, however, **remained in detention** until 24 November 2016, despite having a lawful status.		