



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

THIRD SECTION

CASE OF M.K. v. RUSSIA

(Application no. 35346/16)

JUDGMENT

STRASBOURG

27 February 2018

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

In the case of M.K. 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 6 February 2018,

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

PROCEDURE

1. The case originated in an application (no. 35346/16) 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 a Syrian national, Mr M.K. (“the applicant”), on 21 June 2016. The President of the Section acceded to the applicant’s request not to have his name disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicant was represented by Ms E. Davidyan and Ms D. Trenina, lawyers practising in Moscow. The Russian Government (“the Government”) were represented by their Agent, 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. On 10 November 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant, a Syrian national, was born in 1993 and currently resides in Khartoum, Sudan.

5. On 24 April 2015 the applicant arrived in Russia, being in possession of a study visa. He enrolled in the Izhevsk State Technical University and had his registered residence in the town of Izhevsk. His visa expired on 26 April 2016.

6. On 4 May 2016 the applicant applied for refugee status alleging the risks to his life and safety in the light of the on-going conflict in Syria. The

request and the subsequent appeals were dismissed by the Russian migration authorities and the courts.

7. On 8 June 2016 the applicant was arrested and put in detention by the migration authorities.

8. By a judgment of 9 June 2016 the Oktyabrskiy District Court of Izhevsk found the applicant in breach of migration rules, an offence under Article 18.8 § 1.1 of the Code of Administrative Offences, and ordered his expulsion. In order to facilitate enforcement, the court ordered that the applicant be placed in detention.

9. On 10 June 2016 the Supreme Court of the Udmurtiya Republic upheld the lower court's judgment.

10. On 22 June 2016 the Court indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited, expelled or otherwise involuntarily removed from Russia to Syria for the duration of the proceedings before the Court. Since that date the enforcement of the applicant's expulsion was monthly postponed by the domestic courts.

11. On 13 January 2017 the Supreme Court of the Russian Federation on appeal amended the lower courts' judgments and excluded administrative removal from the sanction, since it would have exposed the applicant's life to risk in Syria.

12. On 20 January 2017 the applicant left Russia for Lebanon.

II. RELEVANT DOMESTIC LAW

13. 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).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

14. The applicant complained that his expulsion to Syria, if carried out, would be in breach of his 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.”

15. 30. The Court notes from the submissions of the representatives that the applicant left Russia for safe third countries and settled there. Thus, it considers that he no longer faces expulsion to Syria and a risk of death and/or ill-treatment there.

16. The Court considers that it is no longer justified to continue the examination of the above application 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* (dec.), no. 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 application (Article 37 § 1, *in fine*). Accordingly, the Court decides to strike the application out of its list of cases in so far as it concerns 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.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

17. The applicant complained that his detention pending expulsion proceedings had been arbitrary and prolonged, and that he had not had access to effective judicial review of his detention. He relied on Article 5 §§ 1 (f) and 4 of the Convention, which in the relevant part 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 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.”

18. 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.

19. 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 applicant's detention had been set, the maximum duration of an administrative penalty was two years. The applicant could seek supervisory review of the expulsion and ensuing detention orders in the event of a significant change in their circumstances.

20. The applicant disputed that argument.

21. 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.*).

22. Turning to the present case, the Court notes that the applicant's complaints concern the period of approximately seven months, during which the applicant was detained pending expulsion between 8 June 2016 and 20 January 2017. It further notes that from 22 June 2016, the date of indication of an interim measure by the Court, and until the date of the applicant's voluntary departure from Russia the possibility of enforcement of his expulsion was reviewed on a monthly basis by the domestic courts.

23. The Court considers that there is no evidence indicating any arbitrariness in respect of the applicant's detention or, more particularly, bad faith, deception or unjustified delays in respect of the authorities' conduct (see, conversely, *Bozano v. France*, 18 December 1986, § 60, Series A no. 111, and *Čonka v. Belgium*, no. 51564/99, § 41, ECHR 2002-I).

24. Lastly, the Court notes that the applicant's complaints concerning the availability of periodic judicial review of the lawfulness of his detention pending expulsion are couched in general and abstract terms. Given the expeditiousness of the national proceedings and monthly review of the possibility of enforcement of his expulsion by the domestic courts together with the relatively short period of detention, the applicant's individual situation was devoid of the deficiencies alleged.

25. Accordingly, having regard to all the material in its possession and the conclusions above, the Court finds that there had been no violation of the applicant's rights under Article 5 §§ 1 (f) and 4 of the Convention.

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

26. On 22 June 2016 the Court indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicant should not be extradited, expelled or otherwise involuntarily removed from Russia to Syria for the duration of the proceedings before the Court.

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

28. Accordingly, the Court considers that the measure indicated to the Government under Rule 39 of the Rules of Court comes to an end.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the application out of its list of cases in so far as it concerns complaints under Articles 2 and 3 of the Convention concerning the risk of death and/or ill-treatment in the event of the applicant 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;
2. *Declares* the complaints under Article 5 of the Convention admissible;
3. *Holds* that there has been no violation of Article 5 §§ 1 (f) and 4 of the Convention.

Done in English, and notified in writing on 27 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President