



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

FIRST SECTION

**CASE OF L.M. AND OTHERS v. RUSSIA**

*(Applications nos. 40081/14, 40088/14 and 40127/14)*

JUDGMENT

STRASBOURG

15 October 2015

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of L.M. and Others v. Russia,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

András Sajó, *President*,  
Mirjana Lazarova Trajkovska,  
Julia Laffranque,  
Paulo Pinto de Albuquerque,  
Linos-Alexandre Sicilianos,  
Erik Møse,  
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 September 2015,

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

**PROCEDURE**

1. The case originated in three applications (nos. 40081/14, 40088/14 and 40127/14) 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 stateless Palestinian from Syria, L.M., and two Syrian nationals, A.A. and Mr M.A. (“the applicants”), on 29 and 30 May 2014 respectively. The President of the Section decided that the applicants’ names should not be disclosed to the public (Rule 47 § 3 of the Rules of Court).

2. The applicants were represented by Ms N.Y. Golovanchuk, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that their return to Syria would be in breach of their rights guaranteed by Articles 2 and 3 of the Convention, and that their detention in Russia had been in breach of Articles 3 and 5 of the Convention.

4. On 30 May 2014 the Acting President of the First Section 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 Acting President also decided to grant the case priority under Rule 41 of the Rules of Court.

5. On 30 May 2014 and 25 March 2015 the applications were communicated to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are Syrian nationals or had their habitual residence in Syria. At the time of lodging their applications they were detained at a detention centre for foreign nationals in the town of Maloyaroslavets, Kaluga Region (*OCVCBIII* – “the detention centre”), run by the local Federal Migration Service (“FMS”).

#### A. The applicants’ personal details

7. The applicant L.M. (application no. 40081/14) was born in 1988. He entered Russia on 9 February 2013. He was detained on 14 April 2014. He is a stateless Palestinian who had his habitual residence in Syria. He was not in possession of a valid national ID at the time of detention, and his identity was established by an immigration officer in Russia in 2014.

8. The applicant A.A. (application no. 40088/14) was born in 1987. He entered Russia on 21 April 2013. He was detained on 15 April 2014.

9. The applicant M.A. (application no. 40127/14) was born in 1994. He entered Russia on 21 April 2013. He was detained on 15 April 2014 and has a brother, Mr Akhmad A., who received temporary asylum in Russia and is married to a Russian national, Albina A.

#### B. The applicants’ arrest and expulsion proceedings

10. On 14 and 15 April 2014 (see Appendix) the applicants were detained by the police and officers of the FMS at a clothing factory in Maloyaroslavets.

11. On 15 and 16 April 2014 (see Appendix) the Maloyaroslavets District Court (“the District Court”) examined the applicants’ administrative files, found them guilty of administrative offences (breach of immigration rules and working without a permit) and ordered them to pay fines of between 2,000 and 3,000 Russian roubles (RUB) and their expulsion to Syria, in line with the procedure under Article 3.10 § 1 of the Code of Administrative Offences. The applicants all stated in court that they feared for their lives if returned to Syria and referred to information about the ongoing and widespread conflict there. The court found these statements to be general in nature and unsupported by any relevant evidence. The applicants also referred to the absence of work in Syria and the fact that in Russia they had been able to work illegally. The District Court then focused on the economic motives of their arrival and illegal stay. Pending expulsion the court ordered their detention at the detention centre.

12. The lawyer representing the applicants before the Court lodged appeals for all three of them, describing in detail the general situation in Syria and the danger of returning there, and citing and attaching the relevant country reports produced by the UNHCR and FMS. She also cited a circular letter issued by the Federal Bailiff Service on 30 August 2013 to its regional branches, according to which no entry was possible into Syrian territory in view of the hostilities and problems that would arise with the execution of court judgments ordering expulsion there. The lawyer argued, in detail, that the decisions to expel the applicants could not be implemented; in such circumstances their detention lost any purpose and became indefinite. The lawyer further cited an FMS circular letter of 23 January 2013 entitled “On the situation in Syria and the work with persons originating from Syria”, which stated that “in the current difficult political situation, when the Syrian authorities are unable to provide effective protection of their citizens from the illegal actions of the armed opposition ... most of the applicants ... have fled the country as a result of the armed conflict. ... Individuals who cannot not safely return [to Syria] and have a well-founded fear of ill-treatment, including torture, should be given temporary asylum”. The statements of appeal further referred to the fact that the applicants had sought asylum in Russia; their expulsion would therefore be contrary to the relevant legislation. The UNHCR Office in Moscow produced a letter to the Kaluga Regional Court (“the Regional Court”) in respect of L.M., reiterating its position in respect of returns to Syria and arguing that any decision relating to expulsion there while his asylum request was pending would be in breach of domestic and international legislation. Similar letters were produced in respect of the two other applicants. The applicants also referred to a decision of the Leningrad Regional Court taken earlier in 2014 relating to a Syrian national in a similar situation (see paragraph 72 below).

13. The Kaluga Regional Court rejected all three appeals on 27 May 2014, following which the expulsion orders entered into force. It stressed the applicants’ illegal stay in Russia and their reference to economic difficulties as their reason for departure from their home country. It found that the alleged danger to the applicants’ lives as a result of the ongoing conflict did not in itself constitute sufficient grounds to exclude expulsion in respect of those guilty of administrative offences in the sphere of immigration.

14. In respect of L.M., in a separate decision of the same date, the Regional Court refused to amend the expulsion order. The court noted that he had not applied for asylum in Russia until 21 May 2014, a fact which “did not affect the lawfulness of the decision taken by the District Court concerning the applicant’s administrative offence and expulsion”.

15. On 17 June 2014 the Kaluga Federal Bailiff Service asked the District Court to stay execution in respect of M.A., pointing out that the European Court of Human Rights had applied Rule 39 and therefore the

expulsion could not be carried out at that time. On 30 June 2014 the District Court found that the Code of Administrative Offences did not provide for stays of expulsion as opposed to the payment of fines and dismissed the request.

16. On 4 July 2014 the District Court issued a similar decision in respect of L.M., pursuant to a request by the Bailiff Service on 1 July 2014. None of the parties were present at the hearing, including L.M.

17. It appears from the letter of 8 July 2014 sent by the Kaluga Federal Bailiff Service to the applicants' lawyer that it was unaware at that date of the District Court's decisions. From the same letter it appears that a similar request had been made for a stay of execution in respect of A.A.

### **C. A.A.'s escape**

18. Since 15 and 16 April 2014 the applicants have been detained at the detention centre.

19. According to the Government's observations received in December 2014, A.A. escaped on 25 August 2014. An internal report was prepared by the head of the Kaluga FMS the same day, describing the events as follows:

"In the early hours of 25 August 2014, between 3 and 4 a.m., a group of foreign nationals and stateless people detained pending administrative deportation from the [detention centre] escaped from the premises ... The group included ... [A.A.], a Syrian national, born on 15 January 1987 ... An investigation has established that the people used an unfinished ventilation shaft located between the ground and first floors of the building. Having reached the first floor, the people jumped out of the window onto a pile of construction rubbish and, having covered the surveillance devices ... with a blanket, left the grounds of the centre with the aid of construction materials stored in the courtyard.

The exact circumstances of the escape are being established. An internal investigation is being held in respect of the staff who had allowed the seven foreign nationals to escape.

The local police have been told to organise a search for the people who have escaped."

20. The applicants' representative claimed to have had no knowledge of the escape prior to receiving the Government's observations, expressing her concern that they had not submitted the information earlier, for example when making their observations of 2 September 2014.

21. In reply to the Court's further questions in this regard, in their observations of 24 April 2015 the Government explained that no administrative or criminal proceedings had been initiated, as an escape from a detention centre for foreign nationals pending deportation was not an offence under any legislation. While the police continued to search for the detainees, their whereabouts, including those of A.A., remained unknown.

22. The Government further submitted that since their observations had been based on the replies of the competent State authorities prepared on 4 and 8 August 2014, no information about A.A.'s escape had been provided at that stage. They also submitted that the detention centre had been under no obligation to inform detainees' representatives of the escape, hence why it had not done so in A.A.'s case.

23. The applicants' representative confirmed that she had not been aware of A.A.'s escape prior to the meeting with the two other applicants on 17 December 2014 and submitted that she had no knowledge of A.A.'s current whereabouts.

#### **D. Proceedings for refugee and asylum status in Russia**

##### *1. A.A.'s first application for asylum*

24. From the documents submitted by the Government in December 2014, it appears that A.A. sought refugee status in Russia on 5 March 2014 by applying to the Moscow Region FMS. On 11 March 2014 this request was accepted for consideration on the merits and the applicant was questioned and issued with an appropriate document.

25. On 26 March 2014 A.A.'s application for refugee status was dismissed. The decision of the FMS stated that he had submitted no information to support his claims of persecution in Syria. His family remained in that country and he could have used the "internal flight alternative" to another part of Syria, or claimed asylum in a transit country. He reasoned his request to remain in Russia by his wish to work there and did not therefore fall under the definition of refugee.

26. The applicant did not obtain a copy of that decision and did not appeal against it.

##### *2. The applicants' claims of asylum after arrest*

27. After their arrest the three applicants applied for refugee status. They submitted the relevant applications to the local FMS in Kaluga; M.A. and A.A. on 14 May 2014 and L.M. on 21 May 2014.

28. On 28 May 2014 the three applicants also submitted requests for temporary asylum in Russia, which were drawn up in Russian and translated by Z.A.

29. In June 2014 the three applicants were questioned by the Kaluga FMS. They indicated that the reasons for their departure from Syria were the war and danger to their lives. A.A. stated that he was from Aleppo and had lost contact with his family, parents and siblings after his departure in 2013. M.A. stated that he had fled Aleppo after his neighbourhood had been taken over by "terrorists" who had killed dozens of people there, including his close male relatives, which he had witnessed. He had also lost contact

with his family after December 2013. L.M. had been in Damascus but had no right of return as he was a stateless Palestinian. He had also lost contact with the members of his family who had remained in Syria. All applicants stressed that they were afraid to go back because of the hostilities which had caused their departure, and said that they feared being forcibly drafted into the armed forces.

30. On 16 June 2014 the Kaluga FMS decided that their applications for refugee status should be considered on the merits and issued appropriate certificates to them.

31. In parallel proceedings, also in June 2014, the three applicants were questioned by the FMS in order to obtain temporary asylum in Russia.

32. On 17 July 2014 L.M. signed a paper in Russian stating that he had asked for his request for “temporary asylum in Russia dated 28 May 2014” not to be considered since he “intended to return to his home in Syria”. The paper was also signed by a translator, Z.A.

33. On the same date a similar paper was signed by A.A. which stated that “he and his wife intended to go to Turkey”. The paper was also signed by Z.A.

34. According to the Government’s observations of 3 December 2014, these requests served as the basis of the FMS decisions to terminate the proceedings in respect of these two applicants, both in respect of their request for refugee status and temporary asylum. No documents were submitted in this regard.

35. On 16 September 2014 the Kaluga FMS decided to refuse M.A.’s request for refugee status. It considered that he faced no threat of persecution on the grounds set out in the Law on Refugees. On 17 September 2014 the Kaluga FMS, for the same reasons, refused him temporary asylum.

36. On 28 November 2014 the Regional Court reviewed M.A.’s appeal against the decision not to grant him temporary asylum. He was not taken to the trial even though the decision stated that he had been notified, and he did not have a representative. A representative of the FMS appeared before the court, which briefly restated the reasons for the FMS decision to refuse the applicant both refugee and temporary asylum status and confirmed that there were no reasons to regard him as in need of protection. Neither the general situation in Syria nor the applicant’s submissions about the situation in Aleppo had been raised or discussed. This decision was sent to M.A. on 5 December 2014. It is unclear if he appealed against it.

### *3. Next round of proceedings*

37. On 30 September 2014 M.A. and L.M. submitted new written requests for refugee status, which were accepted for consideration by the Kaluga FMS on 7 October 2014. On 15 October 2014, however, both applicants signed papers in Russian stating that they had asked for their



requests for “temporary asylum in Russia dated 28 September 2014” not to be considered. The papers stated that they had been translated and written by Z.A.

38. The Government, in their observations of 2 December 2014, explained that the contradictory position taken by L.M. prevented the FMS from considering his new application on the merits. M.A.’s new application was not considered either.

### **E. Conditions of the applicants’ detention and access to representatives**

39. The applicants submitted that severe restrictions had been placed on them meeting with their representatives. As a result, despite numerous attempts and complaints, M.A. and L.M. only had one meeting with them on 17 December 2014. M.A. had one meeting with his brother and Albina A. on 22 October 2014, which lasted about ten minutes. A.A. did not meet with a representative prior to his escape from the detention centre (see paragraphs 20-23 above).

40. The applicants submitted copies of their exchange with various officials in the Kaluga FMS and prosecutor’s office regarding their detention and access to representatives. From these letters it appears that on several occasions the applicants’ two lawyers, Ms Golovanchuk and Ms Yermolayeva, a lawyer of the Kaluga Bar Association, Mr P.K., a member of the Kaluga branch of the Human Rights Centre Memorial who had assisted the applicants with their complaints, Ms Lyubov M.-E., as well as M.A.’s brother and his wife, wrote to these agencies regarding a lack of access to the detention centre and the conditions of detention of people detained there. Their exchanges may be summarised as follows.

#### *1. Detention in April – October 2014*

41. On 3 March 2014 the head of the detention centre responded to Ms Lyubov M.-E., stating that visits by lawyers and human rights defenders were possible daily between 11.30 a.m. and 12.30 p.m. On 14 April 2014 the Kaluga FMS informed the regional prosecutor’s office that visits by representatives, relatives and human rights defenders were possible upon the written request of detainees, or upon the written request of their representatives or human rights defenders if accompanied by a written request by the detainee for legal assistance from them. Visits outside of normal visiting hours had to be agreed in advance with the detention centre administration, to ensure the proper functioning of the centre. If a detainee requested in writing to be represented by anyone, the centre would consider the issue of ensuring a visit from the representative, accompanied by a notary, to certify a power of attorney.

42. On 25 April 2014 L.M.'s lawyer wrote to the Kaluga regional prosecutor's office. She pointed out that the applicant had been refused access to his representatives, and that the conditions of detention at the detention centre were harsher than for people who had been detained on criminal charges. Detainees were kept in their rooms for most of the day; they had no means of communication with anybody and could not contact each other or their representatives. The letter further stressed the absence of any flight connection with Syria and the impossibility of expelling the applicant there.

43. On 17 May 2014 the Kaluga FMS informed the regional prosecutor's office that on 24 April 2014 Ms Lyubov M.-E. had asked to be allowed to meet with the three applicants and an Uzbek national, T. The staff of the centre had refused to allow her to meet with the applicants, since she had not had an interpreter present and could not communicate with them. She had attempted to pass documents in Russian to the applicants (complaints against the domestic court decisions) through T., but they had been found by the detention centre staff. Ms Lyubov M.-E. had been reminded to come back accompanied by an interpreter. Furthermore, the detainees had signed documents refusing to meet with Ms Lyubov M.-E. since she had asked them for money for her services.

44. On 26 May 2014 the head of the NGO Civic Assistance wrote to the Moscow FMS. She pointed out that the applicants' confinement in the detention centre appeared unlawful in the absence of any time-limit or purpose, since the expulsion could not be carried out. She further pointed to the fact that the applicants had submitted applications for temporary asylum, and that their conditions of detention were inhuman and degrading, since the food was of poor quality and they had little access to fresh air, outdoor exercise, meaningful activities or information. The letter further stated that the detention centre staff had threatened and harassed detainees, and that the applicants had been pressed to withdraw their applications for asylum. The letter also referred to the difficulties in meeting the inmates.

45. On 10 June 2014 the applicants' lawyers submitted a letter to the Prosecutor General's Office, with copies to the Kaluga regional prosecutor's office and FMS. They pointed out that the applicants' conditions of detention amounted to inhuman and degrading treatment. M.A. had been diagnosed with pneumonia, but had not received adequate medical help. The applicants had been unable to meet with their relatives and representatives. The food was of poor quality, consisted mostly of cereals and was often served cold. The applicants complained that they had been harassed and threatened by the staff, threatened with reprisals if they complained, and encouraged to withdraw their applications for asylum and discharge their representatives. In the absence of any real possibility of expelling the applicants to Syria, their detention had turned into an open-ended punishment without any possibility of review.

46. On 11 June 2014 the Kaluga FMS wrote to the Kaluga regional ombudsman, noting that on 27 May 2014 the Regional Court had rejected the applicants' appeals (see paragraph 13 above) while they were assisted by a lawyer and interpreter. In their letter of 29 July 2014 the Kaluga FMS informed the regional prosecutor's office that the detainees' rights had not been infringed. The court hearing of 30 June 2014 relating to staying execution of the expulsion order (see paragraph 15 above) had not required the applicants' presence, and an interpreter had been invited to the detention centre on 17 July 2014, who had translated the court decision to the applicants. On the same day M.A. had decided to withdraw his application for temporary asylum and refuse any further assistance from Ms Lyubov M.-E., signing the relevant documents.

47. Writing to the applicants' lawyer on 29 July and 12 August and the regional prosecutor's office on 30 July 2014, the Kaluga FMS provided information about the medical assistance given to the applicants. In respect of M.A., the letters stated that he had been examined by a doctor upon arrival, that an interpreter had assisted him on 9 June 2014 in communicating with the detention centre doctor, who had administered treatment, and that on 14 and 25 June he had again been examined by a doctor and sent for a chest X-ray. His condition had been described as "satisfactory" and improved. The letters went on to state that the detention rooms had a ventilation system installed, that the shower and toilets, although not in the rooms, were undergoing renovation so that they would all be on one floor, that there was a courtyard for walks, and that the detention centre staff had treated detainees with respect and never allowed any behaviour which could escalate into arguments. The staff included a doctor, a psychologist and a medical disinfection specialist. On 17 July 2014 M.A. had signed a paper refusing any further assistance from Ms Lyubov M.-E. On the same day the remaining two applicants had also expressed their wish to withdraw their requests for asylum.

#### *2. M.A.'s meeting with his relatives on 22 October 2014*

48. On 22 October 2014 M.A. signed a letter in Russian addressed to the Kaluga FMS stating that its officers had forced him to sign documents in Russian he could not understand and which, as it turned out, had cancelled his asylum request and prevented him meeting with his representative, Ms Lyubov M.-E. As a result, he had not met with her, and the only meeting he had attended had been with his brother and sister-in-law on 22 October 2014, which had only lasted about ten minutes. The applicant further stated that he and L.M. were under constant surveillance, had received threats from the staff and were unable to write and send letters or make complaints. The treatment was allegedly because of their application to the Court. The papers signed by the applicants about their unwillingness to have their asylum requests considered had been obtained under duress and they had

had no idea what they had signed. The applicant's requests to meet with his relatives and representatives had not been granted. He further complained that he had not been given any personal hygiene products and could not shave or cut his hair, and that he and L.M. were being kept in isolation and had very little contact with other detainees, allegedly because they had applied to the Court. They had also been told that their expulsion to Syria would take place anyway and that their complaints would have no effect. The letter ended with a request to be allowed unrestricted meetings with his relatives and representatives, including Ms Lyubov M.-E.

49. On 27 October 2014 Albina A., M.A.'s sister-in-law, wrote to the Moscow-based human rights NGO Civic Assistance. On the same day she and her husband Mr Akhmad A., M.A.'s brother, produced affidavits to the applicant's lawyers in Moscow. From these documents it appears that both brothers had left Aleppo in Syria because of the hostilities there, that their neighbourhood had been destroyed, that many of their relatives had been killed, and that they had no contact with the surviving family members. They had been unable to meet with M.A. at the detention centre, with the exception of one brief visit on 22 October 2014. The visit had lasted about ten minutes and a detention centre officer had been present. When M.A. had started to write down a complaint in Arabic, it had been taken away by the officer who had said that it was not allowed. M.A. had not been aware that he had signed a withdrawal of his asylum request prior to the meeting with his relatives. He had said that he had signed the papers under pressure from the FMS staff. His brother had managed to covertly obtain his signature on a complaint and a request to be allowed visit from his relatives and representative, Ms Lyubov M.-E. M.A. had also told them that on 21 October he had been visited by an FMS officer from Kaluga (Ms Marina Vladimirovna), accompanied by an interpreter, who had told him that he would be expelled to Syria as soon as his travel documents were issued by the Syrian Embassy.

50. On 27 October 2014 Mr P.K. of the Kaluga Bar Association submitted a complaint to the Kaluga regional prosecutor's office. He stated that he had arrived at the detention centre and had produced an order for representing M.A. and a copy of his bar membership card that day; however, its staff had refused to allow him to meet with his client, referring to the absence of any signed agreement to represent him or permission for the meeting issued by the Kaluga FMS. The FMS had further informed him that the review of his request would take a month. Mr P.K. referred to the provisions of domestic legislation which permitted a lawyer to meet with his client and asked for his client's right to legal aid to be restored.

*3. M.A.'s and L.M.'s meeting with their representatives on 17 December 2014*

51. On 17 December 2014 lawyers Ms Golovanchuk and Ms Yermolayeva met with the two applicants and took affidavits from them regarding their detention and asylum request situation.

52. L.M. stated that he was detained in a spacious room with three other detainees; it had a toilet and running cold water. A hot shower could be taken daily on another floor upon request. The room was clean and had sufficient natural and artificial lighting, which was switched off during the night. There were no hygiene problems with insects and the bed linen was changed once a week. Detainees spent their time in their rooms, day and night, except when they went for walks. There were four nurses who administered medical treatment as necessary. He insisted that he wanted his asylum claim to be considered and unrestricted access and the ability to communicate with his representative, including in writing. When asked, L.M. stated that he had been assaulted by the staff on 27 August 2014 after some of the detainees had escaped; one of the wardens had twisted his hand painfully.

53. M.A. stated that while at the detention centre, he had been beaten twice, in July 2014, when the staff had found him to be in possession of the Koran, and on 25 August, when one of the Syrian detainees had escaped. He had been beaten so that he would disclose details about the escape. After the beatings he had stayed in bed for three days and could not eat. He stated that he had not been allowed to make complaints or send letters, and had been denied access to his representatives and relatives. He had not been allowed to attend the court hearing on 28 November 2014 (see paragraph 36 above) even though he had asked to. He also confirmed that he had wanted to meet with his representatives, including Ms Lyubov M.-E. and had expected his claim for asylum to be processed. He stated that the FMS staff had threatened him and told him that his complaints would not help and that he would be spending two years in prison anyway.

54. Following these submissions, on 17 December 2014 the applicants' lawyers wrote a letter to the Kaluga regional prosecutor's office pointing at the illegal nature of the applicants' detention, since their expulsion could not be carried out and there were no terms or possibility of review of the detention. They also stressed that the applicants' conditions of detention were similar to people in pre-trial detention, while the restrictions on visits and correspondence were illegal and in direct contradiction to the information contained in the letters from the detention centre administration. The letter stressed that the absence of contact with relatives, lawyers and representatives amounted in itself to inhuman treatment since it had serious psychological effects on the applicants.

55. On the same day M.A. signed a request addressed to the Kaluga FMS to be allowed meetings with his representatives, Ms Golovanchuk,

Ms Yermolayeva and Ms Lyubov M.-E., as well as his brother Mr Akhmad A. and sister-in-law Ms Albina A.

*4. Information about the applicants' conditions of detention submitted by the Government*

56. In reply to the Court's additional questions, in April 2015 the Government submitted more detailed information about the applicants' conditions of detention.

57. On 30 March 2014 the head of the Kaluga FMS ordered that meetings with people detained in the detention centre could be authorised for close relatives by its head upon presentation of documents proving they were related. Visits by representatives and human rights defenders could be authorised by the head of the Kaluga FMS, and the detainee could submit a written request to the head of the detention centre.

58. According to the detention centre's daily routine issued by its head on 15 November 2014, daily walks were to last no less than an hour per inmate. An hour a day was set aside for telephone contact and another hour between 11.30 a.m. and 12.30 p.m. for meetings with visitors and receiving parcels. An hour every day was set aside for meetings with the administration.

59. The Government submitted extracts from the applicants' medical files, from which it appears that they had been examined upon arrival at the centre and found to be in good health. A.A. had been treated for bronchitis and pneumonia in June 2014, and on 14 July 2014 his health was improving. He had also had an incident of high blood pressure on 10 June, which had been successfully treated. L.M. had been diagnosed with pulpitis and gastric problems and had received treatment. He had seen the doctor on five occasions between 10 May 2014 and 17 February 2015. M.A. had not consulted the medical staff.

60. According to the Government, L.M. and M.A. were detained in room no. 15 on the first floor of the two-storey building, which measured 47 square metres and accommodated six people. A toilet was accessible from the room, and there was a shared bathroom on the ground floor. The outdoor exercise yard measured 180 square metres. The Government provided photos of the rooms, sanitary facilities, canteen and the yard.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### **A. Legislation relating to the expulsion and detention of foreign nationals**

61. Pursuant to section 34(5) of the Foreigners Act (Law no. 115-FZ of 25 July 2002), foreign nationals subject to administrative removal who have

been placed in custody pursuant to a court order are detained in special facilities pending execution of the decision on administrative removal.

62. Article 3.10 § 1 of the Code of Administrative Offences defines administrative removal as the forced and controlled removal of a foreign national or stateless person across the Russian border. Under Article 3.10 § 2, administrative removal is imposed by a judge or, in cases where a foreign national or stateless person has committed an administrative offence upon entry into the Russian Federation, by a competent public official. Under Articles 3.10 § 5, 27.1 § 1 and 27.19 § 2, for the purposes of executing the decision on administrative removal a judge may order that the foreign national or stateless person be placed in a special facility which they are not allowed to leave at will.

63. Under Article 31.9 § 1, a decision imposing an administrative penalty ceases to be enforceable two years after the decision became final.

64. Article 3.9 provides that an administrative offender can only be punished with administrative detention in exceptional circumstances, for a maximum of thirty days.

## **B. Ruling 6-P of the Constitutional Court**

65. In decision no. 6-P of 17 February 1998, the Constitutional Court stated, with reference to Article 22 of the Constitution concerning the right to liberty and personal integrity, that a person subject to administrative removal could be placed in detention without a court order for a term not exceeding forty-eight hours. Detention for over forty-eight hours was only permitted on the basis of a court order, provided that the administrative removal could not be effected otherwise. The court order was necessary to guarantee protection not only from arbitrary detention of over forty-eight hours, but also from arbitrary detention itself, while the court assessed the lawfulness of and reasons for placing the person in custody. The Constitutional Court further noted that detention for an indefinite term would amount to an inadmissible restriction on the right to liberty as it would constitute punishment not provided for in Russian law and which was contrary to the Constitution.

## **C. Legislation on refugee status and temporary asylum**

66. For a summary of the relevant general provisions of the Refugees Act of Russia (Law no. 4258-I of 19 February 1993), see *Kasymakhunov v. Russia* (no. 29604/12, §§ 83-86, 14 November 2013).

67. For a summary of the relevant provisions on temporary asylum, see *Tukhtamurodov v. Russia* ((dec.), no. 21762/14, 20 January 2015, §§ 24-27).

## **D. Situation of Syrian nationals in Russia**

### *1. Situation of asylum seekers*

68. On 30 August 2013 the Federal Bailiff Service issued a circular letter to its regional branches, according to which no entry was possible into Syrian territory in view of the hostilities there and therefore instructed them to report any problems arising with the execution of court judgments ordering expulsion to Syria to its head office.

69. The FMS produced statistics about the number of Syrian citizens claiming refugee status and territorial asylum in Russia between 1 January 2011 and 1 November 2014. According to these figures, a total of 1,714 people from Syria had claimed refugee status in Russia; none had been granted it. Over the same period, 3,165 such people had sought temporary asylum and 2,523 had been granted it.

70. On 28 October 2014 the human rights NGO Civic Assistance issued an information paper about the situation of Syrian refugees in Russia, which stated that the FMS had started to grant temporary asylum to Syrian nationals in 2013. By 1 September 2014, about 2,200 people had been granted temporary asylum. Civic Assistance estimated that this represented about a tenth of the number of Syrians who had arrived in Russia fleeing the conflict. The report listed the reasons why many others had been unable to obtain this status, including practical problems such as access, a lack of information and interpreting services, the policy of some regions to refuse asylum claims altogether and so forth. The report stated that the FMS, while granting asylum status to many Syrian nationals, at the same time continued to treat others as ordinary administrative offenders and supported their expulsion to Syria, even though it was impossible to carry out. In 2014 the FMS's position towards Syrian asylum seekers hardened. Numerous decisions from various regions had been brought to the attention of Civic Assistance. They showed that the decisions to reject had systematically referred to the absence of individual reasons for asylum.

### *2. Russian courts' decisions in individual cases*

71. On 13 December 2013 a judge of the Supreme Court, acting in supervisory review procedure, altered the decisions of the Pyatigorsk Town Court and the Stavropol Regional Court which had ordered fine and administrative removal of M.A.R. (the decision had entered into force on 29 May 2013). The judge of the Supreme Court referred to the international instruments prohibiting torture and ill-treatment and gave due weight to the claimant's arguments that he could not return in view of the hostilities. The judge further noted the circular letter of 30 August 2013 of the Federal Bailiff Service and a letter of the Stavropol regional ombudsman about the civil war and dire humanitarian situation in Syria. On the strength of the



above, he altered the decisions of the lower courts and excluded the penalty of expulsion. The decision also ordered M.A.R.'s release from the police detention centre.

72. On 13 February 2014 the Leningrad Regional Court issued a decision in the case of a Syrian national, Mr Akhmad A. On 24 January 2014 a district court had found him guilty of an administrative offence under Article 18.8 of the Code of Administrative Offences, fined him and ordered his administrative removal. The Regional Court noted that Mr Akhmad A. had applied for temporary asylum in Russia, and that on 30 August 2013 the Federal Bailiff Service had confirmed that it was impossible to travel to Syria. It thus excluded the additional penalty of administrative removal and ordered the defendant's release from the FMS detention centre.

73. In another decision of unclear date in 2014, the Moscow Regional Court altered the decision of the Balashikha District Court which had found Syrian national "AM" guilty of breach of Article 18.8 of the Code of Administrative Offences. The district court had imposed a fine and ordered "AM" to leave; he had not been placed in detention. The Regional Court referred to the international documents on human rights which prohibit return in cases of danger to life and limb. It took note of the UNCHR recommendation of October 2013 to refrain from involuntary returns and noted the claimant's intention to launch a request for asylum in Russia. In such circumstances, it quashed the order to leave.

#### **E. Conditions of detention**

74. On 30 December 2013 the Russian Government adopted Decree No. 1306 containing rules on the confinement of foreign nationals pending their expulsion/deportation pursuant to an administrative decision. The rules entered into force on 1 January 2014.

75. According to the rules, people confined to centres created and run by the Federal Migration Service have no right to leave. The rules establish a minimum of six square metres per person as a health and safety regulation, or four and half metres in rooms containing bunk beds. The centres should have medical staff available to examine people upon arrival and before they are discharged, and provide them with medical treatment if necessary. The rules further detail the rights and obligations of people in confinement, food rations and hygiene products distributed to inmates.

### **III. RELEVANT INFORMATION ABOUT THE SITUATION IN SYRIA AND THE SITUATION OF REFUGEES**

76. The 8th report of the independent international commission of inquiry on the Syria Arab Republic, established on 22 August 2011 by the

UN Human Rights Council through Resolution S-17/1 (A/HRC/27/60, 13 August 2014) states:

“The findings presented in the present report, based on 480 interviews and evidence collected between 20 January and 15 July 2014, establish that the conduct of the warring parties in the Syrian Arab Republic has caused civilians immeasurable suffering.

Government forces continued to perpetrate massacres and conduct widespread attacks on civilians, systematically committing murder, torture, rape and enforced disappearance amounting to crimes against humanity. Government forces have committed gross violations of human rights and the war crimes of murder, hostage-taking, torture, rape and sexual violence, recruiting and using children in hostilities and targeting civilians. Government forces disregarded the special protection accorded to hospitals and medical and humanitarian personnel. Indiscriminate and disproportionate aerial bombardment and shelling led to mass civilian casualties and spread terror. Government forces used chlorine gas, an illegal weapon.

Non-State armed groups, named in the report, committed massacres and war crimes, including murder, execution without due process, torture, hostage-taking, violations of international humanitarian law tantamount to enforced disappearance, rape and sexual violence, recruiting and using children in hostilities and attacking protected objects. Medical and religious personnel and journalists were targeted. Armed groups besieged and indiscriminately shelled civilian neighbourhoods, in some instances spreading terror among civilians through the use of car bombings in civilian areas. Members of the Islamic State of Iraq and Al-Sham (ISIS) committed torture, murder, acts tantamount to enforced disappearance, and forcible displacement as part of an attack on the civilian population in Aleppo and Ar Raqqah governorates, amounting to crimes against humanity.”

77. Since March 2012 the UNHCR has issued several subsequent papers, including those entitled “Position on Returns to the Syrian Arabic Republic” and, later, “International Protection Considerations with regard to people fleeing the Syrian Arab Republic”, with updates. The latest, “Update III” of 27 October 2014, states:

“2. Nearly all parts of the country are now embroiled in violence, which is playing out between different actors in partially overlapping conflicts and is exacerbated by the participation of foreign fighters on all sides. Fighting between the Syrian government forces and an array of anti-government armed groups continues unabated. In parallel, the group “Islamic State of Iraq and Al-Sham” (hereafter ISIS) has consolidated control over significant areas in northern and north-eastern Syria and engages in frequent armed confrontations with anti-government armed groups, Kurdish forces (People’s Protection Units, YPG) as well as government forces. The launch of airstrikes against ISIS targets as of 23 September 2014 has added an additional layer of complexity to the conflict. As international efforts to find a political solution to the Syria situation have so far not been successful, the conflict continues to cause further civilian casualties, displacement and destruction of the country’s infrastructure. ...

#### *Civilian Casualties*

4. The number of persons killed as a result of the conflict has reportedly surpassed 191,000 by April 2014. The greatest number of documented deaths was recorded in

the governorate of Rural Damascus, followed by Aleppo, Homs, Idlib, Dera'a and Hama governorates. The deterioration of Syria's healthcare system has reportedly resulted in thousands of ordinarily preventable deaths from chronic diseases, premature deaths due to normally nonfatal infectious diseases, neonatal problems and malnutrition. In addition, the conflict has resulted in hundreds of thousands of people wounded, often resulting in long-term disabilities, and many more suffering from the psychological consequences of having been witness to violence, the loss of family members, displacement and deprivation.

#### ***Forced Displacement***

5. The conflict in Syria has caused the largest refugee displacement crisis of our times, with Syrians now the world's largest refugee population under UNHCR's mandate. It continues to generate increasing levels of displacement each day with an average of 100,000 refugees arriving in host countries in the region every month in 2014. Since March 2014, the Syria conflict has resulted in nearly half of the population displaced, comprising 6.45 million inside Syria and over 3.2 million registered refugees who have fled to neighbouring countries. ...

#### ***Human Rights Situation and Violations of International Humanitarian Law***

8. The protection situation in Syria has progressively and dramatically deteriorated. According to the UN Secretary-General, "[T]he conflict continues to be characterized by horrendous violations of international humanitarian law and human rights abuses, with a total disregard for humanity" and the Independent Commission of Inquiry summarized in its most recent report the impact of the conduct of the warring parties on civilians as "*immeasurable suffering*". Parties to the conflict are reported to commit war crimes and gross violations of human rights, including acts amounting to crimes against humanity, with widespread impunity. ...

#### ***Access to Territory and the Right to Seek Asylum***

21. UNHCR characterizes the flight of civilians from Syria as a refugee movement. Syrians, and Palestine refugees who had their former habitual residence in Syria, require international protection until such time as the security and human rights situation in Syria improves significantly and conditions for voluntary return in safety and dignity are met. ...

#### ***Assessing Individual Asylum Claims***

26. While the majority of Syrians and others leaving the country remain in the region, the numbers of individuals who arrive in countries further afield and seek international protection are increasing. Their claims need to be assessed in fair and efficient procedures. UNHCR considers that most Syrians seeking international protection are likely to fulfil the requirements of the refugee definition contained in Article 1A(2) of the *1951 Convention relating to the Status of Refugees*, since they will have a well-founded fear of persecution linked to one of the Convention grounds. For many civilians who have fled Syria, the nexus to a 1951 Convention ground will lie in the direct or indirect, real or perceived association with one of the parties to the conflict. In order for an individual to meet the refugee criteria there is no requirement of having been individually targeted in the sense of having been "singled out" for persecution which already took place or being at risk thereof. Syrians and habitual residents of Syria who have fled may, for example, be at risk of persecution for reason of an imputed political opinion because of who controls the neighbourhood or village where they used to live, or because they belong to a religious or ethnic minority that is associated or perceived to be associated with a particular party to the conflict. In this regard, UNHCR welcomes the increased granting of refugee status to asylum-seekers

from Syria by EU Member States in 2014, in comparison to 2013, when most EU Member States predominantly granted subsidiary protection to Syrians. ...

***Returns, Moratorium on Forced Returns and Consideration of Sur Place Claims***

30. As the situation in Syria is likely to remain uncertain for the near future, UNHCR welcomes the fact that several Governments have taken measures to suspend the forcible return of nationals or habitual residents of Syria, including those whose asylum claims have been rejected. Such measures should remain in place until further notice. ...

31. In light of the developments and changed circumstances in Syria, it may be appropriate to reopen case files of Syrians whose asylum claim were rejected in the past, to the extent that has not yet been done, so as to ensure that those who as a result of changed circumstances have a valid *sur place* claim have it appropriately adjudicated, enabling them to benefit from protection and entitlements flowing from refugee recognition.”

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

“The conflict in Syria has now entered its fourth year, and as the humanitarian situation continues to deteriorate, the number of people forcibly displaced has reached record levels. More than 2.8 million refugees are registered or awaiting registration in Egypt, Iraq, Jordan, Lebanon and Turkey, and over 6.5 million people are internally displaced in Syria. It is one of the largest humanitarian crises in recent history and more support will be needed as the countries hosting the vast majority of refugees struggle to deal with the impact of caring for so many. ...

Although, as noted, the responses and practices in relation to Syrians arriving in Europe have varied, some key trends can be identified. UNHCR has welcomed the positive protection practices of many European States with respect to Syrian nationals, including a *de facto* moratoria on returns to Syria, the decision to process Syrian claims in most countries, and high protection rates. ...

The protection and humanitarian situation of Palestinian refugees in Syria has continued to deteriorate, as nearly all the areas hosting large numbers of Palestinian refugees are directly affected by the conflict. Prior to the conflict, approximately 540,000 Palestine refugees were in Syria. UNRWA estimates that 63 percent of registered Palestinian refugees have been displaced either in Syria or to neighbouring countries. UNHCR has characterized the flight of civilians from Syria as a refugee movement and considers that Palestinian refugees who had their former habitual residence in Syria require international protection.”

79. The Human Rights Watch World Report 2014 (31 January 2014) reported on Syria:

“Since the beginning of the uprising security forces have subjected tens of thousands of people to arbitrary arrests, unlawful detentions, enforced disappearances, ill-treatment, and torture using an extensive network of detention facilities throughout Syria. Many detainees were young men in their 20s or 30s; but children, women, and elderly people were also detained.”

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

#### “1.4 Policy Summary

Case-law has established that it is likely that a failed asylum seeker or forced returnee would, in general, on return to Syria face a real risk of arrest and detention and of serious mistreatment during that detention as a result of imputed political opinion. The position might be otherwise in the case of someone who, notwithstanding a failed claim for asylum, would still be perceived on return to Syria as a supporter of the Assad regime.

Most Syrian nationals are therefore likely to qualify for refugee protection unless excluded.

Where a person is excluded from refugee protection they will also be excluded from Humanitarian Protection but may be entitled to Discretionary leave or Restricted Leave.

The humanitarian crisis, which continues to deteriorate, is such that for most returnees removal would be a breach of Article 3 ECHR.

The level of indiscriminate violence in the main cities and areas of fighting in Syria is at such a level that substantial grounds exist for believing that a person, solely by being present there for any length of time, faces a real risk of harm which threatens their life or person.

Internal relocation within Syria to escape any risk from indiscriminate violence is extremely unlikely to be possible or reasonable because of the highly limited ability to move, and move safely, from one part of Syria to another part of the country and the unpredictability of the violence in areas of proposed relocation coupled with the humanitarian situation for those internally displaced.”

81. In his twelfth report issued on 19 February 2015 on the implementation of Security Council resolutions 2139 (2014), 2165 (2014) and 2191 (2014) on Syria, the Secretary-General of the United Nations observed, *inter alia*, that widespread conflict and high levels of violence continued throughout the country and that the conduct of the hostilities by all parties continued to be characterised by a widespread disregard for the rules of international humanitarian law and the protection of civilians.

#### IV. INFORMATION DOCUMENT ABOUT EXECUTION OF THE JUDGMENT IN *KIM V. RUSSIA* (No. 44260/13)

82. A document entitled “Communication from the Russian Federation concerning the case of Kim against Russian Federation (Application no. 44260/13) DH-DD(2015)527” contained an action plan aimed at execution of the judgment which had found a breach of Article 3 and Article 5 § 1 (f) and 5 § 4 on account of the conditions of detention, detention itself and the absence of review during the two years pending the applicant R.A. Kim’s expulsion. The Government indicated that the judgment had been translated into Russian and placed on several professional portals, including that of the Prosecutor General’s Office, Ministry of the Interior and the Russian Supreme Court’s intranet site, thus making it available to all the judges of general jurisdiction in the Russian

Federation. The possibility of legislative amendments would be considered in December 2015.

## THE LAW

### I. JOINDER OF THE APPLICATIONS

83. 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. ALLEGED VIOLATION OF ARTICLES 2, 3 AND 13 OF THE CONVENTION ON ACCOUNT OF THE APPLICANTS' ORDERED EXPULSION TO SYRIA

84. The applicants 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, as provided in Articles 2 and 3 of the Convention. They also stressed that they had no effective domestic remedies in respect of these violations, in breach of Article 13. The provisions read as follows, in so far as relevant:

#### **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.”

#### **Article 13**

“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.”

### **A. Arguments of the parties**

#### *1. The Government*

85. 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.

86. 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. The documents to support the claims had only been submitted for the hearing of 27 May 2014 in the Kaluga Regional Court, and had either been outdated, such as “Update I” of December 2012 relating to the UNHCR document “International Protection Considerations with regard to people fleeing the Syrian Arab Republic”, or so general in nature that they had failed to corroborate the individual circumstances of each applicant. 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 (see paragraphs 71 and 73 above).

87. Specific information, for instance concerning the destruction of their homes and the death of their family members had not been submitted by A.A and L.M. until 27 May 2014. The significant delay in reporting their alleged fears to the Russian authorities raised doubts as to the veracity of their applications.

88. 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.

89. In view of the above, the Government were 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.

## *2. The applicants*

90. 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. In the April hearings in the District Court, they had raised their fears of returning to Syria. During the hearing of 27 May 2014, they had submitted extensive and detailed information about the conflict there and the danger they would face if returned. These documents included UNHCR and FMS documents, other relevant information and their own detailed statements. The applicants stressed that L.M. was a stateless Palestinian and was therefore in particular need of international protection, while A.A. and M.A. were from Aleppo, where

fierce fighting had been raging since 2013. A.M specified in addition that several of his family members had been killed by the opposition forces. Following the decision taken at that hearing, the decisions to expel them had entered into force.

91. The applicants argued that they had submitted sufficiently detailed, individualised and corroborated evidence to the authorities that they faced a real risk of death and/or ill-treatment if returned. 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.

92. 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. Despite this weighty and detailed evidence, the decisions of the Regional Court of 27 May 2014 had simply stated that the information about the continuous civil war and the alleged danger to the applicants' life and safety "did not constitute sufficient grounds for excluding the application for expulsion".

93. 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. This, in their view, constituted the most appropriate and effective avenue to address the issue. They stressed that the fact that their claims for refugee status and/or temporary asylum status had been lodged by the time of the hearing in the Regional Court on 27 May 2014 had not prevented that court from confirming the legality of their expulsion, thus nullifying the possible guarantee of non-refoulement contained in the relevant international and domestic legal documents.

94. Moreover, the District Court had refused to stay the execution of the judgments in question, supporting the view that the expulsion was still possible.

95. 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. In particular, they pointed out that while asylum seekers were notified of the FMS decision not to grant them asylum or refugee status, they had to try and obtain the text of the relevant decision from the FMS themselves. Only once the text had been obtained could the people affected bring a complaint to the competent court. A.A.s first request had therefore been rejected on 26 March 2014, and the applicant who had no legal aid and spoke no



Russian had not been aware of the need to obtain the decision. This information was apparent from the Government's observations of 10 September 2014 where they had stressed that A.A. had not taken the necessary steps to obtain the decision of 13 August 2013. The remedies had been inaccessible in practice, and therefore unavailable to the applicants.

96. 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.

97. As to M.A., he had not retracted his latest request for asylum which had been rejected on 19 September 2014. Again, he had been unable to obtain the decision in full and prevented from having any meaningful contact with his relatives or representatives to challenge the decision. This information was fully corroborated by M.A.'s relatives and his complaint.

98. 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.

## **B. The Court's assessment**

### *1. Admissibility*

99. The Court should first address the Government's argument of non-exhaustion. It notes that the applicants had raised their fears of treatment in breach of Articles 2 and 3 if returned to Syria in three types of procedure: those concerning their administrative expulsion for illegal residence, and those concerning refugee status and temporary asylum. The applicants claimed that while the administrative expulsion proceedings had been completed and the decisions of the courts to expel them remained in force, the determination of their refugee status and temporary asylum had turned out to be ineffective and inaccessible.

100. The Court first notes that Russian legislation prohibits the removal of persons whose requests for refugee status and/or temporary asylum are pending (see paragraphs 66 and 67 above). It points out that where an applicant seeks to prevent his or her removal from a Contracting State, a remedy will only be effective if it has automatic suspensive effect. Conversely, where a remedy does have automatic suspensive effect, the applicant will normally be required to use that remedy. Judicial review, where it is available and where the lodging of an application for judicial review will operate as a bar to removal, must be regarded as an effective remedy which, in principle, applicants will be required to exhaust before lodging an application with the Court or indeed requesting interim measures

under Rule 39 of the Rules of Court to delay a removal (see *NA. v. the United Kingdom*, no. 25904/07, § 90, 17 July 2008; and, by contrast, *M.A. v Cyprus*, no. 41872/10, §§ 131-43, 23 July 2013; see also *Gayratbek Saliyev v. Russia*, no. 39093/13, § 41, 17 April 2014, where the Government admitted that the remedies which have no automatic suspensive effect in the context of extradition are not effective).

101. The Court further agrees 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 has previously found that such solutions constitute part of an effective national remedy where the regularisation of an applicant's immigration status through the procedure of temporary asylum and the granting of a temporary residence permit on that basis was accompanied by the annulment of the extradition and/or expulsion orders (see *Tukhtamurodov v. Russia* (dec.), no. 21762/14, § 37, 20 January 2015, and, for similar conclusions in the context of Article 8, *Ewalaka-Koumou v. Russia* (dec.), no. 20953/03, 4 February 2010). The Court regards the relevant information submitted by applicants to the immigration authorities as an integral part justifying their claims of a fear of treatment in breach of Article 3 (see *Y. v. Russia*, no. 20113/07, §§ 87-88, 4 December 2008; *Shakurov v. Russia*, no. 55822/10, §§ 132-13, 5 June 2012; and *Kozhayev v. Russia*, no. 60045/10, §§ 85-87, 5 June 2012).

102. At the same time, the Court notes that, in the context of Russia, the decision ordering an applicant's removal from the territory in extradition or administrative expulsion proceedings remains valid despite the lodging of an application for refugee status and/or temporary asylum. Consequently, in reviewing such complaints the Court has focused primarily on these proceedings as constituting the basis for the complaint brought under Article 3. It has found that while ruling on the question of the possibility of removal, the scope of review by the domestic authorities, including the courts, should include relevant arguments of ill-treatment raised by the applicants, in view of the absolute nature of Article 3 (see *Egamberdiyev v. Russia*, no. 34742/13, § 44, 26 June 2014, and *Khalikov v. Russia*, no. 66373/13, § 37, 6 July 2015).

103. It should be reiterated, in this respect, that the criteria laid down for granting refugee status are not identical to those used for assessing the risk of treatment contrary to Article 3 of the Convention. Consequently, the fact that an appeal against such a decision is pending does not, in itself, constitute an obstacle to the Court's examination of the complaint under Article 3 on the merits if the expulsion or extradition request remains in force (see *Kasymakhunov v. Russia*, no. 29604/12, § 125, 14 November 2013; *Rakhimov v. Russia*, no. 50552/13, § 94, 10 July 2014; and *Khalikov*, cited above, § 37). This approach is guided by the general rule that, in the

event of there being a number of remedies which an individual can pursue, that person is entitled to choose one which addresses his or her essential grievance (see *Croke v. Ireland* (dec.), no. 33267/96, 15 June 1999, and *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, 15 November 2005).

104. In the present case, during the hearings in the District Court on the question of expulsion, the applicants referred to the war and danger to their lives (see paragraph 11 above). Indeed, these statements were rather general, but the applicants do not speak Russian and, while they seem to have had access to an interpreter, had no legal representative to assist them. It is therefore not surprising that their participation was relatively limited. In their statements of appeal the applicants, assisted by representatives, submitted detailed and corroborated information about the situation in Syria, such as heavy fighting raging in the regions of their origin and more individualised assessments produced by the UNHCR (see paragraph 12 above). The decisions of 27 May 2014 were final and confirmed the expulsion orders, which remain valid to date in respect of all three applicants. In a separate ruling of the same date in respect of L.M., the Kaluga Regional Court confirmed the validity of the expulsion order in spite of the pending request for asylum (see paragraph 14 above).

105. 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. Numerous complaints lodged by the applicants' representatives pointed to severe restrictions on communication which could not but have had an effect on the accessibility of the appeal proceedings (see paragraphs 32, 33 and 47-54 above). When one of the applicants, M.A., appealed against the decision not to grant him asylum, he had no opportunity to take part in the proceedings (see paragraph 36). 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.

106. Accordingly, the Court dismisses the Government's objection of non-exhaustion.

107. The Court further notes 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.

## 2. *Merits*

### (a) **General principles**

108. The relevant general principles concerning the application of Article 3 have recently been summarised by the Court in *Mamazhonov v. Russia* (no. 17239/13, §§ 127-35, 23 October 2014). They also apply with regard to Article 2 of the Convention (see, for example, *Kaboulov v. Ukraine*, no. 41015/04, § 99, 19 November 2009, and *M.A. v. Cyprus*, cited above, § 133). In the present case, the issues under Articles 2 and 3 of the Convention are indissociable and the Court will therefore examine them together (see *K.A.B. v. Sweden*, no. 886/11, § 67, 5 September 2013).

109. In respect of applications lodged in Russia, primarily by applicants originating from the countries of Central Asia, the Court has identified the critical elements to be subjected to a searching scrutiny. Firstly, it has to be considered whether an applicant has presented the national authorities with substantial grounds for believing that he faces a real risk of ill-treatment in the destination country. Secondly, the Court will inquire into whether the claim has been assessed adequately by the competent national authorities discharging their procedural obligations under Article 3 of the Convention and whether their conclusions were sufficiently supported by relevant material. Lastly, having regard to all of the substantive aspects of a case and the available relevant information, the Court will assess the existence of the real risk of suffering torture or treatment incompatible with Convention standards (see *Mamazhonov*, cited above, §§ 136-37, with further references).

### (b) **Existence of substantial grounds for believing that the applicants face a real risk of death and/or ill-treatment and their assessment by the national authorities**

110. In view of the above, the Court will focus primarily on the examination of the applicants' complaint in the context of the proceedings under the Code of Administrative Offences (see paragraphs 100-04). The Court notes that in these proceedings the applicants challenged the possibility of expulsion. They argued that they originated from Aleppo and Damascus, where heavy and indiscriminate fighting has been raging since 2012. In addition to the general information on the conflict in Syria, they pointed out the practice of the FMS in respect of people originating from Syria and the UNHCR recommendation not to carry out expulsions to Syria, as well as information from the Federal Bailiff Service on the impossibility of ensuring travel there. The applicants referred to a similar case decided in St. Petersburg where the City Court concluded that expulsion could not be carried out and lifted the additional punishment of expulsion (see paragraphs 12 and 72 above). The statements of appeal also referred to the

fact that the applicants had sought asylum in Russia (see paragraph 12 above).

111. The applicants then submitted to the authorities additional and individualised information about the risks in the event of return during the proceedings aimed at obtaining refugee status and temporary asylum (see paragraphs 37-39 above), which were either rejected or remained incomplete for the reasons stated above (see paragraph 105 above).

112. Lastly, the Court does not lose sight of the fact that the arrival of a significant number of asylum seekers from Syria and the need for this group to have international protection could not have been unknown to the relevant authorities, as attested by the position of the FMS which had been brought to the attention of the Regional Court (see paragraph 12 above).

113. In the circumstances, the Court finds that the applicants presented the national authorities with substantial grounds for believing that they faced a real risk to their lives and personal security if expelled. It remains to be addressed whether the claim has been assessed adequately by the competent national authorities.

**(c) Duty to assess claims of a real risk of ill-treatment relying on sufficient relevant material**

114. The Court notes that the applicants argued before the domestic courts that their expulsion would expose them to a real risk of being subjected to treatment contrary to Articles 2 and 3, and in the Government's opinion this argument had been adequately considered by the domestic courts and rejected.

115. As to the proceedings which had resulted in the expulsion order, the Court notes that the scope of review by the domestic courts was largely confined to establishing that their presence in Russia had been illegal. Both the Maloyaroslavets District Court and Kaluga Regional Court had avoided engaging in any in-depth discussion about the dangers referred to by the applicants and the wide range of international and national sources describing the current situation in Syria. In this connection, the Court reiterates that, in view of the absolute nature of Article 3, it is not possible to weigh the risk of ill-treatment against the reasons put forward for expulsion (see *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 91, 22 September 2009). The courts' approach in this case is particularly regretful since there exists a national practice whereby the domestic courts, including the Supreme Court, when considering administrative offences in the immigration sphere take into account and accord sufficient weight to the arguments of real risk of ill-treatment advanced by the claimants. As a result of such examination, the expulsion orders can be lifted (see paragraphs 71-73 above).

116. The applicants and the Federal Bailiff Service attempted to reverse the orders of expulsion, or at least to have them suspended; however, the

courts remained equally dismissive and focused on the nature of the offences committed rather than on an evaluation of the applicants' claims made under Articles 2 and 3 (see paragraphs 14-17 above).

117. The Court has already found that the applicants attempted to lodge requests for asylum and refugee status, but were prevented from effectively participating in these proceedings (see paragraphs 101-05 above).

118. Having regard to the foregoing, the Court is not persuaded that the applicants' allegations have been duly examined by the domestic authorities in any of the proceedings employed. It must, accordingly, assess whether there exists a real risk that the applicants would be subjected to treatment proscribed by Articles 2 and/or 3 if they were removed to Syria.

**(d) Existence of a real risk of ill-treatment or danger to life**

119. The Court notes that a general situation of violence will not normally in itself entail a violation of Article 3 in the event of expulsion (see *H.L.R. v. France*, 29 April 1997, § 41, *Reports of Judgments and Decisions* 1997-III); however, it has never ruled out the possibility that the general situation of violence in a country of destination may be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there is a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return (see *N.A. v. the United Kingdom*, no. 25904/07, § 115, 17 July 2008).

120. As a matter of comparison, when considering situations in different areas of Somalia, the Court concluded that the risks of generalised violence, dire humanitarian conditions and absence of the possibility of relocating internally without the danger of being exposed to a risk of ill-treatment could lead to a finding of breach of Article 3, unless it could be sufficiently demonstrated that special circumstances such as powerful clan or family connections could ensure the individual's protection (see *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, §§ 293-96, 28 June 2011).

121. In assessing the intensity of the conflict in Mogadishu, the Court in *Sufi and Elmi* (cited above) applied the following criteria which had been identified by the United Kingdom Asylum and Immigration Tribunal in *AM & AM* ((armed conflict: risk categories) Somalia CG [2008] UKAIT 00091, § 241):

“[F]irst, whether the parties to the conflict were either employing methods and tactics of warfare which increased the risk of civilian casualties or directly targeting civilians; secondly, whether the use of such methods and/or tactics was widespread among the parties to the conflict; thirdly, whether the fighting was localised or widespread; and finally, the number of civilians killed, injured and displaced as a result of the fighting.”

122. The Court noted that “while these criteria [were] not to be seen as an exhaustive list to be applied in all future cases”, they formed an “appropriate yardstick by which to assess the level of violence in Mogadishu in the context of that particular case” (*ibid.*). In reaching its conclusion about the level of violence in Mogadishu, the Court in *Sufi and Elmi* (cited above) had regard to “the indiscriminate bombardments and military offensives carried out by all parties to the conflict, the unacceptable number of civilian casualties, the substantial number of persons displaced within and from the city, and the unpredictable and widespread nature of the conflict” (*ibid.*, § 248).

123. Turning to the present case, the Court notes that it has not yet adopted a judgment to evaluate the allegations of a risk of danger to life or ill-treatment in the context of the ongoing conflict in Syria. This is undoubtedly at least in part due to the fact that, as it appears from the relevant UNHCR documents, most European countries do not at present carry out involuntary returns to Syria. In October 2014 the UNHCR “welcomed the positive protection practices of many European States with respect to Syrian nationals, including a *de facto* moratoria on returns to Syria, the decision to process Syrian claims in most countries, and high protection rates” The latest UN reports describe the situation as a “humanitarian crisis” and speak of “immeasurable suffering” of the civilians, massive violations of human rights and humanitarian law by all parties and the resulting displacement of almost half of the country’s population (see paragraphs 76, 77, 80 and 81 above).

124. The Court notes that the applicants originate from Aleppo and Damascus, where particularly heavy fighting has been raging. M.A. referred to the killing of his relatives by armed militia who had taken over the district where he lived, and feared that he would be killed too. L.M. is a stateless Palestinian. 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. The Court further notes that the applicants are young men who, in the view of the Human Rights Watch, are in particular danger of detention and ill-treatment (see paragraph 79 above).

125. The above elements are sufficient for the Court to conclude that the applicants have 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 Government have not presented any arguments or relevant information that could dispel these allegations, nor referred to any special circumstances which could ensure sufficient protection for the applicants if returned.

126. The foregoing considerations are sufficient to enable the Court to conclude that if the applicants were expelled to Syria, it would be in breach of Articles 2 and/or 3 of the Convention.

127. In so far as the applicants claimed a breach of Article 13, the Court notes that it has already examined that allegation in the context of Articles 2 and 3 of the Convention. Having regard to these findings, it considers that it is not necessary to examine this complaint separately on the merits (see, among other authorities, *Gaforov v. Russia*, no. 25404/09, § 144, 21 October 2010; *Khaydarov v. Russia*, no. 21055/09, § 156, 20 May 2010; and *Khodzhayev v. Russia*, no. 52466/08, § 151, 12 May 2010).

### III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION BY THE CONDITIONS OF DETENTION

128. The applicants 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. The parties' submissions

129. The applicants listed the following elements as the basis for their complaint under this head: verbal abuse and physical violence by the detention centre staff, limited privacy, limited access to an interpreter and legal aid, lack of opportunity to take walks and have outdoor exercise, and a lack of medical treatment. They referred to their complaints and the affidavits made by themselves and to their representatives. They believed that the cumulative effect of these factors amounted to inhuman and degrading treatment. They also referred to the Courts' previous findings of a violation of Article 3 on account of the conditions of confinement in detention centres for foreign nationals pending expulsion and argued that conditions there, as a rule, were substandard to the requirements of the Convention.

130. The Government were of the opinion that the conditions of the applicants' detention at the centre had not disclosed a violation of Article 3. They referred to the minimum standards established by the relevant legislation (see paragraphs 74 and 75 above) and stressed that these requirements had been complied with at the detention centre in the Kaluga Region. As to the material conditions of the applicants' detention, the Government pointed out that M.A. and L.M. had been detained in a room measuring 47 square metres and designed to hold six detainees; each having a personal space of almost eight square metres, an individual bed and bedding. The room had large windows with unrestricted access to light and ventilation and artificial light in the evenings, inmates had access to a partitioned toilet, and a shared bathroom was accessible on request (see paragraph 60 above). Exercise could be taken daily (see paragraph 58



above). The centre was staffed with medical professionals who provided the necessary care to the inmates, including the applicants (see paragraph 59 above).

### **B. The Court's assessment**

131. The Court has previously found the conditions of detention at some Russian facilities for foreign nationals to be in breach of Article 3 guarantees. In doing so, the Court has had regard to constant overcrowding which was severe enough to justify, in its own right, the finding of a violation of Article 3 of the Convention, seen against the background of virtually non-existent outdoor exercise and deficient hygiene facilities (see *Kim v. Russia*, no. 44260/13, § 32, 17 July 2014).

132. In so far as the applicants complained about the material conditions, the Government presented a detailed description of the accommodation facilities, accompanied by relevant documents and other evidence. L.M. confirmed in his interview of 17 December 2014 that the material conditions of accommodation had not posed any particular problems in terms of overcrowding, personal space, hygiene and bathing facilities or access to regular outdoor exercise (see paragraph 52 above). M.A. did not make any specific submissions on that subject.

133. Having regard to the parties' submissions, the Court is satisfied that the conditions of the applicants' detention at the Kaluga detention centre corresponded to the description contained in the Government's submissions (see paragraph 129 above). Taking into account the cumulative effect of those elements, it does not appear that the material conditions of the applicants' detention could be regarded as inhuman or degrading.

134. In so far as the applicants complained of ill-treatment and verbal abuse by the centre guards, the Court notes that the information about two such incidents in August 2014 had been raised by L.M. and M.A. on 17 December 2014 during meetings with their representatives (see paragraphs 52 and 53 above). No further details are available; these statements are not corroborated by any other relevant evidence, such as complaints to the relevant authorities or medical evidence.

135. In so far as the applicants complained of a lack of medical treatment which could reach the threshold of treatment in breach of Article 3, the Court notes that the medical records submitted by the Government indicate that A.A. and L.M. had sought medical assistance on several occasions and that the administered treatment had led to an improvement in their conditions. No medical complaints were raised by the applicants in December 2014 or later. In fact, L.M. indicated that the detention centre had been staffed with four nurses who had administered treatment as needed (see paragraphs 52 and 59 above).

136. In view of the above and in the light of all the material in its possession, the Court finds that the applicants' complaint under Article 3 about the conditions of detention does 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 application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

#### IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

137. The applicants complained of a violation of Article 5 § 1 (f) and 5 § 4. Article 5 of the Convention reads as follows, where relevant:

“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. Admissibility**

138. The Court notes that this part of the application 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**

139. The Court will consider firstly whether the possibility of effective supervision over the applicants' detention existed and, secondly, whether their detention was compatible with the requirements of Article 5 § 1 (f) (see *Kim*, cited above, § 38, and *Azimov v. Russia*, no. 67474/11, §§ 146 et seq., 18 April 2013).

###### *1. Compliance with Article 5 § 4 of the Convention*

140. The applicants stressed that they had no access to effective judicial review of their continued detention. The Government disputed that argument.

141. The Court reiterates that, since its *Azimov* judgment, which concerned a similar complaint (cited above, § 153), it has found a violation of Article 5 § 4 in a number of cases against Russia on account of the absence of any domestic legal provision which could have allowed an applicant to bring proceedings for a judicial review of his detention pending expulsion (see *Kim*, §§ 39-43, and *Rakhimov*, §§ 148-50, both cited above; *Akram Karimov v. Russia*, no. 62892/12, §§ 199-204, 28 May 2014; and also *Egamberdiyev*, cited above, § 64). In the *Kim* case, the Government acknowledged a violation of Article 5 § 4 and, having regard to the recurrent nature of the violation, the Court directed that the Russian authorities should “secure in [their] domestic legal order a mechanism which allows individuals to institute proceedings for the examination of the lawfulness of their detention pending removal in the light of the developments in the removal proceedings” (cited above, § 71).

142. As in the above cases, the applicants in the present case did not have at their disposal a procedure for a judicial review of the lawfulness of their detention. Accordingly, the Court finds that there has been a violation of Article 5 § 4 of the Convention in respect of all three of them.

## 2. Compliance with Article 5 § 1 (f) of the Convention

### (a) The parties’ submissions

143. The Government disputed the allegations. They were of the opinion that since the expulsion order remained valid, but was only temporarily stopped through the application of interim measures by the Court, the authorities still had lawful grounds to detain the applicants pending expulsion. They pointed out that the applicants’ illegal residence in Russia was weighted towards maintaining detention as a measure to ensure compliance with the domestic court order. They also pointed out that the relevant provisions of the Code of Administrative Offences did not allow for another measure of restraint, and that there were therefore no grounds for the applicants’ release while the expulsion order remained in force (see paragraph 62 above). The Government were of the opinion that while no time-limit for the applicants’ detention had been stipulated, the maximum term of enforcement of an administrative penalty was two years. The applicants were able to seek a supervisory review of the expulsion and ensuing detention orders if there was a significant change in their circumstances.

144. The applicants stressed that the court decisions did not stipulate the maximum length of this detention. Other than the requirement that the expulsion order be executed within the two-year time-limit, the Code of Administrative Offences did not contain any provisions governing the length of detention pending expulsion, and therefore lacked legal certainty. Moreover, there was a conflict between the position of the Federal Bailiff

Service, which was of the opinion that the expulsion could not be carried out and sought to amend the relevant court decisions, and the court decisions confirming the validity of the measure ordered (see paragraphs 15-17 above). Lastly, the applicants claimed that such a long stay in detention significantly exceeded the maximum custodial sentence permissible under the Code of Administrative Offences, and that their detention pending expulsion was of a punitive rather than preventive nature.

**(b) The Court's assessment**

145. The Court observes that the applicants' complaint refers to the period from 15 and 16 April 2014, when the District Court ordered their detention with a view to their administrative removal ("expulsion") from Russia (see paragraph 11 above), to the present day. Since administrative removal amounts to a form of "deportation" within the meaning of Article 5 § 1 (f) of the Convention, that provision is applicable in the instant case.

146. Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 170, ECHR 2009, with further references). The Court also reiterates that deprivation of liberty under Article 5 § 1 (f) of the Convention must conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. The notion of "arbitrariness" in Article 5 § 1 extends beyond a lack of conformity with national law, so that deprivation of liberty may be lawful in terms of domestic law but still arbitrary, and therefore contrary to the Convention. To avoid being branded as arbitrary, detention under Article 5 § 1 (f) 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 (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 74, ECHR 2008; *Azimov*, cited above, § 161; and *Rustamov v. Russia*, no. 11209/10, § 150, 3 July 2012, with further references).

147. It is common ground between the parties that the applicants had been residing illegally in Russia before their arrest and had therefore committed an administrative offence potentially punishable by expulsion. The Court is satisfied that on 15 and 16 April 2014 their detention pending expulsion was ordered by the court with jurisdiction in the matter and in connection with an offence punishable by expulsion. The Court accordingly concludes that the initial decision authorising the applicants' detention was

in compliance with the letter of the national law. Furthermore, in view of the succinct arguments about the situation in Syria submitted by the applicants during the court hearings, it could reasonably be said that during this initial period of detention, action was being taken against the applicants with a view to deportation, as it appears that at that stage the authorities were still investigating whether their removal would be possible (see *Gebremedhin [Gaberamadhién] v. France*, no. 25389/05, § 74, ECHR 2007-II).

148. However, in the statements of appeal submitted to the Kaluga Regional Court the applicants clearly indicated, with reference to the relevant Russian sources, that no expulsions to Syria were possible (see paragraph 12). On 27 May 2014 the Regional Court upheld the decisions to expel and detain them, without addressing the arguments concerning the possibility of expulsion. In a separate ruling, the Regional Court refused to endorse L.M.'s request to have the sanction of expulsion lifted, referring only to the administrative offence he had committed (see paragraph 14 above). In June 2014 the Federal Bailiff Service requested the same court to postpone the decisions to expel, indicating that the expulsion could not be carried out. The court again refused, referring to the absence of any legal grounds to postpone the expulsion (see paragraph 15-17 above). As a result, even though there existed sufficient material indicating that no action could be taken with a view to deportation, the applicants' detention has been validated. L.M. and M.A. remain in detention to date, while A.A. escaped and has been at large since August 2014. Accordingly, in the circumstances of the present case the Court concludes that it cannot be said that after 27 May 2014 the applicants were persons "against whom action [was] being taken with a view to deportation or extradition". Their detention effectuated after that date was not, therefore, permissible under the exception to the right to liberty set out in Article 5 § 1 (f) of the Convention.

149. The Court reiterates that under Russian law there are no provisions which could have allowed the applicants to bring proceedings for a judicial review of their detention pending expulsion, and no automatic review of detention at regular intervals (see *Azimov*, cited above, § 153, and the Court's findings under Article 5 § 4 above). As a result, even though as noted above no real action has been taken since 27 May 2014 with a view to expulsion, the applicants remain in detention without any indication of the time-limit or conditions related to the possibility of review having been added.

150. Moreover, the Court has already pointed to the absence of clarity as regards the applicants' situation after the expiry of the two-year period for the execution of decisions under Article 31.9 § 1 of the Code of Administrative Offences, since they will clearly remain in an irregular situation in terms of immigration law and could again be liable to expulsion

and, consequently, to detention on those grounds (see *Egamberdiyev*, § 62, and *Azimov*, § 171, both cited above).

151. The Court further notes that the maximum penalty for deprivation of liberty for an administrative offence under the Code of Administrative Offences in force is thirty days, and that detention with a view to expulsion should not be punitive in nature and should be accompanied by appropriate safeguards, as established by the Russian Constitutional Court. In the present case, the “preventive” measure was much heavier than the “punitive” one, which is not normal (see *Azimov*, cited above, § 172).

152. In view of the above considerations, the Court concludes that there has been a violation of Article 5 § 1 (f) of the Convention.

## V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

153. The applicants further complained under Article 34 of the Convention that the restrictions on their contact with their representatives had interfered with their ability to communicate with the Court effectively. They also pointed to a lack of interpreting services, which had further hindered their effective participation in the proceedings before the Court. Article 34 of the Convention reads, in so far as relevant, as follows:

“The Court may receive applications from any person ... 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.”

154. The Government contested the applicants’ submissions. They stated that the restrictions on them meeting with their representatives had been reasonable and had not interfered with their right to communicate with the Court. They noted that the detention centre’s daily routine was applicable to all inmates and not just the applicants; that there had been time available every day to arrange for such meetings; that telephone contact, letters and parcels with the representatives had not been limited and could serve as further means of communication. The Government stressed that while the applicants’ representative Ms Golovanchuk had met with the applicants on 17 December 2014, there had been no requests lodged, or refused, by her on any other occasion.

155. The applicants maintained their complaint.

156. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 102, ECHR 2005-I). In this context, “pressure” includes not only direct coercion and flagrant acts of intimidation but also other improper indirect

acts or instances of contact designed to dissuade or discourage applicants from pursuing a Convention remedy. The fact that an individual has actually managed to pursue his application does not prevent an issue arising under Article 34: should the Government's action make it more difficult for him to exercise his right of petition, this amounts to "hindering" his rights under Article 34 (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 105 and 254, *Reports* 1996-IV). The intentions or reasons underlying the acts or omissions in question are of little relevance when assessing whether Article 34 of the Convention has been complied with; what matters is whether the situation created as a result of the authorities' act or omission conforms to Article 34 (see *Paladi v. Moldova* [GC], no. 39806/05, § 87, 10 March 2009).

157. The Court has already found in a number of cases that measures limiting an applicant's contact with his representative may constitute interference with the exercise of his right of individual petition (see, for example, *Shtukurov v. Russia*, no. 44009/05, § 140, 27 March 2008, where a ban on lawyer's visits, coupled with a ban on telephone calls and correspondence, was held to be incompatible with the respondent State's obligations under Article 34 of the Convention). The Court has, however, accepted that compliance by a representative with certain formal requirements might be necessary before obtaining access to a detainee, for instance for security reasons or in order to prevent collusion or perverting the course of the investigation or justice (see *Melnikov v. Russia*, no. 23610/03, § 96, 14 January 2010). At the same time, excessive formalities in such matters, such as those that could *de facto* prevent a prospective applicant from effectively enjoying his right of individual petition, have been found to be unacceptable. Where an applicant's representative, an NGO lawyer, was required to produce a court decision admitting her to act as counsel, such admittance being within the discretionary powers of the trial or appeal judge, this constituted an interference with the exercise of his right of individual petition (see *Zakharkin v. Russia*, no. 1555/04, § 158, 10 June 2010). By contrast, where the domestic formalities were easy to comply with and the applicant concerned had access to other representatives and the resulting delay in meetings was not excessive, no issue arose under Article 34 (see *Lebedev v. Russia*, no. 4493/04, §§ 119, 25 October 2007).

158. Turning to the present case, the Court observes that the applicants were represented before the Court Ms N. Golovanchuk, a lawyer practising in Moscow. It agrees with the Government that it appears that no other meetings with her were requested or denied, except one which took place on 17 December 2014.

159. At the same time, the Court remarks that in their communication with the domestic authorities and their representative before the Court the applicants relied not only on the meetings with their representative before

the Court who is based in Moscow, but also on the possibility of meeting with locally based lawyers and human rights defenders. Numerous complaints indicate that these meetings with the applicants were denied or made subject to formalities that were difficult to overcome (see paragraph 39 above and further). In particular, it appears from the letters from the detention centre that in order to have a meeting with a representative, both an inmate and his representative have to lodge advance written requests, which should also be certified by a notary and drafted in the presence of an interpreter (see paragraph 41 above). These requirements were applied to a member of the bar, Mr P.K., who was refused access to the applicants on the basis of the engagement letter (see paragraph 50 above). Attempts by Ms Lyubov M.-E. to meet with the applicants were also rejected (see paragraphs 42 and 43 above). It also appears that the applicants were not given access to a telephone and could not therefore communicate properly with their representatives.

160. The Court notes the applicants' claim that they had been forced to sign statements withdrawing their asylum requests and containing a refusal to meet with Ms Lyubov M.-E. (see paragraphs 46 and 47 above). These statements were later retracted by L.M. and M.A. as obtained under duress and without a proper interpreter; both applicants insisted that they had wanted their asylum requests to proceed and to be assisted by Ms Lyubov M.-E. (see paragraphs 48, 49 and 52-55 above). The Court reiterates that whether or not contact between the authorities and an applicant are tantamount to unacceptable practice from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see *Knyazev v. Russia*, no. 25948/05, § 117, 8 November 2007, with further references). An applicant's position might be particularly vulnerable when he is held in custody and has limited contact with his family or the outside world (see *Cotleț v. Romania*, no. 38565/97, § 71, 3 June 2003). In addition to being in detention, the applicants in the present case have a very poor command of Russian and have no family or social network, which makes them particularly at risk to unacceptable practice. They complained that the statements in question, which had negative consequences on the proceedings which were of vital interest to them, had been obtained under duress. The Court notes with concern the absence of any meaningful reaction from the relevant authorities to these complaints raising serious allegations of such practice.

161. To sum up, despite several attempts to organise meetings, M.A. and L.M. only met once with their representative, on 17 December 2014. M.A. had one more meeting with his brother and sister-in-law on 22 October 2014, which lasted about ten minutes. A.A. did not meet with a representative prior to his escape from the detention centre (see



paragraphs 20-22 and 39 above). It does not appear that it was possible for the applicants to have telephone contact or exchange written submissions; in fact, it appears that such attempts had been actively prevented by the administration (see paragraphs 43 and 49 above, in particular).

162. In view of the above, the Court is satisfied that there is sufficient evidence that the applicants' communication with their representatives was seriously obstructed. Obtaining permission to have meetings was so difficult that it went beyond the usual formalities and could be regarded as being excessively complicated; for months the applicants remained without any means of communication with their representatives and could not therefore effectively participate in the domestic proceedings or proceedings before this Court.

163. In view of the foregoing, the Court considers that the restrictions on the applicants' contact with their representatives constituted an interference with the exercise of their right of individual petition which is incompatible with the respondent State's obligations under Article 34 of the Convention. The Court therefore concludes that the respondent State has failed to comply with its obligations under that provision.

## VI. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

### A. Article 46 of the Convention

164. 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.”

165. The Court reiterates that by Article 46 of the Convention the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects (see *Menteş and Others v. Turkey* (Article 50), 24 July 1998, § 24, Reports 1998-IV; *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; and *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I). It is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers,

the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention (see *Scozzari and Giunta*, cited above; *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I; and *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV).

166. However, with a view to helping the respondent State to fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V, and *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 148, 17 September 2009).

167. In certain situations, the Court can exceptionally indicate the specific remedy or other measure to be taken by the respondent State (see, for instance, *Assanidze v. Georgia* [GC], no. 71503/01, point 14 of the operative part of the judgment, ECHR 2004-II; *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 208, ECHR 2013; *Del Río Prada v. Spain* [GC], no. 42750/09, § 139, ECHR 2013; and *Amirov v. Russia*, no. 51857/13, § 118, 27 November 2014). Whenever the Court takes this adjudicative approach, it does so with due respect for the Convention organs' respective functions: it falls to the Committee of Ministers to evaluate the implementation of individual and general measures under Article 46 § 2 of the Convention (see *Kudeshkina v. Russia* (no. 2) (dec.), no. 28727/11, § 58, 17 February 2014, with further references).

168. In the instant case the Court considers that it is necessary, in view of its finding of a violation of Article 5 § 1 (f) of the Convention, to indicate individual measures for the execution of this judgment. It has found a violation of that Article and concluded that after 27 May 2014 the applicants' detention did not fall within the list of exceptions to the right to liberty set out in Article 5 § 1 (f) of the Convention since no "action [was] being taken with a view to [their] deportation or extradition". Moreover, as the Court has already found, this detention was not attained by the requisite procedural guarantees, and general measures are expected from the Respondent Government in order to correct this situation (see *Kim*, cited above, § 71).

169. Having regard to the particular circumstances of the case and to the urgent need to put an end to the violation of the Convention it has found, the Court considers it incumbent on the respondent State to ensure that applicants L.M. and M.A. are released immediately.

## **B. Article 41 of the Convention**

170. 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.”

### *1. Damage*

171. The applicants claimed that they should be compensated for the suffering endured by them as a result of the violations found and sought compensation in respect of non-pecuniary damage. They left the amount to the Court’s discretion.

172. The Government submitted that no compensation was necessary.

173. In so far as the applicants complained under Articles 2 and/or 3, their forced return to Syria would, if implemented, give rise to a violation of those provisions. Accordingly, no breach of the Convention under that head has yet occurred in the present case. The Court considers that its finding regarding this complaint in itself amounts to adequate just satisfaction for the purposes of Article 41 (see *Rakhimov*, cited above, § 156).

174. The Court further observes that it has found other violations of the Convention in the present case. It accepts that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. The Court therefore awards each applicant 9,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicants. In respect of A.A., the Court notes that his whereabouts remain unknown after August 2014. In such circumstances, the Court considers it appropriate for the award to be held by the applicant’s representatives in trust for him until such time as payment to the applicant may be enforced (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 215, and point 12 of the operative part, ECHR 2012; *Labsi v. Slovakia*, no. 33809/08, § 155 and point 6 of the operative part, 15 May 2012; and *Mamazhonov*, cited above, § 231).

### *2. Costs and expenses*

175. The applicants also claimed 8,600 euros (EUR) for the costs and expenses incurred before the Court. They submitted that Ms Golovanchuk had spent eighty-six hours on the case, at an hourly rate of EUR 100.

176. The Government were of the opinion that the claims were unnecessary and unsubstantiated.

177. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum as claimed, covering costs under all heads plus any tax that may be chargeable to the applicants.

### 3. *Default interest*

178. 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.

## VII. RULE 39 OF THE RULES OF COURT

179. The Court notes that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

180. The Court notes that the applicants are still formally liable to administrative removal pursuant to the final judgments of the Russian courts. Having regard to the finding that their removal to Syria would be in breach of Articles 2 and 3, the Court considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 4 above) must remain in force until the present judgment becomes final or until further notice.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* 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;
3. *Holds* that the forced return of the applicants to Syria would give rise to a violation of Articles 2 and/or 3 of the Convention;
4. *Holds* that it is not necessary to examine the complaint under Article 13, in conjunction with Articles 2 and/or 3 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
6. *Holds* that there has been a violation of Article 5 § 1 (f) of the Convention;

7. *Holds* that that the respondent State has failed to comply with its obligations under Article 34 of the Convention;
8. *Holds* that the respondent State is to ensure immediate release of applicants L.M. and M.A.;
9. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, to each of the applicants in respect of non-pecuniary damage. The award made to A.A. is to be held for him in trust by his representative Ms N. Golovanchuk until such time as payment to the applicant may be enforced;
    - (ii) EUR 8,600 (eight thousand six hundred euros), plus any tax that may be chargeable to the applicants, jointly, in respect of costs and expenses;
  - (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;
10. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to expel the applicants until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 15 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

András Sajó  
President

**APPENDIX**

<b>Application no.</b>	<b>Initials</b>	<b>Date of birth</b>	<b>Date of entry to Russia</b>	<b>Date of detention</b>	<b>Expulsion proceedings</b>
40081/14	L.M.	20 June 1988	9 February 2013	14 April 2014	Maloyaroslavets District Court on 16 April 2014; Kaluga Regional Court on 27 May 2014
40088/14	A.A.	15 January 1987	21 April 2013	15 April 2014	Maloyaroslavets District Court on 15 April 2014; Kaluga Regional Court on 27 May 2014
40127/14	M.A.	25 February 1994	21 April 2013	14 April 2014	Maloyaroslavets District Court on 15 April 2014; Kaluga Regional Court on 27 May 2014