



## Asylum seekers' detention in Moscow airport transit zone was unlawful, inhuman and degrading

The case **Z.A. and Others v. Russia** (application nos. 61411/15, 61420/15, 61427/15, and 3028/16) concerned complaints brought by four individuals from Iraq, the Palestinian territories, Somalia and Syria who were travelling via Moscow's Sheremetyevo Airport and were denied entry into Russia. Three of the applicants ended up spending between five and eight months in the transit zone of the airport; one of the applicants, from Somalia, spent nearly two years in the zone.

In today's **Chamber** judgment<sup>1</sup> in the case the European Court of Human Rights held, by six votes to one, that there had been a **violation of Article 3 (prohibition of inhuman or degrading treatment)** and a **violation of Article 5 § 1 (right to liberty and security)** of the European Convention on Human Rights.

The Court found in particular that the applicants' confinement in the transit zone, which had not been of their own choosing, had amounted to a deprivation of liberty and that there had been no legal basis for it under domestic law. Moreover, it found that the applicants had been detained for extended periods of time in unacceptable conditions, which had undermined the applicants' dignity, made them feel humiliated and debased, and therefore amounted to inhuman and degrading treatment.

### Principal facts

The applicants in this case are four individuals holding identity documents from Iraq, the Palestinian territories, Somalia and Syria.

While travelling, independently from each other, via Moscow's Sheremetyevo Airport, the applicants were denied entry into Russia by the Russian border authority due to irregularities with their travel documents. As a result, three of the applicants ended up spending between five and eight months in 2015/2016 in the transit zone of the airport; one of the applicants, from Somalia, was in the zone for one year and eleven months between 9 April 2015 and 9 March 2017.

All four applicants applied for refugee status in Russia, without success. The Iraqi applicant and the Syrian applicant were eventually resettled by the office of the United Nations High Commissioner for Refugees (the "UNHCR"), in Denmark and Sweden respectively. The applicant from the Palestinian territories was able to leave the transit zone when the opportunity to take a flight to Egypt presented itself. The applicant from Somalia left for Mogadishu having lost hope of obtaining refugee status in Russia.

### Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants complained about the poor conditions of their detention in the transit zone where they had to sleep on a mattress in the constantly-lit and noisy boarding area of the airport, with no possibility to shower,

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

and live on emergency rations provided by the UNHCR. They also alleged that their confinement to the transit zone had amounted to an unlawful deprivation of their liberty, in breach of Article 5 § 1 (right to liberty and security).

Applications nos. 61411/15, 61420/15 and 61427/15 were lodged with the European Court of Human Rights on 12 December 2015; application no. 3028/16 was lodged on 14 January 2016.

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

Helena Jäderblom (Sweden), *President*,  
Branko Lubarda (Serbia),  
Helen Keller (Switzerland),  
Dmitry Dedov (Russia),  
Pere Pastor Vilanova (Andorra),  
Alena Poláčková (Slovakia),  
Georgios A. Serghides (Cyprus),

and also Stephen Phillips, *Section Registrar*.

## Decision of the Court

### Article 5 (right to liberty and security)

First, considering that holding the applicants in the international zone of Sheremetyevo airport had made them subject to Russian law, the Court rejected the Government's argument that the applicants had not been on Russian territory. Furthermore, the applicants, who had been in the situation of asylum-seekers whose applications had not yet been considered, had not chosen to stay in the transit zone, as they could neither enter Russian territory nor any State other than the one which they had just left. They had thus not validly consented to being deprived of their liberty. The Court therefore concluded that their confinement in the transit zone had amounted to a *de facto* deprivation of liberty.

Moreover, the Government had not referred to any legal provision governing this deprivation of liberty, apart from an international treaty on civil aviation (namely, Chapter 5 of Annex 9 to the Convention on International Civil Aviation). However, no rules were set in that treaty regarding the detention of passengers with irregularities in their travel documents, meaning that the matter was left to Contracting States to regulate under domestic law. As the Government had not referred to any provision of Russian law capable of serving as grounds for justifying the applicants' deprivation of liberty, the Court considered that their lengthy confinement in the transit zone had not had any legal basis under domestic law, in violation of Article 5 § 1.

### Article 3 (conditions of detention)

The Court found it established that the applicants had not had access to such basic amenities as beds, showers or cooking facilities in the transit zone, the Government not having provided any evidence to the contrary. It considered it unacceptable that anyone could be detained in conditions in which there was a complete failure to take care of such essential needs. The conditions which the applicants had had to endure for extended periods of time had therefore to have caused them considerable mental suffering, undermined their dignity and made them feel humiliated and debased. The Court considered such treatment inhuman and degrading, in violation of Article 3.

### Article 41 (just satisfaction)

The Court held that Russia was to pay, in respect of pecuniary damage, 15,000 euros (EUR) to the applicant from the Palestinian territories, EUR 20,000 each to the Iraqi and Syrian applicants and

EUR 26,000 to the Somalian applicant. EUR 3,500 was awarded to each applicant for costs and expenses.

### Separate opinion

Judge Dedov expressed a dissenting opinion.

*The judgment is available only in English.*

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