



A former Syrian serviceman would be at risk of ill-treatment and of a breach of his right to life if he were expelled to Syria

This case concerned an order made by the Bulgarian authorities for the expulsion to Syria of a former Syrian serviceman on the grounds that he posed a threat to national security.

In today's **Chamber** judgment¹ in the case of [O.D. v. Bulgaria](#) (application no. 34016/18) the European Court of Human Rights held unanimously:

- that O.D.'s removal to Syria would amount to a **violation of Article 2 (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment)** of the European Convention on Human Rights
- that there had been a **violation of Article 13 (right to an effective remedy), read in conjunction with Articles 2 and 3.**

The Court found, in particular, that in view of the overall situation in Syria and the individual risk faced by the applicant it could not be established that he could safely return to Syria.

The Court also found that the applicant had not had access to an effective remedy, noting that his request for a stay of execution of the expulsion order had been rejected on the grounds that he posed a threat to national security, and that the proceedings relating to the application for refugee status or humanitarian status had not been aimed at reviewing the lawfulness of the expulsion order or its effects in relation to the complaints concerning the right to life and the right not to be subjected to ill-treatment.

The Court decided to indicate to the Government, under Rule 39 of the Rules of Court, that O.D. should not be expelled.

Principal facts

The applicant is a Syrian national who was born in 1991 and lives in Sofia.

In 2011 the applicant joined the Syrian army and apparently reached the grade of sergeant. He was a sniper and had the ability to handle missiles. He stated that he had deserted in 2012, joining the Free Syrian Army for nine months.

In 2013 he left Syria for Turkey, where he stayed for three months. He then travelled to Bulgaria, where he made two asylum claims, both of which were rejected. The Bulgarian authorities ordered his expulsion in the same year, considering that he represented a threat to national security. The applicant's appeals against that decision were unsuccessful.

In 2018 the European Court of Human Rights decided to indicate to the Bulgarian Government that the applicant should not be expelled for the duration of the proceedings before the Court, under Rule 39 of the Rules of Court (interim measures).

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.

In the same year the Syrian Embassy in Bulgaria issued the applicant with a passport that was valid for two years. It is currently held by the “Migration” service in the Ministry of the Interior and the applicant is considered to be unlawfully resident in Bulgaria.

Complaints, procedure and composition of the Court

The applicant alleged that, were he to be expelled to Syria, he would be at risk of breaches of his rights as guaranteed by Article 2 (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment). He also submitted that he had not had an effective remedy (Article 13) in respect of his complaints.

The application was lodged with the European Court of Human Rights on 13 July 2018.

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

Angelika **Nußberger** (Germany), *President*,
Ganna **Yudkivska** (Ukraine),
Yonko **Grozev** (Bulgaria),
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Articles 2 (right to life) and 3 (prohibition of torture and inhuman or degrading treatment)

The Court noted that the decisions of the Refugees Agency and the Supreme Administrative Court, and the Government’s observations, acknowledged that the overall situation in Syria warranted protection of the rights guaranteed by Articles 2 and 3 of the Convention.

For its part, the Court observed that the security and humanitarian situation, and the nature and extent of the hostilities in Syria, had deteriorated dramatically between the applicant’s arrival in Bulgaria in June 2013 and the final judgment upholding the order for his expulsion in August 2014, and also between the latter date and the decision refusing him protection. Furthermore, the situation appeared unchanged to date. Despite an overall easing of hostilities, the parties to the conflict were engaged in intense fighting and were carrying out indiscriminate attacks, including against the civilian population and civilian infrastructure, and were engaging in looting and persecution. Moreover, large-scale arbitrary arrests and detentions had been carried out as recently as the beginning of 2019 in the vicinity of Homs, the applicant’s city of origin.

With regard to the individual risk faced by the applicant, the Court noted that he feared ill-treatment because he had allegedly deserted from the Syrian army. It also observed that there was nothing in the domestic decisions or in the Government’s observations to suggest that the Bulgarian authorities considered the applicant’s version not to be credible. The Court also took particular note of the existence of practices of execution, arbitrary detention and ill-treatment of individuals who had deserted from the army or had refused to carry out orders to shoot. Moreover, the same assessment of the individual risk faced by the applicant in Syria had been made by the Supreme Administrative Court and in the Government’s observations.

Consequently, the Court considered that it could not be established, in view of the applicant’s allegations that he would be subjected to ill-treatment on account of his desertion from the army, that he could safely return to Syria, either to the city of Homs or elsewhere in the country. Thus, the

applicant's removal from Bulgaria to Syria would amount to a violation of Articles 2 and 3 of the Convention.

[Article 13 \(right to an effective remedy\), read in conjunction with Articles 2 and 3](#)

The Court observed that the Supreme Administrative Court had not addressed the risk referred to by the applicant, simply stating that the threats he faced and the rights he sought to protect had not been clear. Hence, it had not conducted an assessment of the overall situation in Syria. Moreover, the applicant's request for a stay of execution of the expulsion order had been rejected on the ground, among others, that he posed a threat to national security.

As to the proceedings concerning the application for refugee status or humanitarian status, the applicant would have been protected against possible expulsion had the outcome been in his favour. However, those proceedings had not been aimed at reviewing the lawfulness of the expulsion order or its effects in relation to the complaints under Articles 2 and 3 of the Convention. In any event, in refusing to grant the status requested the Supreme Administrative Court, while noting the existence of a serious and widespread situation in Syria, had applied the domestic legislation according to which considerations relating to a threat to national security took precedence over a situation of risk in the destination country. The remedy in question had therefore not enabled the issue of risk to be determined.

Furthermore, the Government had not referred to any other remedies available in Bulgarian law for that purpose. Hence, under the legislation as it currently stood, the applicant would have had no other means of obtaining effective scrutiny of his complaints under Articles 2 and 3 of the Convention.

There had therefore been a violation of Article 13 of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that Bulgaria was to pay the applicant 2,500 euros (EUR) in respect of costs and expenses and that the finding of a violation constituted in itself sufficient just satisfaction in respect of non-pecuniary damage.

The judgment is available only in French.

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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.