



Asylum-seekers' confinement to an airport transit zone for a long time in poor conditions violated their human rights

The case of **Z.A. and Others v. Russia** (application no. 61411/15) concerned four men who were held for long periods of time in the transit zone of Moscow's Sheremetyevo airport while the authorities dealt with their asylum applications. They all eventually left Russia after living in the transit zone.

In today's **Grand Chamber** judgment¹ the European Court of Human Rights held, unanimously, that there had been,

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, and,

a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention.

The Court found in particular that Article 5 was applicable to the applicants' case as their presence in the transit zone had not been voluntary; they had been left to their own devices for the entire period of their stay, which had lasted between five and 19 months depending on the applicant; there had been no realistic prospect of them being able to leave the zone; and the authorities had not adhered to the domestic legislation on the reception of asylum-seekers.

Given the absence of a legal basis for their being confined to the transit zone, a situation made worse by them being impeded in accessing the asylum system, the Court concluded that there had been a violation of the applicants' rights protected by Article 5 § 1.

The conditions the applicants had lived in had also been appalling: they had had to sleep in the transit zone, a busy and constantly lit area, with no access to washing or cooking facilities. There had thus also been a breach of Article 3 as their treatment had been degrading.

Principal facts

The applicants are four individuals, Z.A., an Iraqi national; M.B., who holds a passport issued by the Palestinian Authority; A.M., a Somalian national; and Hasan Yasien, a Syrian national. They were born in 1987, 1988, 1981 and 1975 respectively.

Travelling independently from each other in different circumstances, the applicants eventually arrived at Moscow's Sheremetyevo Airport, where they were denied entry into Russia by the border authority. They applied for refugee status in Russia, without success. Three of them spent between five and seven months in 2015/2016 in the transit zone of the airport while A.M. was there for one year and nine months.

Z.A. and Mr Yasien were eventually resettled by the office of the United Nations High Commissioner for Refugees ("UNHCR"), in Denmark and Sweden. They left the airport in March and May 2016. M.B. left the transit zone to take a flight to Egypt in February 2016 while A.M. left for Mogadishu in March 2017 after losing hope of obtaining refugee status in Russia.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, the applicants alleged that their confinement in the transit zone had amounted to unlawful deprivation of liberty. They also complained under Article 3 (prohibition of inhuman or degrading treatment) of the Convention of poor conditions of detention in the transit zone, where they had had to sleep on mattresses in the constantly lit, noisy boarding area of the airport, with no possibility to shower, and to live on emergency rations provided by UNHCR.

The first three applications were lodged with the European Court of Human Rights on 12 December 2015 and the fourth on 14 January 2016.

In a Chamber [judgment](#) of 28 March 2017, the European Court of Human Rights held, by six votes to one, that there had been a violation of Article 5 § 1 of the Convention, finding that the applicants' confinement in the transit zone, which had not been of their own choosing, had amounted to deprivation of liberty and that there had been no domestic legal basis for it.

The Chamber also held, by six votes to one, that there had been a violation of Article 3 as the applicants had been detained for extended periods of time in unacceptable conditions, which had undermined their dignity, made them feel humiliated and debased, and had therefore amounted to inhuman and degrading treatment.

On 18 September 2017 the Grand Chamber Panel accepted a request from the Russian Government that the case be referred to the Grand Chamber. A hearing was held on 18 April 2018.

The Government of Hungary and the Memorial Human Rights Centre organisation were granted leave to intervene in the written proceedings before the Grand Chamber as third parties but only the Government of Hungary submitted observations. UNHCR's submissions in the Chamber case related to the fourth application were also included in the Grand Chamber case file.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,

Angelika **Nußberger** (Germany),

Robert **Spano** (Iceland),

Jon Fridrik **Kjølbro** (Denmark),

Ksenija **Turković** (Croatia),

Paul **Lemmens** (Belgium),

Ledi **Bianku** (Albania),

Işıl **Karakaş** (Turkey),

Nebojša **Vučinić** (Montenegro),

André **Potocki** (France),

Aleš **Pejchal** (the Czech Republic),

Dmitry **Dedov** (Russia),

Yonko **Grozev** (Bulgaria),

Mārtiņš **Mits** (Latvia),

Georges **Ravarani** (Luxembourg),

Jolien **Schukking** (the Netherlands),

Péter **Paczolay** (Hungary),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar*.

Decision of the Court

Article 5 § 1

The Court took note of concerns expressed by the Governments of Russia and Hungary, as a third party, and agreed that the case had to be seen in the context of the challenges facing States owing to the influx of large numbers of refugees and migrants.

However, the Court held that the case had little to do with whether the right to asylum or asylum-shopping existed under international law but that it was about the legal basis for the applicants being held in the airport and the conditions of their confinement there.

Applicability of Article 5

The Court reiterated previous case-law that four factors had to be taken into consideration when distinguishing between a restriction on liberty of movement and deprivation of liberty when it came to foreigners being confined in airport transit zones and reception centres. Those factors were: the applicants' individual situation and choices; the applicable legal regime and its purpose; the duration of the measure and procedural protection; and the nature and degree of the actual restrictions.

The Court found among other things that the applicants' presence at the airport had not been voluntary, as it had been due to their travel routes, while the Russian authorities had been entitled to perform checks of their claims before deciding to admit them. The purpose of a transit zone was to hold people pending a decision and the authorities had not sought to deprive them of their liberty. States also had a right to carry out such procedures and being made to wait for a short time pending their completion was not deprivation of liberty.

However, the Government had not been able to point to any legal guarantees about the time required to process the applicants' asylum applications and on the maximum length of their stay in the transit zone. Requirements that were laid down by law were not adhered to: for instance the applicants had not been given certificates to show their asylum claims had been examined by the migration authority and they had been left to their own devices in the zone rather than being offered asylum accommodation.

The duration of a restriction was also an important point to consider. In this case, the processing and subsequent judicial decisions on their asylum claims had been anything but speedy as the applicants had spent between five and 21 months in the transit zone depending on their circumstances.

As to restrictions, the Court noted that the zone was continuously monitored by the Border Guard Service, a branch of the Federal Security Service. The applicants' freedom of movement had been very restricted, in a way that was similar to certain types of light regime detention facilities.

Unlike a land transit border zone, leaving the airport would have required much planning and organisation and the Court found that the Government had not substantiated its assertion that the applicants had been free to leave at any time.

The Court concluded that Article 5 was applicable to the applicants' case.

Compatibility of the applicants' deprivation of liberty with Article 5

The Court noted the arguments by the applicants and UNHCR that there had been no legal basis for the men's confinement in the transit area, something the Government had essentially not disputed.

After examining the relevant law, the Court could find no trace of any provision which could serve as grounds for justifying the applicants having been deprived of their liberty. For that reason alone there had been a violation of Article 5 of the Convention.

However, their situation had been worsened by the fact that their access to the asylum system had been impeded as there had been no information available in the transit zone on asylum procedures and their access to legal assistance had been severely restricted.

Furthermore, they had experienced serious delays when attempting to submit and register their asylum applications, they had not been given the necessary examination certificates, and there had been delays in communicating some of the official decisions to them. They had also been held in an area which had clearly not been suitable and the length of their stay had been excessive.

The Court concluded that each applicant had suffered a violation of their rights under Article 5 § 1.

Article 3

Many States faced an influx of asylum-seekers and migrants and the Court did not underestimate the burden and pressure this placed on Governments. It was particularly aware of the difficulties involved in the reception of asylum-seekers at major international airports.

However, the prohibition of inhuman or degrading treatment in the Convention was a fundamental value in democratic societies and was a value of civilisation closely bound up with respect for human dignity, which was part of the very essence of the Convention.

It was clear in the applicants' case that the conditions in which they had lived in the airport transit zone had been unsuitable for an enforced and lengthy stay.

Their having had to sleep on the floor in a constantly lit, crowded and noisy airport transit zone, without unimpeded access to cooking or shower facilities and without outdoor activities or medical or social assistance, had fallen short of the minimum standards of respect for human dignity.

The situation had been aggravated by the applicants being left to their own devices, in disregard of Russia's domestic rules on asylum procedures. Three of the applicants had eventually been recognised by UNHCR as needing international protection, suggesting that their distress had been accentuated by the events they had been through during their migration.

Taken together, the appalling conditions of their detention, which they had had to endure for a long time, and the complete failure of the authorities to take care of them, had constituted degrading treatment, in violation of each applicant's right under Article 3 of the Convention.

Just satisfaction (Article 41)

The Court held that Russia was to pay 20,000 euros (EUR) each to Z.A. and Mr Yasien in respect of non-pecuniary damage; EUR 15,000 in respect of non-pecuniary damage to M.B.; and EUR 26,000 in respect of non-pecuniary damage to A.M.

The Court also awarded EUR 19,000 jointly to the applicants in respect of costs and expenses.

The judgment is available in English and French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Patrick Lannin (tel: + 33 3 90 21 44 18)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

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.