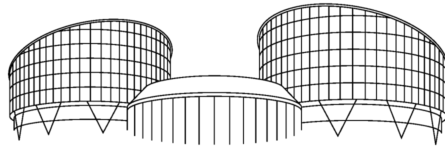

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF Z.A. AND OTHERS v. RUSSIA

(Applications nos. 61411/15 and 3 others – see appended list)

JUDGMENT

STRASBOURG

28 March 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Z.A. and Others v. Russia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 28 February and 28 March 2017,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in four applications (nos. 61411/15, 61420/15, 61427/15, and 3028/16) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four individuals ("the applicants"). The applicants' nationalities and other details, as well as the dates on which they lodged their applications, are set out in the "Facts" section below. The President of the Section decided that the names of the first three applicants should not be disclosed (Rule 47 § 4 of the Rules of Court).

2. The applicants were represented by Ms E. Davidyan and Ms D. Trenina, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicants alleged that they had been unlawfully detained while they had been staying in the transit zone of Sheremetyevo Airport and that the conditions of that detention had been inadequate.

4. Between 16 December 2015 and 15 January 2016 the applications were communicated to the Government. Application no. 3028/16 was granted priority under Rule 41 of the Rules of Court. The Government and the applicants submitted their observations on admissibility and merits. In addition, third-party submissions in application no. 3028/16 were received from the Office of the United Nations High Commissioner for Refugees (UNHCR), which had been granted leave by the President to intervene in the proceedings (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

5. The applicants found themselves staying in the transit zone of Sheremetyevo Airport of Moscow. The details of each application are set out below.

A. Application no. 61411/15 by Mr Z.A., introduced on 12 December 2015

6. The applicant is an Iraqi national who was born in 1987.

7. The applicant moved from Iraq to Turkey in 2013 seeking employment. He later moved to China to look for a job.

8. On 24 July 2015 the applicant travelled by air from China to Turkey. The journey consisted of two legs: Shanghai to Moscow and Moscow to Ankara. The Turkish authorities denied him entry for reasons that the applicant did not specify in his application. The applicant was sent to Moscow on 27 July 2015. On arrival at Sheremetyevo Airport, he was not allowed to pass through passport control.

9. From 27 July 2015 the applicant stayed in the transit zone of Sheremetyevo Airport. The applicant described the conditions of his stay in the transit zone as follows. He slept on a mattress on the floor in the boarding area of the airport, which was constantly lit, crowded and noisy. He sustained himself on emergency rations provided by the Russian office of UNHCR. There were no showers in the transit area.

10. On 29 July 2015 the applicant applied for refugee status in Russia, arguing that in Iraq he would run the risk of persecution by militants belonging to the Islamic State of Iraq and al-Sham (ISIS – also known as Islamic State of Iraq and the Levant) because he had refused to join them, as well as by Iraqi government forces for the reason that he practiced the Sunni form of Islam.

11. On 19 September 2015 the applicant received a visit from the Moscow regional department of the Federal Migration Service ("the Moscow Region FMS") and was interviewed in the transit zone. The Moscow Region FMS did not issue the applicant with a certificate to confirm that his refugee status application deserved to be examined on the merits ("examination certificate").

12. On 10 November 2015 the Moscow Region FMS dismissed the applicant's refugee status application. The applicant appealed to the higher migration authority (the Federal Migration Service of Russia – "the Russian FMS"), asking it to overrule the decision of 10 November 2015, to issue him with an examination certificate, and to allocate him to a centre for the temporary detention of aliens.

13. On 29 December 2015 the Russian FMS dismissed the applicant's appeal on the grounds that he had not received any direct threats targeted against him personally and that "the applicant [had not submitted] convincing evidence that he might become a victim of persecution by ISIS militants or Iraqi authorities on the grounds contained in the definition of the term 'refugee', including his religion". The issue of the applicant's stay in Sheremetyevo Airport was not addressed in the decision.

14. The applicant's lawyer was served with the decision of 29 December 2015 on 23 January 2016.

15. On 1 February 2016 the applicant lodged an appeal against the decisions of 10 November and 29 December 2015 with the Basmannyy District Court of Moscow. He specifically argued that the migration authorities had not complied with the procedural rules by failing to interview him speedily or to issue him with an examination certificate, and that he had spent more than six months in the transit zone of Sheremetyevo Airport in conditions contrary to the guarantees of Article 3 of the Convention, without access to shower and other amenities.

16. On 17 March 2016, having been resettled by UNHCR, the applicant left for Denmark.

17. On 12 May 2016 the Basmannyy District Court of Moscow upheld the Russian FMS's decision. On the same date the applicant's lawyer lodged a brief statement of appeal *(«краткая апелляционная жалоба»),* pending receipt of a reasoned judgment in written form. By 5 July 2016 (the date on which the applicants submitted their written observations to the Court), no such reasoned judgment had been issued.

B. Application no. 61420/15 by Mr M.B., introduced on 12 December 2015

18. The applicant was born in 1988. He holds a passport issued by the Palestinian Authority.

19. Between April 2013 and August 2015 the applicant was in Irkutsk, Russia. It appears that initially he had held a valid entry visa but that he did not take steps to obtain permission to reside in Russia after its expiry.

20. In August 2015 the applicant travelled from Russia to the Palestinian territories via Egypt. For unknown reasons he took a flight from Cairo back to Moscow on 23 August 2015. Because the applicant did not have a valid visa for Russia, he was denied entry to the country by the border guard service.

21. From 23 August 2015 the applicant stayed in the transit zone of Sheremetyevo Airport. The applicant described the conditions of his stay in the transit zone as follows. He slept on a mattress on the floor in the boarding area of the airport, which was constantly lit, crowded and noisy.

The applicant sustained himself on emergency rations provided by the Russian office of UNHCR. There were no showers in the transit area.

22. Three weeks after his arrival at Sheremetyevo Airport, the applicant lodged an application for refugee status. In the course of the ensuing proceedings he mentioned that he had left Palestine because of the ongoing hostilities in the Gaza Strip and the West Bank, as well as a lack of employment and the poor economic situation.

23. On 1 December 2015 the Moscow Region FMS dismissed the applicant's refugee status application as ill-founded. The applicant's lawyer appealed to the Russian FMS, arguing that the applicant did not have any possibility to return to his home in the Gaza Strip, that the Moscow Region FMS had failed to assess his personal situation and the risk he would face if returned to Palestine, and that the Moscow Region FMS, in breach of the Refugees Act (FZ-4528-1 of 19 February 1993), had not issued him with an examination certificate.

24. On 31 December 2015 the Russian FMS dismissed the appeal for the reason that the applicant had "failed to provide evidence confirming that he runs a higher risk of becoming a victim of the Palestine-Israel conflict than the rest of the population of the Palestinian National Autonomy". The applicant's lawyer was informed of that decision on 15 January 2016.

25. On 1 February 2016 the applicant lodged an appeal against the migration authorities' decision with the Basmannyy District Court of Moscow.

26. On 13 February 2016 the Egyptian authorities opened the Rafah crossing point to Gaza. The applicant agreed to take a flight to Egypt and left the transit zone of Sheremetyevo Airport.

27. On 12 May 2016 the Basmannyy District Court of Moscow upheld the Russian FMS's decision. The applicant's lawyer lodged a brief statement of appeal on the same date, pending receipt of a reasoned judgment in written form. By 5 July 2016, no such reasoned judgment had been issued.

C. Application no. 61427/15 by Mr A.M., introduced on 12 December 2015

28. The applicant is a Somalian national who was born in 1981.

29. In 2005 the applicant moved from Somalia to Yemen, where he was granted refugee status. In 2015 he decided to leave Yemen.

30. The applicant travelled by air to Havana, Cuba, a journey that consisted of three legs: Sana'a to Istanbul, Istanbul to Moscow, and Moscow to Havana. On 13 March 2015 the applicant landed in Moscow for the first time; he then continued his journey to Havana.

31. On 9 April 2015 the applicant was deported from Cuba to Russia. The Russian border guard service did not allow him to pass through passport control.

32. From 9 April 2015 onwards, the applicant has been staying in the transit zone of Sheremetyevo Airport. The applicant described the conditions of his stay in the transit zone as follows. He slept on a mattress on the floor in the boarding area of the airport, which was constantly lit, crowded and noisy. He sustained himself on emergency rations provided by the Russian office of UNHCR. There were no showers in the transit area.

33. On 10 April 2015 the applicant lodged an application for refugee status, arguing that he had fled Somalia in 2005 because he had received threats from members of a terrorist group.

34. On 1 July 2015 the Moscow Region FMS interviewed the applicant. However, they did not issue him with an examination certificate.

35. On 1 October 2015 the Moscow Region FMS dismissed the applicant's refugee status application.

36. On 17 October 2015 the applicant's brother was killed in Mogadishu, Somalia.

37. On 7 December 2015 the Russian FMS dismissed an appeal by the applicant against the decision of 1 October 2015.

38. On 22 December 2015 the Moscow Region FMS refused to grant the applicant temporary asylum. On 10 February 2016 the Russian FMS upheld that decision.

39. On 19 May 2016 the Basmannyy District Court of Moscow dismissed an appeal lodged by the applicant against the decisions by the Moscow Region FMS and the Russian FMS to dismiss his application for temporary asylum. It reasoned, in particular, that the applicant had not proved that the terrorists who had threatened him in 2005 represented any danger more than ten years later and that, should such threats persist, he "has not been deprived of an opportunity to avail himself of the protection of his State of nationality [– that is to say] to apply to the law-enforcement agencies of the Republic of Somalia [for protection]." On the same date the applicant's lawyer appealed. On 20 September 2016 the Moscow City Court dismissed the appeal. On 6 February 2017 it dismissed in the final instance the applicant's complaint about the refusals to grant him refugee status.

40. Having received the final rejections of his applications from the Russian authorities, the applicant decided that he did not have any chance of obtaining asylum in Russia. On 9 March 2017 he left for Mogadishu, Somalia.

D. Application no. 3028/16 by Mr Yasien, introduced on 14 January 2016

41. The applicant, Hasan Yasien is a Syrian national who was born in 1975 in Aleppo.

42. On 4 July 2014 the applicant arrived in Moscow from Beirut, Lebanon, holding a business visa valid until 25 August 2014.

43. On 10 September 2014 he applied for temporary asylum to the Moscow City Department of the Federal Migration Service ("the Moscow City FMS"), claiming to have fled Syria because of the ongoing civil war there. That application was refused on 8 December 2014.

44. It appears that the applicant remained in Russia despite that refusal.

45. On 18 August 2015 the applicant took a flight from Moscow to Antalya, Turkey. The Russian border guard service seized his passport and handed it over to the aircraft crew. The Turkish authorities denied the applicant entry to the country and sent him back to Moscow on 20 August 2015. Upon the applicant's arrival, the Russian authorities sent him back to Antalya. The Turkish authorities then returned the applicant to Moscow.

46. On 8 September 2015 the applicant took a flight to Beirut, but the Lebanese authorities denied him entry to the country and sent him back to Moscow. The Russian border guard service did not allow him to pass through passport control.

47. From 9 September 2015 the applicant stayed in the transit zone of Sheremetyevo Airport. He described the conditions of his stay in the transit zone as follows. The applicant slept on a mattress on the floor in the waiting area of the airport, which was constantly lit, crowded and noisy. He received basic food, clothing and sanitary wipes once a week from the Russian office of UNHCR. Given the absence of any refrigerator or kitchen, his rations were extremely limited. Throughout the whole period of his stay in the transit zone the applicant did not have access to a shower.

48. The applicant applied to the Moscow Region FMS for temporary asylum. On 21 December 2015 the Moscow Region FMS dismissed the request.

49. On 4 February 2016 the Russian FMS dismissed an appeal by the applicant against its refusal of 21 December 2015 to grant him temporary asylum. It noted, in particular, that there were regular flights from Moscow to Damascus, from where Syrian nationals could travel to other parts of the country, and that "many Syrians wish to leave the country not only because of a fear for their lives but, in large part, because of the worsening economic and humanitarian situation".

50. On 7 April 2016 the applicant once again tried to lodge an application for refugee status through the border guard service. He received no response.

51. On 11 April 2016 the applicant complained to the Zamoskvoretskiy District Court of Moscow about the refusal of the Moscow Region FMS and Russian FMS to grant him temporary asylum and about his allegedly unlawful detention in appalling conditions in the transit zone of Sheremetyevo Airport.

52. On 11 May 2016 the applicant was resettled by UNHCR and left for Sweden.

53. On 21 July 2016 the applicant's lawyer submitted additional documents to the Zamoskvoretskiy District Court of Moscow in support of the applicant's claims regarding the risks that he would face if returned to Syria. The outcome of the proceedings is unknown.

II. RELEVANT DOMESTIC LAW

54. Section 6 of the Federal Law "On Exit from and Entry into the Territory of the Russian Federation" (FZ-114 of 15 August 1996, with amendments), in so far as relevant, reads as follows:

> "Upon arrival at and departure from the Russian Federation, foreign nationals or stateless persons are obliged to present valid documents confirming their identity and [which are] accepted as such by the Russian Federation, and a visa, unless this Federal Law, or a treaty concluded by the Russian Federation, or decrees by the President of the Russian Federation, provide otherwise."

55. Section 14 of the State Border of the Russian Federation Act (FZ-4730-1 of 1 April 1993, with amendments), in so far as relevant, reads as follows:

> "Foreign nationals and stateless persons who do not possess the status of a person living or residing in the Russian Federation and who have crossed the State border [upon arrival] from the territory of a foreign State shall be [held responsible], in accordance with the Russian law, if there are indications that their actions [constitute] a criminal or administrative offence.
>
> Where there are no grounds for instituting criminal or administrative proceedings against ... the violators of the State border, and if they do not enjoy the right to political asylum, ... the border authorities shall officially transfer them upon arrival to the authorities of the State from ... which they have crossed the [Russian] State border. If the transfer of the violators to the authorities of the foreign State is not envisioned by a treaty between the Russian Federation and that State, the border authorities shall deport them [to places] outside the territory of the Russian Federation ... designated by the border authorities."

56. Section 4 of Federal Law "On Refugees" (FZ-4528-1 of 19 February 1993, with amendments, "the Refugees Act") provides, in so far as relevant, as follows:

> "1. An adult who has expressed a wish to be recognised as refugee should lodge a written application, either in person or through a representative:
>
> ...

> 1 (2) with the border guard service [the BGS] of the Federal Security Service ... at the border crossing point of the Russian Federation at the time when that person crosses the border ...
>
> ...
>
> 3. An application lodged with the border guard service at the border crossing point ... shall be transmitted by [the BGS] to the ... migration authority ... within three days of the date of its being lodged.
>
> ...
>
> 5 (2). An application made by a person who is at a border crossing point ... shall be preliminarily examined by ... the migration authority ... within five days of the date of its receipt.
>
> ...
>
> 6. A decision to issue a certificate [to confirm the examination of an application for refugee status on the merits ("certificate")] shall be taken ... by the migration authority.
>
> A decision to issue a certificate shall serve as grounds for recognising the person's ... rights and for imposing obligations on him or her ...
>
> 7. Within twenty-four hours of that decision ... the migration authority ... shall send the certificate to the person or serve it on him or her ...
>
> The certificate is a document [that serves to identify] a person who has applied for refugee status.
>
> ...
>
> The certificate also serves as grounds for a person ... to receive a document authorising his placement in a temporary accommodation centre."

57. Section 6 of the Refugees Act reads, in so far as relevant, as follows:

> "1. The person in receipt of the certificate ... has a right:
>
> 1 (1) to the services of a translator and an interpreter and to information on the procedure for the granting of refugee status;
>
> ...
>
> 1 (3) to receive a one-time monetary allocation ...
>
> 1 (4) to receive from ... the migration authority a document authorising his placement in a temporary accommodation centre;
>
> ...
>
> 1 (6) to receive food and communal services at the temporary accommodation centre ...
>
> 1 (7) to receive medical and pharmacological aid ..."

III. RELEVANT INTERNATIONAL MATERIALS

A. The 1951 United Nations Convention Relating to the Status of Refugees

58. Article 31 of the 1951 Convention reads as follows:

> "1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
>
> 2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country."

59. Article 33 of the 1951 Convention provides:

> "1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
>
> 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

B. Annex 9 to the Convention on International Civil Aviation ("the Chicago Convention"), Fourteenth Edition, October 2015

60. Chapter 5 of Annex 9 to the Chicago Convention entitled "Inadmissible Persons and Deportees" reads in its entirety as follows:

> "A. General
>
> 5.1 In order to minimize disruptions to the orderly operations of international civil aviation, Contracting States shall cooperate with one another to promptly resolve any differences arising in the course of implementing the provisions of this Chapter.
>
> 5.2 Contracting States shall facilitate the transit of persons being removed from another State pursuant to the provisions of this Chapter, and extend necessary cooperation to the aircraft operator(s) and escort(s) carrying out such removal.
>
> 5.2.1 During the period when an inadmissible passenger or a person to be deported is under their custody, the state Officers concerned shall preserve the dignity of such persons and take no action likely to infringe such dignity.
>
> Note.— These persons should be treated in accordance with the relevant international provisions, including the UN International Covenant on Civil and Political Rights.

B. Inadmissible persons

5.3 Contracting States shall without delay notify the aircraft operator, confirming this as soon as possible in writing, when a person is found inadmissible, pursuant to 3.46.

Note.— Written notification can be either in paper form or in electronic form, such as email.

5.4 Contracting States, through their public authorities, shall consult the aircraft operator on the time frame for removal of the person found inadmissible, in order to allow the aircraft operator a reasonable amount of time during which to effect the person's removal via its own services or to make alternative removal arrangements.

Note.— Nothing in this provision is to be construed so as to allow the return of a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.

5.5 Contracting States shall ensure that a removal order is issued to the aircraft operator in respect of a person found inadmissible. The removal order shall include information regarding the inbound (arriving) flight carrying such person and, if known, the name, age, gender and citizenship of the person in question.

5.6 Contracting States ordering the removal of an inadmissible person who has lost or destroyed his travel documents shall deliver a covering letter in the format set forth in Appendix 9 (1) in order to give information to the authorities of the State(s) of transit and/or the commencement of journey. The covering letter, the removal order and any relevant information shall be handed over to the aircraft operator or, in the case of escorted persons, the escort, who shall be responsible for delivering them to the public authorities at the State of destination.

5.7 Contracting States ordering the removal of an inadmissible person whose travel documents have been seized pursuant to 3.35.1 shall deliver a covering letter in the format set forth in Appendix 9 (2) in order to give information to the authorities of the State(s) of transit and/or the commencement of journey. The covering letter together with a photocopy of the seized travel documents and the removal order shall be handed over to the aircraft operator or, in the case of escorted persons, the escort, who shall be responsible for delivering them to the public authorities at the State of destination.

5.8 Contracting States that have reason to believe that an inadmissible person might offer resistance to his removal shall inform the aircraft operator concerned as far in advance as possible of scheduled departure so that the aircraft operator can take precautions to ensure the security of the flight.

5.9 The aircraft operator shall be responsible for the cost of custody and care of an improperly documented person from the moment that person is found inadmissible and returned to the aircraft operator for removal from the State.

5.9.1 The State shall be responsible for the cost of custody and care of all other categories of inadmissible persons, including persons not admitted due to document problems beyond the expertise of the aircraft operator or for reasons other than improper documents, from the moment these persons are found inadmissible until they are returned to the aircraft operator for removal from the State.

5.10 When a person is found inadmissible and is returned to the aircraft operator for transport away from the territory of the State, the aircraft operator shall not be

precluded from recovering from such person any transportation costs involved in his removal.

5.11 The aircraft operator shall remove the inadmissible person to:

a) the point where he commenced his journey; or

b) to any place where he is admissible.

5.11.1 Recommended Practice.— Where appropriate, Contracting States should consult with the aircraft operator regarding the most practicable place to which the inadmissible person is to be removed.

5.12 A Contracting State shall accept for examination a person removed from a State where he was found inadmissible, if this person commenced his journey from its territory. A Contracting State shall not return such a person to the country where he was earlier found inadmissible.

5.13 Contracting States shall accept the covering letter and other papers delivered pursuant to 5.6 or 5.7 as sufficient documentation to carry out the examination of the person referred to in the letter.

5.14 Contracting States shall not fine aircraft operators in the event that arriving and in-transit persons are found to be improperly documented where aircraft operators can demonstrate that they have taken necessary precautions to ensure that these persons had complied with the documentary requirements for entry into the receiving State.

Note.—Attention is drawn to the relevant text in Doc 9303 and related guidance material and in Doc 9957, The Facilitation Manual, wherein explanations may be found on irregularities in, and the examination and authentication of, travel documents.

5.15 Recommended Practice.— When aircraft operators have cooperated with the public authorities to the satisfaction of those authorities, for example pursuant to memoranda of understanding reached between the parties concerned, in measures designed to prevent the transportation of inadmissible persons, Contracting States should mitigate the fines and penalties that might otherwise be applicable should such persons be carried to their territory.

5.16 Contracting States shall not prevent the departure of an operator's aircraft pending a determination of admissibility of any of its arriving passengers.

Note.— An exception to this provision could be made in the case of infrequent flights or if the Contracting State had reason to believe that there might be an irregularly high number of inadmissible persons on a specific flight.

C. Deportees

5.17 A Contracting State deporting a person from its territory shall serve him a deportation order. Contracting States shall indicate to the deportee the name of the destination State.

5.18 Contracting States removing deportees from their territories shall assume all obligations, responsibilities and costs associated with the removal.

5.18.1 Recommended Practice.— Contracting States and aircraft operators should, where practicable, exchange information as to the appropriate 24-hour point(s) of contact(s) to whom deportee inquiries should be directed.

5.19 Contracting States, when making arrangements with an aircraft operator for the removal of a deportee, shall make available the following information as soon as

possible, but in any case not later than 24 hours before the scheduled time of departure of the flight:

a) a copy of the deportation order, if legislation of the Contracting State allows for it;

b) a risk assessment by the State and/or any other pertinent information that would help the aircraft operator assess the risk to the security of the flight; and

c) the names and nationalities of any escorts.

Note.— In order to ensure coordination of facilitation and security standards, attention is drawn to the applicable provisions of Annex 17, Chapter 4.

5.19.1 The aircraft operator and/or the pilot-in-command shall have the option to refuse to transport a deportee on a specific flight when reasonable concerns relating to the safety and security of the flight in question exist.

Note.─ Reference is made to the ICAO Aviation Security Manual (Doc 8973 — Restricted), paragraphs 12.2.1.3 and 12.2.1.6.

5.19.2 Contracting States, when making arrangements for the removal of a deportee, shall take into consideration the aircraft operator's policy concerning the number of such persons that may be transported on a given flight.

Note.─ Contracting States are to consult with the aircraft operator regarding the most practicable flight or alternate method of transportation.

5.20 Contracting States, in making arrangements for the removal of a deportee to a destination State, shall use direct non-stop flights whenever practicable.

5.21 A Contracting State, when presenting a deportee for removal, shall ensure that all official travel documentation required by any transit and/or destination State is provided to the aircraft operator.

5.22 A Contracting State shall admit into its territory its nationals who have been deported from another State.

5.23 A Contracting State shall give special consideration to the admission of a person, deported from another State, who holds evidence of valid and authorized residence within its territory.

5.24 Contracting States, when determining that a deportee must be escorted and the itinerary involves a transit stop in an intermediate State, shall ensure that the escort(s) remain(s) with the deportee to his final destination, unless suitable alternative arrangements are agreed, in advance of arrival, by the authorities and the aircraft operator involved at the transit location.

D. Procurement of a replacement travel document

5.25 When a replacement travel document must be obtained in order to facilitate removal and acceptance of an inadmissible person at his destination, the State ordering the removal shall provide as much assistance as practicable in obtaining that document.

Note.— In order to clarify application of this Standard, attention is drawn to Standard 5.13.

5.26 A Contracting State shall, when requested to provide travel documents to facilitate the return of one of its nationals, respond within a reasonable period of time and not more than 30 days after such a request was made either by issuing a travel

document or by satisfying the requesting State that the person concerned is not one of its nationals.

5.27 A Contracting State shall not make the signing by the person concerned of an application for a travel document a prerequisite for the issuance of that document.

5.28 When a Contracting State has determined that a person for whom a travel document has been requested is one of its nationals but cannot issue a passport within 30 days of the request, the State shall issue an emergency travel document that attests to the nationality of the person concerned and that is valid for readmission to that State.

5.29 A Contracting State shall not refuse to issue a travel document to or otherwise thwart the return of one of its nationals by rendering that person stateless."

THE LAW

I. JOINDER OF THE APPLICATIONS

61. In accordance with Rule 42 § 1 of the Rules of Court, the Court decides to join the applications, given their factual and legal similarities.

II. ALLEGED VIOLATIONS OF ARTICLES 3 AND 5 OF THE CONVENTION

62. The applicants complained that the poor material conditions of their stay in the transit zone of Sheremetyevo Airport had been incompatible with the guarantees of Article 3 of the Convention. They further complained that their confinement to the transit zone of Sheremetyevo Airport amounted to an unlawful deprivation of liberty in breach of Article 5 § 1 of the Convention. These Convention provisions read, in so far as relevant, as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5

"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."

A. The parties' submissions

1. The Government

63. The Government contested the applicants' allegations. They presented identical observations in respect of each of the four applications under consideration, without making separate submissions in respect of the alleged violations of Articles 3 and 5 § 1 of the Convention. These observations may be summarised as follows.

64. The Government submitted that the transit zone of Sheremetyevo Airport was not the territory of the Russian Federation. The applicants had not crossed the Russian border and had thus been outside the jurisdiction of the respondent State. The fact that the applicants had applied for refugee status in Russia did not suffice, in the Government's submission, for them to be considered as persons falling within Russian jurisdiction. Furthermore, the Government stated that the applicants had remained in the transit zone of Sheremetyevo Airport on their own initiative and that they could have left it at any moment. However, the Government added that it was the sovereign right of the State to control the entry of aliens, and in order to prevent a violation of the visa regime the applicants had been prevented from passing through passport control. Moreover, third States had denied the applicants entry to their respective territories for unknown reasons.

65. The Government further claimed that the Chicago Convention on International Civil Aviation ("the Chicago Convention") and its Annexes were applicable to the applicants' respective situations. Under Chapter 5 of Annex 9 to the Chicago Convention, an aircraft operator is obliged to return a person denied entry in the country of destination to the place where he or she started the journey or to any other place which that person is allowed to enter.

66. The Government concluded that, taking into account the Chicago Convention and the applicants' "manifest will to stay in the transit zone and not to leave it for another State", there had been no violation of Articles 3 and 5 § 1 of the Convention.

67. In reply to the third-party interveners' observations (see paragraphs 73-82 below) the Government stated that, given that it was primarily for the national authorities to interpret domestic legislation, "the interpretation of the Russian legislation given in UNHCR's submissions should be assessed critically".

2. The applicants

68. The applicants contested the Government's argument that the transit zone of Sheremetyevo Airport was not Russian territory. They argued that Russian law extended to the transit zone, given that border guard officers

exercised control over persons intending to enter the Russian territory and those in transit passing through transit zones.

69. The applicants argued that even though the Russian authorities had failed to issue the applicants with examination certificates, in breach of their obligation to do so, that failure had not excluded the applicants from being under the jurisdiction of Russia.

70. As for the Chicago Convention, the applicants emphasised that it contained a *non-refoulement* clause and specified that State officials should preserve the human dignity of persons in their custody who were to be deported.

71. In sum, the applicants concluded that not only had they been detained in the transit zone of Sheremetyevo Airport under Russian jurisdiction, but that there had been no grounds for that detention under Russian law.

72. The applicants also reiterated their grievances concerning the material conditions of their respective stays in the transit zone, which had constituted an affront to human dignity. The applicants had been detained in appalling conditions with no place to sleep and no access to hygienic facilities. They had been left to their own devices, without any legal or social assistance, and without any possibility of having the conditions of their detention reviewed by an independent authority.

3. Third-party interveners in application no. 3028/16

73. UNHCR in its submissions addressed the Russian domestic legal framework and practice applicable to the treatment of asylum-seekers in transit zones of airports in the Russian Federation and provided its interpretation of the relevant principles of international law, which could be summarised as follows.

74. UNHCR noted that under Russian law, only persons seeking political asylum were exempted from criminal prosecution. The exemption did not apply to those seeking refugee status and temporary asylum.

75. UNHCR further noted that Russian law did not contain any provisions addressing the grounds for or duration of stays in border areas and in transit zones or stipulating procedural safeguards for asylum-seekers at the borders.

76. The Russian migration authorities did not have offices or staff in transit zones, which were under the full control of the Federal Security Service’s border guard service (“the BGS”). UNHCR argued that the BGS had not made any decision to keep a person in the transit zone; rather, it had simply not allowed the person to pass through passport control.

77. UNHCR noted that the asylum procedure consisted of seven stages. An asylum-seeker certificate (that is to say an examination certificate) should be issued after a preliminary assessment, which should be completed within five days. The Refugees Act stipulated the right to have an

interpreter and to be informed about the asylum procedure and the rights and obligations of asylum-seekers, the right to medical care and employment, and the right to be housed in one of the temporary accommodation centres run by the Russian FMS. However, asylum-seekers in transit zones were deprived of those rights as they remained in legal limbo even after being issued with an examination certificate.

78. In practice, UNHCR and its partner organisations had dealt with a number of cases of asylum applications not being accepted by BGS officers, without any reason being given. Numerous enquiries by UNHCR had failed to elicit any constructive explanations. The fact that the migration authorities did not maintain offices within transit zones and the fact that no relevant information was available therein limited individuals' capacity to apply for refugee status on their own. Where UNHCR became involved, the migration authorities refused to accept applications, arguing that these should be lodged through the BGS. Lately, only international staff of UNHCR had been able to gain admission to transit zones without prior authorisation. UNHCR's attempts to formalise cooperation with the migration authorities had so far been unsuccessful.

79. People in airport transit zones could not effectively exercise their right to appeal against a first-instance rejection of their refugee status applications.

80. The conditions of stay in airport transit zones were not regulated by Russian law. Nor had they been improved over the previous several years. Asylum-seekers stranded in transit zones were deprived of access to fresh air, privacy, food, and access to medical and social care. They had no choice but to stay in the open area of the transit zone in question without access to any hygienic facilities and to sleep on the floor. UNHCR distributed basic food items and bed linen, clothing, and hygienic products on a weekly basis. Russian law did not place responsibility on any State authority for ensuring minimum basic care for asylum-seekers in transit zones. The period during which an asylum-seeker had to undergo such a dire lack of basic facilities could be prolonged as on average the complete asylum procedure, including appeals, could last between one and two years.

81. Given that people without both a valid visa and a valid passport could not cross the Russian border, in the absence of any exception for asylum-seekers without those documents there was no other legal option for the State authorities but to keep a person holding no documents in a transit zone. Russian law did not provide for the possibility of judicial review in respect of the situation of those stranded in a transit zone.

82. Referring to the UNHCR Detention Guidelines, UNHCR considered that effecting or attempting to effect irregular entry for the purpose of seeking asylum should not be penalised and that the detention of the persons concerned, including at the border and in airport transit zones, should only be a measure of last resort. Furthermore, UNHCR stated, where applied, the

detention of asylum-seekers should be justified under the principles of necessity, reasonableness and proportionality, and should be subject to a series of important procedural safeguards – all of which were absent in the context of persons held in airport transit zones in the Russian Federation.

B. The Court's assessment

1. Article 5 § 1 of the Convention

83. The Court will first examine the applicants' grievances under Article 5 § 1 of the Convention.

(a) Admissibility

84. The Court considers, taking into account all the elements of the case available to it, that the applicants' complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must therefore be examined on the merits (see *Shamsa v. Poland* (dec.), nos. 45355/99 and 45357/99, 5 December 2002). It further notes that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

(i) Existence of a deprivation of liberty

85. The Court must establish at the outset whether the applicants' stay in the transit zone amounted to a deprivation of liberty within the meaning of Article 5 § 1 of the Convention. In order to do so, it would refer to the pertinent general principles established in its previous case-law.

86. In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5 of the Convention, the starting-point must be his concrete situation, and account must be taken of a whole range of criteria, such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation of and restriction on liberty is merely one of degree or intensity, and not one of nature or substance (see *Nolan and K. v. Russia*, no. 2512/04, § 93, 12 February 2009). Holding aliens in an international zone of an airport involves a restriction on liberty which is not in every respect comparable to that which obtains in detention centres. However, such confinement is acceptable only if it is accompanied by safeguards for the persons concerned and is not prolonged excessively. Otherwise, a mere restriction on liberty is turned into a deprivation of liberty. Account should be taken of the fact that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country. The mere fact that it was possible for the

applicants to leave Russia voluntarily cannot rule out an infringement of the right to liberty (see *Amuur v. France*, 25 June 1996, §§ 43 and 48, *Reports of Judgments and Decisions* 1996-III, and *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, § 68, 24 January 2008).

87. Turning to the circumstances of the case at hand, the Court takes note of the Government's claim that the transit zone of Sheremetyevo Airport is not the territory of the Russian Federation. It observes that even if, in the Government's understanding, the applicants were not within Russian territory, holding them in the international zone of Sheremetyevo Airport made them subject to Russian law (compare *Amuur*, cited above, § 52). Nothing in the Government's argumentation allows the Court to consider the transit zone in question as having the status of extraterritoriality (see *Shamsa*, cited above, § 45). Accordingly, the Court cannot agree with the Government's argument and rejects it.

88. The Court notes that the applicants remained in the transit zone of Sheremetyevo Airport for considerably lengthy periods of time: Mr M.B., Mr Z.A., and Mr Yasien spent, respectively, five months and twenty-two days, seven months and twenty-one days, and eight months and two days there, while Mr A.M. stayed in the transit zone for one year and eleven months.

89. Unlike the applicants in the case of *Mogoş v. Romania* ((dec.), no. 20420/02, 6 May 2004), who were free to enter Romanian territory at any time but chose to stay in an airport transit zone, the applicants in the present case – similarly to those in the cases of *Amuur*, *Shamsa*, and *Riad and Idiab* (all cited above) – did not have the opportunity to enter Russian territory. Furthermore, unlike the applicants in *Mahdid and Addar v. Austria* ((dec.), no. 74762/01, 8 December 2005) – who, after their requests for asylum had been dismissed, refused to go to another country in respect of which they had valid visas and destroyed their passports in an attempt to force the Austrian authorities to accept them – the applicants in the case under consideration, while in the transit zone of Sheremetyevo Airport, were in the situation of asylum-seekers whose applications had not yet been considered (see *Amuur*, cited above, § 53) and did not have the option of entering a State other than that which they had left. Accordingly, the Court considers that the applicants did not choose to stay in the transit zone of Sheremetyevo Airport and thus cannot be said to have validly consented to being deprived of their liberty (see, *mutatis mutandis*, *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 58, ECHR 2012).

90. In view of the above, the Court concludes that the applicants' confinement in the transit zone of Sheremetyevo Airport amounted to a *de facto* deprivation of liberty (see *Amuur*, §§ 48-49, *Shamsa*, §§ 45-47, and *Riad and Idiab*, § 68, all cited above).

(ii) Compatibility of the deprivation of liberty with Article 5 § 1 of the Convention

91. It is now incumbent on the Court to establish whether the applicants' deprivation of liberty was compatible with the guarantees of Article 5 § 1 of the Convention.

92. The Court notes at the outset the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. This insistence on the protection of the individual against any abuse of power is illustrated by the fact that Article 5 § 1 of the Convention circumscribes the circumstances in which individuals may be lawfully deprived of their liberty, it being stressed that these circumstances must be given a narrow interpretation having regard to the fact that they constitute exceptions to a most basic guarantee of individual freedom (see, with further references, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 230, ECHR 2012).

93. Noting that the applicants were refused leave to enter Russia, the Court considers that their detention in the transit zone of Sheremetyevo Airport was covered under Article 5 § 1 (f) of the Convention for the purpose of preventing them effecting an unauthorised entry into the country.

94. The Court has previously held that it is normal that States, in the exercise of their "undeniable ... right to control aliens' entry into and residence in their territory", have the right to detain would-be immigrants who – whether or not by applying for asylum – have sought permission to enter the territory. However, the detention of a person constitutes a major interference with individual freedom and must always be subject to rigorous scrutiny. The question thus remains whether the detention was effected "in accordance with a procedure prescribed by law", within the meaning of Article 5 § 1 of the Convention (see, with further references, *Riad and Idiab*, cited above, § 70).

95. Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, which is to protect the individual from arbitrariness (see *Amuur*, cited above, § 50). Furthermore, in order to avoid being branded arbitrary, detention under Article 5 § 1 (f) of the Convention must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (see, with further references, *Abou Amer v. Romania*, no. 14521/03, § 37, 24 May 2011).

96. The applicants submitted that there had been no legal basis for their confinement in the transit zone of Sheremetyevo Airport. UNHCR submitted that Russian law did not contain any provisions addressing the grounds or duration of stays in border areas and in transit zones or procedural safeguards for asylum-seekers at the borders (see paragraph 75 above). The Government in reply merely claimed that UNHCR was not in a position to interpret Russian law, yet did not provide any alternative assessment regarding the domestic legal system (see paragraph 67 above).

97. Because the Government maintained that the applicants had not been deprived of liberty, they did not see the need to refer to any domestic legal provisions governing the deprivation of liberty to which the applicants alleged that they had been subjected. The Government did refer, however, to Chapter 5 of Annex 9 to the Chicago Convention (see paragraph 65 above). The Court observes that nothing in that Chapter (see paragraph 62 above) or elsewhere in the text of the treaty in question sets any rules regarding the detention of improperly documented passengers, implicitly leaving the matter for regulation by the Contracting States' domestic law. At the same time the Court considers it worth noting that paragraph 5.2.1 of the Chapter emphasises the need to preserve the dignity of inadmissible passengers or persons to be deported and to treat them in accordance with the relevant international provisions, while the note to its paragraph 5.4 contains a restatement of the *non-refoulement* principle. The Court accordingly considers that Chapter 5 of Annex 9 to the Chicago Convention cannot serve as a legal basis for a person's detention. It concludes that the Government have not referred to any legal provision governing the applicants' deprivation of liberty.

98. The Court has already established that the fact of "detaining" a person in the transit zone of an airport for an indefinite and unforeseeable period without that detention being based on a specific legal provision or a valid decision of a court and with limited possibilities of judicial review on account of the difficulties of contact enabling practical legal assistance is in itself contrary to the principle of legal certainty, which is implicit in the Convention and is one of the fundamental elements of a State governed by the rule of law (see, with further references, *Riad and Idiab*, cited above, § 78).

99. In the absence of any reference by the Government to any provision of Russian law capable of serving as grounds for justifying the applicants' deprivation of liberty, the Court considers that the applicants' lengthy confinement in the transit zone of Sheremetyevo Airport did not have any legal basis in the domestic law, in breach of the requirement of Article 5 § 1 of the Convention.

100. There has accordingly been a violation of Article 5 § 1 of the Convention in respect of each applicant.

2. *Article 3 of the Convention*

(a) Admissibility

101. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

102. The Court reiterates at the outset that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, with further references, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-97, 20 October 2016).

103. All four applicants in the present case found themselves confined to the premises of the transit zone of Sheremetyevo Airport. The Court has already established that such confinement amounted to the deprivation of liberty (see paragraph 90 above). The Court reiterates that the State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his or her health and well-being are adequately secured (ibid., § 99).

104. The Court further reiterates that the confinement of aliens, accompanied by suitable safeguards for the persons concerned, is acceptable only in order to enable States to prevent unlawful immigration while complying with their international obligations, in particular under the 1951 Convention relating to the Status of Refugees and the European Convention on Human Rights. States' legitimate concern to foil the increasingly frequent attempts to circumvent immigration restrictions must not deprive asylum-seekers of the protection afforded by these conventions. Where the Court is called upon to examine the conformity of the manner and method of the execution of the measure with the provisions of the Convention, it must look at the particular situations of the persons concerned. The States must have particular regard to Article 3 of the Convention (see, with further references, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 216-18, ECHR 2011).

105. According to the applicants, the material conditions of their confinement in the transit zone of Sheremetyevo Airport were appalling. They had no beds to sleep on, no designated place to maintain personal hygiene, and no privacy whatsoever (see paragraphs 9, 21, 32 and 47 above). UNHCR, in its turn, strongly supported the applicants' description of the conditions of their confinement in transit zones in Russian airports (see paragraph 80 above).

106. The Court, referring to its well-established standard of proof in conditions-of-detention cases (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 121-23, 10 January 2012), considers that the applicants in the present case provided a credible and reasonably detailed description of the allegedly degrading conditions of detention, constituting a prima facie case of ill-treatment (see *Muršić*, cited above, § 128). The burden of proof should thus be shifted to the respondent Government. However, the Government chose not to comment on the applicants' submissions under Article 3 of the Convention. In the absence of any evidence to the contrary advanced by the Government, the Court finds it established that the applicants, while detained in the transit zone of Sheremetyevo Airport, did not have individual beds and did not enjoy access to shower and cooking facilities.

107. The Court has little doubt that a public space such as the transit zone of an airport, lacking such basic amenities as beds, showers, and areas designated for cooking, is by definition ill-equipped to serve as a long-term residence. It has already found a violation of Article 3 of the Convention on account of the poor conditions of detention (lasting for eleven and fifteen days) in the transit zone of Brussels Airport (see *Riad and Idiab*, cited above, § 88). The main conspicuous distinction between that case and the one at hand is that the applicants in the present case endured poor conditions of detention not for days, but for many months in a row (see paragraph 88 above). Mr Z.A. and Mr Yasien were eventually given an opportunity to leave the transit zone, as a result of UNHCR's efforts (see paragraphs 16 and 52 above). Mr M.B. also had a chance to depart from Sheremetyevo Airport (see paragraph 26 above). Mr A.M. left the transit zone, having spent one year and eleven months there (see paragraph 40 above).

108. As in the case of *Riad and Idiab*, the Court considers it unacceptable that anyone might be detained in conditions in which there is a complete failure to take care of his or her essential needs (ibid., § 106). The fact that UNHCR provided for some of the applicants' needs does not in any way alter the wholly unacceptable situation which they had to endure.

109. Reiterating that the absence of a positive intention of humiliating or debasing the applicants cannot rule out a finding of a violation of Article 3 of the Convention (see *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III), the Court considers that the conditions which the applicants were required to endure while being detained for extended periods of time caused

them considerable mental suffering, undermined their dignity, and made them feel humiliated and debased.

110. In the light of the foregoing, the Court considers that the fact that the applicants were detained for many months in the transit zone of Sheremetyevo Airport in unacceptable conditions amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention (see *Riad and Idiab*, cited above, § 110).

111. There has accordingly been a violation of Article 3 of the Convention in respect of each applicant.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. 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."

A. Damage

113. The applicant in application no. 61411/15, Mr Z.A., claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

114. The applicant in application no. 61420/15, Mr M.B., claimed EUR 15,000 in respect of non-pecuniary damage.

115. The applicant in application no. 61427/15, Mr A.M., claimed EUR 35,000 in respect of non-pecuniary damage.

116. Mr Yasien claimed EUR 20,000 in respect of non-pecuniary damage.

117. The Government commented, in respect of each applicant's claims, that "if the Court finds that there has been a violation of the Convention and just satisfaction should be awarded to the applicants, Article 41 of the Convention should be applied, in compliance with the Court's well-established case-law".

118. The Court has found violations of Articles 5 § 1 and 3 of the Convention in respect of each applicant. It considers that the applicants must have experienced distress for which the Court's findings of violations alone cannot constitute just satisfaction. It finds it equitable to award the amounts claimed under the head of non-pecuniary damage to Mr Z.A., Mr M.B., and Mr Yasien – that is to say EUR 20,000, EUR 15,000 and EUR 20,000, respectively. Regarding the situation of Mr A.M., the Court awards him EUR 26,000 in respect of non-pecuniary damage.

B. Costs and expenses

119. The applicant in application no. 61411/15 claimed EUR 1,650 for the costs and expenses incurred domestically and EUR 3,500 for the costs and expenses incurred before the Court.

120. The applicant in application no. 61420/15 claimed EUR 1,250 for the costs and expenses incurred domestically and EUR 3,500 for the costs and expenses incurred before the Court.

121. The applicant in application no. 61427/15 claimed EUR 3,500 for the costs and expenses incurred before the Court.

122. Mr Yasien claimed EUR 2,000 for the costs and expenses incurred domestically and EUR 3,500 for the costs and expenses incurred before the Court.

123. The Government considered that Article 41 of the Convention should be applied in accordance with the Court's case-law.

124. 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 of EUR 3,500, covering costs under all heads, to each applicant.

C. Default interest

125. 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.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Declares*, unanimously, the applications admissible;

3. *Holds*, by six votes to one, that there has been a violation of Article 5 § 1 of the Convention in respect of each applicant;

4. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention in respect of each applicant;

5. *Holds*, by six votes to one,

(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) in respect of non-pecuniary damage:

EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, to Mr M.B.;

EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, to Mr Z.A. and Mr Yasien, respectively;

EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, to Mr A.M.;

(ii) in respect of costs and expenses:

EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicants, to each applicant, respectively.

(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;

6. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

H.J.
J.S.P.

DISSENTING OPINION OF JUDGE DEDOV

I regret that I cannot join the majority of my colleagues, who have found a violation of Articles 3 and 5 of the Convention in the present case.

Article 5

It is clear that the applicants were not deprived of their liberty as they were free to leave the transit zone and fly to any other country, including their country of origin. Their application for asylum and the examination by the authorities cannot serve as a basis for finding that the Government detained the applicants or restricted their freedom of movement.

The Court did not find that the applicants' detention apparently occurred *de facto* as a consequence of any action by the State agents (seizure of passport or restriction of living space). Nor did the Court refer to the fact that the applicants could not leave the transit zone in any way other than by boarding a flight as they were aware that they would not be allowed to enter the State's territory without a valid visa or residence permit. Otherwise, border control could be considered an outdated measure not compatible with a legitimate aim in a new globalised world construed according to the concept of fundamental rights and freedoms. In any case, the decision to stay in the transit zone was made voluntarily by the applicants themselves without any compelling reasons.

However, the Court took the opposite approach when examining these circumstances. In the key paragraph of the judgment (see paragraph 89) the Court concluded that the applicants had been deprived of their liberty because 1) they did not have the opportunity to enter Russian territory; 2) they did not choose to stay in the transit zone; and 3) their asylum application had not yet been considered. In my view, none of those three factors has anything to do with the deprivation of liberty. The only general remark that I can add here is that the above consideration reflects a neo-liberal concept of social life, where liberties prevail over the public interest and individual responsibility, so it appears that the State becomes responsible for any difficulties in private life even if those difficulties were provoked by the individuals themselves.

Article 3

As regards the allegation of inhuman treatment in the present case, the outcome depends on the first issue, namely, on whether the applicants were deprived of their liberty and whether they were under the control of the authorities. To my mind they were not, because the necessary factual circumstances were lacking. Obviously, the applicants placed themselves in a difficult situation (and this was their own choice), but we cannot say that

the situation was degrading for their human dignity (compare *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012). The applicants complained that the authorities did nothing to take care of them. In my view, this is a strange statement, but the Court has again agreed with this shifting of the burden from irresponsible aliens to the State authorities. This neo-liberal concept prevents the Court from raising the question: did the applicants try to solve their problems themselves? This is how the arbitrary shifting of responsibility starts to become an institutionalised interpretation of the Convention as an international instrument.

More general remarks

Such an interpretation (guided by a neo-liberal concept) has already led to the current ideological and political crisis in the West triggered by mass (and mostly economic) migration. The approach based on the above-mentioned concept makes it possible to require more from governments than is necessary. This approach does not encourage individuals to seek independence and responsibility, but instead develops completely opposite human qualities. Thus tolerance is expressed for those who would leave their home country for a better place rather than try to improve their life at home, make their own contribution to the national economic situation or fight for peace in their homeland. Why do we expect ourselves to be constantly active, to be involved in the education process, to show responsibility and initiative, to develop culturally, but not require such ambitions from others, or at least expect others to also be motivated to demonstrate those qualities?

Anyone in difficult circumstances must find opportunities to preserve his or her dignity. In the present case the applicants could have succeeded in achieving this. The choice of the applicants is quite representative. They are all young, healthy men aged between 25 and 35. They do not belong to any vulnerable group. However, even if they do belong to such a group the Court may take a controversial position. It may consider that "while it is true that asylum-seekers are considered particularly vulnerable because of everything they might have been through during their migration and the traumatic experiences they were likely to have endured previously" (see *M.S.S. v. Belgium and Greece,* cited above, § 232), yet at the same time conclude that the applicants "were not more vulnerable than any other adult asylum-seeker ..." (see *Mahamed Jama v. Malta*, no. 10290/13, § 100, 26 November 2015). I do not see any reason why in the present case the applicants could be considered vulnerable persons.

As an example of action taken to preserve one's dignity, I would recommend seeing the great movie "The Terminal" starring Tom Hanks, whose character did not complain, but retained his dignity in difficult conditions, thanks to his personal qualities, his education and knowledge.

His situation could be classified as detention and it was even worse than in the present case: he could not return to his home country because all flights had been cancelled for security reasons; his passport was not recognised as valid owing to the uncertain political situation in the country of origin; he had a valid visa, but it was arbitrarily cancelled by the "most democratic" authorities in the world, and he did not travel to a third country to look for a job.

In the present case, without having a valid permit to enter the respondent State, the applicants nonetheless believe that the whole world is open to them and that their arrival at the border of the country automatically creates the obligation for any State to take care of them, and to create a legal basis for detention with all the relevant procedural safeguards. This approach automatically (and therefore arbitrarily) shifts the responsibility onto the State for actions which are not within its control (general, or personal, unfavourable situation in the home country). Let me demonstrate how far (up to the fundamental elements of a State) the Court may go in its controversial considerations. This is an extract from the *Riab and Idiab* judgment (see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, 24 January 2008, cited above):

> "78 ... The Court considers that the fact of "detaining" a person in that zone for an indefinite and unforeseeable period without that detention being based on a specific legal provision or a valid decision of a court and with limited possibilities of judicial review on account of the difficulties of contact enabling practical legal assistance, is in itself contrary to the principle of legal certainty, which is implicit in the Convention and is one of the fundamental elements of a State governed by the rule of law ..."

Neo-liberals should accept that the freedom of movement is not without limits. I believe that this freedom is not limited by borders, but only by our own personal capabilities and aptitude. It could be never restricted for those who develop their personality and create new opportunities, and who are active. There are no borders for those who are in demand from professional companies, employers or an audience.

APPENDIX

No.	Application no.	Application name
1.	61411/15	Z.A. v. Russia
2.	61420/15	M.B. v. Russia
3.	61427/15	A.M. v. Russia
4.	3028/16	Yasien v. Russia