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

Information Note on the Court's case-law 224

December 2018

M.A. and Others v. Lithuania - 59793/17

Judgment 11.12.2018 [Section IV]

Article 3

Expulsion

Border guards' failure to accept asylum applications: *violation*

Facts – The applicants, a family of seven Russian nationals, used to live in the Chechen Republic. In April 2017 they left Chechnya and went to Belarus with the aim of crossing into Poland. Before the Court they complained that they had attempted to lodge asylum applications on three occasions between April and May 2007, but each time Lithuanian border authorities had refused to accept their applications and had returned them to Belarus. The applicants subsequently managed to submit an asylum application and were admitted to a refugee reception centre in Poland to await the decision.

Law – Article 3: The applicants argued that they faced a risk of torture in Chechnya and that Belarus could not be considered a safe third country. The major disagreement between the parties was whether the applicants had actually submitted asylum applications at the border. On each of the three occasions they had presented themselves before border guards, they had provided their identity documents and had not attempted to hide the fact that they did not have visas or other documents giving them the right to enter into Lithuania. The applicants' behaviour had been consistent with their claim that the purpose of their presence at the Lithuanian border had been to ask for asylum.

(a) *First attempt on 16 April 2017* – The applicants claimed that they had firstly expressed their wish for asylum to border guards orally – a claim contested by the Government. However, it was not disputed that they had also written "azul" in Cyrillic – a word often used by Chechen asylum-seekers to mean "asylum" – in the space for a signature on each of the seven decisions refusing them entry into Lithuania. The relevant checkpoint was located on the border with Belarus, where Russian was one of the official languages. Assuming that none of the border guards at the checkpoint had spoken Russian, the Court could not accept the Government's argument that the applicants "had not in any way expressed willingness to seek asylum", as those border guards would not have been able to understand the applicants' oral requests made in Russian. The word "azul" being written on the seven decisions refusing the applicants entry into Lithuania should have been sufficient indication for the border guards that the applicants were seeking asylum.

(b) *Second attempt on 22 May 2017* – The applicants had provided to the Court a copy of a written asylum application and a photograph of that application next to their train tickets from Minsk to Vilnius – they claimed that the photograph had been taken at the border checkpoint and that they had submitted that application to the border guards. The Government did not challenge the authenticity of the asylum application or the photograph, nor did they dispute the applicants' claim that that photograph had been

taken at the border checkpoint. In such circumstances, there were no grounds to doubt the applicants' claim that on 22 May 2017 they had submitted a written asylum application at the Vilnius railway border checkpoint.

(c) *Third attempt on 11 May 2017* – The Court did not have any direct proof that the applicants had asked for asylum. They claimed to have done so orally and the Government contested that claim. The Government also pointed out that on that occasion the applicants had not written "azul" or anything similar on the decisions refusing them entry. In the Court's view, the applicants could not be reproached for not writing down their asylum request on the decisions refusing them entry, as they had previously done so but to no avail. It further observed that the details provided by the applicants, such as the date and time of their arrival at the border checkpoint, corresponded to those contained in the border guards' official reports, and the applicants' account of their attempt to submit an asylum application at that checkpoint was consistent with their accounts of the other two attempts, which the Court had found to be credible on the basis of the available documents. In such circumstances, the Court also accepted as credible the applicants' submission that on the 11 May 2017 they had orally informed the border guards at the border checkpoint that they were seeking asylum.

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Accordingly, the Court was satisfied that the applicants had submitted asylum applications, either orally or in writing, at the Lithuanian border on 16 April, 11 May and 22 May 2017. However, border guards had not accepted those applications and had not forwarded them to a competent authority for examination and status determination, as required by domestic law. Furthermore, border guards' reports to their senior officers had not made any mention of the applicants' wish to seek asylum on any of the three occasions – there were no references to the writing of "azul" on the decisions, nor to the written asylum application. There was also no indication either in those reports or in any other documents submitted to the Court that the border guards had attempted to clarify what was the reason – if not seeking asylum – for the applicants' presence at the border without valid travel documents. Nor did it appear that there had been any assessment at all of whether it had been safe to return the applicants – a family with five very young children – to Belarus, which was not a Contracting Party to the European Convention on Human Rights and, according to publicly available information, could not be assumed to be a safe third country for Chechen asylum-seekers.

As a result, the applicants had been returned to Belarus without there being any assessment of their asylum claims. It was therefore evident that measures which the Government had claimed constituted adequate safeguards against the arbitrary removal of asylum-seekers – such as the supervision of border guards by superior officers or the monitoring of borders by non-governmental organisations – had not been effective in the applicants' case.

Conclusion: violation (four votes to three).

The Court also held, by four votes to three, that there had been a violation of Article 13 as an appeal before an administrative court against a refusal of entry was not an effective domestic remedy within the meaning of the Convention.

Article 41: EUR 22,000 jointly in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See *M.S.S. v. Belgium and Greece* [GC], 30696/09, 21 January 2011, Information Note 137; and *Hirsi Jamaa and Others v. Italy* [GC], 27765/09, 23 February 2012, Information Note 149. See also the 2016 Submission in respect of Lithuania by the

United Nations High Commissioner for Refugees to the Office of the High Commissioner for Human Rights and the Council of Europe Recommendation No. R (98) 15 of the Committee of Ministers to member States on the training of officials who first come into contact with asylum-seekers, in particular at border points)

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