



Expulsion of criminal suspect to China would expose him to risk of facing the death penalty, in violation of the Convention

In today's **Chamber** judgment¹ in the case of **A.L. (X.W.) v. Russia** (application no. 44095/14) the European Court of Human Rights held, unanimously:

that the applicant's forcible return to China would give rise to a **violation of Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights; and

that there had been a **violation of Article 3** of the Convention on account of the conditions of the applicant's detention in a detention centre for aliens and on account of the conditions of his detention at a police station.

The case concerned, in particular, the complaint by a man residing in Russia and wanted as a criminal suspect in China that if forcibly returned to China, he would be at risk of being convicted and sentenced to death.

The Court considered that, given that the exclusion order against the applicant mentioned explicitly that he would be deported if he did not leave Russia before the stated deadline and that his Russian passport had been seized, he was at imminent risk of deportation to China where he might be sentenced to death. Russia was bound by an obligation, under the Convention, not to expose him to such risk.

Principal facts

The applicant, Mr A.L. (or X.W.), lives in Elista (Russia). According to his own submissions, he is a Russian national, A.L., born in 1972. According to the Government, he is a Chinese national, X.W., born in 1973.

The applicant was arrested in St Petersburg in March 2014 on suspicion of having murdered a Chinese policeman in 1996. He had been placed on Interpol's list of wanted persons as a criminal suspect following an arrest warrant issued in his respect by the Chinese authorities. A district court in St Petersburg subsequently ordered his detention pending receipt of an official extradition request. When the Chinese authorities had failed to submit the request within the relevant time-limit, the prosecutor ordered the applicant's release. However, he remained in detention, and on the day following the order for his release, the district court found him guilty of the administrative offence of unlawful residence in Russia of a foreign national. The court considered that he was a Chinese national rather than a Russian national. A few days later, the Federal Migration Service found that he had obtained his Russian passport in the name of A.L. unlawfully. The judgment finding him guilty of the administrative offence was quashed on appeal and the district court, to which the case had been remitted, eventually terminated the proceedings on 30 August 2014.

On 31 August 2014 the applicant was released. His Russian passport, seized upon arrest, was not returned to him and he was served with a decision by the regional department of the interior

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

declaring that his presence in Russia was undesirable and that he was to leave the country before 3 September. The exclusion order and the decision to seize his passport were eventually upheld on appeal in February 2015, the courts holding that the applicant could avoid deportation to China by leaving Russia for another country.

In the meantime, in June 2014, the European Court of Human Rights had granted the applicant's request for an interim measure (under Rule 39 of its Rules of Court) and indicated to the Russian Government that he should not be forcibly removed to China or any other country for the duration of the proceedings before it.

From 18 April to 29 August 2014, the applicant was held in a detention centre for aliens in St Petersburg, and from 29 August until his release on 31 August 2014 he was held in an administrative detention cell in a police station. He maintains that the detention conditions in both facilities were extremely poor. In particular: during the first few days he was held in a windowless punishment cell with no access to food, water or toilet facilities; and he was held in solitary confinement and total isolation for more than four months, receiving only infrequent and short visits by his wife, having no access to any media or books and no possibility to use his mobile phone. The Russian Government contest his allegations.

Complaints, procedure and composition of the Court

The applicant complained that his forced removal to China would expose him to the risk of being convicted and sentenced to death, which would be in violation of Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment). He also complained that he did not have an effective remedy available in respect of that complaint, in breach of Article 13 (right to an effective remedy). Finally, he submitted that the conditions of his detention, both in the detention centre for aliens and in the police station, had been in breach of Article 3.

The application was lodged with the European Court of Human Rights on 16 June 2014.

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

András Sajó (Hungary), *President*,
Mirjana Lazarova Trajkovska ("The former Yugoslav Republic of Macedonia"),
Julia Laffranque (Estonia),
Paulo Pinto de Albuquerque (Portugal),
Linos-Alexandre Sicilianos (Greece),
Erik Møse (Norway),
Dmitry Dedov (Russia),

and also Søren Nielsen, *Section Registrar*.

Decision of the Court

Article 2 and 3 – the applicant's potential removal

The Court found that Russia was bound by an obligation, under Articles 2 and 3, not to extradite or deport an individual to another State where there existed substantial grounds for believing that he or she would face a real risk of being subjected to the death penalty there. Russia had not ratified Protocol No. 6 and Protocol No. 13 to the Convention, which abolished the death penalty. However, in view of Russia's undertaking to abolish the death penalty, upon becoming a member of the Council of Europe – partly fulfilled through a moratorium on that form of punishment – the Court considered that the finding in its case-law that the death penalty had become an unacceptable form of punishment applied fully to Russia.

The Russian courts had not made an assessment of the risks of the applicant being subjected to the death penalty and to inhuman treatment if he were deported to China. The Court was not convinced by their argument that the exclusion order against him did not automatically entail his deportation to China and that he could still leave Russia for another country. Russian legislation provided that foreign nationals in respect of whom an exclusion order had been issued were to be deported if they failed to leave the country. The exclusion order against the applicant mentioned explicitly that he would be deported if he did not leave Russia before the stated deadline. Given that his Russian passport had been seized and there was no evidence that he had any other identity document to leave Russia and enter a third country, the Court accepted the applicant's submission that he was now at imminent risk of deportation to China.

It had moreover not been disputed by the parties that there was a substantial risk that if deported to China the applicant might face the death penalty following conviction. His deportation would therefore be in violation of Articles 2 and 3 of the Convention.

In view of these findings, the Court did not consider it necessary to examine the complaints separately under Article 13.

Article 3 – detention conditions

It had not been disputed by the Russian Government that the applicant had been detained in solitary confinement, in nearly absolute social isolation, during his entire stay of more than four months in the detention centre for aliens. The national authorities had not given any justification for this confinement and there was no evidence in the Government's submissions to the Court that an assessment of the necessity of this form of detention had been made. The Court referred to the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its 2011 report, according to which solitary confinement can have immediate damaging effects. Moreover, the applicant had been in complete ignorance as to why and for how long he had been placed in such confinement, which must have increased his distress. His solitary confinement had therefore amounted to inhuman and degrading treatment, in violation of Article 3.

The Court found a further violation of Article 3 on account of the conditions of his detention at the police station. He had been held there for two days, although the facilities had been designed for detention not exceeding three hours. In particular, the cell did not have a toilet or sink, no bed, chair or table, only a bench, and there was no access to fresh air and daylight.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,100 in respect of costs and expenses.

The judgment is available only in English.

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