



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

THIRD SECTION

CASE OF M.D. AND OTHERS v. RUSSIA

(Applications nos. 71321/17 and 9 others – see appended list)

JUDGMENT

*This version was rectified on 1 February 2022
under Rule 81 of the Rules of Court.*

Art 2 and Art 3 • Proposed expulsion to Syria not feasible at present and at least in near future owing to volatile security situation • Presentation of substantial grounds for believing applicants face a real risk of death or ill-treatment if expelled, not duly examined by domestic authorities
Art 5 § 1 • Expulsion • Detention pending expulsion for at least two years, without possibility to ensure periodic review • Detention lasting between one and two and a half months not excessive
Art 5 § 4 • Review of lawfulness of detention • No effective judicial review of detention pending expulsion

STRASBOURG

14 September 2021

FINAL

14/12/2021

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of M.D. and Others v. Russia,

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

Paul Lemmens, *President*,
Georgios A. Serghides,
Dmitry Dedov,
Georges Ravarani,
Anja Seibert-Fohr,
Peeter Roosma,
Andreas Zünd, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the applications (no. 71321/17 and others, see the Appendix) 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 eleven Syrian nationals (“the applicants”, see the Appendix), on the various dates indicated in the Appendix;

the decision to give notice to the Russian Government (“the Government”) of the applications;

the decision not to have the applicants’ names disclosed;

the decision to give priority to the applications (Rule 41 of the Rules of Court);

the parties’ observations;

Having deliberated in private on 6 July 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The main issues in the present case are whether the expulsion of the applicants to Syria would be in breach of Articles 2 and 3 of the Convention, whether some of the applicants had effective domestic remedies in respect of their complaints under Articles 2 and 3 (as required by Article 13 of the Convention) and whether the detention of some of the applicants pending expulsion was in violation of Article 5 of the Convention.

THE FACTS

2. The applicants are nationals of the Syrian Arab Republic (“Syria”). Their initials, dates of birth, application numbers, the names of their representatives and other details of their cases are set out in the Appendix.

3. The Government were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights and then by his successor in that office, Mr A. Fedorov.

4. The facts of the case may be summarised as follows.

I. THE APPLICANTS' ARREST AND EXPULSION PROCEEDINGS

A. Overview

5. On various dates between 2011 and 2014 the applicants entered Russia on different types of visas and did not leave when the permitted period of their stay had expired.

6. Independently, each of them was then apprehended by the police and charged with breaching the applicable immigration regulations (see the Appendix for the details of the relevant proceedings).

7. The respective district courts ("the District Court(s)") examined their cases, confirmed that they were citizens of Syria, found them guilty of breaching migration regulations and ordered their administrative expulsion. The District Courts also ordered the detention of the applicants in centres for the detention of foreigners awaiting expulsion (see the Appendix for details). The applicants did not have legal representatives and one of them, M.O., did not have an interpreter during the District Court proceedings.

8. The applicants appealed against the judgments ordering their expulsion, but their appeals were dismissed by the appeal courts ("the Appeal Court(s)"). All applicants were assisted by lawyers in the appeal hearings. Some of the applicants were subsequently released from detention, but none of them had judgments ordering their administrative expulsion quashed (see the Appendix for details).

9. On an unspecified date, M.D. was granted refugee status in Sweden where he settled on 10 December 2019 (see the Appendix for details).

10. On 8 January 2021 A.A.K.'s and A.A.R.'s representative, in reply to the Court's request, informed the Court that the applicants no longer maintained contact with him, that their whereabouts were unknown to him and that he was not aware whether they had regularised their immigration status in Russia or whether they wished to continue pursuing their application before the Court.

B. Summary of the applicants' (except M.D.'s, A.A.K.'s and A.A.R.'s) submissions and the domestic courts' judgments in expulsion proceedings

1. *The case of M.O. (application no. 25735/18)*

11. In the expulsion proceedings at the District Court and on appeal, the applicant stated that he had come to Russia to avoid participation in the military conflict between Syria and Iraq and that his expulsion to Syria would directly endanger his life and health, in the light of that ongoing

conflict. He did not attend the appeal hearing but was represented by his lawyer during that hearing.

12. The District Court did not address the arguments raised by the applicant concerning the risk of death and ill-treatment that he would face if returned to Syria, limiting the scope of its review only to the illegality of the applicant's presence in Russia. The Appeal Court dismissed a complaint lodged by the applicant concerning the lack of translation facilities or legal representation during the proceedings before the District Court, simply stating that the applicant had been informed of his procedural rights and that he had not lodged any relevant requests. Furthermore, the Appeal Court extensively restated the general principles of international law concerning the right not to be subjected to ill-treatment, and referred to the principle of *non-refoulement* and to the provisions of Russian law concerning refugees and temporary asylum, and found that the applicant had not been granted refugee status in Russia.

2. *The cases of K.A., Z.A., O.S., M.A., R.K., A.A. and A.K.A. (applications nos. 58858/18, 60000/18, 60001/18, 16868/19, 41174/19, 41176/19 and 41179/19)*

(a) The summary of common submissions by the applicants in the domestic proceedings and general assessment by the domestic courts

13. The applicants argued before the District Courts and Appeal Courts that examined their administrative cases that they were at real risk of death or ill-treatment should they be returned to Syria, owing to the ongoing military conflict there.

14. The District Courts mainly focused on the illegality of the applicants' presence in Russia and their breach of the applicable immigration regulations. In respect of their claims, they held that the security situation in Syria did not objectively impede the applicants from going back and that the applicants had not described any circumstances or presented evidence that would show without doubt that they were at risk of persecution in Syria. The Appeal Courts agreed with the reasons given by the District Courts in their judgments. They furthermore extensively restated the general principles of international law concerning the right not to be subjected to ill-treatment, the principle of *non-refoulement*, and the provisions of Russian law regarding refugees and temporary asylum. They found that the applicants had not shown that they were "at a higher risk than the general population in Syria" of being subjected to inhuman and degrading treatment, and that their arguments had been "speculative and broad". The Appeal Courts furthermore referred to cease-fire agreements and to information indicating that any confrontation between Syrian Government and illegal armed groups was "only incidental".

(b) The summary of the individual submissions of the applicants in the domestic proceedings and the assessment thereof by the domestic courts

(i) *The cases of K.A., Z.A., O.S., and M.A. (applications nos. 58858/18, 60000/18, 60001/18 and 16868/19)*

(α) The submissions of the applicants in the appeal proceedings

15. During the respective appeal hearings the applicants submitted that, notwithstanding the Court's case-law under Articles 3 and 13 of the Convention and its position on expulsion in countries where the risk of death and ill-treatment existed for returnees, (i) the District Court had not objectively assessed the risks of ill-treatment that the applicants would face in the event of their return to Syria; and (ii) a State signatory to the Convention should comply with its obligation of *non-refoulement* if a person was at risk of ill-treatment, irrespective of whether or not that person had applied for asylum. They furthermore submitted that the District Court had not referred to any evidence that indicated that they would not face any such risk in Syria.

16. K.A. submitted during the appeal proceedings that he had been receiving threats on social network sites from terrorists because he had left Syria.

17. Z.A. submitted that his father had been killed by the terrorists two years previously and that he had been afraid to return to Syria. Both K.A. and Z.A. submitted that they had applied for temporary asylum, in October and September 2018, respectively, but the District Court did not take that submission into consideration.

18. O.S. furthermore submitted that the guarantees regarding *non-refoulement* should be observed if a person applied for temporary asylum. However, he had never even been given an opportunity to lodge such an application. The migration officials had not been able to receive him on the day scheduled for his interview, and they had not rescheduled it; shortly thereafter he had been arrested.

19. M.A. furthermore submitted that in the period from 2015 until 2017 he had held temporary asylum status, but that that had not been renewed owing to the inconsistent evaluation of the security situation in Syria by the Russian State bodies. In January 2019 he had applied for the renewal of his temporary asylum status, but that application had not even been registered; instead, he had been arrested. He also submitted that he hailed from the town of Idlib, which was under the control of the Dzhabkhat an Nusra illegal armed group, whose members would consider him to be a supporter of the Syrian Government in the light of his long-time presence in Russia; in the event of his return to Syria, therefore, he would be at risk of being executed or tortured by them.

(β) The assessment of the applicants' submissions by appeal courts

20. The Appeal Court held that K.A.'s arguments concerning threats from terrorists were unsubstantiated and that a positive decision in respect of his claim for temporary asylum, if issued, "could be taken into account at the time of the enforcement of the expulsion order."

21. In respect of Z.A. the Appeal Court held that the fact that his father had been killed by terrorists two years previously did not indicate that he personally would be in any danger in Syria. The Appeal Court furthermore held that Z.A.'s pending application for temporary asylum in Russia did not constitute grounds for expunging the administrative charges against him and did not absolve him from the administrative punishment of expulsion, and that a positive decision in respect of his claim for temporary asylum, if issued, "could be taken into account at the time of enforcement of the expulsion order."

22. In respect of O.S. the Appeal Court held, in particular, that the issue of *non-refoulement* could be examined if a positive decision in respect of his claim for temporary asylum were to be issued but that it also "could be taken into account at the time of the enforcement of an expulsion order [in question]."

23. The Appeal Court held in M.A.'s case that the applicant had not applied for the renewal of his temporary asylum status when it had expired in December 2017. The court furthermore pointed out that in September 2018 the Presidents of Russia and Turkey had signed an agreement on the creation of a "de-escalation area" near the Syrian city of Idlib and that it was under the control of mobile units of Russian and Turkish military police.

(ii) *The case of R.K. (application no. 41174/19)*

24. In the District Court the applicant stated that he had come to Russia for work related reasons but that he could not return to Syria owing to the military conflict that was taking place there. He furthermore stated that his native town of Aleppo was under the control of the Syrian Government and that although he would not be in any danger there, he would be unemployed owing to the dire economic situation in the country. He had applied for temporary asylum in Russia, but his application had been refused. During appeal proceedings he had also stated that in the event of his having to return to Syria he would be required by law to be drafted into the Syrian army for a year and that in the event of his refusing to serve, he would be executed or tortured and returned to his parents as a person with a disability. He had already served in the Syrian army between 1999 and 2002. He furthermore submitted that he had to work in Russia to support himself and his family in Syria.

25. The District Court held that R.K. was from Aleppo, which was under the control of the Syrian Government, and that according to the available information, military action had ceased in a large part of the country. The Appeal Court furthermore referred to information concerning the “continuing return of refugees to the country and their support by the Syrian Government and programmes through which the reconstruction of municipalities was being supported on the territories cleared of illegal armed groups.”

(iii) The cases of A.A. and A.K.A.

26. The applicants submitted in the appeal hearings in respect of their cases that a significant number of people had died in the Syrian civil war since the spring of 2011, and that the country was facing a humanitarian crisis, with no infrastructure, widespread mass diseases and a lack of medical supplies. The applicants submitted information from international organisations and mass-media sources confirming that hostilities were ongoing and that the numbers of civilian deaths were rising. Applicant A.A. (application no. 41176/19) also submitted that he would be required, against his will, to undergo military service upon his return and that in the event that he were to refuse he would be detained, tortured and ill-treated. He also submitted that his house had been destroyed, and that his father had died in 2015; moreover, he provided to the court an audio message in Arabic from an acquaintance, who said that the applicant might be killed in Syria if he were to return.

27. The domestic courts held that the applicants had not shown that they would be at risk of death and/or ill-treatment in Syria (see paragraph 14 above). In respect of the audio message in the case of A.A. the Appeal Court held that that message had not proved conclusively that the applicant’s life was in danger and that the opinion expressed in it was simply that of a private individual.

II. PROCEEDINGS FOR REFUGEE STATUS AND TEMPORARY ASYLUM

28. The applicants sought to obtain refugee status and/or temporary asylum in Russia on the basis of submissions similar to those that they had presented to the domestic courts during the expulsion proceedings.

29. Some of them had had applications for temporary asylum allowed but not extended at a later date; applications lodged by other applicants had been dismissed at the outset – firstly by the Ministry of the Interior of the Russian Federation (*Министерство внутренних дел*, or *МВД* – hereinafter “the MVD”) and then by the domestic courts that had examined the appeals against the MVD’s respective refusals (see the Appendix for details).

30. None of the applicants who applied for refugee status was granted it (see the Appendix for details of the relevant proceedings in each applicant's case).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. LEGISLATION RELATING TO THE EXPULSION AND DETENTION OF FOREIGN NATIONALS, PROCEEDINGS REGARDING REFUGEE STATUS AND TEMPORARY ASYLUM

31. The relevant domestic law and practice relating to the expulsion and detention of foreign nationals in Russia, refugee status and temporary asylum is summarised in the Court's judgment concerning expulsion of Syrian nationals from Russia in the case of *L.M. and Others v. Russia* (nos. 40081/14 and two others, §§ 61-75, 15 October 2015) and in the follow-up case of *S.K. v. Russia*, no. 52722/15, §§ 23-41, 14 February 2017.

II. SITUATION OF SYRIAN NATIONALS IN RUSSIA AND THE EUROPEAN UNION

32. According to the information published on the website of the Russian Federal Statistics Service, as at 1 April 2019 two Syrian nationals had refugee status (0.4% of all refugees in Russia), and 790 Syrians had temporary asylum in Russia (1.1% of the total number of persons with temporary asylum status). As at 1 January 2020, the number of Syrian nationals holding temporary asylum status in Russia had fallen to 591 and in April 2020 to 495 (1.5 % of total persons with temporary asylum status). There is no statistics about such pending or rejected applications.

33. According to Eurostat, the statistical office of the European Union, 61,975 positive first-instance decisions on applications for asylum were issued in respect of Syrian citizens in the European Union in 2019 and 68,300 persons had pending applications at all instances of the administrative and/or judicial procedure in October 2020.

III. RELEVANT INFORMATION ABOUT THE SITUATION IN SYRIA AND THE SITUATION OF SYRIAN REFUGEES

A. 2017-2019 reports on Syria

34. A review of international reports covering the period 2017-2019 concerning the security and humanitarian situation in Syria was carried out by the Court in the case of *O.D. v. Bulgaria* (no. 34016/18, § 23, 10 October 2019). In particular, the Court in that case referred to the United Nations High Commissioner's for Refugees ("UNHCR") fifth update of its

report entitled “International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic” (3 November 2017 HCR/PC/SYR/17/01 (“Update V”). Update V indicated that despite efforts to reduce violence through “de-escalation agreements”, nearly all parts of Syria continued to be embroiled in violence. UNHCR called on States not to forcibly return Syrian nationals and did not consider it appropriate for states to deny persons from Syria international protection on the basis of internal flight or relocation alternative owing, in particular, to the multitude and complexity of conflicts, the volatility of the security situation, the reported high level of human rights violations and abuses.

35. In February 2018 UNHCR issued a “Manual and Guideline” entitled “Comprehensive Protection and Solutions Strategy: Protection Thresholds and Parameters for Refugee Return to Syria”. The importance of that document was reiterated at the “Brussels IV Conference” on Syria in June 2020 (see paragraph 39 below). It stated, in particular, that UNHCR’s position was that the conditions in Syria were not conducive for large scale voluntary repatriation in safety and dignity, that significant risks remained for civilians across the country and that UNHCR neither promoted nor facilitated the returns of refugees at that time.

36. In October 2018 at the 39th session of the UN Human Rights Council the Special Rapporteur presented a report (A/HRC/39/54/Add.2) concerning the negative impact that the unilateral coercive measures (sanctions) had on the enjoyment of human rights by Syrian people, notwithstanding existing humanitarian exceptions. The Rapporteur pointed out, *inter alia*, that ongoing discussions related to the return of refugees were not addressing the need to ensure that the conditions existed for the basic human rights of returnees to be met.

37. On 31 July 2019, the Centre for the Reconciliation of Opposing Sides and Refugee Migration Monitoring in the Syrian Arab Republic (“the Reconciliation Centre” (*Центр по примирению враждующих сторон и контролю за перемещением беженцев в Сирийской Арабской Республике*)), formerly known as the Centre for Reception, Distribution and Placement of Refugees (*Центр приема, распределения и размещения беженцев*), operating under the auspices of the Russian Ministry of Defence, posted the following information on its website:

“... The return of refugees to their homes is ongoing. The representatives of [the Reconciliation Centre] ensure the functioning of ten safe humanitarian corridors ...

Despite the ceasefire arrangements, illegal armed groups operating in the Idlib de-escalation area continue to breach [the relevant agreements]

The insurgents have carried out armed attacks ... in the province[s] of Aleppo, ... Hama, ... [and] Latakia ...”

B. 2020 reports on Syria

1. The general security situation and refugees

38. On 7 May 2020 UNHCR issued a document entitled “Country of Origin Note: Participation in Anti-Government Protests; Draft Evasion; Issuance and Application of Partial Amnesty Decrees; Residency in (Formerly) Opposition-Held Areas; Issuance of Passports Abroad; Return and ‘Settling One’s Status’”, which stated, in particular, that the Syrian Government continued to violently suppress and punish any real or perceived dissent in areas under its control and that amongst those regularly perceived to be holding an anti-Government opinion were civilians (and particularly men and boys of fighting-age) from (formerly) opposition-held areas; draft evaders and deserters. It also stated that across Government-held areas, returnees were reported to be among those subjected to harassment, arbitrary arrest, incommunicado detention, torture and other forms of ill-treatment, as well as property confiscation, including on account of individuals’ perceived anti-Government opinion. Arrests had been reported to occur immediately upon entry or within days or months following return, sometimes despite the individual having obtained security approval from the Syrian Government prior to returning. Deaths in custody of returnees had also been reported. Some returnees were reported to have had their passports confiscated and others had been called in for interrogations on a regular basis. Some returnees could also face movement restrictions, including the need to obtain security approval to return to their area of origin.

39. On 29-30 June 2020 the “Brussels IV Conference” on “Supporting the Future of Syria and the Region”, co-chaired by the European Union and the United Nations, took place in Brussels. Eighty countries (including Russia) participated in it, together with international organisations, the EU and UN agencies. The co-chairs issued a declaration, which stated as follows, in so far as relevant:

“...

Political

10. Conference participants recalled that after almost a decade of conflict, violence and violations of international humanitarian law and international human rights continue ... While an uneasy and fragile calm has prevailed more recently in north-west and north-east Syria, following major military escalations and mass displacement in the Idlib region earlier this year, security conditions in southern Syria continue to deteriorate and require increased attention and focus. In the central and eastern desert a worrying resurgence of ISIL/Da’esh has occurred.

...

Humanitarian

25. The Conference noted that conflict has continued to generate large-scale displacement of people, noting that nearly one million people were newly displaced in north-west Syria between December 2019 and March 2020. It also noted that an estimated 15,000 refugees and 223,000 IDPs returned to some areas in Syria in 2020.

26. ... While conditions inside Syria do not lend themselves to the promotion or organisation of large-scale voluntary return, in conditions of safety and dignity in line with international law, participants underscored that return is a right to be exercised based on an individual's free and informed decision. Support should be guided by refugees' needs, views, concerns and decisions, based on accurate and factual information, on whether to return or not at the present time. ... Returnees also need security from armed conflict, political persecution and arbitrary arrests, access to functioning services, livelihood opportunities as well as other considerations which would enable a voluntary, safe and dignified return. Maintaining assistance levels and access to protection, livelihoods and services in host countries is a key component in enabling a voluntary decision by refugees to return, free from push factors.

...

Regional recovery and development

32. The co-chairs underlined that the remarkable contributions of host countries and local host communities in receiving large Syrian refugee populations and providing them with access to national services are fully in line with the spirit of the Global Compact on Refugees, as recognised notably at the first Global Refugee Forum in 2019. Participants acknowledged the deepening vulnerability of Syrian refugees, Palestinian refugees from Syria and host communities, which should be addressed through sustained support ... [The Conference] noted that temporary legal residence is central to refugees' ability to access protection and services.

The international community reconfirmed its unwavering commitment to supporting Syria's neighbours in continuing to address the multiple challenges they face, by sustaining humanitarian aid and resilience support, including through the 3RP, and by strengthening national systems and response capacities to serve all ..."

40. The Russian Deputy Minister of Foreign Affairs, Mr S.V. Vershinin, gave a speech at the Conference in which he stated, *inter alia*, that (i) Russia entirely supported an increase in humanitarian aid to the Syrian people, (ii) the internal situation in Syria remained tense, especially in Idlib and the area on the far side of the Euphrates [– territories] that were not controlled by the Syrian Government and that were subjected to attacks by [the] Hay'at Tahrir al-Sham and ISIS [terrorist groups], (iii) refugees and IDPs needed support and cooperation in exercising their right to a voluntary, safe and dignified return to their homes and (iv) all Syrians who were willing to return to their home country should be given assistance and not kept in host countries "that had been carrying a heavy burden".

41. At the 45th session of UN Human Rights Council, which took place between 14 September and 2 October 2020, the Independent International Commission of Inquiry on the Syrian Arab Republic (established on 22 August 2011 by the UN Human Rights Council through Resolution S-17/1 (A/HRC/27/60), 13 August 2014)) presented its findings in respect of Syria (A/HRC/45/31); those findings were based on investigations

conducted between 11 January 2020 and 1 July 2020. Its report – based on (i) 538 interviews conducted either in person in the region or from Geneva and (ii) an analysis of official documents, reports, photographs, videos and satellite imagery from multiple sources – contained the following information:

“II. Political and military developments

4. Notwithstanding a relative reduction in large-scale hostilities in recent months due to general conflict dynamics and the impact of coronavirus disease (COVID-19), there were regular spikes in violence and continuous violations of human rights across the Syrian Arab Republic. Idlib Governorate and surrounding areas remained the epicentre of confrontation between pro-Government forces and opposition armed groups during the first half of 2020. While the ceasefire starting on 5 March offered respite, sporadic fighting between pro-Government forces and terrorist groups resumed in May and intensified in June, including around the Ghab plain and Jabal al-Zawiya, in the southern countryside of Idlib Governorate.

5. In the north-east of the country, while joint Turkish-Russian military patrols resumed along the Syrian-Turkish border, periodic clashes between the Kurdish People’s Protection Units, the Syrian National Army and Turkish military forces continued. Car bomb attacks, such as the one on 9 January in Ra’s al-Ayn that killed four Turkish soldiers, or the market attack in Afrin on 28 April that caused over 100 casualties ..., further destabilized the region. The security situation also deteriorated in Dayr al-Zawr, where the Syrian Democratic Forces increased raids and arrests of civilians with alleged links to Islamic State in Iraq and the Levant (ISIL). ... In June, reports of fighting between Turkish-backed groups and the Syrian Democratic Forces in the Al-Bab area, infighting between Syrian National Army groups in Ra’s al-Ayn, and ISIL attacks against Syrian Arab Army units in the Dayr al-Zawr countryside, were received.

6. ISIL remained active in central areas of the Syrian Arab Republic. In January and February, the terrorist group launched attacks on Syrian Arab Army positions in the Sukhnah region in Homs Governorate. The attacks prompted the Government to increase security measures in eastern Homs Governorate, and by mid-April, the Government had regained control of fuel refineries in the Governorate. Nonetheless, attacks by ISIL cells against Syrian Arab Army positions in the Badiya Al-Sham region and around Resafa continued.

7. In the south of the country, unrest intensified. In Suwayda’, protests erupted in January, and continued throughout the first six months of 2020, due to price inflation, corruption and deteriorating living standards. In Dar’a, tensions between local opposition fighters and Government forces, as well as civilians, escalated. In mid-March, artillery shelling by the Syrian Arab Army targeted the southerly Dar’a Governorate, triggering retaliatory attacks by local militants near Nawa. The situation remained volatile in May and June following clashes, targeted killings, and the killing of nine Syrian police officers in Muzayrib. In response to these incidents, the Syrian Arab Army deployed additional troops to the region. Throughout the reporting period, Israeli airstrikes were directed at a broad range of targets across the Syrian Arab Republic, including Iranian and Iranian-backed actors.

8. At the political level, the President, Bashar al-Assad, issued a legislative decree granting pardons for a narrow ambit of crimes committed before 22 March 2020, and proposed a limited amnesty for military deserters.

...

Violations outside the context of the conduct of hostilities

20. Risks of reprisals and other protection concerns continued to affect the Commission's ability to investigate detention-related human rights violations. The cases below are illustrative of the ongoing patterns of arbitrary detention, enforced disappearance, and torture and death in detention.

21. Almost all cases of arbitrary arrest and detention that were investigated in the reporting period resulted in enforced disappearance ... These took place in Dar'a, Homs, Qunaytirah, Rif Damascus and Suwayda' Governorates, involving Government security forces, including the Military Intelligence Directorate and the Military Police.

22. Those subjected to enforced disappearance included defectors as well as current and former humanitarian workers, activists and other civilians, including those who had undergone so-called "reconciliation" processes in Dar'a Governorate.

23. Demonstrating the longevity of this practice and its harrowing impact on families, the Commission, during the reporting period, documented cases of individuals still missing at the time of writing, up to eight years after being disappeared by the Government.

...

25. Moreover, the Commission documented 13 accounts of torture of persons held in detention by the Syrian authorities, with some having experienced torture over lengthy periods, even beyond seven years. Locations where torture took place included the Criminal Security Department branch in Aleppo, ... and, most brutally, at Saydnaya Prison in Rif Damascus. In line with previous patterns, the detainees were beaten with sticks and cables, bound around tyres, hung from ceilings and walls and lashed. One detainee reported being beaten on his genitals. ... men were reported to have been sexually abused in Saydnaya Prison.

...

37. During the period under review, civilians residing in the Afrin and Ra's al-Ayn regions of Aleppo and Hasakah Governorates witnessed an onslaught of violations perpetrated by members of the Syrian National Army as well as shelling and vehicle-borne improvised explosive devices.

...

38. Between January and April, civilians residing in the Afrin region of Aleppo suffered a barrage of shelling and car bomb explosions, which killed and injured scores of inhabitants and damaged civilian infrastructure, including markets and homes.

...

45. With regard to the use of vehicle-borne improvised explosive devices in the city of Afrin ...there are significant indications to conclude that all four of these attacks launched on and in the city of Afrin were carried out by armed group factions or fighters, as opposed to members of State forces. The Commission has reasonable grounds to believe that these four attacks may amount to the war crime of launching indiscriminate attacks resulting in death or injury to civilians. Investigations are ongoing.

B. Violations outside of the context of hostilities

46. During the period under review, the Commission corroborated repeated patterns of systematic looting and property appropriation as well as widespread arbitrary deprivation of liberty perpetrated by various Syrian National Army brigades in the Afrin and Ra's al-Ayn regions. After civilian property was looted, Syrian National Army fighters and their families occupied houses after civilians had fled, or ultimately coerced residents, primarily of Kurdish origin, to flee their homes, through threats, extortion, murder, abduction, torture and detention.

...

54. In detention, civilians – primarily of Kurdish origin – were beaten, tortured, denied food or water, and interrogated about their faith and ethnicity.

VI. Idlib Governorate and western Aleppo

81. In its recent report on Idlib Governorate and western Aleppo, covering the period between November 2019 and June 2020, the Commission documented 52 emblematic attacks by all parties that led to civilian casualties and/or damage to civilian infrastructure. These battles were marked by war crimes, including launching indiscriminate attacks resulting in death or injury to civilians. Continuing previously established patterns, the Commission also documented attacks against medical facilities, schools and markets, which deprived scores of civilians of access to health care, education and food.

82. The battles displaced nearly 1 million people. The Commission found that pro-Government forces may have perpetrated the crimes against humanity of forcible transfer, murder and other inhumane acts during the offensives on Ma'arrat al-Nu'man (second half of December 2019), Ariha (29 January 2020), Atarib (between 10 and 14 February 2020) and Darat Izzah (17 February 2020).

83. When civilians fled, Hay'at Tahrir al-Sham pillaged their homes. In restive areas under its control, members of Hay'at Tahrir al-Sham also committed the war crimes of murder; of passing sentences and carrying out executions without previous judgment pronounced by a regularly constituted court; and of cruel treatment, ill-treatment and torture ...

...

B. Hay'at Tahrir al-Sham

87. Between November 2019 and June 2020, and in a pattern previously documented by the Commission, members of Hay'at Tahrir al-Sham in Aleppo and Idlib Governorates continued to brutally impose their stringent ideologies on local populations, including through acts of arbitrary detention of individuals expressing dissent. Moreover, they detained, tortured and executed civilians who opposed their oppressive rule.

88. During demonstrations between 29 April and 1 May, Hay'at Tahrir al-Sham beat and detained participants. On 1 May, a van drove into a group of protestors, injuring at least one, whereupon members of Hay'at Tahrir al-Sham opened fire, killing one protestor and injuring two others. On 10 June, 13 journalists who filmed the passage of a Russian-Turkish joint patrol along the M4 highway were beaten by members of Hay'at Tahrir al-Sham, who forced them to stop filming.

89. Members of Hay'at Tahrir al-Sham also detained individuals over land disputes and for refusing to pay "taxes" for services provided by their "salvation Government". One man recalled how he had been initially summoned by Hay'at Tahrir al-Sham

“police” and had subsequently been held for five months in various detention facilities. In detention, he was beaten with a cable, handcuffed and hung from the ceiling in his cell, and thereafter forced to thumbprint a statement acknowledging that he had incited others against the terrorist group. He was then transferred to the Hay’at Tahrir al-Sham “criminal security branch” and brought before a “criminal court”, was never informed of the charges against him and was sentenced to prison for unknown reasons ...”.

42. On 14 October 2020 the UN Secretary General issued a report on the implementation of its humanitarian resolutions by all parties to the conflict in Syria (S/2020/1031). The report is issued every sixty days and the information contained in it is based on data available to United Nations agencies and obtained from the Government of Syria. The report indicated the following, in so far as relevant:

“ ...

6. In the north-west, the ceasefire in the Idlib de-escalation area largely continued to hold, albeit with an increasing number of violations. Mutual artillery shelling across lines of contact, notably in the southern part of the de-escalation area, took place on an almost daily basis. Shelling on Jurin village in north-west Hama Governorate reportedly killed 20 civilians in a single day on 24 September. Ground-based clashes occurred less frequently and were limited in scope. Pro-Government aerial bombardments were reported to the north and south of the M4 highway. Since the beginning of 2020, an estimated 225,000 people had returned to areas in the north-west not under Government control from which they had been displaced, with most having moved back to areas south of or close to the M4 highway, such as Ariha and Ihsim, and to areas west of and close to the M5 highway, such as Darat Izzah and Atarib.

...

8. In the north-east, several cross-line attacks were recorded along the southeastern contact lines of the Operation Peace Spring area, notably near Tall Tamr. Attacks, which included the use of improvised explosive devices, vehicle-borne improvised explosive devices and small arms fire, continued to be reported, including against civilians. Islamic State in Iraq and the Levant (ISIL) cells reportedly increased attacks during the period. Multiple parties continued counter-ISIL operations. Detention facilities reported more attempted break outs.

...

12. The south-west of the Syrian Arab Republic saw continued clashes affecting civilians and the assassinations of fighters reconciled from former armed opposition groups and of Government-affiliated figures, as well as continued localized protests against Government raids, arbitrary detention, conscription drives and the lack of public services. Intermittent clashes continued to take place, notably in the vicinity of Dar’a.

...

Protection

17. ... Civilians were killed and injured as a result of shelling and intermittent airstrikes in the de-escalation area in the north-west, and as a result of fighting between and within various armed groups in the north-west, northern and eastern parts of the country. Civilians also continued to be killed and injured by attacks carried out

with various types of improvised explosive devices, including vehicle-borne improvised explosive devices, and as a result of explosive remnants of war, including unexploded ordnance. Some improvised explosive device attacks were carried out inside residential areas and local markets, either targeting civilians or heedless of their impact on civilians.

18. From 1 August until 30 September 2020, the Office of the United Nations High Commissioner for Human Rights (OHCHR) verified at least 117 incidents in which 108 civilians ... were killed and at least 172 civilians ... were injured as a result of the conduct of hostilities across the Syrian Arab Republic, including shelling, airstrikes, improvised explosive devices and explosive remnants of war, armed clashes and targeted killings at the hands of various parties to the conflict or by unidentified perpetrators. The majority of civilian deaths (64 per cent) were attributed to explosive remnants of war in agricultural lands and to targeted killings. In the light of the patterns observed and the large number of incidents and civilians killed and injured in markets and residential areas, it appears that parties to the conflict have failed to respect the key principles, set out under international humanitarian law, of distinguishing civilians from fighters and civilian objects from military objectives; of refraining from indiscriminate attacks; of respecting proportionality in attack; and of taking constant care to spare civilians and civilian objects in the conduct of military operations.

19. Both pro-Government forces and armed groups continued to arbitrarily detain individuals in areas under their effective control. In the majority of cases documented by OHCHR, detainees were denied information about the reasons for their detention and other due process rights, or their families were denied information concerning their whereabouts or their fate, raising concerns that in some cases such detentions may constitute enforced disappearances. In areas under the control of the Government, OHCHR continued to document cases of detainees dying while in custody, allegedly due to natural causes. In many such cases, individuals appear to have been subjected to enforced disappearance, and the fact that they were detained by the Government did not become known until their deaths were acknowledged. The bodies of the deceased were rarely returned to their families, who were also denied the opportunity to question the official causes of death or to know the whereabouts of the bodies. OHCHR has also documented cases of detainees and abductees dying while in the custody of non-State armed groups, Hay'at Tahrir al-Sham and the Syrian Democratic Forces.

20. In Dar'a, OHCHR continued to record incidents of targeted killings of civilians and fighters reconciled from former armed opposition groups. The majority of such attacks have been carried out by unidentified perpetrators. Targeted killings have also been carried out by unidentified perpetrators in areas under the control of the Syrian Democratic Forces in Dayr al-Zawr Governorate, except for a few killings that have recently been claimed by ISIL.

21. Non-State armed groups in the north-western, northern and eastern parts of the country continued to systematically target civilians, including those perceived as being affiliated with opposing parties or alleged to be critical of those in control of the territory, including through killings, the arbitrary deprivation of liberty, torture, ill-treatment and kidnappings. Parties to the conflict continued to impose rules and codes of conduct on civilians living in areas under their control that were fundamentally contrary to human rights, including the rights to life, liberty and security of person, to freedom of movement and to freedom of expression, peaceful assembly and association ...”.

43. On 11-12 November 2020 an international conference on the return of Syrian refugees was held by the Syrian Government with the support and participation of the Russian Federation in Damascus. The representatives of twenty-seven countries, including China, Iran, Lebanon, the United Arab Emirates, Oman, Pakistan and others attended the conference. The UN attended the conference as an observer.

44. On 25 November 2020 the Joint Coordination Committees of the Russian Federation and the Syrian Arab Republic published a joined statement concerning the conference, on the website of the Russian Ministry of Defence, in which the Committees, in particular, (i) reiterated the commitment of conference participants to working on safe, dignified and voluntary returns of Syrian citizens, (ii) stated that all returned Syrian citizens had been provided with decent living conditions, the opportunity to participate in the restoration of the country's social infrastructure and economy and (iii) called upon the entire international community and the host states to help facilitate the process of return of Syrians and effectively assist in the reconstruction of the country.

2. Draft evasion and its consequences

45. In a Country of Origin Note of 7 May 2020 (see paragraph 38 above) UNHCR stated, in particular, that men of military age were at risk of being arrested for the purpose of forced conscription upon return. It further stated that in Syria draft evasion was a criminal offence, the right to conscientious objection was not legally recognised and that draft evaders would likely be subjected to punishment beyond the relevant sanctions for the criminal offence of draft evasion including harsher treatment during arrest, interrogation, detention, torture and other forms of ill-treatment in detention and deployment to a frontline positions within days or weeks of their arrest often with only minimal training. According to the Note, the partial amnesty decrees were reported to have had a limited impact on the release of real and perceived Government opponents, many of whom were held under the Counter-Terrorism law.

C. 2021 reports on Syria

46. In March 2021 UNHCR issued the sixth update of its report entitled "International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic" (HCR/PC/SYR/2021/06 ("Update VI")). UNHCR stated, *inter alia*, that changes in the objective circumstances in Syria, including relative security improvements in parts of the territory, were not of fundamental, stable and durable character. UNHCR considered that an internal flight or relocation alternative was not available in areas then or formerly outside of government control, in light of ongoing conflict, military operations, insecurity and human rights abuses in these areas; the

risk of future shifts in territorial control; and the high levels of both humanitarian needs and destruction to civilian infrastructure in these areas. UNHCR considered that an IFA/IRA in Damascus city was generally not relevant for, *inter alia*, (i) individuals who originate from areas previously or currently outside of government control, and who may be perceived as opposing the government; (ii) men of military-age who object to military service for reasons of conscience and/or who object to participation in activities that constitute violations of international humanitarian, criminal or human rights law and (iii) individuals who have a well-founded fear of persecution at the hands of a state actor or at the hands of family, tribe, or community as a result of harmful traditional practices or religious norms of a persecutory nature. UNHCR confirmed its moratorium on forced returns of Syrian nationals, to any part of Syria, regardless of whether the area is under control of the Government or under control of another state or non-state entity, owing, *inter alia*, to continued conflict, insecurity, severe concerns about the rule of law and widespread human rights violations and abuses, including against returnees; fragmented community relations and a lack of genuine reconciliation efforts.

47. The report of 22 April 2021 of the UN Secretary General (S/2021/390) on the implementation of its humanitarian resolutions by all parties to the conflict in Syria indicated the following, in so far as relevant:

“3. In the north-west, the Idlib de-escalation area saw an escalation of hostilities, with at least 30 communities affected by artillery shelling and air strikes on 21 and 22 March ... On the same day, multiple air-to-surface missiles impacted the road leading to the Bab al-Hawa border crossing in northern Idlib, an area hosting a high density of displaced persons camps and settlements, as well as offices and warehouses of humanitarian organizations.

...

5. In northern Aleppo, mutual shelling and small arms fire and raids intensified across lines of contact in Bab. In Bab and Jarabulus, aerial and missile attacks against oil refineries and storage facilities intensified, while high levels of improvised explosive device and vehicle-borne improvised explosive device attacks continued to be reported in these areas. Mutual shelling and limited ground-based clashes continued along contact lines ... in Aleppo Governorate, around Ayn Isa in Raqqah Governorate, and around Abu Rasin and Tall Tamr in Hasakah Governorate. There was some de-escalation of tensions between the Government of the Syrian Arab Republic and *de facto* authorities in the north-east. Following an agreement, a limited number of detainees were released and mutual restrictions on access and humanitarian assistance were lifted in Qamishli and Aleppo city. However, the security posture of both parties remained heightened, with sporadic confrontations and mutual detentions during the period after the agreement was reached ...

6. Islamic State in Iraq and the Levant (ISIL) continued to launch ambush attacks and assassination attempts on government forces and the Syrian Democratic Forces in areas across Dayr al-Zawr, Hasakah and eastern rural Homs Governorates. Counter-ISIL operations by various parties continued. ... After the clashes [on 5 March], members of the Syrian Democratic Forces assaulted people inside the hospital, including NGO staff members, patients and visitors, several of whom were

injured. Hospital equipment and vehicles were damaged and 12 people were temporarily detained. In a subsequent statement, the Syrian Democratic Forces condemned the attack and committed to compensate for the damage caused ...

...

9. The situation in the south-west part of the country remained unstable throughout the reporting period. There were further attacks against and assassinations of both government forces and fighters reconciled from former armed opposition groups. Government security forces conducted security operations in a number of towns in the southern part of the country, established new checkpoints and expanded conscription efforts. Further arrests of fighters reconciled from former armed opposition forces were reported.

...

14. The Special Envoy [of the Secretary General for Syria] attended the Astana-format meeting, held on 16 and 17 February in Sochi, Russian Federation, at which the Islamic Republic of Iran, the Russian Federation and Turkey, as Astana guarantors, reaffirmed their commitment to the United Nations-facilitated political process, in line with Security Council resolution 2254 (2015).

15. At the fifth Brussels Conference, the Special Envoy called again for strengthened international cooperation towards a broader political process. Regional and international interlocutors continued to support a sustainable and credible Syrian-led and Syrian-owned political process, including his facilitation of that process, in line with Security Council resolution.

Protection

16. Civilians across the Syrian Arab Republic continued to suffer the direct and indirect consequences of armed conflict and violence. [The incidents of killings] included ground-based strikes, improvised explosive devices, explosive remnants of war, armed clashes and targeted killings at the hands of various parties to the conflict or by unidentified perpetrators. Explosions of explosive remnants of war, including landmines and unexploded ordnance, were the primary cause of verified civilian deaths. In the light of the patterns observed and the high numbers of incidents and civilians killed and injured in markets and residential areas, it appears that parties to the conflict have failed to respect the key principles under international humanitarian law of distinguishing civilians from fighters and civilian objects from military objectives; of refraining from indiscriminate attacks; of respecting proportionality in attack; and of taking constant care to spare civilians and civilian objects in the conduct of military operations.

17. In the Idlib de-escalation area in the north-west part of the country, OHCHR documented 29 incidents in which [19 civilians] were killed as a result of air- and ground-based strikes. In addition, various armed groups in northwest, northern and eastern parts of the country continued fighting among themselves, resulting in civilian casualties.

18. In areas controlled by the Government, OHCHR verified incidents in which at least 86 civilians ... were killed and at least 77 civilians ... were injured as a result of hostilities. The majority of civilian casualties in these areas were attributed to landmines and explosive remnants of war, including unexploded ordnance. During the reporting period, OHCHR documented 44 incidents of explosions of explosive remnants of war, in which 52 civilians ... were killed and 58 civilians ... were injured.

...

22. Parties to the conflict continued to arbitrarily detain individuals in areas under their control. In the majority of cases recorded by OHCHR, detainees were denied information about the reasons for their detention and other due process rights, while their families were denied information concerning their whereabouts or their fate, raising concerns that, in some cases, such detentions may constitute enforced disappearance. In areas under the control of the Government, OHCHR continued to document cases of detainees who died in custody, allegedly owing to natural causes. Families either coincidentally learn about these deaths as they are processing unrelated papers at the personal status registry office or as government authorities contact them directly. During the reporting period, OHCHR documented at least 13 such incidents. In many such cases, individuals appear to have been subjected to enforced disappearance and their detention by the Government did not become known until their deaths were acknowledged. The bodies are rarely returned to their families, who are also denied the opportunity to question the causes of death stated in the notification or to know the whereabouts of the bodies of the deceased.

23. Parties to the conflict continued to systematically intimidate and harass civilians, including media professionals and health service providers who were perceived as being affiliates to an opposing party or critical of the party in control of the territory. Such tactics included targeted killings, abductions, deprivation of liberty, ill-treatment, torture, enforced disappearances, looting and confiscation of property. The whereabouts and fate of many of those deprived of their liberty remain unknown ...”.

IV. LEGISLATION AND PRACTICE RELATING TO THE DETENTION OF FOREIGN NATIONALS PENDING THEIR EXPULSION

48. A summary of domestic law provisions concerning the detention of foreign nationals pending expulsion is contained in the judgments in the cases of *Kim v. Russia* (no. 44260/13, §§ 41-57 and 68-74, 17 July 2014), and *Azimov v. Russia* (no. 67474/11, §§ 75-81 and 83, 18 April 2013).

A. Execution proceedings relating to the judgment in the case of *Kim v. Russia*, no. 44260/13, 17 July 2014

49. In April 2018 the Russian authorities submitted a communication to the Council of Europe Committee of Ministers (Updated Action Plan, DH-DD(2018)412) relating to the execution of the Court’s judgments in *Kim* (cited above) and related group of cases, in which the Court found violation of Article 5 § 1 and 5 § 4 of the Convention on account of detention of foreign nationals in Russia pending expulsion and the absence of review of detention.

50. As regards general measures, the Russian authorities submitted that the copies of the Court’s judgments had been translated into Russian and posted on several professional Internet portals, including those of the Prosecutor General’s Office and the Ministry of the Interior, and in the Consultant Plus and Garant legal databases. They furthermore referred to Ruling No. 14-P of 23 May 2017 of the Russian Constitutional Court, which

instructed the legislative authorities to amend the Code of Administrative Offences with a view to providing foreign nationals awaiting expulsion in detention with an effective procedure *via* which to secure periodic judicial assessment.

51. According to the official website of the State Duma, draft law no. 306915-7 was approved at its first hearing in December 2017. The date of the second hearing has not yet been scheduled at the time of the examination of the present case.

B. Case-law of the Constitutional Court of Russia

52. On 23 May 2017 the Constitutional Court of Russia issued Ruling No. 14-P, which stated, *inter alia*, that foreign citizens and stateless persons who were detained pending administrative removal did not benefit from effective judicial protection against arbitrary detention, as such detainees were never notified of how long their detention would last and were not allowed to challenge the grounds of their detention or the extension thereof; they thus were subject to a violation of their right to liberty and security for an uncertain period of time (see paragraph 4.2 of the Ruling).

THE LAW

I. JOINDER OF THE APPLICATIONS

53. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. THE APPLICATIONS TO BE STRUCK OUT OF THE LIST

54. The Court notes that the relevant part of Article 37 § 1 of the Convention provides that:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

...

(c) for any other reason established by the Court, it is no longer justified to continue the examination of the application ...”

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

A. The case of M.D. (application no. 71321/17)

55. On 18 November 2019 the representative of M.D. informed the Court that on an unspecified date the applicant had been granted refugee status in Sweden (see paragraph 9 above).

56. The Court therefore considers, in the light of M.D.'s submissions, that it is no longer justified to continue the examination of M.D.'s application as regards his complaint of an alleged risk of death and/or ill-treatment under Articles 2 and 3 of the Convention (see *Rakhmonov v. Russia*, 11673/15, 31 May 2016). The Court is furthermore satisfied that respect for human rights, as defined in the Convention and the Protocols thereto, does not require it to continue its examination of this part of M.D.'s application (Article 37 § 1, *in fine*). Accordingly, the Court decides to strike the M.D.'s application out of its list of cases in so far as it concerns his complaint of that he risked death and/or ill-treatment in the event that he was expelled to Syria from Russia.

B. The case of A.A.K. and A.A.R. (application no. 31680/18)

57. In respect of A.A.K. and A.A.R. the Court takes note of their lawyer's correspondence to the Court of 8 January 2021, in which he stated that they no longer maintained contact with him, that their whereabouts were unknown to him and that he was not aware whether they had regularised their immigration status in Russia or whether they wished to continue pursuing their application before the Court (see paragraph 10 above).

58. The Court reiterates that an applicant's representative must not only supply a power of attorney or written authority (Rule 45 § 3 of the Rules of Court), but that it is also important that contact between an applicant and his or her representative be maintained throughout the proceedings. Such contact is essential, both in order to learn more about the applicant's particular situation and to confirm the applicant's continuing interest in pursuing the examination of his or her application (see *V.M. and Others v. Belgium* [GC], no. 60125/11, § 35, 17 November 2016).

59. In the light of the foregoing, the Court concludes that A.A.K. and A.A.R. do not wish to pursue the application within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and the Protocols thereto which require the continued examination of the application. Accordingly, their case should be struck out of the list.

C. Conclusion

60. The above findings do not prevent M.D., A.A.K. and A.A.R. from lodging a new application with the Court in the future and making use of the available procedures – including the procedure under Rule 39 of the Rules of Court – in respect of any new circumstances.

III. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION ON ACCOUNT OF THE ORDERING OF THE EXPULSION OF ALL APPLICANTS (EXCEPT M.D., A.A.K. AND A.A.R.) FROM RUSSIA

61. The applicants complained that their expulsion to Syria, if carried out, would be in breach of their right to life and the prohibition on torture and inhuman and degrading treatment. The relevant provisions read as follows:

Article 2

“1. Everyone’s right to life shall be protected by law ...

Article 3

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

A. Admissibility

1. The applications of M.O., M.A. and R.K.

62. The Government submitted that M.O., M.A. and R.K. had not appealed against the migration authorities’ refusal to grant them temporary asylum and they therefore had not exhausted the available domestic remedies in respect of their complaints under Articles 2 and 3 of the Convention.

63. M.O. submitted that he had appealed against the judgment of the District Court upholding the refusal to grant him temporary asylum. He submitted to the Court copies of the judgments in question. The Court therefore dismisses the Government’s objection in respect of M.O.’s complaint under Article 2 and 3 of the Convention.

64. M.A. and R.K. submitted that an appeal against a refusal to grant temporary asylum did not constitute an effective remedy to be exhausted.

65. The Court considers that M.A. and R.K. were not required to lodge appeals against the refusal to grant them temporary asylum, owing to the circumstances of their cases. In particular, in reviewing complaints about removal, the Court has focused, in respect of Russian cases, primarily on extradition or administrative expulsion proceedings as constituting the basis

for complaints brought under Article 3 of the Convention. It has found that while ruling on the question of the possibility of removal, the scope of review by the domestic authorities, including the courts, should include relevant arguments regarding ill-treatment raised by the applicants, in view of the absolute nature of Article 3 of the Convention (see *L.M. and Others v. Russia*, nos. 40081/14 and 2 others, §§ 100-02, 15 October 2015).

66. In this regard, the Court notes that in expulsion proceedings and, specifically, in appeal hearings in their cases, M.A. and R.K. alleged that they would face the risk of death and/or ill-treatment in the event of their removal to Syria and that those complaints were understood by the domestic courts as such, but were nevertheless dismissed (see paragraphs 13-14, 19 and 23-25 above). The Court therefore considers that the essential grievance of M.A. and R.K. under Articles 2 and 3 of the Convention was addressed and that they were not required to bring appeals against the refusal to grant them temporary asylum, the rationale being that when a remedy has been pursued, the use of another remedy that has essentially the same objective is not required (see *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009; see also *L.M. and Others v. Russia*, cited above, § 103). The Court accordingly dismisses the Government's objection regarding the non-exhaustion of domestic remedies by M.A. and R.K.

2. Conclusion as to admissibility of the applicants' complaints (except that of M.D., A.A.K. and A.A.R.) under Article 2 and 3 of the Convention

67. The Court furthermore notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention in respect of all of the applicants concerned (except M.D., A.A.K. and A.A.R.). It must therefore be declared admissible.

B. Merits

1. The applicants' submissions

(a) The case of M.O. (application no. 25735/18)

68. The applicant stated that he ran the risk of being associated with opposition armed groups and targeted by authorities on the basis of his town of origin and the fact that he was a Sunni Muslim, since Douma, the applicant's home town, is the centre of one of the regions actively involved in demonstrations against the authorities and in opposition political and military activities. The applicant also submitted that he might either be drafted into the army in the light of his age or be accused of draft evasion. To support his submissions, the applicant referred to reports issued in 2019 according to which adherents of Sunni Islam were routinely persecuted by the Syrian Government on a large scale, and the Syrian authorities

(i) engaged in, *inter alia*, the indiscriminate use of heavy weapons in populated areas, with devastating consequences and (ii) carried out enforced disappearances and arbitrary detentions. The applicant submitted that persons accused of participation in opposition activities and draft evasion ran the risk of torture and other forms of ill-treatment in detention or of being killed in an extrajudicial manner. The applicant also referred to a letter issued by the Russian office of UNHCR on 30 August 2019 which stated that the security conditions in Syria did not provide for the safe and dignified return of refugees, that refusals of international protection to persons from Syria on the basis of “internal flight alternative” were unjustified, and that the States should refrain from forcibly returning refugees.

(b) The cases of K.A., Z.A., O.S., M.A., R.K., A.A. and A.K.A. (applications nos. 58858/18, 60000/18, 60001/18, 16868/19, 41174/19, 41176/19 and 41179/19)

(i) Submissions concerning delayed applications for temporary asylum

69. The applicants submitted that they had travelled to Russia at various times between 2011 and 2013. They had decided to stay in Russia and seek temporary asylum only after they had seen the deterioration of security in Syria since 2011 during visits home. However, their access to this procedure was fraught with many psychological, linguistic and other practical difficulties that they encountered in dealing with State bodies in a foreign country. The migration officials did not assist them in any manner, and even provided them with misleading and confusing instructions in respect of lodging applications for temporary asylum.

(ii) Submissions to the domestic authorities and the Court concerning personal circumstances of the applicants

70. K.A. submitted that during his interview he had specifically stated that Islamic State fighters had visited his home in Syria looking for him and that they had told his relatives that he would be executed upon his return from Russia. K.A. furthermore submitted that the judicial review on 3 May 2017 of the MVD’s of Ivanovo Region refusal to grant him temporary asylum had not been impartial because one judge had quashed it as overly formalistic and lacking any assessment of the threat to the applicant’s life and personal security and had ordered that it be re-examined by the MVD of Ivanovo Region, whereas another judge on 7 September 2017 had confirmed the second refusal to grant K.A. temporary asylum, even though the reasoning of that refusal had been identical to that of the first one on 3 May 2017 (see the Appendix for details).

71. Z.A. submitted that ISIS fighters had specifically targeted his family and unrelated persons with the same surname because they had resisted the rule of ISIS.

72. O.S. stated that he was of Kurdish ethnicity and that the Syrian authorities considered all Kurds to be rebel fighters.

73. M.A., R.K., A.A. and A.K.A. submitted that they had left Syria for Russia owing to the ongoing civil war there which brought about a large number of civilian deaths and humanitarian crisis.

74. The applicants furthermore submitted that the Russian authorities had confused the humanitarian reasons on the basis of which temporary asylum could be granted with the criteria laid down for the granting of refugee status, unreasonably requiring the applicants to prove that they would be persecuted on the basis of their race, religion, nationality, ethnicity, membership of a particular social group, or political views.

75. They also submitted that they had established in the domestic proceedings that upon their return to Syria they would be required by law to join the Syrian army for a year and that if they were to refuse to serve, they would be executed or tortured. If they were captured by illegal anti-Government armed groups, they would also run the risk of being executed or subjected to torture because they had lived in Russia, which is an ally of the Syrian Government.

(iii) Submissions concerning the general security situation in Syria

76. The applicants submitted that the Government had not provided any evidence that the security situation in Syria had improved by the time of the parties' submitting their observations to the Court in 2019. To support their arguments, they submitted copies of information bulletins that had been issued by the Russian Ministry of Defence indicating that there had been breaches of the peace agreement on a daily basis between 28 February 2016 and 31 July 2019, which, in the applicants' opinion, refuted the Government's arguments that there had been an improvement in the security situation and that the peace agreements had been observed.

77. The applicants submitted that they had consistently referred throughout the domestic proceedings to (i) reports issued by the United Nations and its specialised organs and by other international organisations, and (ii) publications issued by organisations providing legal-defence services to refugees, concerning the dangerous security situation in Syria. The applicants submitted copies of those reports to the Court. However, the domestic authorities had not taken international reports into consideration during the examination of the applicants' cases.

78. In respect of internal flight alternative, they submitted a copy of Update V (see paragraph 34 above).

79. The applicants submitted that the Russian office of UNHCR had sent to the courts examining their cases a report on the security situation in Syria

and had requested them not to issue expulsion orders in respect of the applicants, as they belonged to a vulnerable group of persons who were at risk of persecution and ill-treatment.

2. The Government's submissions

(a) The case of M.O. (application no. 25735/18)

80. The Government submitted that in his application for temporary asylum of 16 May 2018 the applicant had not described any individual circumstances owing to which he would be persecuted in Syria if he were to return there. According to the Government, the applicant had not submitted any evidence of threats of physical violence, degrading treatment or offensive conduct in respect of himself. During his interview the applicant had himself stated that he would be willing to return to Syria if the security situation there stabilised.

(b) The cases of K.A., Z.A., O.S., M.A., R.K., A.A. and A.K.A. (applications nos. 58858/18, 60000/18, 60001/18, 16868/19, 41174/19, 41176/19, and 41179/19)

81. In respect of K.A. the Government submitted that the applicant had lived and worked in Russia since 2010, he only claimed asylum in September 2015. The Government furthermore submitted that in the domestic proceedings the applicant had not described any personal circumstances owing to which he would be at risk of death or ill-treatment proscribed by Articles 2 and 3 of the Convention in the event of his expulsion to Syria. In particular, his submissions about his family situation and the threats allegedly made against him – including threats made by Islamic extremists– had been conflicting, unreliable and unsubstantiated.

82. In respect of Z.A., O.S., M.A., the Government submitted that the migration authorities, when conducting interviews with them in connection with their applications for refugee status, had determined that none of those applicants were sought by the authorities in Syria or elsewhere; moreover, during those interviews those applicants had stated that neither they nor their relatives had received any threats or feared persecution on any grounds, and that they had been able to obtain the necessary documents and to depart from Syria without any difficulty. In respect of O.S. the Government also submitted that he had delayed his application for temporary asylum.

83. Furthermore, in respect of K.A., Z.A. and O.S. the Government submitted that even though the applicants had claimed that the asylum interview was a purely formalistic procedure, they had not been prevented from strengthening their arguments in their repeated applications for temporary asylum or from submitting new arguments with a view to improving their chances of having their applications allowed. Referring to

Saadi v. Italy [GC] (no. 37201/06, ECHR 2008), the Government stated that the Court had held that the mere possibility of ill-treatment on account of an unsettled situation in the receiving country did not in itself give rise to a breach of Article 3 of the Convention and that, where the sources available to it described a general situation, an applicant's specific allegations in respect of a particular case required corroboration by other evidence. The Government submitted that the domestic decisions concerning the applicants' claim had been well-reasoned and that the examination of the circumstances of their cases had been carried out in a comprehensive manner. The applicants, however, had failed to meet the requisite burden of proof by showing that substantial grounds existed for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of death and treatment contrary to Articles 2 and 3 of the Convention.

84. In respect of R.K., A.A. and A.K.A. the Government submitted that it had been established in the domestic proceedings that the applicants had not been at risk of persecution in the event of their return to Syria and that they wished to stay in Russia not because of fear of persecution in Syria but for financial or economic reasons.

(c) The Government's submissions in respect of the general security situation in Syria

85. The Government submitted that the MVD and the courts that had taken decisions in respect of the applicants' cases took into consideration information provided in the 2017-2018 bulletins issued by the Reconciliation Centre. According to those bulletins, an overall de-escalation and stabilisation of the security situation in Syria had taken place and the situation was thus "favourable" for the return of Syrian nationals. The truce and peace negotiations were ongoing, the surrender of arms by illegal armed groups had been taking place and the Syrian and Russian Governments were providing necessary support to refugees.

86. The bulletins furthermore indicated that by the first half of 2017, cease fire agreements had been signed in some communities in the provinces of Damascus, Homs, Hamah, Latakia, As-Suwayda and Al-Quneitra, and that peace negotiations continued in Aleppo, Damascus, Hamah, Homs and Al-Quneitra. By December 2017, the Syrian army, supported by the Russian air and space forces (*Воздушно-космические силы*), had cleared ISIS fighters from the last areas of the country. The destruction of landmines and other explosives had been progressively carried out. Not a single municipality in the country was under the control of ISIS. By October 2018 there had been a decrease in insurgency activities in Idlib. Furthermore, four de-escalation zones in southern Syria, eastern Ghouta, the area north of Homs and the province of Idlib had been successfully established and were under the control of the Russian military

police. By February 2018, the overall situation in the de-escalation areas was considered stable, two more municipalities had signed ceasefire agreements in the province of Idlib, and most incidents involving the indiscriminate use of weapons had been registered in (unidentified) districts controlled by the Dzhabkhat an Nusra terrorist organisation.

87. Furthermore, according to the Government, on 3 July 2018 the Russian Ministry of Foreign Affairs had disseminated a message from the Syrian Government encouraging Syrians who had had to leave Syria to return and guaranteeing their personal security and non-discriminatory treatment. To facilitate the return of such people, a centre for the reception, placement and distribution of refugees had been established by the Russian and Syrian authorities. All Syrian citizens expelled or deported from Russia could reach Damascus Airport (there were weekly flights by Aeroflot – *via* Beirut or other transit locations – and Syrian Airlines) and from there to other areas of the country that were also under the control of pro-Government forces.

88. The Reconciliation Centre had carried out humanitarian operations and provided the local population with medical assistance. Owing to ongoing peace negotiations, it had become possible to organise crossing points for humanitarian deliveries to places that had in the past been under the control of illegal armed groups.

3. *The Court's assessment*

(a) **Introduction**

89. The Court reiterates that within the context of expulsion – where there are substantial grounds to believe that the person in question, if expelled, would face a real risk of capital punishment, torture, or inhuman or degrading treatment or punishment in the destination country – both Articles 2 and 3 of the Convention imply that the Contracting State must not expel that person. The Court finds that the issues under Articles 2 and 3 of the Convention are indissociable in the present case, and it will therefore examine them together (see *F.G. v. Sweden* [GC], no. 43611/11, § 110, 23 March 2016, and *L.M. and Others v. Russia*, cited above, § 108).

(b) **General principles**

90. The Court reiterates at the outset that Contracting States have the right, as a matter of international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens, and that the right to asylum is not explicitly protected by either the Convention or its Protocols. However it is the Court's settled case-law that expulsion or extradition by a Contracting State may give rise to an issue under Articles 2 and 3 of the Convention (and hence engage the responsibility of that State under the Convention) where substantial grounds

have been shown for believing that the individual concerned, if deported, faces a real risk of being killed or subjected to treatment contrary to Article 3 of the Convention (see *Headley v. the United Kingdom* (dec.), no. 39642/03, 1 March 2005 (with further references), and *Mamazhonov v. Russia*, no. 17239/13, §§ 127-28, 23 October 2014).

91. In respect of applications lodged against Russia, primarily by applicants originating from the countries of Central Asia, the Court has identified the critical elements that are to be subjected to a searching scrutiny. Firstly, it has to be considered whether an applicant has presented the national authorities with substantial grounds for believing that he faces a real risk of ill-treatment in the destination country. Secondly, the Court will enquire into whether the claim has been assessed adequately by the relevant national authorities when discharging their procedural obligations under Articles 2 and 3 of the Convention and whether their conclusions were sufficiently supported by relevant material. Lastly, having regard to all of the substantive aspects of a case and the available relevant information, the Court will assess the existence of a real risk of suffering torture or treatment incompatible with Convention standards (see *L.M. and Others v. Russia*, cited above, § 109, citing *Mamazhonov*, cited above, §§ 136-37).

(c) Application of those principles to the present case

(i) Presentation of substantial grounds for believing that the applicants face a real risk of death or ill-treatment

92. The Court will focus on examining the complaints brought by the applicants within the context of the expulsion proceedings, for the reasons provided in paragraph 65 above. The Court notes that the circumstances in which the hearings of the applicants' cases took place resemble those in the case of *L.M. and Others v. Russia* (cited above). In particular, the applicants in the present case referred in the District Courts to the war in Syria and stated that their forced return would expose them to risk of death or ill-treatment (see paragraphs 11, 13 and 24 above). Their statements, too – similarly to the statements of the applicants in *L.M. and Others v. Russia* – were rather general, and their participation in the hearings was relatively limited; however, as the Court pointed out in *L.M. and Others v. Russia*, that was not surprising, given the fact that the applicants did not speak Russian fluently and they were not assisted by a legal representative – indeed, one of them, M.O., did not even have access to an interpreter during the hearing before the District Court (see paragraph 12 above). The Court considers that the applicants, who were apprehended by the police shortly before the hearing, did not speak the language in which their arrest and proceedings were carried out. Accordingly, in the absence of any legal assistance, they probably understood little of what was required of them as parties to judicial proceedings that were entirely foreign to them, and were

thus placed in a rather vulnerable position, which considerably affected their ability to present their case and arguments to the District Courts.

93. In their statements of appeal, however, the applicants, assisted by legal representatives, submitted a more detailed account of security conditions in Syria and referred to reports by UN bodies of an unstable security situation in Syria, recurring violence, breaches of ceasefire agreements and dire humanitarian conditions. They also each submitted a description of their respective personal situations, pointing to the reported persecution of persons sharing certain of the applicants' individual traits, such as their respective place of birth, religious convictions, or an age rendering them liable for conscription into the army (see paragraphs 11, 13, 15-19, 24 and 26 above).

94. Furthermore, the Court notes from the applicants' applications for refugee status and temporary asylum that they submitted similar individualised information to the migration authorities; moreover, some applicants submitted pertinent arguments to the domestic courts examining their appeals against the decisions not to grant them temporary asylum.

95. In addition, the information that was published by the United Nations bodies and that was available for the domestic courts' reference at the time of the examinations of the applicants' cases between March 2018 and July 2019 clearly indicated that the forced return of Syrians to their homeland was not recommended owing to ongoing hostilities, violence and the arbitrary detention of civilians (see paragraphs 34, 35 and 77 above).

96. Given these circumstances, the Court finds that the national authorities were presented with substantial grounds for believing that the applicants would face a real risk to their lives and personal integrity if they were expelled. It remains to be addressed whether the claim has been assessed adequately by the relevant national authorities.

(ii) Assessment by the domestic authorities of the claims of a real risk of death or ill-treatment

97. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. The national authorities are best placed to assess not just the facts but, more particularly, the credibility of witnesses, since it is they who have had an opportunity to see, hear and assess the demeanour of the individual concerned and it is in principle for the asylum-seeker to submit the reasons in support of his claim and to adduce evidence capable of proving that there are substantial grounds for believing that deportation to his or her home country would entail a real and concrete risk of exposure to a life threatening situation covered by Article 2 of the Convention or to treatment in breach of Article 3 of the Convention (see *F.G. v. Sweden*, cited above, §§ 118 and 125, and *J.K. and Others v. Sweden* [GC],

no. 59166/12, §§ 91, 92 and 96, 23 August 2016). The Court must be satisfied, however, that the assessment made by the authorities of the Contracting State concerned is adequate and sufficiently supported by domestic material as well as by material originating from other reliable and objective sources (see *F.G. v. Sweden*, cited above, § 117). In relation to asylum claims based on a well-known general risk, when information regarding such a risk is freely ascertainable from a wide number of sources, the obligations incumbent on the States under Articles 2 and 3 of the Convention in expulsion cases entail that the authorities carry out an assessment of that risk of their own motion (*ibid.*, § 126, and *J.K. and Others v. Sweden*, cited above, § 98). By contrast, in relation to asylum claims based on an individual risk, it must be for the person seeking asylum to rely on and to substantiate such a risk (see *F.G. v. Sweden*, cited above, § 127, and *J.K. and Others v. Sweden*, cited above, § 92). However, considering the absolute nature of the rights guaranteed under Articles 2 and 3 of the Convention, and having regard to the position of vulnerability that asylum-seekers often find themselves in, if a Contracting State is made aware of facts relating to a specific individual that could expose him to a risk of ill-treatment in breach of the said provisions upon returning to the country in question, the obligations incumbent on the States Parties under Articles 2 and 3 of the Convention entail that the authorities carry out an assessment of that risk of their own motion. This applies in particular to situations where the national authorities have been made aware of the fact that the asylum-seeker may plausibly be a member of a group systematically exposed to practice of ill-treatment and there are serious reasons to believe in the existence of the practice in question and in his or her membership of the group concerned (see *F.G. v. Sweden*, cited above, §§ 126-27, and *J.K. and Others v. Sweden*, cited above, §§ 93 and 97).

98. The Court notes that when the District Courts examined the applicants' cases, the scope of their respective reviews was limited to establishing (i) the circumstances of the applicants' apprehension, (ii) their failure to comply with Russian law, and (iii) whether their presence in Russia had been illegal; in some cases, they ignored the applicants' arguments regarding the allegedly real risk of ill-treatment were they to be returned to Syria, and holding, in other cases, that "nothing objectively impedes the applicants from returning" or that "[the applicants] have not described any circumstances or presented evidence that would show without doubt that they are at risk of persecution in Syria" (see paragraphs 12, 14 and 25 above). Indeed, the applicants provided the District Courts with incomplete information and little or no evidence with which to assess the risks that the applicants were facing. In this connection the Court reiterates that it is for the applicants to adduce evidence capable of demonstrating that there were substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being

subjected to treatment contrary to Article 3 of the Convention (see *Saadi*, cited above, § 129; *F.G. v. Sweden*, cited above, § 120; and *J.K. and Others v. Sweden*, cited above, §§ 91, 92 and 94). However, as noted in paragraph 92 above, the applicants could not meaningfully participate in the proceedings before the District Courts, and the Court considers that that inability to present their case – together with the fact that they had fled from a war-torn country (see paragraph 7 above) and available information on security risks in Syria (see paragraphs 34 and 35 above) – had come to the attention of the District Courts. Moreover, the Court has held that a certain degree of speculation is inherent in the preventive purpose of Article 3 of the Convention and that it is not a matter of requiring the persons concerned to provide clear proof of their claim that they would be exposed to proscribed treatment (see *Paposhvili v. Belgium* [GC], no. 41738/10, § 186, ECHR 2016).

99. In these specific circumstances, it was up to the District Courts, of their own motion (see *F.G. v. Sweden* cited above, § 126, and *J.K. and Others v. Sweden*, cited above, § 98), to ascertain and take into consideration information relating to Syria from “reliable and objective” international and national sources and to carry out a comprehensive analysis of whether substantial grounds had been shown for believing that there was a real risk that the applicants would face ill-treatment or death if the order for their expulsion were to be implemented. However, the District Courts only reviewed and upheld the reasons put forward for the applicants’ expulsion (that is to say, the illegality of their conduct); they gave no meaningful assessment of any general risks that the applicants would face in the event of their forced return to Syria. This approach cannot be considered compatible with the need for independent and rigorous scrutiny that is required in cases concerning expulsion (see *Chahal v. the United Kingdom*, no. 22414/93, § 80, 15 November 1996, *Reports of Judgments and Decisions* 1996-V, and *Trabelsi v. Belgium*, no. 140/10, § 118, ECHR 2014 (extracts)), where the Court held that the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration when substantial grounds have been shown for believing that that individual would face a real risk of being subjected to treatment contrary to Article 3 of the Convention if removed to another State; see also *Auad v. Bulgaria*, no. 46390/10, § 101, 11 October 2011). It is especially regrettable in the light of the reported Convention-compliant examination of similar cases by courts in other regions of Russia (see *L.M. and Others v. Russia*, cited above, §§ 71-73 and 115, for the Court’s review of some Russian courts’ practice in expulsion cases).

100. The Court furthermore notes that the courts examining the cases of the applicants in the appeal proceedings dismissed their claims regarding the alleged risk of ill-treatment, without effectively considering them on the merits while referring to certain international sources on asylum and

non-refoulement (see paragraphs 12 and 14 above). However, the Court observes that that reference was cursory and did not have any influence on the resolution of the applicants' cases, because the domestic courts merely restated the norms of international law and did not include any in-depth analysis, within the context of the applicants' cases, of the most recent information provided, for example, by United Nations bodies on the security situation in Syria or the return of refugees to Syria at that time (see paragraphs 34 and 35 above and *J.K. and Others v. Sweden*, cited above, § 98). Furthermore, even though the Appeal Court did give some individual consideration to the claims of K.A., Z.A., O.S., M.A., R.K., A.A. and A.K.A. (see paragraphs 20-23, 25 and 27 above), it nevertheless established that the applicants had "not shown that they were at a greater risk than the general population in Syria of being subjected to inhuman and degrading treatment", referring mainly to information from unidentified Russian State bodies (including, presumably, the Ministry of Defence) regarding the de-escalation of military conflict in Syria, and largely ignoring the international reports submitted to it by the applicants containing analysis suggesting that the contrary was in fact the case and showing that hostilities were ongoing and that the return of refugees was not recommended (see paragraph 77 above).

101. The Court furthermore notes certain difficulties encountered by the applicants in their applications for temporary asylum, including no assistance from the migration officials and confusing and misleading instructions that the applicants had received from them in respect of their applications for asylum and lack of Government's arguments to the contrary (see paragraph 69 above).

102. Having regard to the above considerations, the Court is not persuaded that the applicants' allegations were duly examined by the domestic authorities in any of the sets of relevant proceedings. The Court accordingly finds itself compelled to examine independently whether the applicants would be exposed to a risk of ill-treatment proscribed by Article 2 and 3 of the Convention in the event of their removal to Syria.

(iii) *Examination by the Court of the alleged risk of death or ill-treatment*

(a) *General principles*

103. The general principles applicable in expulsion cases and used by the Court in assessing the risks are well summarised by the Court in the case of *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, §§ 212-19 (concerning the burden of proof and the factors to be considered in an assessment of risks) and §§ 230-34 (concerning the weight to be attributed to country material submitted by Government, non-governmental organisation(s) ("NGO"(s)) and UN bodies), 28 June 2011, and, more recently, *F.G. v. Sweden*, cited above, §§ 111-20 and §§ 125-27, and *J.K.*

and Others v. Sweden, cited above, §§ 87-98. The Court will rely on these principles in its assessment making, where necessary, appropriate references.

(β) Application of these principles to the present cases

104. The Court notes that the applicants argued that the general security situation in Syria was such that any removal to it of a Syrian national would necessarily be in breach of Articles 2 and 3 of the Convention. They relied on 2019 reports by international bodies (including UNHCR) that, in the applicants' opinion, indicated that the security conditions in Syria were not satisfactory for the safe and dignified return of refugees, in accordance with the principles of international law (see paragraphs 68, 77 and 79 above). Some of the applicants also relied on selected information bulletins issued between 2016 and 2019 by the Russian Ministry of Defence to support their claim that widespread breaches of ceasefire agreements had been taking place and to refute the arguments of the Government in that regard (see paragraph 76 above).

105. The Court furthermore observes that in respect of the general security situation in Syria, the Government relied on information bulletins issued in between 2017 and 2018 by the Reconciliation Centre that had been taken into consideration by the domestic bodies that had examined the cases of the applicants. According to the bulletins, the security situation had been "stable" overall in the de-escalation areas (that is to say, in southern Syria, Eastern Ghouta, the area north of Homs, the province of Idlib and the southern parts of Damascus) and conditions in those areas had been "favourable" for the return of Syrian nationals. Furthermore, according to the Government, it had been reported that the Syrian army, supported by the Russian military units, had cleared ISIS fighters from the last parts of the country in which they had been present (see paragraphs 85 and 86 above).

106. The Court notes that the applicants' submissions were based on more up-to-date data and were corroborated by reliable and detailed reports by international bodies (see paragraphs 38 and 41 above) that unambiguously attest to daily ceasefire violations, country-wide hostilities, the devastating impact that armed conflict and indiscriminate attacks by the terrorist groups (including ISIL/Da'esh and Hay'at Tahrir al-Sham) and other non-State actors continue to have on the civilian population in all parts of the country, and the practice of arbitrary detentions and enforced disappearances of young men. The Court also takes note of the latest available update of 31 July 2019 on the website of the Reconciliation Centre of the Russian Ministry of Defence that provided that despite the ceasefire arrangements, illegal armed groups operating in the Idlib de-escalation area continued to breach the relevant agreements and the insurgents had carried out armed attacks in the province[s] of Aleppo, Hama and Latakia (see paragraph 37 above). The Court notes that all those reports are consistent

with its findings in respect of the general security situation over the whole of Syria in the recent case of *O.D. v. Bulgaria* (no. 34016/18, §§ 53-54, 10 October 2019).

107. The Court reiterates that if the applicant has not already been deported, the material point in time for the assessment of risks in the country of destination must be that of the Court's consideration of the case (see *Chahal*, cited above, § 86). The Court therefore considers the latest country material available. It notes in particular that major military escalations had been reported in Idlib (in north-western Syria) and its surrounding areas in 2020-2021, rendering that territory the epicentre of confrontation in the country, and clashes in the north-east (Aleppo) had intensified, leading to scores of civilian casualties and injuries (see paragraphs 41, 42 and 47 above). In the central part (that is to say in the governorate of Homs) and the eastern part (specifically, in the governorate of Dayr-al-Zawr) of the country, the resurgence of ISIL/Da'esh had been reported, and unrest had intensified and security conditions worsened in the south (paragraphs 39, 41 and 42 above). Furthermore, in the first six months of 2020, new episodes of torture of persons held by the Syrian authorities had been documented. Moreover, members of Hay'at Tahrir al-Sham in the governorates of Aleppo and Idlib had continued to detain, torture and execute civilians opposing their oppressive rule (see paragraph 41). Returnees were reported to have been among those who had been subjected to harassment, arbitrary arrest, detention incommunicado, torture and other forms of ill-treatment, as well as to confiscation of property, for reasons including perceived anti-Government opinion; and both pro-Government forces and armed groups in 2020-2021 had continued to arbitrarily detain individuals in areas under their effective control (see paragraphs 38, 42 and 47 above).

108. The Government's submissions focus on the events of 2017-2018 and do not contain a sufficiently detailed assessment of security and humanitarian conditions in any of the governorates from which the applicants originate – that is to say (i) Douma (the governorate of Rif Damascus) in the case of M.O., (ii) Idlib in the case of M.A., (iii) Aleppo in the cases of K.A., Z.A., O.S., R.K., A.A. and A.K.A., and (iv) Damascus – where they would likely be sent in the event of their expulsion (see paragraph 87 above). Neither do the Government's submissions detail any internal-flight/relocation alternatives that might be available to the applicants, any relevant transit risks, or conditions prevailing in the camps for internally displaced persons (compare *Sufi and Elmi*, cited above, §§ 265-67). The applicants' submissions and, in particular, the letter of the Russian office of UNHCR of 30 August 2019 submitted by M.O., by contrast, clearly indicate that no reliance should be made by the States hosting Syrian citizens on the relocation of applicants in other areas of Syria (see paragraphs 68 and 78 above), and the 2017 and 2021 international

reports that the Court has before it do not state that any particular part of Syria (including Damascus – for persons with profiles similar to the applicants) is safe for the involuntary return of refugees, despite the existence of ceasefire agreements and the perceived reduction in large-scale hostilities (see paragraphs 34 and 46 above).

109. The Court notes the efforts made by the Russian Federation and other actors to find sustainable solutions for the return of Syrian refugees (see paragraphs 37, 40, 43, 44 and 47 above). However, in light of the material that the Court has examined in the present case, the forced returns of refugees to Syria, at present and at least in the near future, do not appear feasible owing to the volatile security situation there.

110. The Court furthermore reiterates that in assessing the risks of ill-treatment for the applicant in the country of destination, it focuses on the foreseeable consequences of removal, in the light of the general situation there and of his or her personal circumstances (see *F.G. v. Sweden*, cited above, § 114, with further references). The Court observes that the applicants' own accounts of events in Syria are consistent with information from reliable and objective sources about the general situation, indicating that their personal circumstances put them at a heightened risk of ill-treatment there. In particular, all of the applicants, as returnees, risk being subjected to harassment, arbitrary arrest and incommunicado detention upon arrival despite having obtained security approval, torture and other forms of ill-treatment, as well as property confiscation and movement restrictions, including on account of individuals' perceived anti-Government opinion (see paragraphs 38 and 46 above). Deaths in custody of returnees had also been reported (*ibid.*). Furthermore, O.S., as a person of Kurdish origin faces the risk of extortion, murder, abduction, torture and detention (see paragraphs 41 (specifically, points 46 and 54 of the Human Rights Council Report) and 72 above). The risk for O.S. and also M.O. is further heightened in view of the fact that they are variously perceived, on the one hand, as affiliated with anti-Government opposition groups or insufficiently loyal to the Government or, conversely, as not sharing the ideology of extremists (see paragraph 46 above). Lastly, all the applicants, being men of fighting age, have "risk profiles" and face forced conscription into the army, with no exceptions allowed for conscientious objectors and harsh consequences for draft evasion – such as being sent to a frontline fighting position with minimal military training, service beyond the standard required period of service, and ill-treatment in detention. In addition, if they were to be considered by the authorities as real or perceived opponents of the Government, they would likely not benefit from the relevant amnesty decrees (see paragraphs 38, 45 and 46 above; see also *O.D. v. Bulgaria*, cited above, § 54).

111. Therefore, having regard to the parties' submissions, to the international reports (to which the Court attaches considerable weight – see

Sufi and Elmi, cited above, § 231) and to its own recent findings in respect of the general security situation in Syria in the case of *O.D. v. Bulgaria* (cited above), the Court finds that substantial grounds have been shown for believing that at the time of the examination of the applicants' cases, there exists a real risk that the applicants would face ill-treatment or death if the orders for their expulsion to Syria were to be implemented. Accordingly, it holds that the expulsion of the applicants to Syria would constitute a violation of Articles 2 and 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

112. Applicants K.A., Z.A., O.S., R.K., A.A. and A.K.A. also complained that they had not obtained a meaningful review of their argument that their lives and security would be at risk if they were returned to Syria, in breach of Article 13 of the Convention, which states as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

113. The Government submitted that the applicants had had at their disposal effective domestic remedies in respect of their complaints under Articles 2 and 3 of the Convention and that the authorities had not impeded them from using them.

114. The Court notes that it has already examined that allegation within the context of Articles 2 and 3 of the Convention (see paragraphs 98-102 above). Having regard to these findings, it considers that it is not necessary to examine this complaint separately (see *L.M. and Others v. Russia*, cited above, § 127).

V. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

115. The applicants M.D., M.O., M.A., A.A. and A.K.A. complained that their detention pending expulsion had been arbitrary and prolonged, in breach of Article 5 § 1 of the Convention, which provides as follows:

“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. Admissibility

116. The Government submitted that the applicants M.D. and M.O. had not appealed specifically against the orders for their detention pending expulsion; rather, they had asked the domestic courts during the appeal proceedings to quash their respective judgments only in that part in which their removal had been ordered. The Government argued that their complaint under Article 5 § 1 of the Convention should be dismissed for non-exhaustion of domestic remedies.

117. M.D. submitted that he had introduced an application to have the detention and removal proceedings discontinued on the grounds that his removal had no longer been a realistic prospect, but that the District Court dismissed that application. M.O. submitted that an appeal against an expulsion order included, by implication, an appeal against the relevant detention order.

118. Having examined the material in the applicants' case files and in particular, the judgments of the respective domestic courts in respect of the applicants' cases (see the Appendix for details), the Court is satisfied that M.D. and M.O.'s complaints against the orders for their detention pending expulsion were brought to the attention of the domestic courts. Accordingly, the Court dismisses the Government's objection as to the non-exhaustion by M.D. and M.O. of the available domestic remedies in respect of their complaint under Article 5 § 1 of the Convention.

119. The Court furthermore notes that this complaint brought by M.D., M.O., M.A., A.A. and A.K.A. is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicants' observations

(a) The cases of M.D. and M.O.

120. M.D. and M.O. referring to the case of *Azimov* (cited above) submitted that the court order for detention had not stipulated the maximum length of their detention. Other than the requirement that an expulsion order be executed within two years, the Code of Administrative Offences did not contain any provisions governing the length of detention pending expulsion. Lastly, the applicants argued that such a long stay in detention significantly exceeded the maximum custodial sentence of thirty days permissible under the Code of Administrative Offences, and that their detention pending expulsion had been of a punitive rather than preventive nature.

(b) The cases of M.A., A.A. and A.K.A.

121. M.A. did not submit any observations in respect of his complaint under Article 5 § 1 of the Convention except that his “two-month detention [had] caused [him] to suffer non-pecuniary damage”. A.A. and A.K.A. submitted that the Domestic Court had not taken into account the poor state of their health when it had ordered their detention.

2. The Government’s observations

122. The Government submitted that the applicants’ detention pending their expulsion had been lawful, as it had been ordered by a court, and that even though no time-limit for the detention of M.D. and M.O. had been set, the maximum duration of an administrative penalty was two years. In respect of M.A., A.A. and A.K.A. the Government specified that the applicants had been released promptly.

3. The Court’s assessment

123. Having regard to the information submitted by the applicants (see the Appendix for details), the Court finds that initially all the applicants in question were detained for breaching migration regulations, with a view to subsequently expelling them, and that their initial detention was presumably carried out in good faith and in compliance with Article 5 § 1 of the Convention (see *Chahal*, cited above, § 113; see also *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 74, ECHR 2007-II). It remains to be established whether the applicants’ continuing detention pending expulsion was justified, in the light of the individual circumstances of their cases.

(a) The cases of M.D. and M.O.

124. The Court notes from the case material that M.D. and M.O. have each been detained for at least two years (see the Appendix for the exact dates and periods of the applicants’ detention). On various dates, the authorities became aware of the suspension – for the duration of the proceedings before the Court – of the order for the removal of the applicants owing to the application of an interim measure by the Court (see the Appendix).

125. In this connection, the Court reiterates that the fact that expulsion proceedings are provisionally suspended as a result of the application of an interim measure does not in itself render the detention of the person concerned unlawful, provided that the authorities still envisage expulsion at a later stage, so that “action is being taken”, even though the proceedings are suspended and on condition that the detention will not be unreasonably

prolonged (see *Ahmed v. the United Kingdom*, no. 59727/13, § 44, 2 March 2017, with further references). The Court has also stated that the existing possibility to apply for judicial review of an applicant's situation is an important factor to be taken into account when reviewing the lawfulness of detention in cases where an interim measure was applied (*ibid.*, § 50).

126. The Court observes, however, that following its application of an interim measure, the authorities remained rather inert in the applicants' cases and did not assess at regular intervals whether their removal remained a "realistic prospect", especially with the passing of time (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 167, ECHR 2009 and the Appendix). The applicants, meanwhile, were detained without the possibility to ensure the periodic review of the reasons for their detention (see paragraph 49 above and paragraphs 138 and 139 below).

127. Accordingly, in the light of these considerations, and given the Court's recurrent findings of violations of Article 5 § 1 of the Convention in respect of foreigners detained virtually indefinitely in Russia with a view to administrative expulsion, the Court finds that the length of the detention of M.D. and M.O. exceeded what was reasonably required for the purpose pursued (see the above-cited cases of *L.M. and Others v. Russia*, §§ 141-42 and 149-52, with further references, and *S.K. v. Russia*, no. 52722/15, §§ 108-09 and § 116, 14 February 2017; see also *M.S.A. and Others v. Russia* [Committee], nos. 29957/14 and 9 others, 12 December 2017, in which the Court found that the detention of Syrian nationals pending expulsion was in violation of Article 5 § 1 of the Convention). There has therefore been a violation of Article 5 § 1 of the Convention in respect of M.D. and M.O.

(b) The cases of M.A., A.A. and A.K.A.

128. The Court notes that M.A. was detained for two months pending expulsion, A.A. – for one month and five days and A.K.A. – for two and a half months (see the Appendix).

129. An application lodged by M.A.'s for release was refused by the District Court; however, he was released upon the expiry of the two-month detention imposed on him, whereas the District Courts in the cases of A.A. and A.K.A. ordered their release owing to the application of an interim measure by the Court and the suspension for an indefinite time of the order for their removal (see the Appendix for details).

130. In view of the foregoing, the Court is satisfied that the requirement of diligence was complied with in the cases of M.A., A.A. and A.K.A. and that the overall length of the applicants' detention was not excessive and did not exceed of what was reasonably required for the purpose pursued.

131. Accordingly, there has been no violation of Article 5 § 1 of the Convention in respect of M.A., A.A. and A.K.A.

VI. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

132. The applicants A.A. and A.K.A. complained that the review of their application for the suspension of the enforcement of the order for their expulsion and for them to be released had not been conducted “speedily” by the domestic court. The applicants M.D. and M.O. also complained that that they had not had access to effective judicial review of their detention. They all relied on Article 5 § 4 of the Convention, which states as follows:

Article 5

“...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful ...”

A. The cases of A.A. and A.K.A.

133. The applicants complained, in their observations, that the review of their requests for the suspension of the enforcement of the expulsion order and for them to be released had not been “speedy”. The Court notes that the applicants did not raise a complaint under Article 5 § 4 of the Convention in their original application, and that it was accordingly not communicated to the Government and the Government did not comment on it.

134. The Court reiterates that it does not find it appropriate to examine any new matters raised after the communication of the application to the Government, as long as they do not constitute a mere elaboration upon the applicant’s original complaints to the Court (see *Rafiq Aliyev v. Azerbaijan*, no. 45875/06, §§ 69-70, 6 December 2011 (with further references)). Given that no complaints in connection with the speediness of judicial review were raised before the communication of the present application, the scope of the present case is limited to the facts as they stood at the time of the communication. In such circumstances, the Court considers that the applicants’ complaint about the length of judicial review falls outside the scope of its examination in the present case (*ibid.*; and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 109, 20 March 2018).

B. The cases of M.D. and M.O.

1. Admissibility

135. The Court observes that the complaint brought by M.D. and M.O. is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the

Convention, and it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. *Merits*

136. The Court observes that the general principles regarding the availability of a mechanism for review of the continued detention have been stated in a number of its previous judgments (see, among others, *Chahal, cited above*, § 112, and *A. and Others v. the United Kingdom*, cited above, § 164).

137. In the judgments in the above-cited cases of *Azimov* and *Kim* (both cited above), the Court held that the applicants, who were detained for the purpose of their expulsion, had had no access to periodic judicial review of their detention, in breach of Article 5 § 4 of the Convention. The Court notes with satisfaction the progress that has been made by the Russian authorities within the framework of the execution of those and other similar judgments (see paragraphs 49-51 above). In particular, in May 2017 the Russian Constitutional Court held that foreign nationals who were detained in Russia pending their expulsion did not benefit from effective judicial protection against arbitrary detention, and thus faced for an uncertain length of time the violation of their right to liberty (see paragraph 52 above). The Constitutional Court instructed the federal legislature to introduce respective amendments to the Russian Code of Administrative Offences; the State Duma adopted in its first hearing the relevant draft law, and furthermore consideration of it is currently pending (see paragraph 51 above).

138. Pending the adoption of that law by the Russian authorities, the Court meanwhile will have regard to its well-established case-law on the matter. The Court has already held that foreign nationals who have been detained pending their expulsion are not able to have the reasons and lawfulness of their detention reviewed by the domestic courts (see, as a recent example, *R.K. v. Russia*, no. 30261/17, §§ 62-65, 8 October 2019).

139. In the present case, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of the complaints under Article 5 § 4 of the Convention. The Court considers that M.D. and M.O. did not benefit from effective judicial review of their detention pending expulsion.

140. Accordingly, there has been a violation of Article 5 § 4 of the Convention in respect of M.D. and M.O.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

141. 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

142. M.D. claimed 15,000 euros (EUR), and M.O. claimed EUR 10,000 in respect of non-pecuniary damage. K.A., Z.A., O.S., M.A., R.K., A.A. and A.K.A. requested the Court to make an award of non-pecuniary damage in accordance with the Court’s case-law.

143. The Government claimed that any award should be made in compliance with the Court’s well-established case-law on the subject.

144. In so far as M.O., K.A., Z.A., O.S., M.A., R.K., A.A. and A.K.A. complained under Articles 2 and/or 3 of the Convention, their forced return to Syria would, if implemented, give rise to a violation of those provisions. Accordingly, no breach of the Convention under that head has yet occurred in the present case. The Court considers that its finding regarding this complaint in itself amounts to adequate just satisfaction for the purposes of Article 41 of the Convention, in respect of M.O., K.A., Z.A., O.S., M.A., R.K., A.A. and A.K.A. (see *Rakhimov v. Russia*, no. 50552/13, § 156, 10 July 2014).

145. The Court further observes that it has found other violations of the Convention in the present case. It accepts that M.D. and M.O. have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to its case-law and to equitable considerations, as required by Article 41 of the Convention, the Court awards M.D. and M.O. each, EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

146. The sums claimed by the applicants in respect of costs and expenses incurred before the domestic courts and the Court are indicated in the Appendix.

147. The Government disputed those claims.

148. 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 were actually and necessarily incurred and are reasonable as to quantum (see, *inter alia*, *Z.A. and Others v. Russia* [GC], nos. 61411/15 and 3 others, § 206, 21 November 2019, and *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 135, 3 October 2014). In the present case, regard being had to the documents in its possession and the above criteria, the Court grants the applicants’ claims in full (as indicated in the Appendix), covering costs under all heads, plus any tax that may be chargeable to the applicants. These sums are to be paid jointly and directly to the representatives’ bank accounts.

C. Default interest

149. 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.

VIII. APPLICATION OF AN INTERIM MEASURE UNDER RULE 39 OF THE RULES OF COURT

150. On the dates indicated in the appendix the Court indicated to the respondent Government, under Rule 39 of the Rules of Court, that the applicants should not be involuntarily removed from Russia to Syria for the duration of the proceedings before the Court. On various dates the Court discontinued the application of interim measure in respect of M.D., A.A.K. and A.A.R. (see the Appendix for details). Interim measures in respect of M.O., K.A., Z.A., O.S., M.A., R.K., A.A. and A.K.A. are still pending at the time of examination of their cases.

151. The Court notes that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

152. The Court notes that M.O., K.A., Z.A., O.S., M.A., R.K., A.A. and A.K.A. are still formally liable to administrative removal pursuant to the final judgments of the Russian courts. Having regard to the finding that their removal to Syria would be in breach of Articles 2 and 3 of the Convention, the Court considers that the indication made to the Government under Rule 39 of the Rules of Court must remain in force until the present judgment becomes final or until further notice.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Decides* to strike the application of M.D. (no. 71321/17) out of its list of cases in so far as it concerns complaints under Articles 2 and 3 of the Convention concerning the risk of death and/or ill-treatment in the event of the applicant's being expelled to Syria from Russia;
3. *Decides* to strike the application of A.A.K. and A.A.R. (no. 31680/18) out of its list of cases;

4. *Declares* admissible the complaints of all applicants (except M.D., A.A.K. and A.A.R.) under Article 2 and Article 3 of the Convention concerning the risk of death and/or ill-treatment in the event of their expulsion to Syria;
5. *Declares* admissible the complaint under Article 5 § 1 of the Convention in respect of M.D., M.O., M.A., A.A. and A.K.A.;
6. *Declares* the complaint under Article 5 § 4 of the Convention in respect of A.A. and A.K.A. being out of scope of its examination and admissible in respect of M.D. and M.O.;
7. *Holds* that there would be a violation of Articles 2 and 3 of the Convention in the event of the expulsion of M.O., K.A., Z.A., O.S., M.A., R.K., A.A. and A.K.A. to Syria;
8. *Holds* that there is no need to examine the complaint under Article 13 of the Convention in respect of K.A., Z.A., O.S., R.K., A.A. and A.K.A.;
9. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of M.D. and M.O. and no violation of that Article in respect of M.A., A.A. and A.K.A.;
10. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of M.D. and M.O.;
11. *Holds*
 - (a) that the respondent State is to pay, 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) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, to M.D. and M.O. each, in respect of non-pecuniary damage;
 - (ii) the amounts indicated under “Costs and expenses granted” in the Appendix, to each of the concerned applicants, respectively, plus any tax that may be chargeable to those applicants, in respect of costs and expenses; in application no. 25735/18 this amount is to be paid jointly and directly to the applicant’s representatives’ bank account¹;

¹ Rectified on 1 February 2022: “in application no. 25735/18 this amount is to be paid jointly and directly to the applicant’s representatives’ bank account” has been added.

- (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;

12. *Dismisses* the remainder of the applicants' claim for just satisfaction;

13. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to expel M.O., K.A., Z.A., O.S., M.A., R.K., A.A. and A.K.A. until such time as the present judgment becomes final or until further order.

Done in English, and notified in writing on 14 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Paul Lemmens
President

APPENDIX

List of cases:

No.	Application no. Case name Lodged on Applicant Year and place of Birth Place of Residence Nationality Represented by	Detention	Removal Proceedings	Refugee status / Temporary asylum proceedings	Other relevant information	Costs and expenses granted
1.	71321/17 <i>M.D. v. Russia</i> 02/10/2017 1989 Sweden Syrian Roza Saidovna MAGOMEDOVA	Detention pending expulsion 08 August 2017 – 10 December 2019 (2 years, 4 months, 2 days) 08 August 2017 – arrested by police and detention ordered by the Taganskiy District Court of Moscow; 18 September 2017 the Moscow City Court upheld the order of expulsion and detention. 9 September 2019 – application for release from detention refused by the Taganskiy District Court.	Not applicable as the applicant's complaints under Articles 2 and 3 were struck out (see paragraphs 55-56 above)		3 October 2017 – interim measure applied preventing the applicant's expulsion to Syria On 8 November 2019 the applicant informed the Court that on unspecified date, he was granted refugee status in Sweden. 14 November 2019 the Court lifted the interim measure in the light of the information submitted by the applicant.	EUR 2,200 (two thousand two hundred euros)

M.D. AND OTHERS v. RUSSIA JUDGMENT

No.	Application no. Case name Lodged on Applicant Year and place of Birth Place of Residence Nationality Represented by	Detention	Removal Proceedings	Refugee status / Temporary asylum proceedings	Other relevant information	Costs and expenses granted
					On 10 December 2019 the applicant settled in Sweden.	
2.	25735/18 <i>M.O. v. Russia</i> 04/06/2018 1993, Douma Balashikha Syrian Daria Vladimirovna TRENINA Eleonora DAVIDYAN Kirill ZHARINOV	Detention pending expulsion 15 March 2018 – 17 December 2020 (2 years, 9 months, 4 days) 15 and 16 March 2018 – arrested, detention ordered by the Ostankinskiy District Court of Moscow; 14 May 2018 – the Moscow City Court upheld the order of detention. 12 July 2018 – the Ostankinskiy District Court of Moscow ordered the applicant’s detention “for the duration of the proceedings before the Court”.	Expulsion Proceedings 19 April 2016 – deportation order issued by the migration service in Smolensk; 16 March 2018 – expulsion order issued by the Ostankinskiy District Court of Moscow; 14 May 2018 – expulsion order upheld by the Moscow City Court. 12 July 2018 – the Ostankinskiy District Court of Moscow suspended enforcement of order of expulsion, at the request of bailiff, owing to indication of interim measure by the Court.	Temporary asylum proceedings 5 February 2014 – request for temporary asylum granted on “humanitarian grounds”; 10 June 2015 – the applicant requested to cancel his temporary asylum status because he intended to relocate to Turkey. 17 June 2015 request to cancel temporary asylum status granted; the applicant did not leave Russia. Between 24 August 2016 and 24 August 2017 held temporary asylum granted by the MVD of Smolensk Region, did not apply for renewal owing to “the loss of certificate and inability to travel to Smolensk for renewal in person (required), without a valid ID”.	4 June 2018 – interim measure preventing the applicant’s removal applied.	EUR 4,980 (four thousand nine hundred and eighty euros)

M.D. AND OTHERS v. RUSSIA JUDGMENT

No.	Application no. Case name Lodged on Applicant Year and place of Birth Place of Residence Nationality Represented by	Detention	Removal Proceedings	Refugee status / Temporary asylum proceedings	Other relevant information	Costs and expenses granted
		17 December 2020 – the Ostankinskiy District Court of Moscow ordered the applicant's release.	17 December 2020 – the Ostankinskiy District Court of Moscow ordered the applicant's release but did not cancel the order of expulsion.	16 May 2018 – lodged new application for temporary asylum with the MVD of Moscow; 10 September 2018 – refusal of temporary asylum by the MVD of Moscow; 27 November 2018 – appeal refused by the MVD of Russia. 25 April 2019 – refusal of temporary asylum upheld by the Basmannyy District Court of Moscow; 20 November 2019 – refusal of temporary asylum confirmed by the Moscow City Court. Refugee status proceedings On 15 December 2015 the Ministry of Interior of Belarus refused the applicant's application for refugee status. 29 May 2018 – application for refugee		

M.D. AND OTHERS v. RUSSIA JUDGMENT

No.	Application no. Case name Lodged on Applicant Year and place of Birth Place of Residence Nationality Represented by	Detention	Removal Proceedings	Refugee status / Temporary asylum proceedings	Other relevant information	Costs and expenses granted
				status in Russia lodged.		
3.	31680/18 A.A.K. and A.A.R. v. Russia 09/07/2018 1999, Aleppo unknown Syrian 1998, Aleppo unknown Syrian Illarion Georgiyevich VASILYEV	Not applicable – application struck out (see paragraphs 57-59 above)			6 and 15 July 2018 -interim measure applied by the Court 6 August 2018 – the Government informed that the applicants’ application for temporary asylum is pending and should be examined before 26 September 2018 In this regard, the interim measure was lifted on 4 September 2018 in respect of both applicants.	None, application struck out of the list of cases.
4.	58858/18 K.A. v. Russia 17/12/2018 1982, Aleppo Ivanovo Syrian Irina Yevgenyevna	Detention pending expulsion 28 November 2018 – the Frunzenskiy District court of Ivanovo ordered the applicant’s detention; 23 January 2019 the Frunzenskiy	Removal proceedings 28 November 2018 – the Frunzenskiy District court of Ivanovo ordered the applicant’s removal; the applicant’s detention for two	Refugee status proceedings 16 December 2015 refusal to grant refugee status issued by the migration service. No appeal filed. 10 October 2018 – new application for a refugee status lodged.	17 December 2018 – interim measure applied preventing the applicant’s expulsion to Syria.	34,197 Russian roubles (RUB) (EUR 450 – four hundred and fifty euros)

M.D. AND OTHERS v. RUSSIA JUDGMENT

No.	Application no. Case name Lodged on Applicant Year and place of Birth Place of Residence Nationality Represented by	Detention	Removal Proceedings	Refugee status / Temporary asylum proceedings	Other relevant information	Costs and expenses granted
	SOKOLOVA	District court of Ivanovo extended the term of the applicant's detention by two months; 24 January 2019 the Frunzenskiy District court of Ivanovo granted suspension of expulsion but refused the application for release; 30 January 2019 – the Ivanovo Regional Court quashed the above judgment and ordered the applicant's release.	months in CVSIG; 6 December 2018 – the Ivanovo Regional Court upheld the judgment.	Outcome/progress unknown. Temporary asylum proceedings 24 March 2016 temporary asylum granted for one year, renewal refused by the MVD of Ivanovo Region on 21 March 2017; 3 May 2017 the Oktyabrskiy District Court of Ivanovo ordered the MVD of Ivanovo Region to re-examine the applicant's application; 3 August 2017 – the MVD of Ivanovo Region refused temporary asylum; 7 September 2017 – the Oktyabrskiy District Court of Ivanovo upheld the refusal to grant temporary asylum; 9 November 2017 – the Ivanovo Regional Court upheld refusal;		

M.D. AND OTHERS v. RUSSIA JUDGMENT

No.	Application no. Case name Lodged on Applicant Year and place of Birth Place of Residence Nationality Represented by	Detention	Removal Proceedings	Refugee status / Temporary asylum proceedings	Other relevant information	Costs and expenses granted
				13 May 2019 – the applicant applied for temporary asylum; 13 August 2019 – the MVD of Ivanovo Region refused the applicant’s application owing to “stabilisation of security situation in Syria” 10 October 2019 Frunzenskiy District Court of Ivanovo upheld the refusal; 16 January 2020 the Ivanovo Regional Court confirmed.		
5.	60000/18 Z.A. v. Russia 26/12/2018 1985,Aleppo Ivanovo Syrian Irina Yevgenyevna SOKOLOVA	Detention pending expulsion 27 November 2018 – arrested; 28 November 2018 – the Frunzenskiy District Court of Ivanovo ordered the applicant’s detention. 30 January 2019 – the Ivanovo Regional Court ordered the applicant’s release.	Expulsion proceedings 28 November 2018 – the Frunzenskiy District Court of Ivanovo ordered the applicant’s administrative removal and detention pending expulsion; 6 December 2018 – the Ivanovskiy Regional Court confirmed removal.	Refugee status proceedings 28 December 2015 – refugee status refused by the MVD of Ivanovo Region. No appeal brought. Temporary Asylum Proceedings 12 April 2016 – temporary asylum granted for one year by the MVD of Ivanovo Region;	27 December 2018 – interim measure preventing the applicant’s expulsion to Syria granted for the duration of the proceedings before the Court.	RUB 29,284 (EUR 400 – four hundred euros)

M.D. AND OTHERS v. RUSSIA JUDGMENT

No.	Application no. Case name Lodged on Applicant Year and place of Birth Place of Residence Nationality Represented by	Detention	Removal Proceedings	Refugee status / Temporary asylum proceedings	Other relevant information	Costs and expenses granted
				31 March 2017 – refusal to renew; 4 May 2017 – the Oktyabrskiy District Court of Ivanovo confirmed the refusal of temporary asylum; 18 July 2017 – the Ivanovo Regional Court confirmed on appeal. 10 October 2018 – new application sent by post to the MVD of Ivanovo Region.		
6.	60001/18 O.S. v. Russia 26/12/2018 1987, Aleppo Ivanovo Syrian Irina Yevgenyevna SOKOLOVA	Detention pending expulsion 27 November 2018 – arrested, 28 November 2018 – detention ordered by the Frunzenskiy District Court ordered the applicant’s detention. 30 January 2019 – the Ivanovo Regional Court released the applicant.	Expulsion proceedings 28 November 2018 – the Frunzenskiy District Court of Ivanovo ordered the applicant’s administrative expulsion and detention pending expulsion; 6 December 2018 – the Ivanovo Regional Court confirmed the judgment.	Refugee status proceedings April 2018 – applied for status of refugee with the MVD of Ivanovo Region; 17 July 2018 – refusal to grant. No appeal brought because, according to the applicant, “refugee status is rarely granted in Russia ... According to the statistics of the MVD, only 598 persons were registered as refugees in 2018 ...” Temporary Asylum Proceedings	27 December 2018 – interim measure granted for the duration of the proceedings before the Court	RUB 4,284 (EUR 50 – fifty euros)

M.D. AND OTHERS v. RUSSIA JUDGMENT

No.	Application no. Case name Lodged on Applicant Year and place of Birth Place of Residence Nationality Represented by	Detention	Removal Proceedings	Refugee status / Temporary asylum proceedings	Other relevant information	Costs and expenses granted
				15 January 2019 – applied for temporary asylum; 25 February 2019 – the MVD of Ivanovo Region refused the applicant's application.		
7.	16868/19 M.A. v. Russia 28/03/2019 1981, Idlib Moscow Syrian Irina Yevgenyevna SOKOLOVA	Detention pending expulsion 11 March 2019 – 11 May 2019 (two months): 11 March 2019 the Frunzenskiy District Court of Ivanovo ordered the applicant's detention; 5 April 2019 the Frunzenskiy District Court of Ivanovo suspended the enforcement of expulsion but confirmed the order of the applicant's detention; 11 May 2019 – the applicant was	Expulsion proceedings 11 March 2019 – the Frunzenskiy District Court of Ivanovo ordered the applicant's expulsion and detention pending expulsion; 19 March 2019 – the Ivanovo Regional Court confirmed. 5 April 2019 – the Frunzenskiy District Court of Ivanovo ordered suspension of the expulsion pending examination of the complaint by the ECHR;	Temporary asylum proceedings Temporary asylum between 2015-2017, renewal refused. 11 March 2019 – applied for temporary asylum in the MVD of Ivanovo Region, was not interviewed, was arrested.	28 March 2019 – interim measure preventing the applicant's expulsion to Syria granted for the duration of the proceedings before the Court.	RUB 17,803 (EUR 200 – two hundred euros)

M.D. AND OTHERS v. RUSSIA JUDGMENT

No.	Application no. Case name Lodged on Applicant Year and place of Birth Place of Residence Nationality Represented by	Detention	Removal Proceedings	Refugee status / Temporary asylum proceedings	Other relevant information	Costs and expenses granted
		released from detention, owing to the expiry of the term of his detention.	12 April 2019 – the Ivanovo Regional Court confirmed.			
8.	41174/19 R.K. v. Russia 05/08/2019 1980, Aleppo Ivanovo Syrian Irina Yevgenyevna SOKOLOVA	Detention pending expulsion 10 June – 9 August 2019 (2 months): 10 June 2019 – arrested by the police; 11 June 2019 -the Leninskiy District Court of Ivanovo ordered the applicant's detention pending expulsion; 9 August 2019 – the Leninskiy District Court of Ivanovo released the applicant, owing to the application of the interim measure by the Court.	Removal proceedings 3 November 2017 – the Frunzenskiy District Court of Ivanovo found the applicant guilty of migration regulations and fined him (without penalty of expulsion). 11 June 2019 – the Leninskiy District Court of Ivanovo ordered his expulsion; 20 June 2019 – the Ivanovo Regional Court confirmed the order of expulsion and detention.	Temporary asylum proceedings 13 June 2013 – 13 July 2017 – held temporary asylum status, did not seek renewal, for unspecified reasons. 19 February 2019 – refusal of temporary asylum status by the MVD of Ivanovo Region, no appeal lodged because in the applicant's view, "no Syrian has received temporary asylum [in Russia] since 2017". 6 September 2019 – reapplied for temporary asylum; application refused; 20 February 2020 – the Frunzenskiy District Court of Ivanovo confirmed the refusal.	5 August 2019 – the Court applied interim measure preventing the applicant's expulsion to Syria for the duration of the proceedings before the Court.	None (covered by UNHCR and NGO Memorial)
9.	41176/19 A.A. v. Russia	Detention pending expulsion	Removal proceedings 2013 – found guilty of	Refugee status proceedings 30 September 2014 – refusal to grant	5 August 2019 – the Court applied the interim measure	None (covered by UNHCR)

M.D. AND OTHERS v. RUSSIA JUDGMENT

No.	Application no. Case name Lodged on Applicant Year and place of Birth Place of Residence Nationality Represented by	Detention	Removal Proceedings	Refugee status / Temporary asylum proceedings	Other relevant information	Costs and expenses granted
	05/08/2019 1984, Aleppo Ivanovo Syrian Irina Yevgenyevna SOKOLOVA	25 July – 30 August 2019 (1 month and five days): 25 July 2019 – arrested, detention ordered by the Frunzenskiy District Court of Ivanovo; 8 August 2019 – the applicant requested to suspend expulsion proceedings and be released; the hearing was rescheduled twice owing to “absence of case material” at the court. 30 August 2019 – the Frunzenskiy District Court of Ivanovo granted the applicant’s application of 8 August 2019 to suspend expulsion proceedings and release the applicant, owing to the application of the interim measure by the Court.	breaching immigration regulations, fined and administrative expulsion ordered; 25 July 2019 – the Frunzenskiy District court of Ivanovo, found the applicant guilty of breaching migration regulations, ordered his expulsion and detention; 1 August 2019 – the Ivanovo Regional Court confirmed the judgment on appeal.	refugee status issued by the MVD of Moscow; 5 December 2016 – the applicant’s application for refugee status refused by the MVD of Ivanovo Region; Temporary asylum proceedings 27 January 2015 – refusal of temporary asylum issued by the MVD of Moscow Region 14 April 2015 – refusal confirmed by the MVD of Russia; 3 March 2017 the applicant’s request of temporary asylum refused by the MVD of Ivanovo Region; 25 April 2017 the Oktyabrskiy District Court of Ivanovo dismissed the applicant’s appeal; 15 June and 22 December 2017 the Ivanovo Regional Court confirmed on appeal and cassation appeal;	preventing expulsion of the applicant to Syria for the duration of the proceedings before the Court.	and NGO Memorial)

M.D. AND OTHERS v. RUSSIA JUDGMENT

No.	Application no. Case name Lodged on Applicant Year and place of Birth Place of Residence Nationality Represented by	Detention	Removal Proceedings	Refugee status / Temporary asylum proceedings	Other relevant information	Costs and expenses granted
				28 May 2018 – the Supreme Court of Russia confirmed the refusal in cassation appeal. 5 December 2019 – refusal of temporary asylum issued by the MVD of Ivanovo Region; 28 February 2020 – the Frunzenskiy District Court of Ivanovo upheld the refusal; 23 July 2020 – the Ivanov Regional Court confirmed. 17 September 2020 – refusal to grant temporary asylum by the MVD of Ivanovo Region; 25 November 2020 - the Frunzenskiy District Court of Ivanovo upheld the refusal.		
10.	41179/19 A.K.A. v. Russia 05/08/2019	Detention pending expulsion 4 July – 19 August 2019 (one	Removal proceedings 17 January 2019 -the	Refugee status proceedings 5 March 2015 – the FMS Ivanovo refused to grant refugee status to the	5 August 2019 – the Court applied interim measure preventing the applicant's	None (covered by UNHCR and

M.D. AND OTHERS v. RUSSIA JUDGMENT

No.	Application no. Case name Lodged on Applicant Year and place of Birth Place of Residence Nationality Represented by	Detention	Removal Proceedings	Refugee status / Temporary asylum proceedings	Other relevant information	Costs and expenses granted
	1978 Ivanovo Syrian Irina Yevgenyevna SOKOLOVA	month and fifteen days); 4 July 2019 – arrested by the police; 5 July 2019 – the Oktyabrskiy District Court of Ivanovo ordered the applicant’s detention pending expulsion owing to his failure to leave of his own. 18 July 2019 – the Ivanovo Regional Court confirmed. 19 August 2019 – the Oktyabrskiy District Court of Ivanovo granted the applicant’s application of 13 August 2019 to suspend expulsion proceedings and release the applicant, owing to the application of the interim measure by the Court.	Frunzenskiy District Court of Ivanovo found the applicant guilty of breaching migration regulations, ordered his expulsion by way of “controlled voluntary departure”; 29 January 2019 – the Ivanovo Regional Court confirmed. 5 July 2019 – the Oktyabrskiy District Court found the applicant guilty of failure to abide by the court order of “controlled voluntary departure”; his expulsion and detention pending expulsion was ordered; 18 July 2018 – the Ivanovo Regional Court confirmed.	applicant, no appeal brought. Temporary asylum proceedings 10 June 2015 – 10 June 2017 – held temporary asylum status; 2 June 2017 – the MVD of Ivanovo Region refused to extend temporary asylum status; 31 August 2017 – the Oktyabrskiy District Court of Ivanovo confirmed the refusal to prolong temporary asylum status; 5 December 2017 – the Ivanovo Regional Court confirmed. 19 February 2019 – refusal of temporary asylum status issued by the MVD of Ivanovo Region, no appeal lodged because in the applicant’s view, “no Syrian has received temporary asylum [in Russia] since 2017.”	expulsion to Syria for the duration of the proceedings before the Court.	NGO Memorial)