June 2016
This Factsheet does not bind the Court and is not exhaustive

Migrants in detention

"…[T]he confinement of aliens, accompanied by suitable safeguards for the persons concerned, is acceptable only in order to enable States to prevent unlawful immigration while complying with their international obligations, in particular under the 1951 Geneva Convention relating to the Status of Refugees and the European Convention on Human Rights. States' legitimate concern to foil the increasingly frequent attempts to circumvent immigration restrictions must not deprive asylum seekers of the protection afforded by these conventions … Where the [European] Court [of Human Rights] is called upon to examine the conformity of the manner and method of the execution of the measure with the provisions of the [European] Convention [on Human Rights], it must look at the particular situations of the persons concerned … The States must have particular regard to Article 3 of the Convention, which enshrines one of the most fundamental values of democratic societies and prohibits in absolute terms torture and inhuman or degrading treatment or punishment irrespective of the circumstances and of the victim's conduct …" (*M.S.S. v. Belgium and Greece (application no. 30696/09)*, Grand Chamber judgment of 21 January 2011, §§ 216-218).

Deprivation of liberty / Restriction on the freedom of movement

Amuur v. France

25 June 1996

The applicants, Somali nationals – three brothers and a sister – born between 1970 and 1975, arrived in France via Syria in March 1992. They asserted that, after the overthrow of the regime of President Siyad Barr, their lives were in danger in Somalia. They were not admitted onto French territory on the ground that their passports had been falsified. They complained that they had been held in the transit zone at Paris-Orly Airport for 20 days before being sent back to Syria.

The European Court of Human Rights held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the European Convention of Human Rights. It found that Article 5 of the Convention was applicable, as holding the applicants in the transit zone had been equivalent in practice to a deprivation of liberty. That deprivation of liberty had been unlawful, as the applicable provisions of French law in force at the time had not allowed the ordinary courts to review the conditions under which aliens were held or to impose a limit on the duration of their detention. Nor had these provisions provided for legal, humanitarian and social assistance.

Shamsa v. Poland

27 November 2003

The applicants, two brothers, are Libyan nationals who were arrested in Warsaw with no valid identity papers or residence permit. Their expulsion within 90 days was ordered and they were placed in detention pending expulsion. The authorities made three attempts to execute the expulsion order, but to no avail, partly because of the brothers' refusal to cooperate. Under Polish law an expulsion order must be enforced within 90 days, failing which the person concerned must be released. The applicants' complained that they had been held by the Warsaw airport border police, with a view to their

expulsion, in a transit zone after the date on which they should have been released under Polish law, namely on 25 August 1997. However, the authorities had continued to enforce the expulsion order, with no legal basis, after the statutory time-limit had expired and until 3 October 1997 when the applicants had been taken to hospital by the police for an examination and left.
The Court pointed out that detention for a period of several days which has not been ordered by a court, a judge or any other person authorised by law to exercise judicial power cannot be considered "lawful" within the meaning of Article 5 § 1 (right to liberty and security) of the Convention. Considering that the applicants' detention between 25 August and 3 October 1997 had not been "prescribed by law" or "lawful", the Court held that that there had been a **violation of Article 5 § 1** of the Convention.

Riad and Idiab v. Belgium (see also below, under "Detention conditions")

24 January 2008
The applicants, Palestinian nationals, complained in particular about the conditions in which they had been detained in the transit zone of Brussels National Airport following their unlawful entry into Belgian territory.
The Court held that the applicants' detention in the transit zone had not been lawful, in **violation of Article 5 § 1** (right to liberty and security) of the Convention. It also concluded that the fact of detaining the applicants for more than ten days in the premises in question had amounted to inhuman and degrading treatment, in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

Nolan and K. v. Russia

12 May 2009
The applicant, an American national, complained that on 2 June 2002, upon his return from a short absence abroad, he had been locked in a holding cell for nine hours at Sheremetyevo Airport in Moscow and, although he had a valid Russian visa, he had not been allowed to re-enter Russia.
The Court found that the conditions of the applicant's overnight stay in the Moscow Airport transit hall had been equivalent in practice to a deprivation of liberty, for which the Russian authorities had been responsible. Given the lack of accessibility and foreseeability of the Border Crossing Guidelines, the Court concluded that the national system had failed to protect the applicant from arbitrary deprivation of liberty, in **violation of Article 5 § 1** (right to liberty and security) of the Convention.

Application pending before the Grand Chamber

Khlaifia and Others v. Italy (application no. 16483/12)

1 September 2015 (Chamber judgment) – the case was referred to the Grand Chamber in February 2016
This case concerns the detention in a reception centre on Lampedusa and subsequently on ships moored in Palermo harbour, as well as the repatriation to Tunisia, of clandestine migrants who had landed on the Italian coast in 2011 during the events linked to the "Arab Spring".
In its Chamber judgment of 1 September 2015 the Court held, unanimously, that there had been a violation of Article 5 §§ 1, 2 and 4 (right to liberty and security, right to be informed promptly of the charge against the applicants, and right to a speedy decision by a court on the lawfulness of detention) of the Convention, finding that the applicants had been deprived of their liberty without a sufficient legal basis, that they had not been duly informed of the reasons for the measure, and that they had been unable to challenge it. The Chamber further held, unanimously, that there had been no violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention in respect of the conditions of detention on board the ships and, by five votes to two, that there had been a violation of Article 3 in respect of the conditions of detention in the Contrada Imbriacola first reception centre. Concerning the conditions of the applicants' detention in that centre, the Chamber took account of the exceptional humanitarian crisis facing Italy on the island of Lampedusa in 2011 in the wake of the Arab Spring (55,298

migrants had landed around the time the applicants had been present there). The Chamber nonetheless concluded that the conditions in which the applicants were held had diminished their human dignity, although that had not been the case on board the ships moored in Palermo harbour. The Chamber also held, by five votes to two, that there had been a violation of Article 4 (prohibition of collective expulsion of aliens) of Protocol No. 4 to the Convention, taking the view that the applicants had been subjected to a collective expulsion, as the refusal-of-entry decisions issued to them had not referred to their individual situations. The Chamber found in particular that an identification procedure was insufficient to rule out the existence of collective expulsion. It also noted that at the relevant time a large number of Tunisians had been removed by means of such fast-track procedures. Lastly, the Court held, by five votes to two, that there had been a violation of Article 13 (right to an effective remedy) of the Convention taken in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4.
On 1 February 2016 the case was referred to the Grand Chamber at the request of the Italian Government.
On 22 June 2016 the Grand Chamber held a hearing in the case.

Detention conditions

Dougoz v. Greece

6 June 2001

The applicant, a Syrian national, was placed in police detention in Greece pending his expulsion to Syria. He was held for several months at the Drapetsona police station, where, he alleged, he was confined in an overcrowded and dirty cell with insufficient sanitary and sleeping facilities, scarce hot water, no fresh air or natural daylight and no yard in which to exercise. In April 1998, he was transferred to the police headquarters where, he claimed, conditions were similar to those in the Drapetsona detention centre, although there was natural light and air in the cells and adequate hot water. He remained there until 3 December 1998, the date of his expulsion to Syria.
The Court held that the conditions of detention of the applicant in the police headquarters and the Drapetsona detention centre, in particular the serious overcrowding and absence of sleeping facilities, combined with the inordinate length of his detention, had amounted to degrading treatment **contrary to Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

Riad and Idiab v. Belgium (see also above, under "Deprivation of liberty")

24 January 2008

The applicants, Palestinian nationals, complained in particular about the conditions in which they had been detained in the transit zone of Brussels National Airport following their unlawful entry into Belgian territory.
The Court considered that the fact of detaining the applicants for more than ten days in the transit zone had amounted to inhuman and degrading treatment, in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. By its very nature, it was a place intended to receive people for extremely short periods of time. The transit zone, the nature of which could arouse in detainees a feeling of solitude, had no external area for walking or taking physical exercise, no internal catering facilities, and no radio or television to ensure contact with the outside world; it was in no way adapted to the requirements of a stay of more than ten days.

S.D. v. Greece (application no. 53541/07)

11 June 2009

The applicant, a Turkish national, was detained for two months in a holding facility at a border guard station in Greece after entering the country irregularly. During his detention, he was not allowed to go outside or make telephone calls, and had no access to blankets, clean sheets or hot water.

The Court concluded that the applicant, while an asylum seeker, had experienced conditions of detention that amounted to degrading treatment **in violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. He had spent two months in a prefabricated cabin, without being allowed outdoors and without access to a telephone, blankets or clean sheets or sufficient hygiene products. He was subsequently held in Patrou Rali and confined to his cell for six days, in unacceptable conditions as described by the European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT) following their visit in February 2007.

A.A. v. Greece (no. 12186/08)

22 July 2010

The applicant, a Palestinian national, was arrested by the maritime police in Greek territorial waters after fleeing the refugee camp where he had been living in Lebanon. The Samos police authorities took him into custody and an order was made to return him to his country of origin. He complained about the squalid conditions in which he was held at the Samos detention centre: the dirt-encrusted floor on which the detainees would eat and, in most cases, sleep; piles of rubbish in the corridors; insufficient food prepared in unhygienic conditions; lice and skin diseases; windows barred by wooden planks; combined toilet and shower with no hot water; access to a small courtyard only at the whim of the guards; impossibility of making telephone calls; and, overcrowding (the centre catered for 100 but housed 140-190 people).

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, on account both of the living conditions in the detention centre, entailing degrading treatment of the applicant, and of the lack of diligence on the part of the authorities in providing him with appropriate medical assistance. The applicant's allegations concerning the state of the centre where he had been held for three months were corroborated by a number of reports by international organisations and Greek NGOs. They had indicated the following problems: overcrowding, extremely cramped and dirty conditions, bathroom facilities shared by men and women and in a state of disrepair, bathroom area immersed in 1 cm of water, no possibility of hospital treatment, defective sewer system, nauseating smells, infectious skin diseases and violence during arrests.

Abdolkhani and Karimnia v. Turkey (no. 2)

27 July 2010

The applicants, two Iranian nationals, entered Turkey in June 2008 as refugees under the mandate of the United Nations High Commissioner for Refugees (UNHCR). They were arrested at a road checkpoint as their passports were found to be false and were placed in detention at Hasköy police headquarters.

While the Court could not check the veracity of all the applicants' allegations – as a result of the failure of the Turkish Government to submit documentary evidence – the length of detention and the overcrowding were sufficient to conclude that the conditions of detention at Hasköy Police Headquarters had amounted to degrading treatment **contrary to Article 3** (prohibition of inhuman or degrading treatment) of the Convention. The applicants had been held in the basement of the police headquarters for three months. Even assuming that the Turkish Government's estimate of 42 detainees in the facility was accurate, holding that many people in 70 m², even for a duration as short as one day, constituted severe overcrowding.

M.S.S. v. Belgium and Greece (no. 30696/09)

21 January 2011 (Grand Chamber)

The applicant, an Afghan national, entered the European Union via Greece. He subsequently arrived in Belgium, where he applied for asylum. By virtue of the "Dublin II" Regulation[1] he was transferred back to Greece in June 2009. On arriving at Athens

[1]. The "Dublin system" aims at determining which EU Member State is responsible for examining an asylum application lodged in one of the Member States by a third-country national. See also the factsheet on "'Dublin' cases".

airport, he was immediately placed in detention in an adjacent building, where, according to his reports, he was locked up in a small space with 20 other detainees, access to the toilets was restricted, detainees were not allowed out into the open air, were given very little to eat and had to sleep on dirty mattresses or on the bare floor.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention by Greece because of the applicant's detention conditions. Despite the fact that he had been kept in detention for a relatively short period of time, the Court considered that the conditions of detention experienced by the applicant in the holding centre had been unacceptable. It found that, taken together, the feeling of arbitrariness, inferiority and anxiety he must have experienced, as well as the profound effect such detention conditions indubitably had on a person's dignity, had constituted a degrading treatment. In addition, as an asylum seeker the applicant was particularly vulnerable, because of his migration and the traumatic experiences he was likely to have endured.
In this case the Court also held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention by Greece because of the applicant's living conditions in Greece; a **violation of Article 13** (right to an effective remedy) **taken together with Article 3** by Greece because of the deficiencies in the asylum procedure followed in the applicant's case; a **violation of Article 3** by Belgium both because of having exposed the applicant to risks linked to the deficiencies in the asylum procedure in Greece and because of having exposed him to detention and living conditions in Greece that were in breach of Article 3; and a **violation of Article 13 taken together with Article 3** by Belgium because of the lack of an effective remedy against the applicant's expulsion order.

R.U. v. Greece (no. 2237/08) (see also below, under "Challenging the lawfulness of detention")

7 June 2011

This case concerned the principle and the conditions of keeping in detention in Greece a Turkish asylum seeker of Kurdish origin and the conduct of the asylum procedure.
The applicant's complaint about his conditions of detention was the same and concerned the same period as the one examined by the Court in the case of *S.D. v. Greece* (see above), in which the Court had held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention on account of the general conditions of detention prevailing in the Soufli and Petrou Ralli detention centres. It came to the same conclusion in the case of *R.U.*, that there had been a **violation of Article 3** of the Convention. As there were no remedies in Greece enabling the applicant to complain about his conditions of detention, the Court further held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention.

A.F. v. Greece (no. 53709/11)

13 June 2013

The applicant, an Iranian national, entered Greece and was arrested by the police authorities at the Feres border post. The authorities allegedly refused to register his request for political asylum. He was held in the premises of the Feres border police from October 2010 to January 2011. The applicant complained of the conditions in which he had been detained.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention due to the cramped conditions in which the applicant had been held. It noted the reports of international organisations on the conditions of detention at the Feres border post, all of which highlighted the severe lack of space. According to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, on the date of his visit in October 2010 there were 123 inmates in a space for 28, while according to ProAsyl in December 2010, there were 110 inmates in one dormitory, and the European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT) also noted that, in January 2011, each detainee had approximately 1 m² or less in some dorms.

Horshill v. Greece

1 August 2013

The applicant, a foreign national who was due to be deported, was held successively for 15 days in two police stations after having applied for asylum. He complained in particular about the conditions of detention in the premises of the two police stations in question.

The Court considered that the applicant had been subjected to degrading treatment which had entailed a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. He had been held for fifteen days in two police stations. For four days he had suffered from conditions of overcrowding. The cells in one of the police stations had been located in the basement and were thus devoid of natural light. In both police stations, the cells did not have adjoining showers and the detainees had been unable to walk outside or to take part in physical activity. The Court reiterated that police stations were not appropriate premises for the detention of persons who were awaiting the application of an administrative measure.

Sakir v. Greece

24 mars 2016[2]

This case concerned an assault against the applicant in 2009 in the centre of Athens which led to his hospitalisation, and also the conditions in which he was detained in a police station after his release from hospital.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) **and a violation of Article 13** (right to an effective remedy) of the Convention with regard to the applicant's conditions of detention in the Aghios Panteleïmon police station in Athens. It found in particular that the police had not sought to ascertain from the hospital whether the applicant's state of health allowed him to be placed in detention. It noted that, in spite of specific instructions from his doctors, there had been shortcomings in the manner in which his medical condition and state of vulnerability were taken into account. Moreover, no effective remedy had been available to enable the applicant to complain about the conditions of his detention. In this case the Court also held that there had been a violation of Article 3 of the Convention with regard to the conduct of the investigation carried out following the assault.

Application pending before the Grand Chamber

Khlaifia and Others v. Italy (application no. 16483/12)

1 September 2015 (Chamber judgment) – the case was referred to the Grand Chamber in February 2016

See above under "Deprivation of liberty".

Migrants with specific needs (children, persons with disabilities, women, etc.)

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium

12 October 2006

This case concerned the nearly two months long detention at a transit centre for adults run by the Aliens Office near Brussels airport of a five-year old Congolese national travelling alone to join her mother who had obtained refugee status in Canada, and her subsequent removal to her country of origin.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the conditions of the child's detention. The child, who was only five years old, had been detained for almost two months in a centre that had initially been intended for adults, even though she was unaccompanied by her parents and no one had been assigned to look after her. No measures had further been taken to ensure that she received proper counseling and educational assistance from a qualified person specially assigned to her. Indeed, the

[2]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

Belgian Government acknowledged that the place of detention was not adapted to her needs and that there had been no adequate structures in place at that time. Owing to her very young age, the fact that she was an illegal alien in a foreign land, that she was unaccompanied by her family from whom she had become separated and that she had been left to her own devices, the child was in an extremely vulnerable situation. The Court found that the measures taken by the Belgian authorities had been far from adequate in view of their obligation to take care of the child and the array of possibilities at their disposal. The conditions of detention had caused the child considerable distress. The authorities who had detained her could not have been unaware of the serious psychological effects that her detention in such conditions would have on her.

Muskhadzhiyeva and Others v. Belgium

19 January 2010

The applicants, a mother and her four children (respectively aged seven months, three and a half years, five and seven years at the material time), are Russian nationals of Chechen origin. Having fled from Grozny in Chechnya they arrived in Belgium, where they sought asylum. As they had spent some time in Poland, the Polish authorities agreed to take charge of them, by virtue of the "Dublin II" Regulation[3]. The Belgian authorities accordingly, on 21 December 2006, issued a decision refusing them permission to stay in Belgium and ordering them to leave the country. On 22 December 2006 they were placed in a closed transit centre run by the Aliens Office near Brussels airport, where aliens (single adults or families) were held pending their removal from the country.

The Court found that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the detention of the four children, recalling that the extreme vulnerability of a child was a paramount consideration and took precedence over the status as an illegal alien. It was true that in the present case the four children had not been separated from their mother, but that did not suffice to exempt the authorities from their obligation to protect the children. They had been held for over a month in a closed centre which was not designed to house children, as confirmed by several reports cited by the Court. The Court also referred to the concern expressed by independent doctors about the children's state of health.

Rahimi v. Greece (see also below, under "Challenging the lawfulness of detention")

5 April 2011

This case concerned in particular the conditions in which a minor, a migrant from Afghanistan, who had entered Greece illegally, was held in the Pagani detention centre on the island of Lesbos and subsequently released with a view to his expulsion.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the applicant's conditions of detention in the Pagani detention centre. In view of the failure to take into account the applicant's extremely vulnerable individual situation and the conditions of detention in the Pagani centre, which were so serious as to be an affront to human dignity, the Court held that the applicant had been subjected to degrading treatment, despite the fact that his detention had lasted for only two days.

Popov v. France

19 January 2012

The applicants, a married couple, Kazakhstan nationals accompanied by their two children, applied for asylum in France, but their application was rejected, as were their applications for residence permits. In August 2007, the applicants and their children, then aged five months and three years, were arrested at their home and taken into police custody and the following day they were transferred to Charles-de-Gaulle airport to be flown back to Kazakhstan. The flight was cancelled, however, and the applicants

[3]. See footnote 1 above.

and their children were then taken to the Rouen-Oissel administrative detention centre, which was authorised to accommodate families.
The Court held that **a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention had occurred with respect to the detention conditions of the children. While families were separated from other detainees at the Rouen-Oissel centre, the only beds available were iron-frame beds for adults, which were dangerous for children. Nor were there any play areas or activities for children, and the automatic doors to the rooms were dangerous for them. The Council of Europe Commissioner for Human Rights and the European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT) also pointed out that the stress, insecurity, and hostile atmosphere in these centres was bad for young children, in contradiction with international child protection principles according to which the authorities must do everything in their power to avoid detaining children for lengthy periods. Two weeks' detention, while not in itself excessive, could seem like a very long time for children living in an environment ill-suited to their age. The conditions in which the applicants' children had been obliged to live with their parents in a situation of particular vulnerability heightened by their detention were bound to cause them distress and have serious psychological repercussions. However there had been **no violation of Article 3** of the Convention in so far as detention conditions of the parents were concerned; the fact that they had not been separated from their children during their detention must have alleviated the feeling of helplessness, distress and frustration their stay at the administrative detention centre must have caused them.

Mahmundi and Others v. Greece

31 July 2012
This case concerned the detention of an Afghan family, including a woman who was eight months pregnant and four minors, in the Pagani detention centre on the island of Lesbos.
The Court held that the applicants' conditions of detention had amounted to inhuman and degrading treatment **in breach of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It stressed, in particular, the absence of any specific supervision of the applicants despite their particular status as minors and a pregnant woman. It also noted that non-governmental organisations observed that there had been no improvement in the situation in the Pagani centre in spite of their alarming findings in the past.

Aden Ahmed v. Malta

23 July 2013
This case concerned a Somali national and her detention in Malta after entering the country irregularly, by boat, to seek asylum in February 2009.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It was concerned about the conditions in which the applicant was detained in Lyster Barracks detention centre, notably the possible exposure of detainees to cold conditions, the lack of female staff in the detention centre, a complete lack of access to open air and exercise for periods of up to three months, an inadequate diet, and the particular vulnerability of the applicant due to her fragile health and personal emotional circumstances. She had previously suffered a miscarriage while in detention and was also separated from her young child. Taken as a whole, those conditions, in which she had lived for 14 and a half months as a detained immigrant, amounted to degrading treatment.

Asalya v. Turkey

15 April 2014
Paraplegic and wheel-chair bound, the applicant, a Palestinian, complained in particular about the conditions of his detention in Kumkapı Foreigners' Admission and Accommodation Centre (Turkey) pending his deportation, principally because of the

inadequate facilities – no lifts and squat toilets – for wheel-chair bound detainees like himself.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the applicant's conditions of detention at the Kumkapı Foreigners' Admission and Accommodation Centre. It observed in particular that there was no evidence in the case of any positive intention to humiliate or debase the applicant. It nevertheless considered that the detention of the applicant in conditions where he was denied some of the minimal necessities for a civilised life, such as sleeping on a bed and being able to use the toilet as often as required without having to rely on the help of strangers, was not compatible with his human dignity and exacerbated the mental anguish caused by the arbitrary nature of his detention, regardless of its relatively short period. In these circumstances, the Court found that the applicant had been subjected to degrading treatment.

Mohamad v. Greece

11 December 2014
This case concerned the conditions and lawfulness of the detention of the applicant, who was an unaccompanied minor at the time of his arrest, at the Soufli border post, pending his removal.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the applicant's conditions of detention at the Soufli border post, and a **violation of Article 13** (right to an effective remedy) of the Convention **taken together with Article 3** on account of the lack of a remedy by which to complain about those conditions. The Court also held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in this case, noting that the applicant had been arrested and detained in disregard of his status as unaccompanied minor and that when he had reached the age of majority the authorities had extended his detention without taking any steps with a view to his removal.

Challenging the lawfulness of detention

Abdolkhani and Karimnia v. Turkey

22 September 2009
The applicants, Iranian nationals and former members of the People's Mojahedin Organisation in Iran, were being held, at the time of their application, in Gaziosmanpaşa Foreigners' Admission and Accommodation Centre in Kırklareli (Turkey).
The Court held that in the absence of clear legal provisions establishing the procedure for ordering and extending detention with a view to deportation and setting time-limits for such detention, the national system had failed to protect the applicants from arbitrary detention and, consequently, their detention could not be considered "lawful", in **violation of Article 5 § 1** (right to liberty and security) of the Convention.
The Court also concluded that the national authorities had never actually communicated the reasons for the applicants' detention to them, which had occurred not as a result of criminal charges, but in the context of immigration control. This was a **violation of Article 5 § 2** of the Convention.
Given the findings that the applicants had been denied legal assistance and had not been informed of the reasons for their detention, the applicants' right to appeal against their detention had been deprived of all effective substance. Nor had the Turkish Government submitted that the applicants had at their disposal any procedure through which the lawfulness of their detention could have been examined by a court. The Court therefore concluded that the Turkish legal system had not provided the applicants with a remedy whereby they could obtain judicial review of their detention, in **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention.

See also: ***Ghorbanov and Others v. Turkey***, judgment of 3 December 2013.

Mikolenko v. Estonia

8 October 2009

The applicant, a Russian national, complained that following the Estonian authorities' refusal to extend his residence permit, he had been detained unlawfully in 2003 in a deportation centre and had been kept there for too long, until his release in 2007.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that the grounds for the applicant's detention – action taken with a view to his deportation – did not remain valid for the whole period of his detention due to the lack of a realistic prospect of his expulsion and the domestic authorities' failure to conduct the proceedings with due diligence.

Louled Massoud v. Malta

27 July 2010

The case concerned an Algerian national who was born in 1960 and was, at the time of the introduction of the application, detained in Safi Military Barracks (Malta). He arrived in Malta in June 2006 by boat and was immediately detained. He was subsequently charged and found guilty of aiding others to enter Malta. On completing his sentence of imprisonment, he was released but immediately placed in a detention centre for a little more than 18 months.

The Court found that there had been a **violation of Article 5 § 1** (right to liberty and security) and a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention due to the applicant's detention for more than 18 months, the maximum allowed according to a policy introduced in Malta in 2005 concerning illegal immigrants, refugees and integration.

Rahimi v. Greece (see also above, under "Conditions of detention")

5 April 2011

This case concerned the detention of an unaccompanied foreign minor in an adult detention centre. The applicant alleged in particular that he had not been informed of the reasons for his arrest or of any remedies in that connection.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention. It observed that the applicant's detention had been based on the law and had been aimed at ensuring his deportation. In principle, the length of his detention – two days – could not be said to have been unreasonable with a view to achieving that aim. However, the Greek authorities had given no consideration to the best interests of the applicant as a minor and had not explored the possibility of replacing detention with a less drastic measure. These factors led the Court to doubt the authorities' good faith in carrying out the detention measure. The Court therefore held that the applicant's detention had not been "lawful" within the meaning of Article 5 § 1 of the Convention.

The Court further found a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention. The applicant had been unable in practice to contact a lawyer. Furthermore, the information brochure outlining some of the remedies available had been written in a language which he would not have understood, although the interview with him had been conducted in his native language. The applicant had also been registered as an accompanied minor although he had had no guardian who could act as his legal representative. Accordingly, even assuming that the remedies had been effective, the Court failed to see how the applicant could have exercised them.

R.U. v. Greece (no. 2237/08) (see also above, under "Detention conditions")

7 June 2011

This case concerned the detention in Greece of a Turkish asylum seeker of Kurdish origin, who had allegedly been tortured in Turkey, and the conduct of the asylum procedure.

The Court found that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention. The applicant's deprivation of liberty was intended to guarantee the possibility of deporting him. The Court pointed out in that connection that Greek law only permitted detention with a view to deportation where that deportation could be executed. It also observed that, both under Greek and international law, an asylum seeker could not be deported until his or her application had been definitively dealt with. That had been the situation of the applicant (asylum application pending) and when the administrative court had decided on 15 May 2007 to keep him in detention, it had been aware of the position because it had expressly referred to the asylum application.
The Court further held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention. No provision of Greek law gave the court power to examine the lawfulness and appropriateness of a decision to maintain a person in detention with a view to his or her expulsion. In any event, the judges who had dealt with the applicant's case had not examined the question.

M and Others v. Bulgaria (no. 41416/08)

26 July 2011
This case concerned the detention pending expulsion from Bulgaria of an Afghan father of two young children and the impossibility for him to effectively challenge his situation.
The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention. The applicant had been detained for two years and eight-and-a-half months. While his deportation had been ordered in December 2005, the authorities had only attempted for the first time, in February 2007, to secure an identity document to make his deportation possible. Further, they had only reiterated their request a year and seven months later. During all that time the applicant had remained in detention. In addition, the Bulgarian Government had since shown that they had attempted to send him to a different safe country. Consequently, the applicant's detention had not been justified throughout its duration, given the lack of diligence on the part of the Bulgarian authorities.
The Court further held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention. The applicant had argued, in two separate court proceedings, that his detention, ordered by two different acts, in December 2005 and October 2006, had been unlawful. In the first proceedings the courts had refused to examine his appeal, and in the second, the courts had only established, almost two-and-a-half years later, that the second order had been signed by an unauthorised officer. Therefore, the authorities had failed to ensure that the applicant could speedily challenge in court the lawfulness of his detention pending expulsion.

See also: ***Amie and Others v. Bulgaria***, judgment of 12 February 2013.

Auad v. Bulgaria

11 October 2011
The applicant, a stateless person of Palestinian origin, arrived in Bulgaria in May 2009 and soon after claimed asylum. Accused of terrorism (notably being involved in more than ten assassinations), the applicant's expulsion to Lebanon was ordered in November 2009 on the grounds of national security. He was detained until May 2011, that is to say the maximum period (18 months) allowed under Bulgarian legislation pending deportation. Upon his release he remained in Sofia and was obliged to report daily to the local police station.
The Court found that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention because the grounds on which the applicant had been kept in detention, namely his pending deportation, had not remained valid for the whole period of his detention due to the Bulgarian authorities' failure to conduct the proceedings with due diligence.

Mathloom v. Greece

24 April 2012

This case concerned an Iraqi national who was kept in detention for over two years and three months with a view to his deportation, although an order had been made for his conditional release.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention. It found, in particular, that the Greek legislation governing the detention of persons whose expulsion had been ordered by the courts did not lay down a maximum period and therefore did not satisfy the foreseeability requirement under Article 5 § 1 of the Convention.

M.A. v. Cyprus (no. 41872/10)

23 July 2013

This case concerned a Syrian Kurd's detention by Cypriot authorities and his intended deportation to Syria after an early morning police operation on 11 June 2010 removing him and other Kurds from Syria from an encampment outside government buildings in Nicosia in protest against the Cypriot Government's asylum policy.

Overall, the Court concluded that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the applicant's entire period of detention as the domestic authorities had not effected his detention in accordance with a procedure prescribed by law.

The only recourse in domestic law that would have allowed the applicant to have had the lawfulness of his detention examined would have been one brought under Article 146 of the Constitution. The Court held that the average length of such proceedings, eight months at the relevant time, was undoubtedly too long for the purposes of **Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention. Accordingly, there had been a **violation** of that provision.

Suso Musa v. Malta

23 July 2013

This case concerned an asylum seeker, allegedly from Sierra Leone. The applicant complained in particular that his detention had been unlawful and that he had not had an effective means to have the lawfulness of his detention reviewed.

The Court found that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention. The applicant's detention preceding the determination of his asylum request had been arbitrary. The conditions of his place of detention had been highly problematic from the standpoint of Article 3 (prohibition of inhuman and degrading treatment) of the Convention. Moreover, it had taken the authorities an unreasonable amount of time to determine whether the applicant should have been allowed to remain in Malta. As regards the period of detention following the determination of the applicant's asylum request, it found that the deportation proceedings had not been prosecuted with due diligence.

There had also been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention as the applicant had not been able to have a speedy review of the lawfulness of his detention. The Court considered that the problems detected in this case could give rise to further similar applications. Therefore, it requested the Maltese authorities to establish a mechanism to allow individuals seeking a review of the lawfulness of their immigration detention to obtain a determination of their claim within a reasonable time-limit. The Court further recommended Malta to take the necessary steps to improve the conditions and shorten the length of detention of asylum seekers.

Kim v. Russia

17 July 2014

This case concerned the detention of a stateless person, whom the authorities initially took to be a national of Uzbekistan, with a view to his expulsion. The applicant complained in particular of the conditions of his two-year detention in the detention

centre for aliens. He also submitted that his detention had been unlawful, both on account of its excessive length and the impossibility to enforce the order for his expulsion, and that he had been unable to obtain a judicial review of his detention.
The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) and a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention. It found in particular that the applicant had had no procedure available to him to challenge his detention, and that he had remained in detention even though there was no realistic prospect of securing his expulsion. The authorities had therefore lacked the required diligence in view of the situation. Under **Article 46** (binding force and execution of judgments) of the Convention, the Court further concluded, in particular, that Russia was to take appropriate measures to provide for procedures in order to prevent the applicant from being re-arrested and detained for the offences resulting from his status as a stateless person. In this case the Court also found that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the applicant's detention conditions.

Mahammad and Others v. Greece

15 January 2015
This case concerned the conditions of the applicants' detention, and the lawfulness of that detention, in the Fylakio administrative detention centre in Greece.
The Court held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention on account of the shortcomings in the procedure for reviewing the lawfulness of the applicants' administrative detention. It also found that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the applicants' detention conditions.

Application pending before the Grand Chamber

Khlaifia and Others v. Italy (application no. 16483/12)

1 September 2015 (Chamber judgment) – the case was referred to the Grand Chamber in February 2016
See above under "Deprivation of liberty".

Texts and documents

See in particular:

- the Council of Europe **webpage** on "Migration and human rights"
- **Handbook on European law relating to asylum, borders and immigration**, European Union Fundamental Rights Agency / European Court of Human Rights, 2013

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