March 2023
This Factsheet does not bind the Court and is not exhaustive

Migrants in detention

See also the factsheets on "Accompanied migrant children in detention" and "Unaccompanied migrant minors 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.

Khlaifia and Others v. Italy

15 December 2016 (Grand Chamber)
This case concerned 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".
The Grand Chamber held that there had been a **violation of Article 5 § 1** (right to liberty and security), a **violation of Article 5 § 2** (right to be informed promptly of the reasons for deprivation of liberty) and a **violation of Article 5 § 4** (right to a speedy decision by a court on the lawfulness of detention) of the Convention. It observed in particular that the applicants' deprivation of liberty without any clear and accessible basis did not satisfy the general principle of legal certainty and was incompatible with the need to protect the individual against arbitrariness. The refusal-of-entry orders issued by the Italian authorities had made no reference to the legal and factual reasons for the applicants' detention and they had not been notified of them "promptly". The Grand Chamber also noted that the Italian legal system had not provided them with any remedy by which they could have obtained a judicial decision on the lawfulness of their detention. The Grand Chamber further held in this case that there had been **no**

violation of Article 4 (prohibition of collective expulsion of aliens) **to Protocol No. 4** to the Convention, that there had been **no violation of Article 13** (right to an effective remedy) of the Convention **combined with Article 4 to Protocol No. 4**, that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) as regards both the conditions in the Lampedusa early reception and aid centre and the conditions on the ships in Palermo harbour, and that there had been a **violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 3** concerning the lack of a remedy by which the applicants could have complained about the conditions in which they were held in the Lampedusa reception centre or on the ships.

S.K. v. Russia (no. 52722/15)

14 February 2017

This case involved a decision by the Russian authorities to detain the applicant, a Syrian national, and remove him to his home country. The applicant complained in particular that his continuing detention was arbitrary, given that he could not be removed to Syria, and that there had been no domestic procedure which he could have used to have had his detention reviewed.

The Court held that there had been a **violations of Article 5 § 1** (right to liberty and security) **and Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention on account of the applicant's detention with a view to enforcing the penalty of administrative removal. It noted in particular that neither the Code of Administrative Offences nor any other applicable legislation provided for a procedure which would have allowed the applicant to obtain a review of his detention and obtain release. There was also no provision requiring his detention to be automatically reviewed on a regular basis. The Court further observed that detention with a view to expulsion would only be compatible with Article 5 § 1 of the Convention if the proceedings relating to expulsion were in process and pursued with due diligence, and if the detention was lawful and was not arbitrary. In this case, it should have been sufficiently evident to the Russian authorities in February and March 2015 that the removal of the applicant to Syria was not practicable, and would remain unlikely in view of the worsening conflict in Syria. It was therefore incumbent on the authorities to consider alternative arrangements for the authorities. However, once the order was made for him to be detained in a special detention facility for foreigners, his detention was not reassessed. Lastly, under **Article 46** (binding force and implementation of judgments) of the Convention, the Court indicated with reference to its findings under Article 5 that it would be appropriate to release the applicant without delay, and no later than on the day following notification that the present judgment has become final.

J.R. and Others v. Greece (no. 22696/16) (see also below, under "Detention conditions")

25 January 2018

This case concerned the conditions in which three Afghan nationals were held in the Vial reception centre, on the Greek island of Chios, and the circumstances of their detention. The applicants complained in particular about the length of their detention in the centre, which they regarded as arbitrary. They also complained that they had not received any information about the reasons for their detention, neither in their mother tongue nor in any other language.

The Court held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention. It found in particular that the applicants had been deprived of their liberty for their first month in the centre, until 21 April 2016 when it became a semi-open centre. The Court was nevertheless of the view that the one-month period of detention, whose aim had been to guarantee the possibility of removing the applicants under the EU-Turkey Declaration, was not arbitrary and could not be regarded as "unlawful" within the meaning of Article 5 § 1 (f). The Court held however that there had been **a violation of Article 5 § 2** (right to be informed promptly of the reasons for arrest) of the Convention, finding that the applicants had not been appropriately

informed about the reasons for their arrest or the remedies available in order to challenge that detention.

K.G. v. Belgium (no. 52548/15)

6 novembre 2018

This case concerned an asylum-seeker who was placed and kept in detention under four decisions, for security reasons, while his asylum application was pending. In particular, the applicant was "placed at the Government's disposal" and held on that basis for approximately 13 months.

The Court held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention. It found in particular that public interest considerations had weighed heavily in the decision to keep the applicant in detention, and saw no evidence of arbitrariness in the assessment made by the domestic authorities. It also observed that the applicant's health had not been jeopardised and that he had benefited from special care in both the centres where he had been detained. Lastly, the Court found that, in view of the issues at stake and the fact that the domestic authorities had acted with the requisite diligence, the length of time for which the applicant had been placed at the Government's disposal could not be regarded as excessive.

Z.A. and Others v. Russia (nos. 61411/15, 61420/15, 61427/15 and 3028/16)
(see also below, under "Detention conditions")

21 November 2019 (Grand Chamber)

This case concerned four men from Iraq, the Palestinian territories, Somalia and Syria who were held for long periods of time in the transit zone of Moscow's Sheremetyevo airport while the authorities dealt with their asylum applications. They all eventually left Russia after living in the transit zone. The applicants alleged in particular that their confinement in the transit zone had amounted to unlawful deprivation of liberty.

The Grand Chamber found in particular that Article 5 (right to liberty and security) of the Convention was applicable to the applicants' case as their presence in the transit zone had not been voluntary; they had been left to their own devices for the entire period of their stay, which had lasted between five months and almost two years depending on the applicant; there had been no realistic prospect of them being able to leave the zone; and the authorities had not adhered to the domestic legislation on the reception of asylum-seekers. Further, given the absence of a legal basis for their being confined to the transit zone, a situation made worse by them being impeded in accessing the asylum system, the Court concluded that there had been a **violation of the** applicants' **rights protected by Article 5 § 1** of the Convention.

Ilias and Ahmed v. Hungary (see also below, under "Detention conditions")

21 November 2019 (Grand Chamber)

This case concerned two asylum-seekers from Bangladesh who spent 23 days in a Hungarian border transit zone before being removed to Serbia after their asylum applications were rejected. The applicants alleged in particular that they had been confined to the transit zone in violation of Article 5 § 1 (right to liberty and security) and Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) of the Convention.

The Grand Chamber held, by a majority, that the applicants' **complaints under Article 5 §§ 1** (right to liberty and security) **and 4** (right to have lawfulness of detention decided speedily by a court) of the Convention had to be rejected as inadmissible, finding that Article 5 of the Convention was not applicable to the applicants' case as there had been no *de facto* deprivation of liberty in the transit zone. Among other things, the Court found that the applicants had entered the transit zone of their own initiative and it had been possible in practice for them to return to Serbia, where they had not faced any danger to their life or health. It also noted that the applicants' fears of a lack of access to Serbia's asylum system or of *refoulement* to Greece, as expressed under Article 3 (prohibition of inhuman or degrading treatment) of the Convention, had not been enough to make their stay in the transit zone involuntary.

R.R. and Others v. Hungary (no. 36037/17)

2 March 2021

This case concerned the confinement of an asylum-seeking family, including three minor children, in the Röszke transit zone on the border with Serbia in April-August 2017. The applicants complained, in particular, of the fact of and the conditions of their detention in the transit zone, of the lack of a legal remedy to complain of the conditions of detention, and of the lack of judicial review of their detention.

The Court found that the applicants' stay in the transit zone had amounted to a *de facto* deprivation of liberty. It considered that without any formal decision of the authorities and solely by virtue of an overly broad interpretation of a general provision of the law, the applicants' detention could not be considered to have been lawful. Accordingly, it concluded that in the present case there had been no strictly defined statutory basis for the applicants' detention and that there had thus been a **violation of Article 5 § 1** (right to liberty and security) of the Convention. In the absence of any formal decision of the authorities and any proceedings by which the lawfulness of the applicant's detention could have been decided speedily by a court, the Court also 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. Lastly, in view, in particular, of the applicant children's young age, the applicant mother's pregnancy and health situation and the length of the applicants' stay in the conditions in the transit zone, the Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

Akkad v. Türkiye

21 June 2022

This case concerned allegations by a Syrian national that he had been subjected to forced and unlawful expulsion to Syria by the Turkish authorities under the guise of a "voluntary return". In 2018 the applicant, who had a valid residence permit in Türkiye and had been granted "temporary protection" status, was arrested near the Meriç river while attempting to enter Greece. He was removed to Syria two days later. The applicant complained in particular that he had not been informed of the true reasons for his detention from the time of his arrest and submitted that he had been unable to challenge the lawfulness of his detention.

The Court held that there had been a **violation of Article 5 §§ 1, 2, 4 and 5** (right to liberty and security) of the Convention in respect of the applicant. It firstly found that the applicant had been deprived of his liberty from the time of his arrest close to the Greek border at Meriç until his removal to Syria. The Court noted, in particular, that during that time the applicant had been under the supervision of State agents and had been unable to move around and travel freely. In addition, under the Turkish legislation, the expulsion of a person in possession of a temporary residence permit could only be ordered on particularly weighty grounds, which had to be set out in a reasoned decision by the authorities concerned and be approved by the relevant judicial authority. However, the applicant's administrative detention with a view to his expulsion had not been recorded as such and had not been officially notified as such to the applicant. Moreover, the authorities had not informed the applicant of the true nature of his detention until his removal to Syria. As a result of these failings, the legal safeguards afforded by the national legislation – designed to provide protection against arbitrariness to persons in detention pending their expulsion – had not taken effect in the applicant's case. The Court also noted that the applicant had not had any remedy by which to obtain judicial review of the lawfulness of his detention.

J.A. and Others v. Italy (no. 21329/18)

30 March 2023 (Chamber judgment[1])

This case concerned the presence of the applicants, four Tunisian nationals, at the

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

"hotspot" on the Italian island of Lampedusa, where they had been taken having been rescued by an Italian ship in the Mediterranean Sea, and their later removal to Tunisia. The applicants complained, in particular, of allegedly having being deprived of their liberty without a clear decision or without being able to legally challenge that deprivation of liberty, and that their deferred refusal of entry (*respingimento differito*) had amounted
The Court held that there had been **violations of Article 3** (prohibition of inhuman or degrading treatment) and **Article 5 §§ 1, 2 and 4** (right to liberty and security) of the Convention, and a **violation of Article 4** (prohibition of collective expulsion of aliens) **to Protocol No. 4** to the Convention in the present case. It found in particular that the Italian Government had failed to rebut the allegations that the conditions at the hotspot had been inadequate; that their presence there was deemed to be detention which had neither been a result of an official order, nor had it been a limited period to clarify their situation or to send them elsewhere, as required by law, and that their situations had not been individually assessed before their being issued with refusal-of-entry orders. The Court noted in particular that the applicants had been kept for processing in the hotspot, which was surrounded by bars, fences and gates, and from which they had not been able to leave lawfully. This had not been a limited period to clarify the situation of the applicants or to send them to other centres, as permitted by law. The Court stated that clarification by the legislature of the nature of the hotspots and the substantive and procedural rights of the individuals staying there would have been beneficial. There had therefore been no clear and accessible legal basis for the applicants' ten-day detention, they had not been informed of the legal reasons for their deprivation of liberty, they had not been provided with sufficient information, and they had not able to challenge the grounds for their *de facto detention* before a court.

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[2] he was transferred back to Greece in June 2009. On arriving at Athens 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

[2]. 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".

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

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.

J.R. and Others v. Greece (no. 22696/16) (see also above, under "Deprivation of liberty")

25 January 2018

This case concerned the conditions in which three Afghan nationals were held in the Vial reception centre, on the Greek island of Chios, and the circumstances of their detention.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the threshold of severity required for the applicants' detention to be characterised as inhuman or degrading treatment had not been reached in this case. The Court noted in particular that the facts in question occurred at the time of an exceptional and sharp increase in migratory flows in Greece, which had created organisational, logistical and structural difficulties. It reiterated in this respect that, in view of the absolute nature of Article 3, the factors associated with an increasing influx of migrants could not absolve States of their obligations to ensure that all persons deprived of their liberty were held in conditions compatible with respect for human dignity. In the present case, the Court observed that several NGOs had visited the centre and confirmed some of the applicants' allegations concerning its general

condition. On the other hand the Court found that the European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT) had not been particularly critical of the conditions prevailing in the centre, particularly as regards the aspects that could have concerned the applicants' situation. Its criticisms had focused mainly on medical care, the lack of adequate information and legal assistance and the poor quality of drinking water and food. It was apparent from the file that those problems were not such as to affect the applicants excessively in terms of Article 3 of the Convention. The Court lastly noted that the applicants' detention had been short, namely thirty days.

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

3 octobre 2019

This case concerned the conditions of detention of Syrian, Afghan and Palestinian nationals in the "hotspots" of Vial and Souda (Greece), and the lawfulness of their detention in those camps. The applicants complained in particular about the conditions of detention in the camps, which they alleged to be a danger to their physical and mental wellbeing. They complained both of the quantity and quality, in health terms, of the meals distributed to them and of the inadequacy of the medical provision. They also highlighted the overcrowding in the camps, which rendered the material conditions of accommodation dangerous. Lastly, they noted the lack of facilities capable of guaranteeing the security and safety of women and children, who constituted particularly vulnerable categories of persons.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention with regard to the applicants' conditions of detention. It considered in particular that the authorities had done all that could reasonably be expected of them in the Vial camp to meet the obligation to provide care and protection to unaccompanied minors. The other applicants had been transferred immediately – or within ten days – from the Vial camp to the Souda camp. The Court also found that the conditions of detention in the Souda camp did not amount to inhuman or degrading treatment.

Z.A. and Others v. Russia (nos. 61411/15, 61420/15, 61427/15 and 3028/16)
(see also above, under "Deprivation of liberty")

21 November 2019 (Grand Chamber)

This case concerned four men who were held for long periods of time in the transit zone of Moscow's Sheremetyevo airport while the authorities dealt with their asylum applications. They all eventually left Russia after living in the transit zone. The applicants complained in particular of poor conditions of detention in the transit zone, where they had had to sleep on mattresses in the constantly lit, noisy boarding area of the airport, with no possibility to shower, and to live on emergency rations provided by the United Nations High Commissioner for Refugees (UNHCR).

The Grand Chamber held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the degrading treatment to which the applicants had been subjected in the airport transit zone. Firstly noting that many States faced an influx of asylum-seekers and migrants, the Court pointed out that it did not underestimate the burden and pressure this placed on Governments, and that it was particularly aware of the difficulties involved in the reception of asylum-seekers at major international airports. It recalled, however, that the prohibition of inhuman or degrading treatment was a fundamental value in democratic societies and was a value of civilisation closely bound up with respect for human dignity, which was part of the very essence of the Convention. In the applicants' case, the Court found that, taken together, the appalling conditions of their detention (they had had to sleep in the transit zone, a busy and constantly lit area, with no access to washing or cooking facilities), which they had had to endure for a long time, and the complete failure of the authorities to take care of them, had constituted degrading treatment.

Ilias and Ahmed v. Hungary (see also above, under "Deprivation of liberty")

21 November 2019 (Grand Chamber)

This case concerned two asylum-seekers from Bangladesh who spent 23 days in a Hungarian border transit zone before being removed to Serbia after their asylum applications were rejected. The applicants complained in particular about the conditions of detention in the transit zone.

The Grand Chamber held, unanimously, that there had been **no violation of Article 3** (prohibition of inhuman of degrading treatment) of the Convention, as regards the applicants' conditions in the transit zone. It found in particular that the living conditions in the zone, the length of the applicants' stay there, and the possibilities for human contact with other asylum seekers, representatives of the United Nations High Commissioner for Refugees (UNHCR), NGOs and a lawyer, meant that their situation had not reached the minimum level of severity necessary to be considered as inhuman treatment within the meaning of Article 3. The Grand Chamber held, however, that there had been a violation of Article 3 of the Convention owing to the applicants' removal to Serbia, finding in particular that the Hungarian authorities had failed in their duty under Article 3 to assess the risks of the applicants not having proper access to asylum proceedings in Serbia or being subjected to chain-*refoulement*, which could have seen them being sent to Greece, where conditions in refugee camps had already been found to be in violation of Article 3.

Feilazoo v. Malta

11 March 2021 (Chamber judgment)

This case concerned, inter alia, the conditions of the immigration detention of a Nigerian national, including time spent in *de facto* isolation and a subsequent period where the applicant had been placed with new arrivals in Covid-19 quarantine.

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 inadequate conditions of detention. In particular, the Court was concerned about the applicant's assertion, not rebutted by the Maltese Government, that following an isolation period the applicant had been moved to other living quarters where new arrivals (of asylum seekers) had been being kept in Covid-19 quarantine. There was no indication that the applicant had been in need of such quarantine – particularly after an isolation period which, moreover, had lasted for nearly seven weeks. Thus, the measure of placing him, for several weeks, with other persons who could have posed a risk to his health in the absence of any relevant consideration to that effect, could not be considered as a measure complying with basic sanitary requirements.

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 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.

Palushi v. Austria

22 December 2009

The applicant, a national of the former Socialist Federal Republic of Yugoslavia at the time of the events, alleged that, when held in custody in Vienna Police Prison with a view to his expulsion for illegal residence, prison officers had ill-treated him. Placed in solitary confinement immediately afterwards, he further complained about being refused access to a doctor.

The Court noted in particular that the applicant, who had already been on hunger strike (with the risks that that implied such as loss of consciousness) for three weeks, had been placed in solitary confinement based on the assessment of a paramedic who had received only basic training, and had been refused access to a doctor until the third day of his solitary confinement. Taken together, those factors had to have caused him suffering and humiliation going beyond what had been inevitable in a situation of detention. In the Court's view the applicant had therefore been subjected to degrading treatment on account of the lack of medical care provided in solitary confinement until he had been allowed to see a doctor, in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

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

[3]. See footnote 2 above.

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 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.
See also: ***Abdi Mahamud v. Malta***, judgment of 3 May 2016.

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.

A.B. and Others v. France (no. 11593/12)

12 July 2016
This case primarily concerned the administrative detention of an underage child for eighteen days in the context of a deportation procedure against his parents.
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 child, finding that, given the child's age and the duration and conditions of his detention in the administrative detention centre, the authorities had subjected him to treatment which had exceeded the threshold of seriousness required by Article 3. The Court noted in particular that, where the parents were placed in administrative detention, the children were *de facto* deprived of liberty. It acknowledged that this deprivation of liberty, which resulted from the parents' legitimate decision not to entrust them to another person, was not in principle contrary to domestic law. The Court held, however, that the presence in administrative detention of a child who was accompanying his or her parents

was only compatible with the Convention if the domestic authorities established that they had taken this measure of last resort only after having verified, in the specific circumstances, that no other less restrictive measure could be applied. Lastly, the Court observed that the authorities had not taken all the necessary steps to enforce the removal measure as quickly as possible and thus limit the time spend in detention. In the absence of a particular risk of absconding, the administrative detention of eighteen days' duration seemed disproportionate to the aim pursued. In this case the Court also 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 speedy review of the lawfulness of detention) of the Convention in respect of the applicant's child, as well as a **violation of Article 8** (right to respect for private and family life) of the Convention in respect of the child and his parents.

See also: ***A.M. and Others v. France (no. 24587/12)***, ***R.C. and V.C. v. France (no. 76491/14)***, ***R.K. and Others v. France (no. 68264/14)*** and ***R.M. and Others v. France (no. 33201/11)*** judgments of 12 July 2016.

Mahamed Jama v. Malta

26 November 2015

The applicant, a Somali national, was detained in the context of immigration at the time of the introduction of the application. She complained in particular about the conditions of her detention and maintained that her detention for more than eight months had been arbitrary and unlawful.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the applicant's conditions of detention. It further held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention concerning the applicant's detention pending her asylum claim and a **violation of Article 5 § 1** concerning her detention following the decision on her asylum claim. Lastly, 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, finding that the applicant had not had an adequate remedy to challenge the lawfulness of her detention.

See also: ***Moxamed Ismaaciil and Abdirahman Warsame v. Malta***, judgment of 12 January 2016.

Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia (no. 14165/16)

13 June 2019

This case concerned the living conditions of five unaccompanied migrant minors from Afghanistan, who entered Greece as unaccompanied migrant minors in 2016, when they were between 14 and 17 years of age. More specifically, two of the applicants complained about their living conditions at Polykastro and Filiata police stations, where they had been held in "protective custody", while four applicants complained about their living conditions at the camp in Idomeni. Three of the applicants also argued that their placement in protective custody at the police stations in Polykastro, Filiata and Aghios Stefanos had amounted to an unlawful deprivation of liberty.

The Court declared the complaints against Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia **inadmissible** as being manifestly ill-founded. It further held that there had been a **violation** by Greece **of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. Firstly, the Court found that the conditions of detention of three of the applicants in various police stations had amounted to degrading treatment, observing that being detained in these places was liable to arouse in the persons concerned feelings of isolation from the outside world, with potentially negative repercussions on their physical and mental well-being. Secondly, it noted that the authorities had not done all that could reasonably be expected of them to fulfil the obligation to provide for and protect four of the applicants, who had lived for a month in the Idomeni camp in an environment unsuitable for adolescents. That obligation was

incumbent on the Greek State with regard to persons who were particularly vulnerable because of their age. The Court also held that there had been a **violation** by Greece **of Article 5 § 1** (right to liberty and security) of the Convention with regard to three applicants, finding that the placement of these applicants in the police stations had amounted to a deprivation of liberty as the Greek Government had not explained why the authorities had first placed the applicants in police stations – and in degrading conditions of detention – rather than in alternative temporary accommodation. The detention of those applicants had therefore not been lawful.

G.B. and Others v. Turkey (no. 4633/15)

17 October 2019

This case concerned the immigration detention of a mother and her three young children pending their deportation from Turkey. They had been released after nearly four months following a series of challenges about the lawfulness of their detention before the domestic courts. The applicants complained in particular about the conditions of their detention at Kumkapı, especially on account of overcrowding, poor hygiene and lack of outdoor exercise, and alleged that conditions at Gaziantep had been even worse. They also alleged that their detention had been unlawfu and that the judicial review mechanism to challenge the lawfulness of detention had been ineffective.

The Court held that there had been two **violations of Article 3** (prohibition of inhuman or degrading treatment) of the Convention concerning the applicants' conditions of detention pending deportation at the two removal centres in question. It noted in particular that the Turkish Government had failed to disprove the applicants' allegations that they had been detained in overcrowded dormitories, had rarely been allowed to go outside for fresh air, had constantly been exposed to cigarette smoke from other detainees and had not been given suitable food for children. The Court found that such conditions were manifestly adverse even for adults, and had therefore been all the more so for the three applicants who were vulnerable children. The Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **in conjunction with Article 3** because of the lack of effective remedies for the applicants to complain about the conditions of detention at the Kumkapı removal centre. Lastly, the Court held that there had been a **violation of Articles 5 §§ 1** (right to liberty and security) and 4 (right to have lawfulness of detention decided speedily by a court) of the Convention. Having regard to the particular vigilance required by the special circumstances of the applicants, it found in particular that both the Istanbul Magistrates' Court and the Constitutional Court had failed to conduct a speedy and effective review of the lawfulness of the applicants' detention.

H.M. and Others v. Hungary (no. 38967/17)

2 June 2022

This case concerned the detention of an Iraqi family (a couple and four of their children who were born between 2001 and 2013) in a transit zone at the border between Hungary and Serbia after fleeing Iraq. The applicants complained about the conditions and the unlawfulness of their confinement and the way they had been treated in the transit zone.

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 the mother and children had faced during their four-month-long stay in the transit zone. It found, however, that, in contrast to the mother, the father had been no more vulnerable than any other adult asylum-seeker confined to the transit zone. Although it had been alleged that he had mental health problems related to his treatment in Iraq, it seemed that he had not sought any assistance from the staff present. The Court did not find that the general conditions in the transit zone had been particularly ill-suited in his circumstances. However, the Court found that the use of handcuffs and leash on the father when accompanying his wife to a hospital appointment had not been justified. It held that there had been a **violation of Article 3** of the Convention in this respect.

The Court further held that there had been a **violation of Article 5 §§ 1** (right to liberty and security) **and 4** (right to have lawfulness of detention decided speedily by a court) of the Convention because there had been no legal basis for the family's detention, and they had not had any way of having their situation examined speedily by a court.

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. Lastly, under **Article 46** (binding force and execution of judgments) of the Convention, the Court noted 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.

A.M. v. France (no. 56324/13)

12 July 2016

This case concerned a complaint about the lack of an effective remedy to contest the lawfulness of a detention order against an alien in France which had led to his deportation from French territory. The applicant, a Tunisian national, complained, essentially, of the lack of suspensive effect of his appeal against the deportation order and of the excessively restrictive nature of the review conducted by the French Administrative Court of the lawfulness of that order.

The Court held that there had been a **violation of Article 5 § 4** (right to a speedy decision on the lawfulness of detention) of the Convention, finding that the applicant had not benefited from an effective remedy for the purposes of that provision. It noted in particular that the purpose of Article 5 § 4 was to provide victims of deprivations of liberty within the meaning of Article 5 § 1 (right to liberty and security) of the Convention with sufficient and effective protection against arbitrary treatment. Insofar as the French administrative court was unable to assess the original acts for which the victim risked detention, the domestic legal remedy allowing the assessment of not only the lawfulness but also the expediency of the detention was insufficient.

Khlaifia and Others v. Italy

15 December 2016 (Grand Chamber)

See above, under "Deprivation of liberty".

S.K. v. Russia (no. 52722/15)

14 February 2017

See above, under "Deprivation of liberty".

O.S.A. and Others v. Greece (no. 39065/16)

21 March 2019

This case concerned the conditions of detention of the applicants, Afghan nationals, in the Vial centre on the island of Chios (Greece), and the issues of the lawfulness of their detention, the courts' review of their case, and the information provided to them.

The Court held that there had been a **violation of Article 5 § 4** (right to a speedy decision on the lawfulness of detention) of the Convention. It considered in particular that, in view of the circumstances, the applicants had not had access to remedies by which to challenge the decisions ordering their expulsion and the extension of their detention. The Court further noted that the applicants were Afghan nationals who understood only Farsi and they had had no lawyers to assist them. The documents issued to them by the authorities had been written in Greek and had not specified which administrative court had jurisdiction. Lastly, as in the case of *J.R. and Others v. Greece* (see above, under "Deprivation of liberty"), the Court held that the applicants' detention had nevertheless been lawful and that the threshold of seriousness for it to be characterised as inhuman or degrading treatment had not been attained.

Kaak and Others v. Greece (see also above, under "Detention conditions")

3 October 2019

This case concerned the conditions of detention of Syrian, Afghan and Palestinian nationals in the "hotspots" of Vial and Souda (Greece), and the lawfulness of their detention in those camps. The applicants complained in particular about a lack of free legal aid and the fact that there was no administrative court on Chios, which, in their view, rendered any complaints about their detention impossible in practice, and consequently arbitrary.

The Court held that there had been a **violation of Article 5 § 4** (right to a speedy decision on the lawfulness of detention) and **no violation of Article 5 § 1** (right to liberty and security) of the Convention. It reiterated in particular its previous finding that a period of one month's detention in the Vial camp should not be considered excessive,

given the time needed to comply with the relevant administrative formalities. In addition, the length of the applicants' detention once they had expressed their wish to apply for asylum had been relatively short. In contrast, the applicants, who did not have legal assistance, had not been able to understand the content of the information brochure; in particular, they were unable to understand the material relating to the various appeal possibilities available under domestic law.

G.B. and Others v. Turkey (no. 4633/15)

17 October 2019

See above, under "Detention conditions".

E.K. v. Greece (no. 73700/13)

14 January 2021

This case concerned the conditions of detention of the applicant, a Turkish national, in the Soufli and Feres border posts, the Attika Sub-Directorate for Aliens (Petrou Ralli) and the Amygdaleza Detention Centre, the lawfulness of his detention, and whether the review of the lawfulness of that detention had been effective.

The Court held that there had been a **violation of Article 5 § 4** (right to a speedy decision on the lawfulness of detention) of the Convention, finding that the applicant had not benefited from a sufficiently thorough assessment of the lawfulness of his detention to highlight the remedies and other channels provided under domestic law and case-law. That had been particularly true with regard to the complaints concerning his conditions of detention, in which connection the Court had found violations on several occasions in other cases. The Court held, however, that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in the present case, finding that the applicant's conditions of detention had not been contrary to the Convention in any of the establishments in which he had been detained, with reference, in particular, to several reports by international organisations having visited them. The Court also held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that the applicant's detention had not been arbitrary and had been "lawful".

R.R. and Others v. Hungary (no. 36037/17)

2 March 2021

See above, under "Deprivation of liberty".

Akkad v. Türkiye

21 June 2022

See above, under "Deprivation of liberty".

Texts and documents

See in particular:

- **Guide on the case-law of the European Convention on Human Rights - Immigration**, prepared under the authority of the Jurisconsult
- **Handbook on European law relating to asylum, borders and immigration**, European Union Fundamental Rights Agency / European Court of Human Rights, 2013
- Special Representative of the Council of Europe Secretary General on migration and refugees **webpage**

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