



## Compilation of jurisprudence

# Detention of applicants for international protection in the context of the Common European Asylum System



*EASO Professional Development Series  
for members of courts and tribunals*





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## European Asylum Support Office

EASO is an agency of the European Union that plays a key role in the concrete development of the Common European Asylum System (CEAS). It was established with the aim of enhancing practical cooperation on asylum matters and helping Member States fulfil their European and international obligations to give protection to people in need.

Article 6 of the EASO founding regulation <sup>(1)</sup> (hereinafter the Regulation) specifies that the Agency shall establish and develop training available to members of courts and tribunals in the Member States. For this purpose, EASO shall take advantage of the expertise of academic institutions and other relevant organisations, and take into account the Union's existing cooperation in the field with full respect to the independence of national courts and tribunals.

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<sup>(1)</sup> Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office [2010] OJ L 132/11.

## Contributors

This Compilation of Jurisprudence has been developed by a working group consisting of judges **Aikaterini Koutsopoulou** (Greece, working group co-coordinator), **Julian Phillips** (United Kingdom, working group co-coordinator), **Judith Putzer** (Austria), **Dobroslav Rukov** (Bulgaria), **Marie-Cécile Moulin-Zys** (France), **Ulrich Drews** (Germany), **Jure Likar** (Slovenia), and legal assistant to the court **Lenka Horáková** (Czech Republic) and **Samuel Boutruche** (UNHCR).

They have been invited for this purpose by the European Asylum Support Office (EASO) in accordance with the methodology set out in Appendix C of the judicial analysis. The recruitment of the members of the working group was carried out in accordance with the scheme agreed between EASO and the members of the EASO network of court and tribunal members. The working group itself met on four occasions in March, April, June and October of 2018 in Malta.

This compilation of jurisprudence will be updated in accordance with the methodology set out in Appendix C of the judicial analysis.

# Court of Justice of the European Union (CJEU) Jurisprudence

Court	Case name/reference/ date	Key words/relevance/main points	Cases cited
CJEU	<p>K. C-18/16 14.09.2017 ECJ:EU:C:2017:680</p>	<p><b>Key words:</b> Detention grounds, procedural and legal safeguards, validity.</p> <p>Judgment after a reference for a preliminary ruling from the Rechtbank Den Haag zittingsplaats Haarlem — Netherlands concerning the validity of the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33/EU.</p> <p><i>Summary:</i></p> <p>The examination of the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection has disclosed nothing capable of affecting the validity of that provision in the light of Articles 6 and 52(1) and (3) of the Charter of Fundamental Rights of the European Union.</p> <p>In that regard, it should be noted that the limitation on the exercise of the right to liberty resulting from the first subparagraph of Article 8(3)(a) and (b) of Directive 2013/33 is provided for by EU legislation and that it does not affect the essence of the right to liberty laid down in Article 6 of the Charter. The first subparagraph of Article 8(3)(a) and (b) of that directive does not render the guarantee of that right less secure and — as is apparent from the wording of the provision and recital 15 of the directive — the power that it confers on Member States enables them to detain an applicant only on the basis of his individual conduct and under the exceptional circumstances referred to in the same provision, those circumstances also being circumscribed by all the conditions set out in Articles 8 and 9 of the directive (see, by analogy, judgment of 15 February 2016, <i>N., C-601/15 PPU</i>, EU:C:2016:84, paragraphs 51 and 52). In that regard, it is apparent both from the wording and context of Article 8 of Directive 2013/33 and from its legislative history that that power is subject to compliance with a series of conditions whose aim is to create a strictly circumscribed framework in which such a measure may be used.</p> <p>The limitations on the exercise of the right conferred by Article 6 of the Charter contained in the first subparagraph of Article 8(3)(a) and (b) of that directive are also not disproportionate to the aims pursued. In that regard, it should be noted that the first subparagraph of Article 8(3)(a) and (b) is based on a fair balance between the general interest objective pursued, namely the proper functioning of the Common European Asylum System, allowing applicants who are genuinely in need to be granted international protection and refusing, on the one hand, applications from those who do not satisfy the conditions and, on the other hand, interference with the right to liberty resulting from a detention measure. Although the proper functioning of the Common European Asylum System requires, in practice, that the competent national authorities have at their disposal reliable information relating to the identity or nationality of the applicant for international protection and to the elements on which his application is based, that provision cannot justify detention measures being decided without those national authorities having previously determined, on a case-by-case basis, whether they are proportionate to the aims pursued.</p> <p>Paragraphs relevant to detention: 31–54.</p>	<p>CJEU: N., C-601/15 PPU ECtHR: <i>Nabil and others v Hungary</i>, 62116/12 <i>Saadi v United Kingdom</i>, 13229/03</p>

Court	Case name/reference/ date	Key words/relevance/main points	Cases cited
CJEU	<p><i>Khir Amayry</i> C60/16 13.09.2017 ECLI:EU:C:2017:675</p>	<p><b>Key words:</b> Duration of detention, suspensive effect. Judgment after a preliminary ruling from the Kamarrätten i Stockholm — Migrationsöverdomstolen — Sweden concerning the interpretation of Article 28(3) of Regulation (EU) No 604/2013.</p> <p><b>Ruling:</b></p> <p>1. Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, read in conjunction with Article 6 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that:</p> <p>— it does not preclude national legislation, such as that at issue in the main proceedings, which provides that, where the detention of an applicant for international protection begins after the requested Member State has accepted the take charge request, that detention may be maintained for no longer than two months, provided, first, that the duration of the detention does not go beyond the period of time which is necessary for the purposes of that transfer procedure, assessed by taking account of the specific requirements of that procedure in each specific case and, second, that, where applicable, that duration is not to be longer than six weeks from the date when the appeal or review ceases to have suspensive effect; and</p> <p>— it does preclude national legislation, such as that at issue in the main proceedings, which allows, in such a situation, the detention to be maintained for 3 or 12 months during which the transfer could be reasonably carried out.</p> <p>2. Article 28(3) of the Dublin III Regulation must be interpreted as meaning that the number of days during which the person concerned was already detained after a Member State has accepted the take charge or take back request need not be deducted from the six week period established by that provision, from the moment when the appeal or review no longer has suspensive effect.</p> <p>3. Article 28(3) of the Dublin III Regulation must be interpreted as meaning that the six week period beginning from the moment when the appeal or review no longer has suspensive effect, established by that provision, also applies when the suspension of the execution of the transfer decision was not specifically requested by the person concerned.</p> <p>Paragraphs relevant to detention: 22-73.</p>	<p><i>Al Chodor</i>, C-528/15</p>
CJEU	<p><i>Al Chodor and others</i> C-528/15 15.03.2017 ECLI:EU:C:2017:213</p>	<p><b>Key words:</b> Objective criteria, significant risk of absconding, binding provisions. Judgment after a reference for a preliminary ruling from the Nejvyšší správní soud — Czech Republic, on objective criteria defining the existence of a risk of absconding.</p> <p><b>Summary:</b></p> <p>Article 2(n) and Article 28(2) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, read in conjunction, must be interpreted as requiring Member States to establish, in a binding provision of general application, objective criteria underlying the reasons for believing that an applicant for international protection who is subject to a transfer procedure may abscond. The absence of such a provision leads to the inapplicability of Article 28(2) of that regulation. Taking account of the purpose of the provisions concerned, and in the light of the high level of protection which follows from their context, only a provision of general application could meet the requirements of clarity, predictability, accessibility and, in particular, protection against arbitrariness. (see paras 43, 47, operative part)</p> <p>Paragraphs relevant for detention: 24-47.</p>	<p><i>N.</i>, C-601/15 PPU</p>



Court	Case name/reference/ date	Key words/relevance/main points	Cases cited
CJEU	<p><i>C.K. and others</i> C-578/16 PPU 16.02.2017 ECLI:EU:C:2017:127</p>	<p><b>Key words:</b> Risk of inhuman and degrading treatment Judgment after a reference for a preliminary ruling from the Vrhovno sodišče — Slovenia concerning the interpretation of Articles 3(2) and 17(1) of Regulation (EU) No 604/2013.</p> <p><b>Summary:</b></p> <p>2. Article 17(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person must be interpreted as meaning that the question of the application, by a Member State, of the 'discretionary clause' laid down in that provision is not governed solely by national law and by the interpretation given to it by the constitutional court of that Member State, but is a question concerning the interpretation of EU law, within the meaning of Article 267 TFEU. (see para. 54, operative part 1)</p> <p>3. Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that:</p> <ul style="list-style-type: none"> <li>— even where there are no substantial grounds for believing that there are systemic flaws in the Member State responsible for examining the application for asylum, the transfer of an asylum seeker within the framework of Regulation No 604/2013 can take place only in conditions which exclude the possibility that that transfer might result in a real and proven risk of the person concerned suffering inhuman or degrading treatment, within the meaning of that article;</li> <li>— in circumstances in which the transfer of an applicant for asylum with particularly serious mental or physical illness would entail a real and proven risk of a significant and permanent deterioration in the state of health of the person concerned, that transfer would constitute inhuman or degrading treatment within the meaning of that article;</li> <li>— it is for the authorities of the Member State having to carry out the transfer and, if necessary, its courts to eliminate any serious doubts concerning the impact of the transfer on the state of health of the person concerned by taking the necessary precautions for the transfer to take place in conditions enabling appropriate and sufficient protection of that person's state of health. If, taking into account the particular severity of the illness of the applicant for asylum concerned, taking those precautions is not sufficient to ensure that his transfer does not entail a risk of a significant and permanent worsening of his state of health, it is for the authorities of the Member States concerned to suspend the enforcement of the transfer of the person concerned for such time as his state renders him unfit for such a transfer; and</li> <li>— where necessary, if it is noted that the state of health of the asylum seeker concerned is not expected to improve in the short term, or that the suspension of the procedure for a long period would risk worsening the condition of the person concerned, the requesting Member State may choose to conduct its own examination of that person's application by making use of the 'discretionary clause' laid down in Article 17(1) of Regulation No 604/2013.</li> </ul> <p>Article 17(1) of Regulation No 604/2013, read in the light of Article 4 of the Charter of Fundamental Rights of the European Union, cannot be interpreted as requiring, in circumstances such as those at issue in the main proceedings, that Member State to apply that clause.</p> <p>In any event, if the state of health of the applicant for asylum concerned does not enable the requesting Member State to carry out the transfer before the expiry of the period of six months provided for in Article 29(1) of the Dublin III Regulation, the Member State responsible would be relieved of its obligation to take charge of the person concerned and responsibility would then be transferred to the first Member State, in accordance with the second paragraph of that article.</p> <p>(see paras 89, 96, 97, operative part 2)</p> <p>Paragraphs relevant to detention: 96.</p>	<p><i>N.S. and Others</i>, C-411/10 and C-493/10</p>

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CJEU	<p><i>J. N. v Staatssecretaris van Veiligheid en Justitie</i> C-601/15 PPU 15.02.2016 ECLI:EU:C:2016:84</p>	<p><b>Key words:</b> Detention, protection of national security or public order, validity, Charter Judgment after a reference for a preliminary ruling from from the Raad van State (Council of State, Netherlands) concerning the validity of point (e) of the first subparagraph of Article 8(3) of Directive 2013/33/EU.</p> <p><b>Summary:</b></p> <p>2. There is no factor of such a kind as to affect the validity — in the light of Articles 6 and 52(1) and (3) of the Charter of Fundamental Rights of the European Union — of point (e) of the first subparagraph of Article 8(3) of Directive 2013/33 laying down standards for the reception of applicants for international protection, which allows an applicant to be detained for reasons relating to the protection of national security or public order. Given that the objective pursued by that provision is the protection of national security and public order, a measure ordering detention which is based on the provision genuinely meets an objective of general interest recognised by the European Union. In addition, the protection of national security and public order also contributes to the protection of the rights and freedoms of others. Article 6 of the Charter of Fundamental Rights of the European Union states in this regard that everyone has the right not only to liberty but also to security of person.</p> <p>As regards the proportionality of the interference with the right to liberty to which a measure ordering detention gives rise, the detention of an applicant where the protection of national security or public order so requires is, by its very nature, an appropriate measure for protecting the public from the threat which the conduct of such a person represents and is thus suitable for attaining the objective pursued by point (e) of the first subparagraph of Article 8(3) of Directive 2013/33. Moreover, it is apparent both from the wording and context of Article 8 of Directive 2013/33 and from its legislative history that the possibility — provided for in point (e) of the first subparagraph of paragraph 3 — of detaining an applicant for reasons relating to the protection of national security or public order is subject to compliance with a series of conditions whose aim is to create a strictly circumscribed framework in which such a measure may be used. In that regard, Article 9(1) of Directive 2013/13 provides that an applicant is to be detained only for as short a period as possible and may be kept in detention only for as long as the grounds set out in Article 8(3) of that directive are applicable.</p> <p>Lastly, the strict circumscription of the power of the competent national authorities to detain an applicant on the basis of point (e) of the first subparagraph of Article 8(3) of Directive 2013/33 is also ensured by the interpretation which the case-law of the Court of Justice gives to the concepts of ‘national security’ and ‘public order’ found in other directives and which also applies in the case of Directive 2013/33.</p> <p>The concept of ‘public order’ entails, in any event, the existence — in addition to the disturbance of the social order which any infringement of the law involves — of a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.</p> <p>The concept of ‘public security’ covers both the internal security of a Member State and its external security. Consequently, a threat to the functioning of institutions and essential public services and the survival of the population, as well as the risk of a serious disturbance to foreign relations or to peaceful coexistence of nations, or a risk to military interests, may affect public security.</p> <p>(see paras 53-55, 57, 62, 64-66, 82, operative part)</p> <p>3. In relation to national case-law according to which the introduction of an asylum application by a person who is subject to a return decision automatically causes all return decisions that may previously have been adopted in the context of that procedure to lapse, the principle that Directive 2008/115, on common standards and procedures in Member States for returning illegally staying third-country nationals, must be effective requires that a procedure opened under that directive, in the context of which a return decision, accompanied, as the case may be, by an entry ban, has been adopted, can be resumed at the stage at which it was interrupted, as soon as the application for international protection which interrupted it has been rejected at first instance. Indeed, the Member States must not jeopardise the attainment of the objective which Directive 2008/115 pursues, namely the establishment of an effective policy of removal and repatriation of illegally staying third-country nationals.</p>	<p>CJEU: <i>El Dridi</i>, C-61/11 PPU ECTHR: <i>Saadi v the United Kingdom</i>, 13229/03 <i>Nabil and others v Hungary</i>, 62116/12</p>

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CJEU	<p><i>Mahdi</i></p> <p>C-146/14 PPU</p> <p>05.06.2014</p> <p>ECJ:EU:C:2014:1320</p>	<p>In this regard, it follows both from the duty of sincere cooperation of the Member States, deriving from Article 4(3) TEU, and from the requirements for effectiveness referred to, for example, in recital 4 of Directive 2008/115 that the obligation imposed on the Member States by Article 8 of that directive, in the cases set out in Article 8(1), to carry out the removal must be fulfilled as soon as possible. That obligation would not be met if the removal were delayed because, following the rejection at first instance of the application for international protection, a procedure such as that described above could not be resumed at the stage at which it was interrupted but had to start afresh.</p> <p>It follows from the foregoing that, in adopting point (e) of the first subparagraph of Article 8 of Directive 2013/33 laying down standards for the reception of applicants for international protection, which allows an applicant to be detained for reasons relating to the protection of national security or public order, the EU legislature did not disregard the level of protection afforded by the second limb of Article 5(1)(f) of the European Convention on Human Rights: that provision permits the lawful detention of a person against whom action is being taken with a view to deportation or extradition.</p> <p>(see paras 75-78)</p> <p>Paragraphs relevant for detention: 43-82</p> <p><b>Key words:</b> Written measure.</p> <p>Judgment after a reference for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria concerning the interpretation of Article 15 of Directive 2008/115/EC.</p> <p><i>Summary:</i></p> <p>1. Article 15(3) and (6) of Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, read in the light of Articles 6 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that any decision adopted by a competent authority, on expiry of the maximum period allowed for the initial detention of a third-country national, on the further course to take concerning the detention must be in the form of a written measure that includes the reasons in fact and in law for that decision.</p> <p>The only requirement expressly provided for in Article 15 of Directive 2008/115 as regards adoption of a written measure is the requirement set out in paragraph 2 thereof, namely that detention must be ordered in writing with reasons being given in fact and in law. The requirement that a decision be adopted in writing must be understood as necessarily covering all decisions concerning extension of detention. However, the provisions of Article 15 of Directive 2008/115 do not require the adoption of a written measure concerning the periodic reviews. The authorities which carry out the review of a third-country national's detention at regular intervals pursuant to the first sentence of Article 15(3) of the directive are therefore not obliged, at the time of each review, to adopt an express measure in writing that states the factual and legal reasons for that measure.</p> <p>Nevertheless, if the authority dealing with a review procedure at the end of the maximum period for initial detention allowed by Article 15(5) of Directive 2008/115 takes a decision on the further course to take concerning the detention, it is obliged to adopt a written reasoned decision. In such a case, the review of the detention and the decision on the further course to take concerning the detention occur in the same procedural stage. Consequently, that decision must fulfil the requirements of Article 15(2) of Directive 2008/115. It must also, in every case, be subject to supervision by a judicial authority in accordance with Article 15(3) of that directive.</p> <p>(see paras 44, 47-49, 52, operative part 1)</p> <p>2. EU law does not preclude national legislation — which at the same time ensures that the fundamental rights are observed and that the provisions of EU law relating to that measure are fully effective — from providing that the authority which reviews the detention of a third-country national at reasonable intervals, in accordance with the first sentence of Article 15(3) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals, must adopt, on the conclusion of each review, an express measure containing the factual and legal reasons justifying the measure adopted. Such an obligation would arise solely under national law.</p> <p>(see paras 50, 51)</p>	<p><i>Kadzoev</i>, C-357/09 PPU</p>

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		<p>3. Article 15(3) and (6) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that the supervision that has to be undertaken by a judicial authority dealing with an application for extension of the detention of a third-country national must permit that authority to decide, on a case-by-case basis, on the merits of whether the detention of the third-country national concerned should be extended, whether detention may be replaced with a less coercive measure or whether the person concerned should be released, that authority thus having power to take into account the facts stated and evidence adduced by the administrative authority which has brought the matter before it, as well as any facts, evidence and observations which may be submitted to the judicial authority in the course of the proceedings.</p> <p>A judicial authority deciding upon an application for the extension of detention must be able to rule on all relevant matters of fact and of law in order to determine, in the light of the requirements arising under Article 15 of Directive 2008/115, whether an extension of detention is justified, which requires an in-depth examination of the matters of fact specific to each individual case. Where the detention that was initially ordered is no longer justified in the light of those requirements, the judicial authority having jurisdiction must be able to substitute its own decision for that of the administrative authority or, as the case may be, the judicial authority which ordered the initial detention and to take a decision on whether to order an alternative measure or the release of the third-country national concerned. To that end, the judicial authority ruling on an application for extension of detention must be able to take into account both the facts stated and the evidence adduced by the administrative authority and any observations that may be submitted by the third-country national. Furthermore, that authority must be able to consider any other element that is relevant for its decision should it so deem necessary. Accordingly, the powers of the judicial authority in the context of an examination can under no circumstances be confined just to the matters adduced by the administrative authority concerned.</p> <p>(see paras 62, 64, operative part 2)</p> <p>4. Article 15(1) and (6) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as precluding national legislation pursuant to which an initial six month period of detention may be extended solely because the third-country national concerned has no identity documents. It is for the referring court alone to undertake an individual assessment of the facts and circumstances of the case in question in order to determine whether a less coercive measure may be applied effectively to that third-country national or whether there is a risk of him absconding.</p> <p>(see para. 74, operative part 3)</p> <p>5. Article 15(6)(a) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that a third-country national who has not obtained an identity document which would have made it possible for him to be removed from the Member State concerned may be regarded as having demonstrated a lack of cooperation within the meaning of that provision only if an examination of his conduct during the period of detention shows that he has not cooperated in the implementation of the removal operation and that it is likely that that operation lasts longer than anticipated because of that conduct, a matter which falls to be determined by the referring court.</p> <p>Furthermore, Article 15(6) of Directive 2008/115 requires that, before it considers whether the third-country national concerned has shown that he has failed to cooperate, the authority concerned should be able to demonstrate that the removal operation is lasting longer than anticipated, despite all reasonable efforts: that means that the Member State in question should actively be seeking to secure the issue of identity documents for the third-country national.</p> <p>Thus, in order to confirm that the Member State concerned has made reasonable efforts to carry out the removal operation and that there is a lack of cooperation on the part of the third-country national concerned, a detailed examination of the factual matters relating to the whole of the initial detention period is necessary. Such an examination is a question of fact which falls outside the jurisdiction of the Court in proceedings under Article 267 TFEU and is a matter for the national court.</p> <p>(see paras 83-85, operative part 4)</p>	

Court	Case name/reference/ date	Key words/relevance/main points	Cases cited
CJEU	<p><i>Arslan</i> C534/11 30.05.2013 ECLI:EU:C:2013:343</p>	<p>6. Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that a Member State cannot be obliged to issue an autonomous residence permit, or other authorisation conferring a right to stay, to a third-country national who has no identity documents and has not obtained such documentation from his country of origin, after a national court has released the person concerned on the ground that there is no longer a reasonable prospect of removal within the meaning of Article 15(4) of that directive. However, that Member State must, in such a case, provide the third-country national with written confirmation of his situation. (see para. 89, operative part 5) Paragraphs relevant to detention: 37-74.</p> <p><b>Key words:</b> The returns directive. Judgment after a reference for a preliminary ruling from the Nejvyšší správní soud — Czech Republic concerning the interpretation of Article 2(1) of Directive 2008/115/EC. <i>Summary:</i> 2. Article 2(1) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in conjunction with recital 9 in the preamble, must be interpreted as meaning that that directive does not apply to a third-country national who has applied for international protection within the meaning of Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status, during the period from the making of the application to the adoption of the decision at first instance on that application or, as the case may be, until the outcome of any action brought against that decision is known. It is clearly apparent from the wording, scheme and purpose of Directives 2005/85 and 2008/115 that an asylum seeker, independently of the granting of a residence permit, which, under Article 7(1) of Directive 2005/85 is left to the discretion of each Member State, has the right to remain in the territory of the Member State concerned at least until his application has been rejected at first instance, and cannot therefore be considered to be ‘illegally staying’ within the meaning of Directive 2008/115, which relates to his removal from that territory. (see paras 48, 49, operative part 1) 3. Directives 2003/9 laying down minimum standards for the reception of asylum seekers and 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status do not preclude a third-country national who has applied for international protection within the meaning of Directive 2005/85 after having been detained under Article 15 of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals from being kept in detention on the basis of a provision of national law, where it appears, after an assessment on a case-by-case basis of all the relevant circumstances, that the application was made solely to delay or jeopardise the enforcement of the return decision and that it is objectively necessary to maintain detention to prevent the person concerned from permanently evading his return. Although Directive 2008/115 is not applicable during the procedure in which an application for asylum is examined, that does not mean that the return procedure is thereby definitively terminated, as it may continue if the application for asylum is rejected. The objective of that directive, namely the effective return of illegally staying third-country nationals, would be undermined if it were impossible for Member States to prevent the person concerned from automatically securing release by making an application for asylum. However, the mere fact that an asylum seeker, at the time of the making of his application, is the subject of a return decision and is being detained on the basis of Article 15 of Directive 2008/115 does not allow it to be presumed, without an assessment on a case-by-case basis of all the relevant circumstances, that he has made that application solely to delay or jeopardise the enforcement of the return decision and that it is objectively necessary and proportionate to maintain detention. (see paras 60, 62, 63, operative part 2) Paragraphs relevant to detention: 40-63.</p>	<p><i>Kadzoev</i>, C-357/09 PPU</p>



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CJEU	<p><i>M.S. and others</i> Joined cases C-411/10 and C-493/10 21.12.2011 ECU:EU:C:2011:865</p>	<p><b>Key words:</b> Systemic deficiencies, risk of inhuman or degrading treatment.</p> <p>Judgment after a reference for a preliminary ruling from the Court of Appeal (England &amp; Wales) (Civil Division) (United Kingdom) and the High Court (Ireland) on interpretation of Article 3(2) of Council Regulation (EC) No 343/2003 and the fundamental rights of the European Union</p> <p><i>Summary:</i></p> <p>1. Article 3(2) of Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national grants Member States a discretionary power which forms an integral part of the Common European Asylum System provided for by the FEU Treaty and developed by the Union legislature. That discretionary power must be exercised in accordance with the other provisions of that regulation. A Member State which exercises that power must therefore be considered as implementing Union law within the meaning of Article 51(1) of the Charter of Fundamental Rights of the European Union. Therefore, the decision taken by a Member State on the basis of Article 3(2) of Regulation No 343/2003 as to whether or not to examine an asylum application which is not its responsibility according to the criteria laid down in Chapter III of that regulation implements Union law for the purposes of Article 6 TEU and/or Article 51 of the Charter of Fundamental Rights of the European Union.</p> <p>(see paras 65-66, 68-69, operative part 1)</p> <p>2. European Union law precludes the application of an irrebuttable presumption that the Member State which Article 3(1) of Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national indicates as responsible observes the fundamental rights of the European Union.</p> <p>Articles 1, 18 and 47 of the Charter of Fundamental Rights of the European Union do not lead to an answer different from that given above.</p> <p>(see paras 105, 115, operative part 2-3)</p> <p>3. Article 4 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the Member States, including the national courts, may not transfer an asylum seeker to the Member State responsible within the meaning of Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that that asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of that provision.</p> <p>Subject to the right for that State to examine the application referred to in Article 3(2) of Regulation No 343/2003, the finding that it is impossible to transfer an applicant to another Member State, where that State is identified as the Member State responsible in accordance with the criteria set out in Chapter III of that regulation, requires the Member State that was to carry out that transfer to continue to examine the criteria set out in that chapter in order to establish whether one of the following criteria enables another Member State to be identified as responsible for the examination of the asylum application.</p> <p>The Member State in which the asylum seeker is present must, however, ensure that it does not worsen a situation in which that applicant's fundamental rights have been infringed by use of a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, it must itself examine the application in accordance with the procedure laid down in Article 3(2) of Regulation No 343/2003.</p> <p>Articles 1, 18 and 47 of the Charter of Fundamental Rights of the European Union do not lead to a different answer from that given above.</p> <p>(see paras 106-108, 115, operative part 2-3)</p>	<p>ECtHR: <i>M.S.S. v Belgium and Greece</i>, 30696/09</p>

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		<p>4. It is apparent from Article 1 of Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom that that protocol does not call into question the applicability of the Charter in the United Kingdom or in Poland, a position which is confirmed by the recitals in the preamble to that protocol. Thus, according to the third recital in the preamble to Protocol (No 30), the Charter must be applied and interpreted by the courts of Poland and of the United Kingdom strictly in accordance with the explanations referred to in Article 1 of the protocol. In addition, according to the sixth recital in the preamble to that protocol, the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles. In those circumstances, Article 1(1) of Protocol (No 30) explains Article 51 of the Charter with regard to its field of application and is not intended to exempt the Republic of Poland or the United Kingdom from the duty to comply with the provisions of the Charter, or to prevent a court of one of those Member States from ensuring compliance with those provisions.</p> <p>Consequently, the taking into account of that protocol does not affect the scope of the United Kingdom's obligations in relation to the protection conferred on a person to whom Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national applies.</p> <p>(see paras 119-120, 122, operative part 4)</p> <p>Paragraphs relevant to detention: 106.</p>	
CJEU	<p><i>Kadzoev</i> C-357/09 PPU 30.11.2009 ECLI:EU:C:2009:741</p>	<p><b>Key words:</b> Removal, calculating period of detention.</p> <p>Judgment after a reference for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria concerning the interpretation of Article 15(4) to (6) of Directive 2008/115/EC.</p> <p><i>Summary:</i></p> <p>1. Article 15(5) and (6) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that the maximum duration of detention laid down in those provisions must include a period of detention completed in connection with a removal procedure commenced before the rules in that directive become applicable.</p> <p>(see para. 39, operative part 1)</p> <p>2. A period during which a person has been held in a detention centre on the basis of a decision taken pursuant to the provisions of national and Community law concerning asylum seekers may not be regarded as detention for the purpose of removal within the meaning of Article 15 of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals. Detention for the purpose of removal governed by Directive 2008/115 and detention of an asylum seeker, in particular under Directive 2003/9 laying down minimum standards for the reception of asylum seekers, Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status, and the applicable national provisions, fall under different legal rules. However, if an asylum seeker remains in detention for the purpose of removal while asylum procedures opened following his applications for asylum are under way, the period of detention corresponding to the period during which those asylum procedures were under way must be taken into account in calculating the period of detention for the purpose of removal mentioned in Article 15(5) and (6) of Directive 2008/115.</p> <p>(see paras 45, 47-48, operative part 2)</p> <p>3. Article 15(5) and (6) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that the period during which execution of the decree of deportation was suspended because of a judicial review procedure brought against that decree by the person concerned is to be taken into account in calculating the period of detention for the purpose of removal, where the person concerned continued to be held in a detention facility during that procedure. If it were otherwise, the duration of detention for the purpose of removal could vary, sometimes considerably, from case to case within a Member State or from one Member State to another because of the particular features and circumstances peculiar to national judicial procedures, which would run counter to the objective pursued by Article 15(5) and (6) of Directive 2008/115, namely to ensure a maximum duration of detention common to the Member States.</p> <p>(see paras 54, 57, operative part 3)</p>	

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CJEU	<p><i>Thi Ly Pham v Stadt Schweinfurt, Amt für Meldewesen und Statistik</i> C-474/13 14.07.2014 ECLI:EU:C:2014:2096</p>	<p>4. Article 15(4) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as not being applicable where the possibilities of extending the periods of detention provided for in Article 15(6) of Directive 2008/115 have been exhausted at the time when a judicial review of the detention of the person concerned is conducted. (see para. 62, operative part 4)</p> <p>5. Article 15(4) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods. (see para. 67, operative part 5)</p> <p>6. Article 15(4) and (6) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as not allowing, where the maximum period of detention laid down by that directive has expired, the person concerned not to be released immediately on the grounds that he is not in possession of valid documents, his conduct is aggressive, and he has no means of supporting himself and no accommodation or means supplied by the Member State for that purpose. (see para. 71, operative part 6)</p> <p>Paragraphs relevant to detention: 34-71.</p> <p><b>Key words:</b> Detention in prison with ordinary prisoners.</p> <p><i>Summary:</i></p> <p>1. The second sentence of Article 16(1) of Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as not permitting a Member State to detain a third-country national for the purpose of removal in prison accommodation together with ordinary prisoners even if the third-country national consents thereto. It is clear from the wording of that provision that it lays down an unconditional obligation requiring illegally staying third-country nationals to be kept separated from ordinary prisoners when a Member State cannot provide accommodation for those third-country nationals in specialised detention facilities. That obligation is not coupled with any exception and constitutes a guarantee of observance of the rights which have been expressly accorded by the EU legislature to those third-country nationals in the context of the conditions relating to detention in prison accommodation for the purpose of removal. The obligation requiring illegally staying third-country nationals to be kept separated from ordinary prisoners, laid down in the second sentence of Article 16(1), is more than just a specific procedural rule for carrying out the detention of third-country nationals in prison accommodation and constitutes a substantive condition for that detention, without observance of which the latter would, in principle, not be consistent with the directive. In this context, a Member State cannot take account of the wishes of the third-country national concerned. (see paras 17, 19, 21-23, operative part)</p>	<p><i>Bero and Bouzalimate</i>, C473/13 and C514/13</p> <p><i>El Dridi</i>, C61/11</p> <p><i>Ars-lan</i>, C534/11</p>
CJEU	<p><i>Cimade v Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration</i> C-179/11 27.09.2012 ECLI:EU:C:2012:594</p>	<p><b>Key words:</b> Guarantee of minimum reception conditions.</p> <p><i>Summary:</i></p> <p>1. Directive 2003/9 laying down minimum standards for the reception of asylum seekers in the Member States must be interpreted as meaning that a Member State in receipt of an application for asylum is obliged to grant the minimum conditions for reception of asylum seekers laid down in that directive even to an asylum seeker in respect of whom it decides, under Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, to call upon another Member State, as the Member State responsible for examining his application for asylum, to take charge of or take back that applicant.</p> <p>According to Article 3 of Directive 2003/9, which defines the scope of that directive, the directive applies to all third-country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State, as long as they are allowed to remain on the territory as asylum seekers.</p>	<p>No cited case-law</p>



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		<p>With regard to the first condition for application of that directive, the period during which the material reception conditions must be granted to the applicants, that period begins when the asylum seeker applies for asylum. No provision can be found in the directive such as to suggest that an application for asylum can be regarded as having been lodged only if it is submitted to the authorities of the Member State responsible for the examination of that application.</p> <p>With regard to the second condition for application of Directive 2003/9, Article 7(1) of Directive 2005/85 on minimum standards on procedures in Member States for granting and withdrawing refugee status confers on an asylum seeker the right to remain in the Member State for the purposes of the examination of his application. According to Article 2(k) of that directive, the expression 'remain in the Member State' must be understood as the fact of remaining in the territory, not only of the Member State in which the application for asylum is being examined, but also in that in which it was lodged. Thus, asylum seekers are allowed to remain not only in the territory of the Member State in which the application for asylum is being examined, but also in that of the Member State in which that application was lodged, as required by Article 3(1) of Directive 2003/9.</p> <p>Recital 29 in the preamble to Directive 2005/85 is not such as to impugn that interpretation, since that recital refers only to the fact that the procedures established by that directive for the grant or withdrawal of refugee status in the Member States are to be distinguished from the procedures laid down in Regulation No 343/2003 for determining the Member State responsible for examining an application for asylum.</p> <p>(see paras 37, 39, 40, 46-50, operative part 1)</p> <p>2. The obligation for a Member State in receipt of an application for asylum to grant the minimum conditions laid down in Directive 2003/9 laying down minimum standards for the reception of asylum seekers in the Member States to an asylum seeker in respect of whom it decides, under Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, to call upon another Member State, as the Member State responsible for examining his application for asylum, to take charge of or take back that applicant ceases when that same applicant is actually transferred by the requesting Member State. The general scheme and purpose of Directive 2003/9 and the observance of fundamental rights, in particular the requirements of Article 1 of the Charter of Fundamental Rights of the European Union, under which human dignity must be respected and protected, preclude an asylum seeker from being deprived — even for a temporary period of time after the making of the application for asylum and before being actually transferred to the Member State responsible — of the protection of the minimum standards laid down by that directive.</p> <p>(see paras 56, 58, 61, operative part 2)</p> <p>3. The financial burden of granting those minimum conditions laid down by Directive 2003/9 laying down minimum standards for the reception of asylum seekers in the Member States is to be assumed by the Member State which is subject to the obligation of granting those conditions. The financial burden linked to requirements arising from the need for a Member State to comply with European Union law is usually assumed by the Member State which is subject to the obligation to satisfy those requirements, unless European Union legislation provides otherwise. Thus, in the absence of contrary provisions in that regard either in Directive 2003/9 or Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, the financial burden of providing the minimum reception conditions is to be assumed by the Member State which is subject to that obligation. With a view to responding to the need to share responsibilities fairly between Member States as concerns the financial burden arising from the implementation of common policies on asylum and immigration, the European Refugee Fund, established by Decision No 573/2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows', provides for the possibility of financial assistance being offered to the Member States with regard, <i>inter alia</i>, to reception conditions and asylum procedures.</p> <p>(see paras 59-61, operative part 2)</p>	

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CJEU	<p><i>Hassen El Dridi, alias Karim Soufi</i> C-61/11 PPU 28.04.2011 ECU:EU:C:2011:268</p>	<p><b>Key words:</b> border controls, return of illegally staying third-country nationals Judgment after reference for a preliminary ruling from the Corte d'appello di Trento (Italy), concerning the interpretation of Articles 15 and 16 of Directive 2008/115/EC.</p> <p><b>Summary:</b> Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals, in particular Articles 15 and 16 thereof, must be interpreted as precluding a Member State's legislation which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period. Such a penalty, due inter alia to its conditions and methods of application, risks jeopardising the attainment of the objective pursued by that directive, namely, the establishment of an effective policy of removal and repatriation of illegally staying third-country nationals. (see paras 59, 62, operative part) Paragraphs relevant to detention: 39-43.</p>	<p>CJEU: <i>Kadzoev</i>, C-357/09 PPU ECtHR: <i>Saadi v United Kingdom</i> [GC], 13229/03</p>
CJEU	<p><i>Tsegezab Mengesteab v Bundesrepublik Deutschland</i> C-670/16 26.07.2017 ECU:EU:C:2017:587</p>	<p><b>Key words:</b> Regulation No 604/2013, the Member State responsible, time limits, lodging an application Judgment after reference for a preliminary ruling from the Verwaltungsgericht Minden (Administrative Court, Minden, Germany), concerning the interpretation of Article 17(1), Article 20(2), Article 21(1) and Article 22(7) of Regulation (EU) No 604/2013</p> <p><b>Summary:</b> 1. Article 27(1) of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, read in the light of recital 19 thereof, must be interpreted as meaning that an applicant for international protection may rely, in the context of an action brought against a decision to transfer him, on the expiry of a period laid down in Article 21(1) of that regulation, even if the requested Member State is willing to take charge of that applicant. As regards the objectives of that regulation, it should be stated, inter alia, that, according to its recital 9, that regulation, while confirming the principles underlying Regulation No 343/2003, is intended to make the necessary improvements, in the light of experience, not only to the effectiveness of the Dublin system but also to the protection afforded applicants under that system, to be achieved, inter alia, by the effective and complete judicial protection enjoyed by asylum seekers (see, to that effect, judgment of 7 June 2016, <i>Ghezelbash</i>, C-63/15, EU:C:2016:409, paragraph 52). A restrictive interpretation of the scope of the remedy provided for in Article 27(1) of the Dublin III Regulation might thwart the attainment of that objective (see, to that effect, judgment of 7 June 2016, <i>Ghezelbash</i>, C-63/15, EU:C:2016:409, paragraph 55). It follows from the foregoing that that provision must be interpreted as ensuring that the applicant for international protection has effective judicial protection by, inter alia, guaranteeing him the opportunity of bringing an action against a transfer decision made in respect of him, which may concern the examination of the application of that regulation, including respect of the procedural guarantees laid down in that regulation (see, to that effect, judgment of 7 June 2016, <i>Karim</i>, C-155/15, EU:C:2016:410, paragraph 22). In that regard, it should be noted that the EU legislature defined the effects of the expiry of those periods by specifying, in the third subparagraph of Article 21(1) of the Dublin III Regulation, that where that request is not made within those periods, responsibility for examining the application for international protection is to lie with the Member State in which the application was lodged. It follows that, while the provisions of Article 21(1) of that regulation are intended to provide a framework for the take charge procedure, they also contribute, in the same way as the criteria set out in Chapter III of that regulation, to determining the responsible Member State, within the meaning of that regulation. Therefore, a decision to transfer to a Member State other than the one with which the application for international protection was lodged cannot validly be adopted once the periods laid down in those provisions have expired.</p>	<p><i>Ghezelbash</i>, C-63/15 <i>Karim</i>, C-155/15</p>

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		<p>In those circumstances, in order to satisfy itself that the contested transfer decision was adopted following a proper application of the take charge procedure laid down in that regulation, the court dealing with an action challenging a transfer decision must be able to examine the claims made by an asylum applicant who invokes an infringement of the provisions set out in Article 21(1) of that regulation (see, by analogy, judgment of 7 June 2016, <i>Karim</i>, C-155/15, EU:C:2016:410, paragraph 26).</p> <p>(see paras 46-48, 52, 53, 55, 62, operative part 1)</p> <p>2. Article 21(1) of Regulation No 604/2013 must be interpreted as meaning that a take charge request cannot validly be made more than three months after the application for international protection has been lodged, even if that request is made within two months of receipt of a Eurodac hit within the meaning of that article.</p> <p>(see para. 74, operative part 2)</p> <p>3. Article 20(2) of Regulation No 604/2013 must be interpreted as meaning that an application for international protection is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority.</p> <p>In that regard, it should, in the first place, be pointed out that the second sentence of Article 20(2) states that, where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible, which suggests (i) that the preparation of that report is in essence a formality intended to record the intention of a third-country national to request international protection and (ii) that the creation of that document must not be deferred.</p> <p>In the second place, it is clear from Article 20(1) of that regulation that the process of determining the Member State responsible is to start as soon as an application for asylum is first lodged with a Member State. It follows that, in order to be able effectively to start the process of determining the responsible Member State, the competent authority needs to be informed, with certainty, of the fact that a third-country national has requested international protection, and it is not necessary for the written document prepared for that purpose to have a precisely defined form or for it to include additional information relevant to the application of the criteria laid down by the Dublin III Regulation or, a fortiori, to the examination of the application for international protection. Nor is it necessary, at that stage of the procedure, for a personal interview already to have been organised.</p> <p>In the third place, the effectiveness of certain important guarantees granted to applicants for international protection would be restricted if the receipt of a written document, such as that at issue in the case in the main proceedings, was not sufficient to demonstrate that an application for international protection had been lodged.</p> <p>In the fourth place, the Dublin III Regulation assigns a specific role to the first Member State in which an application for international protection is lodged. In those circumstances, to consider that a document such as that at issue in the case in the main proceedings does not constitute a 'report', within the meaning of that provision, would, in practice, allow third-country nationals to leave the Member State in which they have requested international protection and to re-request that protection in another Member State, but they could not be transferred, for that reason, to the first Member State and it would not be possible to trace their initial request by using the Eurodac system. Such a situation could seriously affect the functioning of the Dublin system by calling into question the special status which the Dublin III Regulation grants to the first Member State in which an application for international protection is lodged.</p> <p>In the light of all those factors, a written document such as that at issue in the case in the main proceedings, prepared by a public authority and certifying that a third-country national has requested international protection, must be considered to be a 'report' within the meaning of Article 20(2) of that regulation.</p> <p>(see paras 84, 85, 88, 91, 93, 95, 97, 103, operative part 3)</p> <p>Paragraph relevant to detention: 103.</p>	

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CJEU	<p><i>Sadikou Gnanadi v État belge</i> C-181/16 19.06.2018 ECJ:EU:C:2018:465</p>	<p><b>Keywords:</b> Adoption of a return decision before resolution of an appeal against the decision of the determining authority rejecting the application for international protection</p> <p>Judgment after reference for a preliminary ruling from the Conseil d'État (Council of State, Belgium), concerning the interpretation of Directive 2008/115/EC.</p> <p><i>Ruling:</i></p> <p>Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, read in conjunction with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, and in the light of the principle of non-refoulement and the right to an effective remedy, enshrined in Article 18, Article 19(2) and Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding the adoption of a return decision, under Article 6(1) of Directive 2008/115, in respect of a third-country national who has applied for international protection, immediately after the rejection of that application by the determining authority or together in the same administrative act, and thus before the conclusion of any appeal proceedings brought against that rejection, provided, inter alia, that the Member State concerned ensures that all the legal effects of the return decision are suspended pending the outcome of the appeal, that that applicant is entitled, during that period, to benefit from the rights arising under Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, and that he is entitled to rely on any change in circumstances that occurred after the adoption of the return decision which may have a significant bearing on the assessment of his situation under Directive 2008/115, and in particular under Article 5 thereof, those being matters for the referring court to determine.</p> <p>Paragraphs relevant to detention: 45, 62.</p>	<p><i>Arslan</i>, C-534/11 <i>Pham</i>, C-474/13 <i>N.</i>, C-601/15 PPU <i>Abdida</i>, C-562/13 <i>N.S. and Others</i>, C-411/10 and C-493/10 <i>Samba Diouf</i>, C-69/10 <i>Cimade and GISTI</i>, C-179/11 <i>Mahdi</i>, C-146/14 PPU <i>Mukarubega</i>, C-166/13</p>

## European Court of Human Rights (ECtHR) Jurisprudence

Court	Case name/reference/ date	Key words/relevance/main points	Cases cited
ECtHR	<p><i>Abdullahi Elmi and Aweys Abubakar v Malta</i> nos 25794/13 and 28151/13 22.11.2016 ECLI:CE:ECHR:2016:1122JUD002579413</p>	<p><b>Keywords:</b> (Art. 3) Prohibition of torture (Art. 3) Degrading treatment (Art. 5) Right to liberty and security (Art. 5-1) Lawful arrest or detention (Art. 5-4) Review of lawfulness of detention. <i>Summary:</i> The case concerned two asylum seekers' detention for eight months pending the outcome of their asylum procedure and in particular a procedure to assess whether they were minors or not. The applicants, Burhaan Abdullahi Elmi and Cabdullaahi Aweys Abubakar, are Somali nationals who were born in 1996 and 1995 respectively. At the time of the introduction of their application the two applicants were detained in Safi Barracks Detention Centre, Safi, Malta. Both applicants arrived in August 2012 in Malta by boat as irregular migrants. They were immediately registered by the immigration police. They were then given two documents in English (a Return Decision and a Removal Order) informing them that their stay was being terminated and that they would remain in custody until they had been removed. Shortly after their arrival, they both applied for asylum, stating on their forms that they were 16 and 17 years old, respectively. They were referred to the Agency for the Welfare of Asylum Seekers (AWAS), a government-run agency, for an age assessment, which consists of one or two interviews and an X-ray of the wrist bones. Mr Burhaan Abdullahi Elmi was interviewed and taken for the bone test a few weeks after his arrival. He claims that he was told informally in or around October 2012 that he was found to be a minor and would be released. He was, however, only released six months later under a care order and placed in an open centre for unaccompanied minors. He subsequently absconded and went to Germany where he is waiting for the outcome of judicial proceedings as to whether he would be sent back to Malta to have his asylum claim determined there. Mr Cabdullaahi Aweys Abubakar was interviewed some weeks after his arrival and taken for the bone test some five months later. He also claims that he was told informally — in March 2013 — that he was found to be a minor and would be released. He was, however, only released two and a half months later under a care order and placed in an open centre for unaccompanied minors. He was granted subsidiary protection in September 2013. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), both applicants complained about the conditions of their immigration detention for eight months, which had involved overcrowding, lack of light and ventilation, no organised activities and a tense, violent atmosphere. They argued that these conditions had been all the more difficult in view of their vulnerable status as asylum-seekers and minors; indeed, there had been no support mechanism for them and this, combined with the lack of information as to what was going to happen to them or how long they would be detained, had exacerbated their fears. Also relying on Article 5 § 1 (right to liberty and security), they alleged that their detention had been the result of a blanket policy applied to all irregular migrants without distinction or review and had therefore been arbitrary and unlawful; they also complained in particular that they had been detained despite the fact that they had claimed to be minors. They further alleged under Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) that they had not had a remedy to challenge the lawfulness of their detention.</p> <p><b>Violation of Article 3 (degrading treatment);</b> <b>Violation of Article 5 § 1;</b> <b>Violation of Article 5 § 4.</b> Paragraph relevant to detention: 102, 104.</p>	<p><i>M.S.S. v Belgium and Greece</i> [GC], 30696/09 <i>Tarakhel v Switzerland</i> [GC], 29217/12 <i>Ananyev and others v Russia</i>, 42525/07 and 60800/08</p>

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ECtHR	<p><i>O.M. v Hungary</i> no 9912/15 05.07.2016 ECLI:CE:ECHR:2016:07051UD000991215</p>	<p><b>Keywords:</b> (Art. 5) Right to liberty and security (Art. 5-1) Lawful arrest or detention (Art. 5-1-b) Secure fulfilment of obligation prescribed by law (Art. 5-1-f) Prevent unauthorised entry into country</p> <p><b>Summary:</b> The applicant, O.M., is an Iranian national who was born in 1982 and currently lives in Budapest. The case concerned his detention for 58 days following his request for asylum in Hungary. Having travelled via Serbia, O.M. arrived in Hungary in June 2014, where he was apprehended and taken into custody. He filed a claim for asylum stating that he had been forced to flee Iran, his country of origin, because of his homosexuality. At his asylum hearing he alleged that because of his sexual orientation criminal proceedings had been instituted against him and that he faced severe penalties. On 25 June 2014 the Office of Immigration and Nationality ordered for him to be detained, referring to the fact that his identity and nationality had not yet been clarified and the risk of his frustrating proceedings or running away if left at large. O.M.'s request for release was subsequently dismissed by the competent district court, which extended his detention by 60 days. In August 2014, the asylum authority's request for an additional 60-day extension was dismissed. His detention was eventually terminated on 22 August 2014 and he was designated a place of residence. In October 2014 he was recognised as a refugee. Relying on Article 5 (right to liberty and security), O.M. complained that his detention had been arbitrary and unjustified and that the authorities had failed to take into consideration the individual circumstances of his case, in particular, his belonging to a vulnerable group.</p> <p><b>Violation of Article 5 § 1 — concerning the period between 25 June and 22 August 2014.</b> Paragraph relevant to detention: 53.</p>	<p><i>Alajos Kiss v Hungary</i>, 38832/06</p>
ECtHR	<p><i>J.R. and Others v Greece</i> no 22696/16 25.01.2018 ECLI:CE:ECHR:2018:01251UD002269616</p>	<p><b>Keywords:</b> (Art. 3) Prohibition of torture (Art. 3) Degrading treatment (Art. 3) Inhuman treatment (Art. 5) Right to liberty and security (Art. 5-1) Deprivation of liberty (Art. 5-1) Lawful arrest or detention (Art. 5-1-f) Expulsion (Art. 5-1-f) Prevent unauthorised entry into country (Art. 5-2) Information in language understood (Art. 5-2) Information on reasons for arrest</p>	



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ECtHR	<p><i>Lokpo and Touré v Hungary</i> no 10816/10 20.09.2011 ECLI:CE:ECHR:2011:0920JUD001081610</p>	<p><b>Summary:</b> The 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 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). However, the applicants had not been appropriately informed about the reasons for their arrest or the remedies available in order to challenge that detention. As to the conditions of detention in the centre, the Court noted the emergency situation facing the Greek authorities after significant numbers of migrants had arrived and the ensuing material difficulties. It observed that several NGOs had visited the centre and had partly confirmed the applicants' allegations, but found that the conditions were not severe enough for their detention to be characterised as inhuman or degrading treatment had not been reached.</p> <p><b>No violation of Article 5 § 1;</b> <b>A violation of Article 5 § 2;</b> <b>No violation of Article 3;</b> Paragraphs relevant to detention: 144-147.</p>	<p><i>Saadi v the United Kingdom</i> [GC], 13229/03</p>
ECtHR	<p><i>J.N. v United Kingdom</i> no 37289/12 19.05.2016 ECLI:CE:ECHR:2016:0519JUD003728912</p>	<p><b>Keywords:</b> (Art. 5) Right to liberty and security</p> <p><b>Summary:</b> The applicants, Paul Thibaut Lokpo and Ousmane Touré, are Ivorian nationals who were born in 1990 and 1984 and live in Budapest and Nyírbátor, Hungary, respectively. They entered Hungary illegally and, arrested in March 2009, subsequently claimed asylum. Relying on Article 5 § 1 (right to liberty and security), they complained about the unlawfulness of their detention from April to September 2009 pending the asylum proceedings.</p> <p><b>Violation of Article 5 § 1.</b> Paragraph relevant to detention: 22.</p>	<p><i>A.H. and J.K. v Cyprus</i>, 41903/10 and 41911/10 <i>Amie and others v Bulgaria</i>, 58149/08 <i>Auad v Bulgaria</i>, 46390/10 <i>Bordovskiy v Russia</i>, 49491/99 <i>Gallardo Sanchez v Italy</i>, 11620/07 <i>Louled Massoud v Malta</i>, 24340/08 <i>A. and Others v the United Kingdom</i> [GC], 3455/05 <i>Muminov v Russia</i>, 42502/06 <i>Ismailov and others v Russia</i>, 2947/06</p>

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ECtHR	<p><i>Nabil and Others v Hungary</i> no 62116/12 22.09.2015 ECLI:CE:ECHR:2015:0922JUD006211612</p>	<p><b>Summary:</b> The case concerned a complaint about the system of immigration detention in the United Kingdom. The applicant, Mr J.N., is an Iranian national who was born in 1971 and lives in Barking (England, UK). Mr J.N. arrived in the UK in January 2003 and claimed asylum. His claim was refused in October 2003. He was subsequently convicted of indecent assault, sentenced to 12 months' imprisonment and served with a deportation order. On completion of his sentence, he remained in immigration detention for a total of 55 months, notably from March 2005 to December 2007 and then from January 2008 to December 2009. During the first period of detention Mr J.N. indicated that he wished to return to Iran and eventually, in November 2007, the Iranian Embassy agreed to issue a travel document provided that he sign a 'disclaimer' consenting to his return. He refused, however, to sign the disclaimer. He was released in December 2007 pursuant to a court order but became liable for detention again because of failure to comply with the conditions for his release, namely that he take the necessary steps to obtain travel documents. He was thus detained again one month later while reporting to the immigration authorities. During this second period of detention, Mr J.N. continued to repeatedly refuse to cooperate with the authorities' attempts to engage him in a voluntary return or to sign a disclaimer. He was released in December 2009 when the High Court granted him permission to apply for judicial review and the Home Office was ordered to release him on bail. Mr J. N. brought two sets of judicial review proceedings: the first during his initial period of immigration detention, which he failed to pursue following his release in December 2007; and the second, which resulted in the Administrative Court finding that his detention had been unlawful from 14 September 2009 and awarding him 6 150 British pounds in damages. The Administrative Court notably concluded that 'the woeful lack of energy and impetus' applied to Mr J.N.'s case from at least the middle of 2008 meant that it could not be said that his deportation was being pursued with the obligation under the relevant national law to act with 'reasonable diligence and expedition'. Relying on Article 5 § 1 (f) (right to liberty and security), Mr J.N. complained about the excessive length of his detention as well as the system of immigration detention in the UK, notably alleging that the time-limits on the maximum period of immigration detention had been unclear and that there had been no automatic judicial review.</p> <p><b>Violation of Article 5 § 1 — in respect of the period of detention from mid-2008 to 14 September 2009.</b> Paragraphs relevant to detention: 83, 87, 88.</p>	<p><i>Chahal v the United Kingdom</i>, 15 November 1996, Reports of Judgments and Decisions 1996-V <i>Auad v Bulgaria</i>, 46390/10</p>
ECtHR	<p><i>Nabil and Others v Hungary</i> no 62116/12 22.09.2015 ECLI:CE:ECHR:2015:0922JUD006211612</p>	<p><b>Keywords:</b> (Art. 5) Right to liberty and security (Art. 5-1) Lawful arrest or detention (Art. 5-1-f) Expulsion</p> <p><b>Summary:</b> The applicants, Ahmad Mohamed Nabil, Saleh Ali Isse, and Mohamad Addow Shini, are Somali nationals who were born in 1984, 1974, and 1985 respectively and live in Bicske (Hungary). The case concerned the applicants' detention pending their eventual deportation to Serbia. Originally coming through Greece, the three applicants entered Hungary via Serbia in November 2011. They were intercepted and arrested by the Hungarian border police and transferred to a border station. On 6 November 2011 the authorities, considering the applicants to be illegal border crossers without identity documents, ordered their expulsion to Serbia and their detention with a view to their eventual deportation. Their detention was subsequently reviewed by the domestic courts on five occasions between 8 November 2011 and 3 March 2012, and extended essentially on the grounds that the applicants had entered Hungary illegally and without ID and that there was a risk that they might frustrate their expulsion. In the meantime, on 9 November 2011 the applicants had applied for asylum in Hungary. Their asylum application was dismissed on 19 March 2012. However, having been granted subsidiary protection in the asylum proceedings, they were eventually released on 24 March. Relying in particular on Article 5 § 1 (right to liberty and security), the applicants complained about their detention without appropriate judicial review, alleging in particular that it had no longer been justified to detain them under domestic law once they had filed their asylum request.</p> <p><b>Violation of Article 5 § 1 — concerning the period from 8 November 2011 to 3 March 2012.</b> Paragraphs relevant to detention: 29.</p>	



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ECtHR	<p><i>Gayratbek Saliyev v Russia</i> no 39093/13 17.04.2014 ECLI:CE:ECHR:2014:0417JUD003909313</p>	<p><b>Keywords:</b> (Art. 3) Prohibition of torture (Art. 3) Extradition (Art. 5) Right to liberty and security (Art. 5-4) Speediness of review</p> <p><b>Summary:</b> The applicant, Gayratbek Saliyev, is a Kyrgyz national and an ethnic Uzbek who was born in 1988 and is currently staying in the Moscow Region, Russia. The case concerned proceedings for his extradition to Kyrgyzstan. Having arrived in Russia in July 2010, he was arrested by the Russian police in March 2012, as he was wanted in Kyrgyzstan for a number of violent offences allegedly committed during inter-ethnic riots in southern Kyrgyzstan in June 2010. He was subsequently remanded in detention pending extradition, which was extended on several occasions until his release in September 2013. Mr Saliyev's application for refugee status in Russia was refused and his appeal against the order for his extradition was rejected by a decision eventually upheld in June 2013. His extradition was stayed following an interim measure applied by the European Court of Human Rights under Rule 39 of its Rules of Court, indicating to the Russian Government that Mr Saliyev should not be extradited until further notice. Mr Saliyev complained in particular that his extradition to Kyrgyzstan would expose him to a real risk of treatment in violation of Article 3 (prohibition of torture or inhuman or degrading treatment), notably because he belonged to a group — of ethnic Uzbeks suspected of involvement in the violence of June 2010 — who was systematically being tortured by the Kyrgyz authorities. Further relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), he complained in particular of the length of the appeal proceedings he had brought against two of the orders for his detention.</p> <p><b>Violation of Article 3 — in the event of the applicant's being extradited to Kyrgyzstan;</b> <b>Violation of Article 5 § 4 — on account of the length of the proceedings in the applicant's appeals against the two detention orders.</b></p> <p>Paragraphs relevant to detention: 76-79.</p>	<p><i>Baranowski v Poland</i>, 28358/95 <i>Mooren v Germany</i> [GC], 11364/03 <i>Lebedev v Russia</i>, 4493/04</p>
ECtHR	<p><i>Suso Musa v Malta</i> no 42337/12 23.07.2013 ECLI:CE:ECHR:2013:0723JUD004233712</p>	<p><b>Keywords:</b> (Art. 5) Right to liberty and security (Art. 5-1-f) Expulsion (Art. 5-1-f) Extradition (Art. 5-1-f) Prevent unauthorised entry into country (Art. 5-4) Review of lawfulness of detention (Art. 5-4) Speediness of review</p>	<p><i>Lebedev v Russia</i>, 4493/04 <i>Abdolkhani and Karimnia v Turkey</i>, 30471/08 <i>Amuur v France</i>, 25 June 1996, para. 53 in fine, Reports of Judgments and Decisions 1996III</p>

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ECtHR	<p><i>Čonka v Belgium</i> no 51564/99 05.02.2002 ECLI:CE:ECtHR:2002: 02051UD005156499</p>	<p><b>Summary:</b> The case concerned an alleged Sierra Leonean asylum seeker who 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 Mr Suso Musa's detention preceding the determination of his asylum request had been arbitrary. Indeed, the conditions of his place of detention had been highly problematic from the standpoint of Article 3 (prohibition of inhuman and degrading treatment). 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 Mr Suso Musa's asylum request, it found that the deportation proceedings had not been prosecuted with due diligence. Moreover, the applicant had not been allowed 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. It further recommended Malta to take the necessary steps to improve the conditions and shorten the length of detention of asylum seekers.</p> <p><b>A violation of Article 5 § 1;</b> <b>A violation of Article 5 § 4.</b></p> <p>Paragraphs relevant to detention: 61.</p> <p><b>Keywords:</b> (Art. 5) Right to liberty and security (Art. 5-1) Lawful arrest or detention (Art. 5-1-f) Expulsion (Art. 5-2) Information on reasons for arrest (Art. 5-2) Information in language understood (Art. 5-4) Review of lawfulness of detention (Art. 5-4) Take proceedings (Art. 5-4) Procedural guarantees of review (Art. 13) Right to an effective remedy (Art. 13) Effective remedy</p>	<p><i>Matthews v the United Kingdom</i> [GC], 24833/94</p>

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		<p>(P4-4) Prohibition of collective expulsion of aliens (Art. 3) Prohibition of torture <i>Summary:</i> The applicants, Ján Čonka and Mária Čonková and their children, Nad'a Čonková and Nikola Čonková, are Slovakian nationals of Romany origin. In November 1998, they left Slovakia for Belgium, where they requested political asylum on the ground that they had been violently assaulted on several occasions by skinheads in Slovakia. On 18 June 1999 the Commissioner-General for Refugees and Stateless Persons upheld a decision of the Minister of the Interior declaring their applications for asylum inadmissible and the applicants were required to leave the territory within five days. On 3 August 1999 the applicants lodged applications with the Conseil d'État for judicial review of the decision of 18 June 1999 and for a stay of execution under the ordinary procedure. They also applied for legal aid.</p> <p>On 23 September 1999, the Conseil d'État dismissed the applications for legal aid on the ground that they had not been accompanied by the requisite means certificate and invited the applicants to pay the court fees within fifteen days.</p> <p>In September 1999, the Ghent police sent a notice to a number of Slovakian Romany families, including the applicants, requiring them to attend the police station on 1 October 1999. The notice stated that their attendance was required to enable the files concerning their applications for asylum to be completed.</p> <p>At the police station the applicants were served with a fresh order to leave the territory and a decision for their removal to Slovakia and their detention for that purpose. A Slovakian-speaking interpreter was present when they were arrested.</p> <p>They were then taken with other Romany families to the Steenokkerzeel Closed Transit Centre, near Brussels. On 5 October 1999 they and some 70 other refugees of Romany origin whose requests for asylum had also been turned down were taken to Melsbroek military airport, and put on a plane for Slovakia.</p> <p><b>Violation of Article 5 § 1;</b> <b>No violation of Article 5 § 2;</b> <b>Violation of Article 5 § 4;</b> <b>Violation of Article 4 of Protocol No 4;</b> <b>Violation of Article 13 of the Convention.</b></p> <p>Paragraph relevant to detention: 46.</p>	

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ECtHR	Abdi Mahamud v Malta no 56796/13 03.05.2016 ECLI:CE:ECHR:2016: 0503JUD005679613	<p><b>Key words:</b></p> <p>(Art. 3) Prohibition of torture (Art. 3) Degrading treatment (Art. 5) Right to liberty and security (Art. 5-1) Lawful arrest or detention (Art. 5-1-f) Expulsion (Art. 5-1-f) Extradition (Art. 5-1-f) Prevent unauthorised entry into country (Art. 5-4) Review of lawfulness of detention (Art. 5-4) Speediness of review</p> <p><b>Summary:</b></p> <p>The applicant Abdi Mahamud arrived in Malta by boat on 6 May 2012 and was immediately detained by the immigration police and presented with a removal order. The applicant lodged an asylum application, fearing nationality-based persecution. Her application was denied in December 2012. During this detention the applicant developed a number of physical and psychological conditions and applied for release on medical grounds. She was informed of her prospective release in April 2013 and was subsequently released in September 2013 on these medical grounds. The applicant alleges that the conditions of detention amounted to inhuman treatment. The applicant also alleges a violation of Article 5 due to a lack of effective remedy during detention and the prolonged length of the decision regarding her release, either through the asylum application or the 'vulnerable persons application'. The detention of a Somalian national is declared by the European Court of Human Rights to constitute a violation of Articles 3, 5 (4) and 5 (1). The cumulative effects of the detention conditions amounted to inhuman and degrading treatment and the detention could not be deemed lawful due to the lack of an effective remedy during detention and insufficient justification under Article 5(1)(f).</p> <p><b>Violation of Article 3;</b> <b>Violation of Article 5(4);</b> <b>Violation of Article 5(1) of the Convention.</b></p>	

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ECtHR	<p><i>Aden Ahmed v Malta</i> no 55352/12 23.07.2013 ECLI:CE:ECHR:2013: 0723JUD005535212</p>	<p><b>Key words:</b> (Art. 3) Prohibition of torture (Art. 3) Degrading treatment (Art. 5) Right to liberty and security (Art. 5-1) Lawful arrest or detention (Art. 5-1-f) Expulsion (Art. 5-4) Review of lawfulness of detention (Art. 5-4) Speediness of review <i>Summary:</i> The case concerned a Somali national, Ms Ahmed, and her detention in Malta after entering the country irregularly, by boat, to seek asylum in February 2009. This is the first time the Court found a violation of Article 3 against Malta concerning immigration detention conditions. The Court was concerned about the conditions in which Ms Ahmed was detained in Lyster Barracks detention centre (Hal Far), 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 Ms Ahmed due to her fragile health and personal emotional circumstances. 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. Moreover, deportation proceedings were not in progress while Ms Ahmed was being detained and the Maltese authorities had taken no steps whatsoever to remove her, so her continued detention for 14 and half months was therefore unlawful. The Court also found that the domestic remedies in Malta had not provided Ms Ahmed with a speedy review of the lawfulness of her detention.</p> <p><b>Violation of Article 3;</b> <b>Violation of Article 5 §§ 1 and 4.</b></p>	<p><i>Sammut and Visa Investments Ltd v Malta</i>, 27023/03 <i>Kudła v Poland</i>, 30210/96, ECHR 2000-XI and <i>Handyside v the United Kingdom</i>, 5493/72 <i>Ananyev and others v Russia</i>, 42525/07 and 60800/08; <i>Roman Karasev v Russia</i>, 30251/03; <i>Torreggiani and others v Italy</i>, 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10; <i>Z and others v the United Kingdom</i> [GC], 29392/95; <i>Ciorap v Moldova</i> (no. 2), 7481/06; <i>Gera de Petri Testaferrata Bonici Ghaxaq v Malta</i>, 26771/07; <i>Zarb v Malta</i>, 16631/04; <i>McFarlane v Ireland</i> [GC], 31333/06; <i>Iordache v Romania</i>, 6817/02; <i>Hazar and others v Turkey</i>, 62566/00 et seq.; <i>Dougoz v Greece</i>, 40907/98; <i>Riad and Idiab v Belgium</i>, 29787/03 and 29810/03; <i>S.D. v Greece</i>, 53541/07; <i>A.A. v Greece</i>, 12186/08; <i>Alver v Estonia</i>, 64812/01; <i>Tabesh v Greece</i>, 8256/07; <i>Karalevičius v Lithuania</i>, 53254/99; <i>Visloguzov v Ukraine</i>, 32362/02; <i>Gubin v Russia</i>, 8217/04; <i>Khudoyorov v Russia</i>, 6847/02; <i>Peers v Greece</i>, 28524/95; <i>Belevitskiy v Russia</i>, 72967/01; <i>Louled Massoud v Malta</i>, 24340/08; <i>Saadi v the United Kingdom</i> ([GC], 13229/03; <i>Nada v Switzerland</i> [GC], 10593/08.</p>

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ECtHR	<p>Z.H. v Hungary no 28973/11 08.11.2012 ECLI:CE:ECHR:2012: 1108JUD002897311</p>	<p><b>Key words:</b> Information in language which the applicant understands. <b>Summary:</b> The applicant, Z.H., is a Hungarian national. He is deaf and mute, is unable to use sign language or to read or write, and has a learning disability. The case concerned his complaint that, on account of his disabilities, he could not understand the reasons for his arrest on 10 April 2011 on a charge of mugging, in breach of Article 5 § 2 (everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him), and that his ensuing detention until his release on 4 July 2011 had amounted to inhuman and degrading treatment, in breach of Article 3 (prohibition of torture and of inhuman or degrading treatment). <b>Violation of Article 3;</b> <b>Violation of Article 5 § 2.</b></p>	<p><i>Jasinskis v Latvia</i>, 45744/08; <i>Alajos Kiss v Hungary</i>, 38832/06; <i>Selmouni v France</i> [GC], 25803/94; <i>X. v the United Kingdom</i>, 6998/75.</p>
ECtHR	<p><i>Yoh-Ekale Mwanje v Belgium</i> no 10486/10 20.12.2012 ECLI:CE:ECHR:2011: 1220JUD001048610</p>	<p><b>Key words:</b> Lawful detention. Right to an effective remedy. <b>Summary:</b> The applicant, Khatherine Yoh-Ekale Mwanje, is a Cameroonian national who was born in 1971. She is HIV-positive and was detained for almost four months in the '127 bis' closed transit centre with a view to her deportation to her country of origin, having been illegally resident in Belgium. Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, the applicant alleged that she would suffer a premature death if she were returned to her country of origin, as she would not have access to the anti-retroviral drugs she needed. She maintained that her return would amount to a violation of Article 8 (right to respect for private and family life). She further alleged that she did not have an effective remedy by which to assert these complaints before the Belgian courts. Lastly, she submitted that her detention in a closed centre was unlawful and arbitrary, in breach of Article 5 § 1 (f) (right to liberty and security). <b>No violation of Article 3 (in case of deportation);</b> <b>Violation of Article 3 (conditions of detention);</b> <b>Violation of Article 13 (right to an effective remedy) in conjunction with Article 3 Violation of Article 5 § 1 (f).</b></p>	<p><i>Aleksanian v Russia</i>, 46468/06; <i>Kudła v Poland</i> [GC], 30210/96; <i>M. and others v Bulgaria</i>, 41416/08; <i>Riad and Idiab v Belgium</i>, 29787/03 et 29810/03; <i>S.P. v Belgium</i>, 12572/08; <i>Sanoma Uitgevers B.V. v Pays-Bas</i>, 38224/03.</p>
ECtHR	<p><i>Bistieva and others v Poland</i> no 75157/14 10.04.2018 ECLI:CE:ECHR:2018: 0410JUD007515714</p>	<p><b>Key words:</b> (Art. 8) Right to respect for private and family life (Art. 8-1) Respect for family life <b>Summary:</b> The applicants, Zita Bistieva, a Russian national born in 1976, and her three minor children, born in 2006, 2008, and 2013 respectively, live in Herne (Germany). The case concerned the family's detention in a centre for aliens in Poland. Ms Bistieva arrived in Poland with her husband and her first two children in 2012. The husband applied for asylum for himself and the family but the authorities rejected the application in March 2013 and ordered their expulsion. The family fled to Germany, where Ms Bistieva had a third child. The German authorities sent her and the children back to Poland in January 2014 and they were placed in the Kętrzyn aliens centre where Ms Bistieva's husband apparently joined them in February 2014. They were released from the centre in June 2014, eventually moving back to Germany. Ms Bistieva and her children complained about their detention in the centre under, in particular, Article 8 (right to respect for private and family life) of the European Convention on Human Rights. <b>Violation of Article 8.</b></p>	<p><i>A.B. and others v France</i>, 11593/12; <i>Kennedy v the United Kingdom</i>, 26839/05; <i>Melnitis v Latvia</i>, 30779/05; <i>Gavril Yosifov v Bulgaria</i>, 74012/01; <i>Ławniczak v Poland</i>, 22857/07; <i>B. and L. v the United Kingdom</i>, 36536/02; <i>A.B. and others v France</i>, 11593/12; <i>R.C. and V.C. v France</i>, 76491/14; <i>Muskhadzhieva and others v Belgium</i>, 41442/07.</p>

Court	Case name/reference/ date	Key words/relevance/main points	Cases cited
ECHR	<p><i>V.M. and others v Belgium</i> no 60125/11 17.11.2016 ECLI:CE:ECHR:2016:1117JUD006012511</p>	<p><b>Key words:</b> Review of lawfulness of detention. Speediness of review. Reception conditions.</p> <p><b>Summary:</b> The case concerned the reception conditions of a family of Serbian nationals seeking asylum in Belgium. Following an order to leave the country and despite their appeals against the measure, the applicants were left without basic means of subsistence and were obliged to return to their country of origin, where their severely disabled child died. The Court found in particular that the Belgian authorities had not given due consideration to the vulnerability of the applicants, who had remained for four weeks in conditions of extreme poverty, and that they had failed in their obligation not to expose the applicants to degrading treatment, notwithstanding the fact that the reception network for asylum seekers in Belgium had been severely overstretched at the time (the 'reception crisis' of 2008 to 2013). The Court considered that the requirement of special protection of asylum seekers had been even more important in view of the presence of small children, including an infant, and of a disabled child. Furthermore, the fact that the appeal against the order for the applicants' deportation did not have suspensive effect had resulted in all material support for the applicants being withdrawn and had forced them to return to their country of origin without their fears of a possible violation of Article 3 in that country having been examined.</p> <p><b>Violation of Article 3;</b> <b>Violation of Article 13 taken in conjunction with Article 3;</b> <b>No violation of Article 2.</b></p>	<p><i>Tarakhel v Switzerland</i> [GC], 29217/12; <i>Sharifi and others v Italy and Greece</i>, 16643/09; <i>Ibrahim Hayd v the Netherlands</i>, 30880/10; <i>Kadzoev v Bulgaria</i>, 56437/07; <i>Ramzy v the Netherlands (striking out)</i>, 25424/05; <i>Diallo v the Czech Republic</i>, 20493/07; <i>K. and T. v Finland</i> [GC], no. 25702/94; <i>F.G. v Sweden</i> ([GC], 43611/11; <i>M.S.S. v Belgium and Greece</i> [GC], 30696/09; <i>Tarakhel v Switzerland</i> [GC], 29217/12.</p>
ECHR	<p><i>Rahimi v Greece</i> no 8687/08 05.04.2011 ECLI:CE:ECHR:2011:0405JUD00868708</p>	<p><b>Keywords:</b> (Art. 35) Admissibility criteria (Art. 35-1) Exhaustion of domestic remedies (Art. 3) Prohibition of torture (Art. 3) Degrading treatment (Art. 13) Right to an effective remedy (Art. 13) Effective remedy (Art. 5) Right to liberty and security (Art. 5-1-f) Expulsion (Art. 5-4) Review of lawfulness of detention</p> <p><b>Summary:</b> The case concerned 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.</p> <p><b>Violation of Art. 3 (substantive aspect);</b> <b>Violation of Art. 13;</b> <b>Violation of Art. 5-1-f;</b> <b>Violation of Art. 5-4.</b></p> <p>Paragraphs relevant to detention: 59-96, 102-110.</p>	<p><i>Mubianzila Mayeka and Kaniki Mitunga v Belgium</i>, 13178/03, §§ 53-54 <i>S.D. v Greece</i>, no 53541/07, 11 June 2009 <i>Saadi v the United Kingdom</i> [GC], 13229/03</p>



Court	Case name/reference/ date	Key words/relevance/main points	Cases cited
ECHR	<p><i>M.A. v Cyprus</i> no 41872/10 23.07.2013 ECLI:CE:ECHR:2013: 0723JUD004187210</p>	<p><b>Keywords:</b> (Art. 2) Right to life (Art. 2) Expulsion (Art. 3) Prohibition of torture (Art. 3) Expulsion (Art. 5) Right to liberty and security (Art. 5-1) Deprivation of liberty (Art. 5-1) Lawful arrest or detention (Art. 5-1) Procedure prescribed by law (Art. 5-1-f) Expulsion (Art. 5-2) Information on reasons for arrest (Art. 5-4) Speediness of review (Art. 13) Right to an effective remedy (Art. 13) Effective remedy (Art. 34) Victim (P4-4) Prohibition of collective expulsion of aliens-{general} (P4-4) Prohibition of collective expulsion of aliens</p> <p><b>Summary:</b> The 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. It is one of 38 similar applications pending before the European Court of Human Rights.</p> <p><b>Violation of Article 13 and Article 2;</b> <b>Violation of Article 13 and Article 3;</b> <b>Violation of Article 5 (Article 5-4 — Speediness of review);</b> <b>Violation of Article 5 (Article 5-1 — Deprivation of liberty Lawful arrest or detention);</b> <b>No violation of Article 5 (Article 5-2 — Information on reasons for arrest); No violation of Article 4 of Protocol No. 4 – Prohibition of collective expulsion of aliens-{general} (Article 4 of Protocol No. 4 — Prohibition of collective expulsion of aliens).</b></p> <p>Paragraphs relevant to detention: 185-203.</p>	<p><i>Chahal v the United Kingdom</i>, 15 November 1996, §§ 112-113, Reports of Judgments and Decisions 1996-V</p> <p><i>Conka v Belgium</i>, 51564/99, ECHR 2002-I; <i>Fox, Campbell and Hartley v the United Kingdom</i>, 30 August 1990, §§ 40-41, Series A no. 182 <i>Gebremedhin [Gaberamadhien] v France</i>, 25389/05, ECHR 2007-II</p> <p><i>Hirsi Jamaa and Others v Italy</i>, [GC], 27765/09, §§ 166-167, ECHR 2012</p> <p><i>Kerr v the United Kingdom</i>, 40451/98</p> <p><i>Louled Massoud v Malta</i>, 24340/08, § 39 July 2010</p> <p><i>M.S.S. v Belgium and Greece</i> [GC], 30696/09, §§ 288-293, ECHR 2011</p> <p><i>Mevedev and others v France</i> [GC], 3394/03, § 73, ECHR 2010.</p> <p><i>Rusu v Austria</i>, 34082/02, § 43, 2 October 2008</p> <p><i>Saadi v the United Kingdom</i>, [GC], 13229/03, ECHR 2008</p> <p><i>Shamayev and Others v Georgia and Russia</i>, 36378/02, ECHR 2005-III</p>



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ECHR	<p><i>Al-Skeini and Others v The United Kingdom</i> no 55721/07 07.07.2011 ECLI:CE:ECHR:2011:0707JUD005572107</p>	<p><b>Keywords:</b> (Art. 1) Obligation to respect human rights (Art. 1) Jurisdiction of States (Art. 2) Right to life (Art. 2-1) Effective investigation (Art. 2-1) Life <b>Summary:</b> In the exceptional circumstances deriving from the United Kingdom's assumption of authority for the maintenance of security in South East Iraq from 1 May 2003 to 28 June 2004, the UK had jurisdiction under Article 1 (obligation to respect human rights) of the European Convention on Human Rights in respect of civilians killed during security operations carried out by UK soldiers in Basrah; and, that there had been a failure to conduct an independent and effective investigation into the deaths of the relatives of five of the six applicants, in violation of Article 2 (right to life) of the Convention. The case concerned the deaths of the applicants' six close relatives in Basrah in 2003 while the UK was an occupying power: three of the victims were shot dead or shot and fatally wounded by British soldiers; one was shot and fatally wounded during an exchange of fire between a British patrol and unknown gunmen; one was beaten by British soldiers and then forced into a river, where he drowned; and one died at a British military base, with 93 injuries identified on his body. <b>No violation of Art. 1.</b></p>	<p><i>Ahmet Özkan and others v Turkey</i>, 21689/93, 6 April 2004 <i>Al-Saadoon and Mufdhi v the United Kingdom</i>, 61498/08 <i>Bankovic and Others v Belgium and Others</i> [GC] (dec.), 52207/99, ECHR 2001-XI <i>Ilaşcu and Others v Moldova and Russia</i> [GC], 48787/99, ECHR 2004-VII <i>Issa and Others v Turkey</i>, 31821/96, 16 November 2004 <i>Loizidou v Turkey</i> (merits), 18 December 1996, Reports 1996-VI <i>Loizidou v Turkey</i> (preliminary objections), Series A no 310 <i>Mevedyev and Others v France</i> [GC], 3394/03, ECHR 2010-...Öcalan v Turkey [GC], 46221/99, ECHR 2005-IV <i>Quark Fishing Ltd v the United Kingdom</i>, 15305/06 <i>Soering v the United Kingdom</i>, 7 July 1989, Series A no 161</p>

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ECtHR	<p><i>Medvedyev and Others v France</i> no 3394/03 29.03.2010 ECLI:CE:ECHR:2010:0329JUD000339403</p>	<p><b>Keywords:</b> (Art. 1) Obligation to respect human rights (Art. 1) Jurisdiction of States (Art. 5) Right to liberty and security (Art. 5-3) Brought promptly before judge or other officer (Art. 5-1) Deprivation of liberty (Art. 5-1) Lawful arrest or detention <i>Principal facts:</i> The nine applicants are Oleksandr Medvedyev and Borys Bilenikin, Ukrainian nationals, Nicolae Balaban, Puiu Dodica, Nicu Stelian Manolache and Viorel Petcu, Romanian nationals, Georgios Boreas, a Greek national, and Sergio Cabrera Leon and Guillermo Luis Eduar Sage Martinez, Chilean nationals. They were crew members of a cargo vessel named the Winner. In June 2002 the French authorities requested authorisation to intercept the Winner, which was registered in Cambodia, as it was suspected of carrying significant quantities of narcotics for distribution in Europe. In a diplomatic note dated 7 June 2002 Cambodia consented to the intervention of the French authorities. On an order from the Maritime Prefect and at the request of the Brest public prosecutor a tug was sent out from Brest to take control of the Winner and reroute it to Brest harbour. The French Navy apprehended the vessel off the shores of Cap Verde and the crew were confined to their quarters on board under French military guard. On their arrival in Brest on 26 June 2002, 13 days later, the applicants were taken into police custody and were brought before investigating judges the same day. On 28 and 29 June they were charged and remanded in custody. On conclusion of the criminal proceedings against the applicants, three of them were found guilty of conspiracy to illegally attempt to import narcotics and received sentences ranging from three to 20 years' imprisonment. The other six applicants were acquitted. <b>Violation of Art. 5-1;</b> <b>No violation of Art. 5-3.</b></p>	<p><i>Amuur v France</i>, 25 June 1996, Reports 1996-III <i>Bankovic and Others v Belgium and 16 Other Contracting States</i> (dec.) [GC], 52207/99, ECHR 2001-XII <i>Ilaşcu and Others v Moldova and Russia</i> [GC], 48787/99, ECHR 2004-VII <i>Loizidou v Turkey</i> (exceptions préliminaires) [GC], 23 March 1995, § 62, Series A no 310 <i>Soering v the United Kingdom</i>, 7 July 1989, § 86, Series A no 161</p>

Court	Case name/reference/ date	Key words/relevance/main points	Cases cited
ECtHR	<p><i>Mubilanzila Mayeka and Kanini Mitunga v Belgium</i> no 13178/03 12.10. 2006 ECLI:CE:ECtHR:2006:1012JUD001317803</p>	<p><b>Keywords:</b> (Art. 3) Degrading treatment, inhuman treatment (Art. 5-1) Lawful arrest or detention (Art. 5-4) Court review of lawfulness of detention (Art. 8) Right to respect for private and family life <i>Principal facts</i></p> <p>The applicants, Ms Pulchérie Mubilanzila Mayeka and her daughter Tabitha Kamiki Mitunga, are Congolese nationals who were born in 1970 and 1997 respectively. They now live in Montreal (Canada). The application relates to Tabitha's detention for a period of nearly two months and her subsequent removal to her country of origin.</p> <p>Ms Mubilanzila Mayeka arrived in Canada in September 2000, where she was granted refugee status in July 2001 and obtained indefinite leave to remain in March 2003. After being granted asylum, she asked her brother, a Dutch national living in the Netherlands, to collect Tabitha, who was then five years old, from the Democratic Republic of the Congo and to look after her until she was able to join her in Canada.</p> <p>On 18 August 2002, shortly after arriving at Brussels airport, Tabitha was detained in Transit Centre no 127 because she did not have the necessary documents to enter Belgium. The uncle who had accompanied her to Belgium returned to the Netherlands. On the same day a lawyer was appointed by the Belgian authorities to assist Tabitha.</p> <p>On 27 August 2002, an application for asylum that had been lodged on behalf of Tabitha was declared inadmissible by the Belgian Aliens Office. Its decision was upheld by the Commissioner-General for Refugees and Stateless Persons on 25 September 2002.</p> <p>On 26 September 2002, Tabitha's lawyer asked the Aliens Office to place Tabitha in the care of foster parents, but did not receive a reply.</p> <p>On 16 October 2002, the chambre de conseil of the Brussels Court of First Instance held that Tabitha's detention was incompatible with the New York Convention on the Rights of the Child and ordered her immediate release. On the same day the Office of the High Commissioner for Refugees sought permission from the Aliens Office for Tabitha to remain in Belgium while her application for a Canadian visa was being processed and explained that her mother had obtained refugee status in Canada.</p> <p>The following day, 17 October 2002, Tabitha was removed to the Democratic Republic of Congo. She was accompanied by a social worker from Transit Centre no. 127 who placed her in the care of the police at the airport. On board the aircraft she was looked after by an air hostess who had been specifically assigned to that task by the chief executive of the airline. She travelled with three Congolese adults who were also being deported. No members of her family were waiting for her when she arrived in the Democratic Republic of Congo. On the same day, Ms Mubilanzila Mayeka rang Transit Centre no. 127 and asked to speak to her daughter, but was informed that she had been deported.</p> <p>At the end of October 2002, Tabitha joined her mother in Canada following the intervention of the Belgian and Canadian Prime Ministers.</p> <p><b>Violation of Article 3 on account of Tabitha's detention;</b> <b>Violation of Article 3 on account of Tabitha's deportation to her country of origin;</b> <b>Violation of Article 8 on account of Tabitha's detention; and,</b> <b>Violation of Article 8 on account of Tabitha's deportation;</b> <b>Violation of Article 5 § 4 in relation to Tabitha.</b></p> <p>Paragraphs relevant to detention: 82-85.</p>	<p><i>Osman v UK</i>, 23452/94, § 116 <i>Amuur v France</i>, 19776/92, § 42, § 53 <i>Eriksson v Sweden</i>, 11373/85 § 58 <i>Gnahoré v France</i>, 40031/98, § 50</p>

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ECtHR	<p><i>M.S. v Belgium and Greece</i> no 30696/09 21.01.2011 ECLI:CE:ECHR:2011:0121JUD003069609</p>	<p><b>Keywords:</b> (Art. 3) Prohibition of torture, Degrading treatment, Inhuman treatment (Art. 13) Right to effective remedy <i>Summary:</i> The case concerned the expulsion of an asylum seeker to Greece by the Belgian authorities in application of the EU Dublin II Regulation. <b>Violation of Article 3 by Greece both because of the applicant's detention conditions and because of his living conditions in Greece;</b> <b>Violation of Article 13 taken together with Article 3 by Greece because of the deficiencies in the asylum procedure followed in the applicant's case;</b> <b>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;</b> <b>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.</b></p>	<p><i>Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland</i> [GC], 45036/98 <i>Gebremedhin v France</i>, 25389/05, § 53 <i>T.I. v UK</i>, 43844/98 <i>Stapleton v Ireland</i>, 56588/07, § 30 <i>Kudła v Poland</i>, 30210/96, § 152 <i>Sultani v France</i>, 45223/05 <i>K.R.S. v UK</i>, 32733/08 <i>Thampipillai v the Netherlands</i>, 25904/07 <i>Soering v UK</i>, 14038/88 <i>Waite &amp; Kennedy v Germany</i>, 26083/94 <i>Budina v Russia</i>, 45603/05 <i>Saadi v Italy</i>, 37201/06, § 132, 147</p>
ECtHR	<p><i>A.B. and Others v France</i> no 11593/12 12.07.2016 ECLI:CE:ECHR:2016:0712JUD001159312</p>	<p><b>Keywords:</b> (Art. 3) Degrading treatment, Inhuman treatment (Art. 5-1) Lawful arrest or detention (Art. 5-4) Court review of lawfulness of detention (Art. 8) Right to respect for private and family life <i>Summary:</i> The applicants, Mr A.B. and Ms A.A.B. and their son A.B., are Armenian nationals who were born in 1978, 1980 and 2007 respectively. They arrived in France on 4 October 2009, having fled Armenia in fear of persecution as a result of Mr A.B.'s journalistic activity and political involvement. The case primarily concerned the fact of their underage child being placed in administrative detention in the context of a deportation procedure. On 4 October 2009, on the day of their arrival in France they lodged applications for asylum, which were refused by the French Office for the Protection of Refugees and Stateless Persons (OFPRA) and subsequently by the National Asylum Tribunal (CNDA). Their requests for reconsideration were also rejected. The prefect of the Loiret département rejected their applications for residence permits, ordering them to leave the country. The administrative court, in response to a request by the applicants, refused to set aside these deportation orders.</p>	<p><i>Popov v France</i>, 39472/07 and 39474/07 <i>Muskhadzhiyeva and others v Belgium</i>, 41442/07 <i>Mubilanzila Mayeka and Kanini Mitunga v Belgium</i>, 13178/03 <i>Kanagaratnam v Belgium</i>, 15297/09</p>

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		<p>Having been arrested by the police after committing a theft, Mr A.B. was immediately placed in police detention. His wife and son were taken into custody on the following day, 17 February 2012, in the Chaigny Reception Centre for Asylum Seekers (CADA), where the family were living. On the same date, the applicants were taken to the Toulouse-Cornebarrieu administrative detention centre (CRA). Mr A.B. and Ms A.A.B. challenged the orders placing them in administrative detention, and, in parallel, they filed an urgent application. They argued that they had a fixed place of residence in a CADA and that, in any event, the placement was incompatible with the best interests of their child. They pointed out that, since he was too young to be left alone, he was obliged to accompany them in their administrative dealings, and to be in close proximity to armed and uniformed police officers. On 21 February 2012 the president of the Toulouse Administrative Court rejected the urgent application, without a hearing. On the same date the Toulouse Administrative Court rejected the application to have the administrative detention order set aside. On 24 February 2012 the applicants submitted to the Court, under Rule 39 of the Rules of Court, a request for the suspension of the order for placement in the administrative detention centre. The Court declined to indicate an interim measure in response to that request. On 5 March 2012 the applicants were released after having indicated their wish to return to Armenia and having requested, for that purpose, assistance with a view to voluntary return. They did not leave France, however, on account of their son's health. By two judgments of 15 November 2012, the Bordeaux Administrative Court of Appeal set aside the judgments of 17 February 2012 ordering their placement in administrative detention.</p> <p>The applicants alleged that the placement in administrative detention of their son, then aged four, in the Toulouse-Cornebarrieu administrative detention centre amounted to treatment contrary to the provisions of Article 3 (prohibition of inhuman or degrading treatment). They submitted that the placement of their child in detention had been ordered in breach of Article 5 § 1 (right to liberty and security) and § 4 (right to speedy review of the lawfulness of detention) and that it had infringed their right to respect for family life, a right protected by Article 8 (right to respect for private and family life). The Court considered that, given the child's young age and the duration and conditions of his detention in the Toulouse-Cornebarrieu administrative detention centre, the authorities had subjected Mr A.B. and Ms A.A.B.'s child to treatment which had exceeded the threshold of seriousness required by Article 3 of the Convention. While having regard to the grounds set out in the prefect's decision on placement in administrative detention, the Court was not persuaded that the domestic authorities had verified that the family's placement in administrative detention was a measure of last resort for which no alternative was available. Lastly, it seemed that that the authorities had not taken all the necessary steps to enforce the removal measure as quickly as possible and thus limit the time spent in detention. In the absence of a particular risk of absconding, the administrative detention of eighteen days' duration seemed disproportionate to the aim pursued. The Court considered that Mr A.B. and Ms A.A.B. and their child had sustained a disproportionate interference with their right to respect for their family life.</p> <p><b>Violation of Article 3 — in respect of the child A.B.;</b>  <b>Violation of Article 5 §§ 1 and 4 — in respect of the child A.B.;</b>  <b>Violation of Article 8 — in respect of all the applicants.</b></p>	

Court	Case name/reference/ date	Key words/relevance/main points	Cases cited
ECtHR	<p><i>Hirsi Jamaa and Others v Italy</i> [GC] no 27765/09 23.02.2012 ECLI:CE:ECHR:2012:0223JUD002776509</p>	<p><b>Keywords:</b> (Art. 1) Obligation to respect human rights (Art. 1) Jurisdiction of States (Art. 35) Admissibility criteria (Art. 35-1) Exhaustion of domestic remedies (Art. 34) Individual applications (Art. 34) Victim (Art. 3) Prohibition of torture (Art. 3) Expulsion (Art. 13) Right to an effective remedy (Art. 13) Effective remedy (P4-4) Prohibition of collective expulsion of aliens-[general] (P4-4) Prohibition of collective expulsion of aliens Positive obligations Summary: The case concerned Somalian and Eritrean migrants travelling from Libya who had been intercepted at sea by the Italian authorities and sent back to Libya. <b>Two violations of Article 3 because the applicants had been exposed to the risk of ill-treatment in Libya and of repatriation to Somalia or Eritrea;</b> <b>A violation of Article 4 of Protocol No. 4;</b> <b>A violation of Article 13 (right to an effective remedy) taken in conjunction with Article 3 and with Article 4 of Protocol No. 4.</b> Paragraphs relevant to detention: 80, 81, 133.</p>	<p><i>Chahal v the United Kingdom</i>, 15 November 1996, Reports of Judgments and Decisions 1996-V <i>Jabari v Turkey</i>, 40035/98 <i>M.S.S. v Belgium and Greece</i> [GC], 30696/09 <i>Meadeley and others v France</i>, [GC], 3394/03</p>

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ECtHR	<p><i>Stawomir Musiał v Poland</i> no 28300/06 20.01.2009 ECLI:CE:ECHR:2009:0120JUD002830006</p>	<p><b>Keywords:</b> (Art. 46) Binding force and execution of judgments (Art. 46-2) Execution of judgment (Art. 46-2) Individual measures Positive obligations (Art. 3) Prohibition of torture (Art. 3) Degrading treatment (Art. 3) Inhuman treatment <i>Principal facts</i></p> <p>The applicant, Stawomir Musiał, is a Polish national who was born in 1978 and is currently detained in Herby Stare Prison (Poland). He has been suffering from epilepsy since his early childhood. More recently he has been diagnosed with schizophrenia and other serious mental disorders. Prior to his detention, he had attempted to commit suicide and received in-patient treatment in a psychiatric hospital.</p> <p>The applicant was detained on 19 April 2005 on suspicion of committing robbery and battery. He has been detained since 2005 in various detention facilities designed for prisoners in good mental health. On several occasions he has been taken to a psychiatric hospital for emergency treatment following hallucinations and suicide attempts.</p> <p>The parties' statements concerning the conditions of the applicant's detention were, to a large extent, contradictory. According to the applicant he has had to endure overcrowded and unsanitary cells in all detention facilities in which he has been held. He pointed out that cells were infested with bedbugs, cockroaches and fungus. Detainees smoke cigarettes all day/long inside the cells; bed linen and towels were not properly washed; and, there was a stench in the air. Detainees also had to wash themselves in cold water.</p> <p>The Government contested most of the applicant's allegations, but acknowledged that the detention facilities, in which the applicant has been held, faced the problem of overcrowding.</p> <p>The applicant has not lodged any formal complaints with the penitentiary authorities. He has complained, however, to various State authorities, including the Ombudsman, about the inadequate medical care he has received and the conditions of his detention. He has also filed several requests for release on health grounds, all of which have been refused.</p> <p><b>Violation of Article 3.</b></p> <p>Paragraphs relevant to detention: 88, 94.</p>	<p><i>Melnik v Ukraine</i>, 72286/01 <i>Mouisel v France</i>, 67263/01 <i>Rivière v France</i>, 33834/03</p>



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ECtHR	<p><i>Charahili v Turkey</i> no 46605/07 13.07.2010 ECLI:CE:ECHR:2010: 0413JUD004660507 <i>Keshmiri v Turkey</i> no 36370/08 13.04.2010 ECLI:CE:ECHR:2010: 0413JUD003637008 <i>Ranjbar and others v Turkey</i> no 37040/07 13.04.2010 ECLI:CE:ECHR:2010: 0413JUD003704007 <i>Tehrani and others v Turkey</i> nos 32940/08, 41626/08 and 43616/08 13.04.2010 ECLI:CE:ECHR:2010: 0413JUD003294008</p>	<p><b>Key words:</b> (Art. 3) Prohibition of torture (Art. 3) Degrading treatment (Art. 3) Expulsion (Art. 3) Inhuman treatment (Art. 5) Right to liberty and security (Art. 5-1) Lawful arrest or detention <i>Summary</i> The applicants are one Tunisian, Malek Charahili, currently held in the Kırklareli Foreigners' Admission and Accommodation Centre in Turkey, and ten Iranian nationals: Mansour Keshmiri, Mohammad Javad Tehrani and Parviz Norouzi, also detained in the Kırklareli Centre; Nader Kazempour Marand and Parviz Ranjbar Shorehdel, currently settled in Kırklareli on the basis of a temporary residence permit; and, Alireza Ranjbar, Pejman Piran, Abolfazl Ajourlu, Seyid Ali Alemzadeh and Mostaba Naderani Vatanpur, currently living in Sweden. Recognised as refugees by the UNHCR (the United Nations High Commissioner for Refugees), they all left their country of origin and entered Turkey illegally. Their four cases concern their possible deportation to Tunisia (the first case), Iran or Iraq (the other three cases). They allege that, as members of illegal organisations (Ennahda in the first case, and former members of the People's Mojahedin Organisation in the second and fourth cases), they would be at real risk of death or ill-treatment if deported. They rely in particular on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy). In all the cases but one (Keshmiri), the applicants also make various complaints under Article 5 (right to liberty and security) about the unlawfulness of their detention pending deportation. The applicants in the cases of Charahili and Tehrani and Others further complain under Article 3 about the conditions of their detention in a police station and certain of the detention centres where they have been held awaiting deportation.</p> <p><b>(1st, 2nd and 4th cases) Violation of Article 3 (if expulsion order enforced);</b> <b>(1st and 4th cases) Violation of Article 3;</b> <b>(2nd and 4th cases) Violation of Article 13 in conjunction with Article 3;</b> <b>(1st and 3rd cases) Violation of Article 5 § 1;</b> <b>(4th case) Violation of Article 5 §§ 1 and 4.</b></p>	<p><i>Assanidze v Georgia</i> [GC], 71503/01, §§ 201-203, ECHR 2004-II <i>Çelik v Turkey</i> (no. 1), 39324/02, § 44 <i>Chahal v the United Kingdom</i>, § 81, Reports of Judgments and Decisions 1996-V <i>Dougoz v Greece</i>, 40907/98, § 46, ECHR 2001-II <i>Getiren v Turkey</i>, 10301/03, § 132 <i>Jabari v Turkey</i>, 40035/98, § 41, ECHR 2000-VIII <i>Juhnke v Turkey</i>, 52515/99, § 99 <i>Kalashnikov v Russia</i>, 47095/99, § 102, ECHR 2002-VI <i>Kamil Uzun v Turkey</i>, 37410/97, § 64</p>



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ECtHR	<p><i>Nechiporuk and Yankalo v Ukraine</i> no 42310/04 21.07.2011 ECLI:CE:ECHR:2011:0421JUD004231004</p>	<p><b>Key words:</b> (Art. 3) Prohibition of torture (Art. 3) Torture (Art. 3) Effective investigation (Art. 5) Right to liberty and security (Art. 5-1) Procedure prescribed by law (Art. 5-1) Lawful arrest or detention (Art. 5-2) Prompt information (Art. 5-1-c) Reasonable suspicion (Art. 5-2) Information on reasons for arrest (Art. 5-3) Brought promptly before judge or other officer <i>Summary</i></p> <p>The case concerned in particular the first applicant's allegation that he was tortured during his police custody in order to make him confess to a murder, that his detention was unlawful and that the criminal proceedings against him were not fair.</p> <p><b>Violation of Article 3</b> (on account of the first applicant's having been tortured and of the lack of an effective investigation into his complaints in that respect); <b>Violations of Article 5 §§ 1, 2, 3, 4 and 5</b> (on account of his detention during five separate periods between 2004 to 2007); <b>Violations of Article 6 §§ 1 and 3 (c)</b> (as regards the proceedings against the first applicant).</p>	<p><i>Akkoç v Turkey</i>, 22947/93 and 22948/93, ECHR 2000-X; <i>Allan v the United Kingdom</i>, 48539/99, § 42, ECHR 2002-IX <i>Aquilina v Malta</i> [GC], 25642/94, § 48, ECHR 1999-III <i>Assanidze v Georgia</i> [GC], 71503/01, § 171, ECHR 2004-II <i>Assenov and others v Bulgaria</i>, § 103 et seq., Reports of Judgments and Decisions 1998-VIII <i>Baranowski v Poland</i>, 28358/95, § 55, ECHR 2000-III <i>Benham v the United Kingdom</i>, § 41, Reports 1996-III <i>Brogan and others v the United Kingdom</i>, § 58, Series A no 145-B <i>Buzilov v Moldova</i>, 28653/05, § 32</p>



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