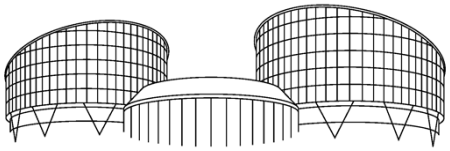

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF NUR AND OTHERS v. UKRAINE

(Application no. 77647/11)

JUDGMENT

STRASBOURG

16 July 2020

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Nur and Others v. Ukraine,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Mārtiņš Mits, *President,*
Ganna Yudkivska,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to:

the application against Ukraine lodged with the Court on 19 December 2011 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by nine Somali, Eritrean and Guinean nationals ("the applicants"), whose personal details, as declared by them, are indicated in the Appendix;

the decision to give notice of the application to the Ukrainian Government ("the Government");

the parties' observations;

Having deliberated in private on 23 June 2020,

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

INTRODUCTION

1. The case mainly concerns the applicants' complaints, under Article 5 of the Convention, that their arrest and detention as migrants in an irregular situation were unlawful, and that they were not informed of the reasons for their arrest and had no effective access to the procedure to challenge the lawfulness of their arrest and detention. It also concerns the eighth applicant's complaint under Article 3 that she, a minor at the time, was not provided with adequate care in detention in connection with her pregnancy and the miscarriage she suffered.

THE FACTS

2. The applicants alleged that they had been born on the dates set out in the Appendix. They were represented by Mr O. Koval and, at the time when the application form and observations were submitted, Ms H. Bocheva, who at the material time were lawyers practising in Kyiv and worked for the Right to Protection Program implemented by the Hebrew Immigrant Aid Society (HIAS) in Kyiv.

3. The Government were represented by their Agent, Mr I. Lishchyna.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. INFORMATION CONCERNING ALL APPLICANTS

5. All the applicants alleged that they had suffered various hardships and had faced various risks in their countries of origin. They had left those countries with the aim of reaching Western Europe. In early November 2011 they were arrested by Ukrainian border guards while attempting to cross Ukraine's border with Hungary or Slovakia. They were eventually granted asylum or subsidiary protection in Ukraine, and those applicants whose applications were refused failed to pursue appeals.

6. By November 2015, the date of the last communication from the representatives to the Court on this subject, the representatives had lost contact with all the applicants other than the second and the eighth (Mr Ibrahim and Ms Kante respectively). For the reasons set out in paragraphs 73 to 76 below, the description of the facts below concerns only the second and the eighth applicants.

II. THE APPLICANTS' ARREST AND DETENTION

7. Both applicants were arrested by Ukrainian border guards. They were placed in the temporary holding facility ("the THF") in Chop, in particular so that their identity could be checked, as they had no identity documents.

8. On 2 November 2011 the second applicant was arrested while trying to illegally cross Ukraine's border with either Hungary or Slovakia. The report on his arrest was signed by border guards, the applicant and a Ukrainian-to-English and English-to-Ukrainian interpreter.

9. On 16 November 2011 the eighth applicant was arrested while trying to cross into Slovakia. According to the report on her arrest, she had no identification documents and explained, in English, that she had tried to enter Slovakia in search of a better life. The report was signed by border guards, the applicant and a Ukrainian-to-English and English-to-Ukrainian interpreter. A document submitted by the eighth applicant indicates that her cousin was among the people who were arrested with her, and her cousin was held with her at the Chop facility (see paragraph 47 below).

10. Both arrest reports contained references to a number of provisions of domestic law, in particular Article 263 of the Code of Administrative Offences (paragraph 48 below). They also listed the rights of defendants in administrative-offence cases, including the right to a lawyer and an interpreter, and the right to lodge complaints and appeal against decisions in their cases. Finally, they listed the applicants' names, dates of birth and nationalities as set out in the Appendix, but indicated that this information was based on the applicants' own statements, since they had no identity documents.

11. Two-page documents in English summarising the legal regime of detention in the THF were served on the applicants. They described the

rules to be observed at the THF and the duties and rights of detainees, including the right to complain about their detention to a prosecutor, and the right to address complaints and letters to State authorities, NGOs, the Parliamentary Commissioner for Human Rights and the European Court of Human Rights.

12. The border guards lodged applications for the applicants' detention with the Zakarpattya Circuit Administrative Court, "in order to ensure the possibility of their expulsion".

13. Relying on section 32 of the 1994 Aliens Act (see paragraph 55 below), the court allowed the applications in respect of the second and the eighth applicants on 4 and 18 November 2011 respectively. It held that the applicants might "fail to leave the territory of Ukraine voluntarily", as they had no documents allowing them to leave Ukraine and they had tried to cross its border illegally. The court ordered that the applicants should be detained in "temporary accommodation centres for foreigners and stateless individuals who [were] present in Ukraine illegally" for up to twelve months. The detention orders stated the applicants' age as declared by them and set out in the Appendix.

14. The applicants were present at the court hearings concerning their detention. An official from the Chop Childcare Service also took part in the hearings as their representative, because they claimed to be minors.

15. According to the applicants, the representative did not meet with them prior to the hearings or discuss with them any matters relating to the case during the hearings, as the representative did not speak a language which they understood.

16. According to the court transcripts, during the hearings the second applicant acknowledged that he was in Ukraine illegally and had no documents allowing him to return to his home country. The eighth applicant informed the court that she was pregnant. She confirmed that she had tried to cross the Ukrainian-Slovakian border illegally. She also stated that she wished to stay in Ukraine, although she had nowhere to live.

17. According to the applicants, documents concerning their arrest and the relevant court proceedings were not translated into a language which they understood. Interpretation was provided, but into English, which they did not understand sufficiently.

18. On 30 November 2011 the International Fund for Health, Well-being and Environment Protection "Carpathian Region" (NEEKA), an NGO assisting refugees and asylum-seekers in the Zakarpattya Region under a contract with the UNHCR, wrote to the Chop Childcare Service, urging the service to cooperate in lodging appeals against the court orders for the applicants' detention. The NGO indicated that it provided legal assistance to migrants, that the applicants had appealed to it for free legal assistance, and that it had approved their requests and stood ready to assist them. However,

it considered that since the applicants were minors, only the Childcare Service could lodge appeals on their behalf.

19. According to the applicants, the Childcare Service refused to appeal, as it agreed with their age-assessment results, which showed that they were adults (see paragraph 32 below).

20. On 17 November 2011 the second applicant was transferred to the temporary accommodation centre ("the TAC") in Zhuravychi in the Volyn Region.

21. On 28 December 2011 the eighth applicant was transferred to the TAC located in Rozsudiv in the Chernigiv Region.

22. On 7 May 2012 lawyers representing the second and eighth applicants lodged appeals against the detention orders with the Lviv Administrative Court of Appeal. The lawyers requested an extension of the time-limit allowed for lodging appeals, stating that the applicants could not lodge appeals in time, owing to language barriers and a lack of access to legal assistance.

23. The appeals were mainly based on the arguments: that the applicants' detention had no legal basis, as there was no decision on their expulsion; that the first-instance court had failed to assess the alleged risk to the applicants' life and safety in their home countries; and that it was contrary to the law to place unaccompanied minors in detention. The appeals also contained complaints of a lack of access to legal assistance and insufficient interpretation during the first-instance proceedings. In the eighth applicant's appeal, it was stated that she had not been able to understand all that had been translated during the court hearing in November 2011, as she understood little English.

24. On 12 September 2012 the Court of Appeal scheduled a hearing on the second applicant's appeal for 31 October 2012.

25. On 21 September 2012 the Court of Appeal scheduled a hearing on the eighth applicant's appeal for 11 October 2012.

26. In both cases, the Court of Appeal ruled that the appeals had not been lodged out of time.

27. The parties provided no information as to whether the appeals had actually been examined.

28. On 8 October 2012 the eighth applicant was released and transferred to a centre for female victims of violence in Odessa.

29. On 9 October 2012 the second applicant was released following a decision of the Migration Service of 10 August 2012 granting him subsidiary protection (see paragraph 36 below).

III. THE APPLICANTS' AGE ASSESSMENT

30. On 4 and 17 November 2011 a prosecutor directed that the second and eighth applicants should undergo an age-assessment procedure.

31. On 7 November and 23 November 2011 the second and eighth applicants respectively underwent age-assessment medical examinations at the Zakarpattya Regional Agency for Forensic Examination. In the context of that age-assessment procedure, a dentist examined the applicants, and there were X-ray examinations of their hands and feet.

32. On 14 November 2011 it was determined that the second applicant was nineteen to twenty years old, and on 30 November 2011 it was determined that the eighth applicant was eighteen to nineteen years old.

IV. ASYLUM PROCEEDINGS AND GRANT OF PROTECTION

33. On 9 January 2012 the second applicant applied for asylum in Ukraine, and the eighth applicant did the same on 16 January 2012.

34. On 30 January 2012 the Migration Service declared the eighth applicant's asylum application inadmissible, on the grounds that the applicant had falsely claimed to be a minor.

35. On 11 April 2012, noting that the eighth applicant had submitted her birth certificate indicating that she was a minor, the Migration Service revoked its decision of 30 January 2012 and decided to examine the applicant's asylum application on the merits.

36. On 10 August 2012 the Migration Service decided to grant the second applicant subsidiary protection, finding that he would run a real risk of ill-treatment if returned to Somalia.

37. On 5 November 2012 the Migration Service decided to grant the eighth applicant subsidiary protection. It was found that her fears of ill-treatment in the event of her return to Guinea had some basis, having regard in particular to her allegations that she had been the victim of domestic violence in Guinea, and to various international reports pointing to the systemic problems of spousal rape and domestic violence there.

V. THE EIGHTH APPLICANT'S MEDICAL SITUATION

38. After her arrest on 16 November 2011 the eighth applicant, who was nine weeks pregnant at the time, was taken to the THF in Chop. There, she was medically examined, and no health-related issues were noted. It is not known whether the eighth applicant informed those who examined her that she was pregnant.

39. On the night of 5 December 2011, while in the THF, the eighth applicant had a vaginal haemorrhage. She was urgently transferred to a hospital, where doctors examined her and noted that she had been in the first nine weeks of pregnancy, but had miscarried. The eighth applicant underwent dilation and curettage. Subsequently, she was prescribed certain types of medication, mainly anti-inflammatories and sedatives.

40. According to the applicant, at the hospital she had to wait for several hours before a doctor treated her.

41. On 8 December 2011 the eighth applicant was transferred back to the THF, as the hospital doctors noted that she was in a "satisfactory condition". While in the THF, the applicant received the medication she had been prescribed, and was also examined by a gynaecologist.

42. At some point between 11 and 15 December 2011 and on 3 February 2012 two child psychologists who had apparently been engaged within the framework of a project operated by the Danish Refugee Council, an NGO, paid a couple of visits to the applicant. According to reports produced by the psychologists, the applicant was in a "situation of psychophysical stress" in connection with the gender-based violence which she had suffered in Guinea.

43. According to a psychologist's report drawn up at some point between 11 and 15 December 2011, the applicant had spoken French in the course of a counselling session. She had completed eleven years of school in Guinea, understood English and spoke it a little. The applicant had told the psychologist in detail about abuse, humiliation and beatings to which she had been subjected by her husband in Guinea, as a result of which she had miscarried on a previous occasion back in that country. This situation had led her to leave Guinea. In the counselling session, the applicant had also reported to the psychologist that prior to the most recent miscarriage she had had a consultation with a doctor at the Chop THF, and when she had started bleeding she had been taken to a hospital where, in her assessment, the doctors had done everything correctly (*врачи по ее словам сделали все правильно*). At the time of the counselling session the applicant had been doing well, but the psychologist noted that she would visit her again on 16 December.

44. On 3 March 2012 another counselling session with a psychologist was held. Her report confirmed the information on the eighth applicant's background, linguistic abilities and history in Guinea which was contained in the psychologist's report of December 2011 (see paragraph 43 above).

45. According to the Government, the applicant did not request any further psychological assistance.

46. According to the records provided by the Government, after the eighth applicant's transfer to the TAC in the Chernigiv Region on 28 December 2011 (see paragraph 21 above) she received the following assistance (medical and otherwise) in the course of her stay in that institution:

(i) a consultation with a general practitioner on 30 December 2011 and with a gynaecologist on 4 January 2012, in the course of which the applicant presented no complaints;

(ii) four consultations with doctors between January and April 2012 in connection with digestive tract problems, and two in

connection with flu on 21 and 28 September 2012. The applicant was prescribed outpatient treatment in that connection, which she received;

(iii) consultations with a psychologist on 23 and 24 May 2012;

(iv) twenty-five legal and psychological assistance sessions with representatives from an NGO (the Chernigiv Committee for Human Rights) between January and August 2012;

(v) a consultation with an UNHCR legal specialist on 1 October 2012.

VI. POST-RELEASE INTERVIEW WITH THE EIGHTH APPLICANT

47. On 11 December 2012 the eighth applicant was interviewed in Odessa by a lawyer employed by the South Ukrainian Young Lawyers' Centre. In support of her application to the Court, the applicant submitted the record of her discussion with the lawyer, in English. The record of that interview contains the following passages (reproduced verbatim):

> "**Had they ever informed you that you have a right to refuse a medical expertise?[1] Had they ever said you that you could say that you don't want to take such examinations?**
>
> No. When they were sending people to Lutsk, I said them I will not go there. I was behaving really badly. I was crying and shouting. They didn't send me and I stayed there in Chop and after one week they said that I will go to Chenigov.[2] They said that that is a good place. You can use telephone and it is nice there. I believed them and went.
>
> ... I was stopped by the [border guards] for 2 times. When I was stopped for a first time they made some medical examination and they knew that I am pregnant after nearly two weeks they let me go. Next time after some time I tried to cross border with my cousin Adrea Silla (Adrea Silva according to his 'spravka'). They cached us and I said them that I am pregnant, but they said that it doesn't matter I will stay there ...
>
> **Did someone explain you prior to the [age assessment] examination how it will be carried out, for which it is held, who will carry it out and where before or after you was taken to the hospital?**
>
> No, never. We had no translation. They didn't ask us, they decided everything by themselves. They just said quickly go, there were a lot of people there. When we were in a court, when judge gave us 12 months, they brought translator with Caritas lawyer and they brought translator from Ukrainian to English. I am not good in English. That is why my cousin was translating to me in Peula. We didn't understand it, it was very quickly and when we had examination, it was like 20 people, but they said to us that all we are 18-19 years, how it is possible?
>
> **Did you feel fear or discomfort in connection with the examination, when you were transported to the examination or at any before or after examination? Had**

[1] Apparently this refers to the age-assessment procedure.

[2] Sic Apparently Chernigiv.

you ever felt discomfort or some fear because there were no person who could explain you what was happening in language that you understand?

When we came there we were sitting there, 9 or 8 people. Two girls were there, me and one girl from Somalia. They took boys and chained their hand one to another, but girls were free. There were nearly 5 [Border Guards]. There were different people from different countries, but we were speaking English. We were asking each other do you know why I am here. But no one knew. Previously, I thought that I asked them to take me to hospital, because of my pregnancy, I thought maybe they will check me. But they didn't check these things. Everyone was afraid, but we could do nothing. When we came back there were some Somalians in Chop. They asked us did you go to court. We said that we were in hospital and they explained that it [was] for medical check of our age. Only then we understood why we went to hospital.

Did you have translator in Chop before you went to hospital or in the hospital?

We didn't have translator. Only when I had a scandal in detention, because I didn't want to go to Lutsk,[3] Caritas came with some black boy and he was speaking French."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC MATERIAL

A. The 1984 Code of Administrative Offences

48. Under Article 263, a person who has violated border regulations may be arrested for up to three hours so that an official report may be prepared charging him or her with the violation. If it is necessary to establish the identity of the person concerned and verify the circumstances of the offence, he or she may be detained for up to three days. Written notice must be given to a prosecutor within twenty-four hours of the arrest.

49. Article 267 of the Code provides that an arrestee can challenge arrest in connection with an administrative offence before the arresting official's superiors, a prosecutor or the courts. The appeal does not have suspensive effect.

B. The 2005 Code of Administrative Justice

50. The Code of Administrative Justice was enacted in 2005 and was entirely revised by Law no. 2147-VIII of 3 October 2017, with effect from 15 December 2017. The references below concern the Articles of the Code in the 2005 version, as worded at the material time.

[3] Lutsk is the administrative centre of the Volyn Region At the relevant time Ukraine operated two main TACs for the detention of foreigners in an irregular situation: one in Zhurvychi in the Volyn Region, about an hour's drive from Lutsk, and another in Rozsudiv in the Chernigiv Region The eighth applicant was eventually transferred to the latter By "Lutsk", she apparently meant the Zhuravychi TAC in the Volyn Region.

51. At the relevant time, Article 56 of the Code provided that minors' parents, guardians or official representatives acted on their behalf before the administrative courts.

52. In accordance with Article 162 of the Code, should an administrative court find an administrative claim substantiated, it could (amongst other things) declare the impugned action, omission or decision unlawful, invalidate the decision in question, and/or oblige the defendant to undertake certain actions or abstain from taking such actions. It could also order the defendant to pay compensation for the damage caused by the unlawful action, omission or decision.

53. Article 183-5 regulated the particularities of the procedure whereby cases concerning the expulsion of foreigners and stateless persons, including authorities' applications for foreigners and stateless persons to be detained in connection with their expulsion, were considered. It provided for the compulsory presence of the parties during court hearings, and for the immediate consideration of applications for detention. The courts' decisions in such cases could be challenged on appeal within five days of being delivered, and could be further challenged before the court of cassation.

C. The 1994 and 2011 Legal Status of Foreign Nationals and Stateless Persons Acts ("the 1994 Aliens Act" and "the 2011 Aliens Act" respectively)

54. The 1994 Aliens Act was in effect prior to 25 December 2011, and on that date it was replaced by the 2011 Aliens Act.

1. The 1994 Aliens Act

55. At the relevant time (until 24 December 2011) section 32 of the 1994 Act, as amended by the Law of 5 April 2011, provided:

> "Aliens arrested for being illegally present in Ukraine (contrary to a ban on [their] entry, [or] in the absence of legal grounds for [their] presence provided for by domestic law or international treaties ..., including where [a] forged, damaged or non-matching visa, permit or passport has been used), or those allowed into Ukraine under readmission treaties ... shall, pursuant to an order of an administrative court, be placed in centres for temporary accommodation ... for the period necessary for preparing their expulsion from Ukraine, [a period] not to exceed twelve months."

2. The 2011 Aliens Act

56. Section 14(2) of the 2011 Act provides that:

> "2. Aliens who have crossed Ukraine's border illegally, outside of an authorised port of entry, shall be arrested [*затримуються*] and, provided that they have not committed a criminal offence, shall be returned, pursuant to the procedure established by law, to the country where they were previously present [*повертаються до країни попереднього перебування у встановленому порядку*]."

57. Section 26 lays down the procedure for the compulsory return (*примусове повернення*) of aliens to their country of origin or a third country. In particular, the State Security Service, border guards or immigration authorities can order the return of an alien whose actions have violated the regulations concerning the legal status of aliens. Such a decision must include reasons and indicate the period of time within which the alien must leave Ukraine (a period not exceeding thirty days).

58. At the relevant time, the relevant parts of section 30 read as follows:

Section 30. Compulsory expulsion [*примусове видворення*] of aliens

"1. [Migration authorities, border guards and the Security Service] may, solely on the basis of a decision of an administrative court, expel from Ukraine an alien who has failed to comply with a return decision, or [who is in a situation] where there are grounds to believe that the alien would not comply [with such a decision] ...

2. Appeals can be lodged against a court's decision on the forcible expulsion of aliens, pursuant to the procedure provided for by law.

3. On the basis of the respective decision, [migration authorities or border guards] shall place [*на підставі відповідного рішення розміщує*] the aliens referred to in subsection 1 of this section in temporary accommodation centres for aliens...

4. Aliens shall remain [*перебувають*] in temporary accommodation centres for the period necessary for enforcing the judicial decision on forcible expulsion, but not for more than twelve months."

D. Regulations concerning temporary accommodation centres for foreigners and stateless individuals who are present in Ukraine illegally (*пункти тимчасового перебування іноземців та осіб без громадянства, які незаконно перебувають в Україні*)

59. Regulations governing TACs were enacted by resolution no. 1110 of the Cabinet of Ministers of 17 July 2003 and were in force at the relevant time. Section 3 of the regulations provided that unaccompanied children could not be held in centres and had to be transferred to shelters run by the child welfare services. However, children ten years and older who were accompanied by close family members could be held in centres, with their consent.

60. At the material time the centres were under the authority of the Ministry of the Interior, which, by order no. 390 of 16 October 2007, had enacted regulations governing them. Those regulations were in effect at the relevant time, and were repealed on 29 February 2016.

Section 6.1 of the regulations conferred on centre directors the authority to release foreigners.

Section 6.2 provided that an undocumented foreigner could be released if the authority which had ordered his placement in the centre informed the centre that, despite its best efforts, the identity of the foreigner could not be established.

Section 6.5 provided that release had to be formalised by a decision of the centre's director.

Section 6.8 of the regulations read as follows:

"6.8. A foreigner shall also be released (*звільняється*) from the centre:

а) in the event of an application for asylum being submitted (*у разі подання заяви про надання статусу біженця*);

б) when his application for asylum is declared admissible *(при оформленні документів для вирішення питання щодо надання йому статусу біженця*);

в) in the event of asylum being granted;

г) on the basis of a court decision acquitting the foreigner of an administrative offence;

ґ) in the event of the foreigner acquiring a legal basis for his stay in Ukraine (*у разі легалізації іноземця в інший передбачений законодавством спосіб*)"

E. Regulations concerning temporary holding facilities run by the State Border Control Service

61. The regulations, which were enacted by the State Border Control Service on 30 June 2004 and were in force at the material time, provided, *inter alia*, that persons arrested pursuant to Article 263 of the Code on Administrative Offences for violations of border regulations (see paragraph 48 above) had to be detained in temporary holding facilities (*пункти тимчасового тримання затриманих*) for a period of up to three days, or for up to ten days with a prosecutor's permission.

62. Detainees had to be detained in cells with natural and artificial light, ventilation, sanitary facilities, furniture and individual beds fixed to the floor or walls. Cells had to be designed to provide each detainee with 4 square metres of individual space (4.5 square metres for pregnant women), excluding the space needed for sanitary facilities. Unaccompanied children were to be detained separately from adults.

63. Detainees had to be informed about their rights and obligations in a language which they understood. They were entitled to communicate with the migration authorities, NGOs and the UNHCR, among others.

F. Resolution of the Plenary High Administrative Court on judicial practice as regards the disputes concerning refugee status, the removal of aliens from Ukraine, and their stay in Ukraine

64. The resolution, which was in force at the time when the applicants in the present case were arrested and placed in detention, was adopted by the Plenary High Administrative Court on 25 June 2009 and amended on 20 June 2011.

65. In section 27 of the resolution, the Plenary Court explained that there were two preconditions for a court issuing a decision on forcible removal

under section 32 of the 1994 Aliens Act: (i) the existence of a decision ordering the person's removal; and (ii) the person's failure to comply with that decision, or the existence of reasonable grounds suggesting that the person would fail to leave Ukraine.

II. RELEVANT EUROPEAN AND INTERNATIONAL MATERIAL

A. Conditions in the facilities where the applicants were detained

66. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published two reports on its visits to Ukraine covering the above issue.

67. The relevant parts of the CPT report on its visit to Ukraine in December 2007 (CPT/Inf (2009) 15), published on 19 May 2009, read:[4]

> "A. Establishments under the authority of the State Border Service
>
> 1. Preliminary remarks
>
> 10. The legal provisions applicable to foreign nationals held under aliens legislation have remained basically unchanged since the 2005 visit. Pursuant to Section 263 of the Code of Administrative Offences, persons who have violated the border crossing regulations may be detained by the State Border Service: i) for up to 3 hours, while a protocol of administrative violation is being drawn up; ii) for up to 72 hours, with the public prosecutor being notified within 24 hours of the moment of detention, if it is necessary to clarify the person's identity and the circumstances of the violation; iii) for up to 10 days with the public prosecutor's prior authorisation, if the person is not in possession of identity documents.
>
> ...
>
> 12. As regards detention under Section 32 of the Law on the Legal Status of Foreigners and Stateless Person ... it is to be served in temporary holding centres for foreigners and stateless persons illegally residing in Ukraine. [T]he Ministry of Internal Affairs has been entrusted with the setting-up and running of such centres ...
>
> During the 2007 visit, the delegation was informed that the Ministry of Internal Affairs was in the process of completing the construction of two centres, in Volyn' (with 180 places) and Chernigiv (with 240 places), which were expected to open at the end of 2007/early 2008...
>
> ...
>
> 14. According to the regulations in force, foreign nationals under the age of 18 who are separated from their families should be placed in special facilities for minors. However, during the visit to the Pavshino Centre, it transpired from the documentation that there were at least two juveniles (aged 14 and 16) in detention. They were accommodated together with adult compatriots with whom they had been apprehended. When asked for an explanation, staff said that 'they had probably lied about their age'.
>
> ...

[4] http://hudoc.cpt.coe.int/eng?i=p-ukr-20071205-en

3. Conditions of detention

..

27. The temporary holding facility (PTT) at Chop Border Guard Command was opened in 2006. With an official capacity of 44 (of which 12 in principle set aside for women and children), it was accommodating 35 persons (including one woman) on the day of the delegation's visit. Material conditions in this new facility were a distinct improvement on what had been seen by the CPT in the past in Border Guard detention facilities, and were in general acceptable for the intended length of stay of up to 10 days. However ... foreign nationals were on occasion being held there for up to one month.

The PTT comprised two sections: one reserved for women and children, the other for men. The women's section consisted of three rooms (each measuring approximately 13 m² and equipped with beds and some additional furniture), a playroom for the children, a kitchen where meals were taken and additional food could be prepared, a toilet and shower facility (also equipped with a washing machine), and a spacious exercise yard.

..."

68. The relevant parts of the CPT report on its visit to Ukraine in September 2009 (CPT/Inf (2011) 29), published on 23 November 2011, read:[5]

"B. Foreign nationals detained under aliens legislation

1. Preliminary remarks

47. ... [T]he Ministry of Internal Affairs runs Temporary accommodation centres (PTPs) designed for the detention of foreign nationals for up to six months. Two new PTPs entered into service in Rozsudiv (Chernigiv region) in July 2008 and in Zhuravichi (Volyn' region) in September 2008...

48. It is noteworthy that some detained foreign nationals were kept in Border Service facilities for prolonged periods of time: stays of up to 24 days were noted at the Boryspil Airport SP and stays of up to two months at the Chernigiv PTT. The CPT reiterates its recommendation that steps be taken to ensure that the legal provisions governing detention by the State Border Service are fully respected in practice.

...

4. Conditions of detention

a. Internal Affairs Temporary accommodation centre (PTP) in Rozsudiv

60. With an official capacity of 235 places, at the time of the visit, Rozsudiv PTP was holding 92 foreign nationals, including five women and three children aged from 3 to 20 months. Detained foreign nationals were being held in five separate sections, one of which was accommodating the women and children.

61. The delegation was impressed by the material conditions offered to detained foreign nationals. The bedrooms, which were designed to hold from three to eight persons and measured from 16 to 34 m², were well lit and ventilated, adequately equipped (with beds, table, chairs and wardrobes) and clean. Each section had a sanitary facility with toilets and showers, and detainees were provided with a set of

[5] http://hudoc.cpt.coe.int/eng?i=p-ukr-20090909-en

personal hygiene items. Further, there were plans to build a laundry; pending that, clothes and bedding were washed outside the centre.

The delegation received hardly any complaints about food. There were special dietary arrangements for 53 detainees at the time of the visit.

62. As regards the regime, there was an open-door policy and detained foreign nationals had access throughout the day to a spacious outdoor exercise yard, fitted with sports equipment. That said, the CPT recommends that the outdoor exercise areas be equipped with shelters against inclement weather and means of rest.

Major efforts had been made to ensure that a range of leisure-time activities is available to detainees (table tennis, TV with many foreign channels, radio, books, board games, etc.). However, there was a lack of structured activities (e.g. language classes, organised sports activities, work, etc.). As indicated in previous visit reports, the longer the period for which persons are detained, the more developed should be the activities which are offered to them. The CPT invites the Ukrainian authorities to further develop the range of activities offered to detained foreign nationals at the Rozsudiv PTP, as well as in other PTPs in Ukraine."

B. Birth records and identity documents from Somalia

69. The Immigration and Refugee Board of Canada, in its publication of 26 June 2013 entitled "Somalia: Birth registration, including the issuance of birth certificates; the registration of children attending school; title deeds (2009-June 2013)", stated:

"In their mission report, the Norwegian Country of Origin Information Centre and the Danish Immigration Service note that, according to the United Nations High Commissioner for Refugees (UNHCR) in Somalia, there is no official birth registration system in Somalia. According to the Elman Peace and Human Rights Centre in Mogadishu, only hospitals are registering births (Norway and Denmark May 2013, 57)."[6]

In its 29 July 2004 publication entitled "Somalia: Identity documents and travel documents (January 2000-June 2004)", the Immigration and Refugee Board of Canada also stated:

"In May 2004, the Home Office of the United Kingdom (UK) issued an 'Operational Guidance Note' on Somalia, in which it stated that it is impossible to verify the authenticity of any documents presented by Somalis who apply for asylum in the UK because there is no central government or authority in Somalia that keeps official records of the population or of the issuance of such documents to enable verification (Sec. 5.3.1). Additionally, the official records that had been kept prior to the collapse of the government were destroyed during the civil war... While the UK Home Office acknowledged that '[s]ome local administrations such as Somaliland and the TNG [Transitional National Government] authorities issue documents (birth certificates, passports etc.), [it also pointed out that] these are not issued under any internationally recognised authority and are not verifiable' (ibid.).

...

[6] https://www.refworld.org/docid/51e4fdd34.html (last visited 26 February 2020).

> In its report, [United Nations Integrated Regional Information Networks] also indicated that, generally, persons wishing to acquire an unofficial passport would do so unofficially by going to the Bakaara market and paying a fee (IRIN 4 Sept. 2002). Similarly, in May 2004, the UK Home Office declared that '[a] range of Somali documents, including passports, can be easily obtained both in Somalia and in many other countries in the region through unofficial channels. [S]uch documentation is often openly on sale in markets. Little weight can therefore be attached to any claimed Somali document and they should not be accepted as sole proof of identity or nationality (UK May 2004, Sec. 5.3.3).'"[7]

70. A publication of the Resource Information Centre of the United States Bureau of Citizenship and Immigration Services of 9 May 2000 entitled "Somalia: Birth Certificates" reads:

> "A professor at California State University, Chico, states that because there has been no official national government structure in Somalia since the deposition of Barre in 1991, it is difficult to know whether birth certificates are currently issued to the citizens of what was once Somalia, but it is not probable (23 March, 26 May 2000). Prior to 1991, birth certificates were only issued in urban areas in Somalia (Professor 23 March 2000; Researcher 27 March 2000).
>
> A researcher at CERI in France states that people often resort to buying documents 'on the market place through private traders' because 'there is no alternative' and they must show documents in order to travel (27 March, 4 April 2000). In the absence of an official government in Somalia, it is very easy to obtain documents in Somali marketplaces such as Bakara, Karan, and Monopolio in Mogadishu, and Bosaso and Hargeysa, but these documents are for purposes such as international travel and are worthless in Somalia (Professor 23 March 2000; Researcher 27 March, 4 April 2000)."[8]

THE LAW

I. PRELIMINARY ISSUES

A. Decision to strike out parts of the application

1. The first, third to seventh and ninth applicants

71. The applicants' representative informed the Court that at some point in time after the first, third to seventh and ninth applicants had been released from detention in 2012 she had lost contact with them. Their whereabouts are unknown (see paragraph 6 above).

72. The Court observes that Article 37 § 1 of the Convention provides:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or

[7] https://www.refworld.org/docid/41501c601c.html (last visited 26 February 2020).
[8] https://www.refworld.org/docid/51e4fdd34.html (last visited 26 February 2020).

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

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

73. The Court observes that the applicants concerned were released from detention on different dates in 2012. They did not inform their representative of their whereabouts and did not maintain contact with her. There is nothing to suggest that the applicants concerned were precluded from doing so.

74. In the light of the foregoing, in accordance with Article 37 § 1 (a) of the Convention, the Court finds that the applicants concerned do not intend to pursue their application. Bearing in mind also that their complaints are largely similar to those brought by the other two applicants, the Court considers that there are no special circumstances regarding respect for human rights as defined in the Convention or its Protocols which require the continuation of the examination of their application (see *Abdi Ahmed and Others v. Malta* (dec.), no. 43985/13, §§ 43-45, 16 September 2014).

75. Accordingly, the Court decides to strike the case out of the list in so far as it concerns the first, third to seventh and ninth applicants, pursuant to Article 37 § 1 (a) of the Convention.

76. Accordingly, the term "applicants" will henceforth refer to the second and eighth applicants only, unless specifically noted otherwise.

2. The second and eighth applicants

77. The applicants initially complained under Article 3 of the Convention that they would face a real risk of being subjected to ill-treatment if they were expelled from Ukraine, and that they had not been given the opportunity to apply for asylum or have their asylum applications examined on the merits.

78. After the respondent Government had been given notice of the case, the applicants informed the Court that they did not wish to pursue the above complaints under Article 3 of the Convention, as they faced no imminent risk of expulsion. They made no comments concerning their related grievances under Article 13.

79. The Court considers that the applicants clearly lost interest in pursuing their initial complaints under Article 3 of the Convention relating to the risk of their expulsion because that risk ceased to exist. The Court does not consider that respect for human rights as defined in the Convention and the Protocols thereto requires it to continue the examination of this part of the application. Accordingly, it must be struck out of the list pursuant to Article 37 § 1 (a) of the Convention.

B. The second and eighth applicants' age

80. The Court notes that the eighth applicant, in the context of her asylum application process, provided the domestic authorities with a copy of her birth certificate. On the basis of that document, from that point on they treated her as a minor. The authorities accepted the certificate and did not challenge it. The Court, accordingly, finds it established that at the time of the eighth applicant's arrest she was a minor. However, there is no indication that the authorities became aware of this until 11 April 2012 (see paragraph 35 above), because the applicant's age assessment on 11 April 2012 had determined that she was at least eighteen years old (see paragraph 32 above).

81. By contrast, as far as the second applicant is concerned, while he provided his Somali birth certificate to the Court, there is no indication that he submitted it to the domestic authorities. Numerous international reports indicate that Somali identity documents and birth records are unreliable (see paragraphs 69 and 70 above). The applicant's age assessment determined that he was at least nineteen at the relevant time (see paragraph 32 above). In such circumstances, the Court finds that the second applicant has not provided it with cogent elements which would lead it to depart from the findings of fact reached by the domestic authorities in respect of his age which determined him to be an adult at the relevant time (for the relevant principles, see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 154, 22 October 2018).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION REGARDING THE EIGHTH APPLICANT'S DETENTION

82. The eighth applicant complained that she had been subjected to inhuman and degrading treatment during her detention in Ukraine. She relied on Article 3 of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Submissions by the parties

83. The Government submitted that the eighth applicant had been provided with adequate medical assistance while in detention, including psychological assistance, even though she had not actively requested it. The assistance provided to her had been adequate, having regard to her particular vulnerability as an unaccompanied asylum-seeker who was a minor.

84. The applicant submitted that she had been subjected to inhuman and degrading treatment during her detention in Ukraine. In particular, she had not been provided with timely, adequate medical assistance in respect of her

pregnancy, and the authorities had made no effort to prevent a miscarriage. No adequate medical assistance had been provided to her while she had been at the hospital (see paragraph 40 above), and no psychological assistance had been provided to her after she had miscarried. According to the applicant, the THF in which she had been detained for over three weeks had not been designed or equipped for the long-term detention of pregnant women. The applicant further argued that the very fact that she had been detained in spite of her vulnerable situation – particularly given that she had been pregnant and a minor – had caused her feelings of anxiety and anguish.

B. The Court's assessment

1. Medical assistance

85. The Court notes at the outset that the applicant, despite having been consistently represented since 30 November 2011 at least (see paragraphs 18, 43 and 46 (iv) and (v) above), has failed to show that she ever brought any complaint in respect of the adequacy of the medical assistance she received in the context of her pregnancy and miscarriage to the attention of domestic authorities.

86. Her declaration to the effect that there was a delay in treating her on the night of her miscarriage is vague (see paragraph 40 above), lacks any corroboration and contradicts her own statement to a psychologist (see paragraph 43 above). There is no indication that the conditions of her detention might have contributed to the miscarriage. In that regard, it is notable that the applicant had already suffered a miscarriage back in her home country (ibid.).

87. The applicant received extensive medical and psychological assistance after her miscarriage (see paragraphs 43 to 46 above). There is no indication that that follow-up was deficient, in any event, not to a degree that would amount to a breach of Article 3 of the Convention.

2. The applicant's situation as a pregnant minor

88. As to the applicant's argument that her detention was contrary to Article 3 because she was a minor, the Court notes that before 11 April 2012 the authorities considered her to be an adult, on the basis of the age-assessment results (see paragraph 80 above). While that assessment was later discarded, the applicant did not submit any argument that would demonstrate that the methodology used in the age assessment was so flawed as to place it outside the acceptable margin of error inherent in such forensic examinations. There was also no delay in conducting the assessment: it was ordered the day after the applicant's arrest, carried out five days later and completed seven days after it had been carried out (see paragraphs 30 to 32 above).

89. Therefore, during the entire period of the applicant's stay at the Chop THF the authorities had grounds for treating her as an adult. The fact that she was a minor was only established by the authorities on 11 April 2012, in the course of her stay at the TAC for aliens in an irregular situation.

90. The CPT praised the conditions in the TAC (see paragraph 68 above). Indeed, the applicant did not criticise the conditions of her detention there, other than the fact that she had been detained with adults (contrast, for example, *Rahimi v. Greece*, no. 8687/08, §§ 82 and 83, 5 April 2011, which concerned overcrowding and deplorable sanitary conditions, in addition to detention with adults, and *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, §§ 107 and 110-15, 22 November 2016, where detention for eight months with adults was combined with overcrowding, a lack of light and ventilation, and a tense, violent atmosphere).

91. In the circumstances of the present case, the Court does not consider that the sole fact that the applicant was held with adults can be considered to amount to a violation of Article 3 of the Convention.

92. As to the applicant's detention at the Chop facility for longer than the ten-day time-limit imposed by domestic law, the Court observes that she was indeed held at that facility from 16 November to 28 December 2011, that is for a month and twelve days – longer than the ten-day time-limit imposed by domestic law (see paragraphs 9, 21 and 61 above).

93. However, the applicant's statements indicate that she herself opposed her transfer to a facility better suited for long-term detention. In the interview with a lawyer which she had following her release, she stated that she had made a scene when the authorities had contemplated transferring her to "Lutsk", which is apparently a reference to a TAC located in Zhuravychi in the Volyn Region, about fifty kilometres from Lutsk, the centre of the Volyn Region (see paragraph 47 above). This, combined with the fact that the applicant lodged no complaint in this regard at domestic level, despite being represented, leads the Court to believe that the applicant herself did not wish to leave the Chop facility.

94. In view of the above considerations, the Court is unable to find that the applicant's situation was so serious as to be classified as treatment contrary to Article 3 of the Convention, even taking into account her particular vulnerability and the fact that the time-limit for her detention in the Chop facility was exceeded.

95. Therefore, this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

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

96. The applicants complained that their detention under the arrest reports drawn up by the Border Guards and their detention under the orders

issued in their respect by the domestic court had been unlawful and arbitrary. They invoked Article 5 § 1 of the Convention, which reads:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

1. Submissions by the parties

(a) The Government

97. The Government contended that the applicants had failed to exhaust domestic remedies as regards their complaints under Article 5 § 1 of the Convention about their initial period of detention ordered by the Border Guards in November 2011. In particular, they should have lodged a claim under the Code of Administrative Offences and the Code of Administrative Justice (see paragraphs 49 and 52 above) with the courts, which could have awarded them compensation if their detention had been found to be unlawful.

98. The Government argued that the applicants would have been able to lodge such a claim, as they had promptly (that is, immediately after their arrest) been informed by the Border Guards, in a language which they understood, of the reasons for their arrest and the procedure to challenge the relevant decisions. The applicants had also been provided with free legal assistance, and had been advised, *inter alia*, of the grounds for their arrest and the appeal procedure.

(b) The applicants

99. The applicants disagreed, stating that they had had no practical opportunity to use the remedy suggested by the Government, as they had had no access to a lawyer or a translator. They also argued that the Government had not submitted evidence from domestic case-law which would indicate the effectiveness of that remedy in practice.

2. The Court's assessment

100. The Court notes the Government's submissions to the effect that the applicants failed to exhaust an effective domestic remedy in respect of their complaint under Article 5 § 1 concerning their arrest and detention in accordance with the arrest reports drawn up by the border guards, that is,

prior to the domestic administrative court issuing the detention orders in respect of them.

101. The Court does not consider it necessary to address that objection, since the applicants' complaint in that regard is in any event manifestly ill-founded for the following reasons.

102. The applicants, foreign nationals without identity documents, were arrested while trying to cross the border in a clandestine manner. Their detention under such circumstances had a clear basis in domestic law (see paragraph 48 above). No serious argument has been made that that law did not meet the Convention's "lawfulness" requirements in terms of foreseeability, accessibility or the presence of appropriate safeguards against arbitrariness.

103. The applicants' arrest and detention in the relevant period fell within the ambit of Article 5 § 1 (f) of the Convention, since identification of the applicants was the first and indispensable step in any action for their expulsion.

104. As to the applicants' arguments to the effect that they were minors and the authorities did not take their "best interests" as children into account when deciding whether to detain them, there is no indication that the authorities neglected to verify their age claims. In fact, an age assessment was requested within two days of the applicants being detained, and was completed within two weeks (see paragraphs 30 to 32 above).

105. Accordingly, the applicants' complaints under Article 5 § 1 in respect of their detention by the border guards prior to the domestic administrative court issuing the detention orders is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

106. The Court notes that the applicants' remaining complaints under Article 5 § 1 regarding their detention under the detention orders issued in their respect by the domestic court are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. Submissions by the parties

107. The applicants submitted that their detention under the detention orders issued by the domestic court had been contrary to the requirements of Article 5 § 1 of the Convention, on the following grounds.

(i) Their detention had not been necessary in the circumstances and had been unlawful, in view of the fact that they had been minors, since the authorities had failed to consider alternatives to detention and, in deciding to place them in detention, had not

taken into account their "best interests" as children, for whom detention should be a measure of last resort.

(ii) The authorities had also placed them in TACs, in the same conditions as adults and contrary to the domestic regulations on such centres, which provided that minors could not be held there and had to be placed in childcare institutions instead (see paragraph 59 above).

(iii) Their detention had been contrary to the requirements of domestic law, since, according to the applicants' interpretation of the domestic law, they could not be detained in the absence of expulsion decisions in respect of them. In support of their interpretation, the applicants relied on section 27 of the resolution of the Plenary High Administrative Court concerning matters of migration (see paragraph 65 above).

108. In their original application form the applicants also submitted additional arguments as to why they believed that their detention had been contrary to Article 5 § 1:

(i) they had been detained in the THF in Chop for periods substantially exceeding the maximum ten-day period which had been provided for by the relevant regulations (see paragraph 61 above);

(ii) relying on a provision in the regulations on TACs enacted by the Ministry of the Interior (section 6.8 of the regulations, see paragraph 60 above) they argued that, in accordance with those regulations, they should have been released from detention once they had submitted their applications for asylum;

(iii) the second applicant further argued that his detention had served no legitimate purpose, as it had not been possible, in practice, to expel an undocumented person to Somalia.

109. The Government submitted that the applicants had been caught while trying to cross Ukraine's western border illegally, and had had no identity documents. Therefore, the authorities had been justified in firstly placing them under arrest for three days under Article 263 of the Code of Administrative Offences (see paragraph 48 above) and then ordering their detention with a view to preparing their expulsion.

110. The Government also submitted a memorandum from the State Border Service to the Government's Agent dated 25 September 2012 concerning the circumstances of the applicants' arrest and detention. It stated, in particular, that African migrants arrested by Ukrainian border guards on their way to western Europe often falsely identified themselves as Somali nationals in order to render their expulsion more difficult. In the first half of 2012 there had been at least two such proven cases involving Kenyan nationals. It had taken up to four months to identify the relevant migrants and, in one case, expel the person concerned to Kenya.

2. The Court's assessment

(a) The second applicant's argument as to expulsion to Somalia being impossible in practice

111. The Court is not convinced by the second applicant's argument (see paragraph 108 (iii) above) that his detention was contrary to Article 5 § 1 of the Convention because it was not possible to expel him to Somalia: he was taken into detention so that the authorities could identify him (as he had no identity documents), verify his nationality and examine the possibilities for his expulsion. This was particularly appropriate, in view of the trend which had been documented by the Government of migrants from other African countries falsely claiming to be Somali nationals in order to complicate their expulsion (see paragraph 110 above).

112. Even though the applicant did turn out to be a national of Somalia, and even accepting *arguendo* that his expulsion to Somalia was impossible at the time owing to technical difficulties, the respondent State could legitimately explore the possibility of expelling him to a safe third country through which he had transited (see *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, §§ 74 and 75, ECHR 2007-V, and *M. and Others v. Bulgaria*, no. 41416/08, § 73, 26 July 2011).

113. In short, the Court finds the second applicant's arguments in this regard ill-conceived.

(b) Detention at the THF in Chop

(i) The second and eighth applicants' age

114. As the Court found in paragraph 81 above, the domestic authorities had legitimate grounds for treating the second applicant as an adult. As far as the Chop facility is concerned, this was also true in respect of the eighth applicant. Therefore, their arguments in this regard must be rejected.

(ii) The absence of expulsion decisions in respect of the applicants

115. The applicants' arguments to the effect that their detention was unlawful in the absence of formal expulsion decisions in respect of them are similarly ill-conceived. The applicants derived that argument from an apparent misreading of the resolution of the Plenary High Administrative Court explaining certain matters of domestic law regulating migration to the lower courts. In the part of that resolution dedicated to explaining the application of the section of the 1994 Aliens Act regulating the expulsion of foreign nationals in an irregular situation, the High Administrative Court stated that there were two preconditions for issuing a decision on the forcible removal of such a person: (i) the existence of a decision ordering the person's removal; and (ii) the person's failure to comply with that decision, or the existence of reasonable grounds suggesting that the person would fail to comply voluntarily (see paragraph 65 above).

116. However, from reading the High Administrative Court's language and the relevant section of the 1994 Aliens Act itself, it transpires that the combination of the two circumstances mentioned by the court was required for the forcible removal of a foreign national in an irregular situation, and not the detention of such an individual with a view to identifying and eventually removing him or her (see paragraphs 55 and 65 above and *Nur Ahmed and Others v. Ukraine* [Committee], no. 42779/12 and 5 others, § 93, 18 June 2020).

117. The Court, accordingly, is not convinced by this aspect of the applicants' argument either.

(iii) Detention at the THF in Chop for longer than ten days

118. The second applicant was held at the Chop facility from 2 to 17 November 2011, and the eighth applicant from 16 November to 28 December 2011 (see paragraphs 8, 9, 20 and 21 above), while domestic regulations only allowed them to be kept there for ten days (see paragraph 61 above).

119. In the absence of any explanation from the Government for this state of affairs, the Court finds that the second applicant's detention at the THF in Chop from 13 to 17 November 2011, and the eighth applicant's detention at that facility from 27 November to 28 December 2011, was not lawful.

(c) Detention in TACs

(i) Whether the applicants had to be released as soon as they had lodged applications for asylum

120. The applicants pointed out (see paragraph 108 (ii) above) that section 6.8 of the regulations on TACs enacted by the Ministry of the Interior (paragraph 60 above) provided that directors of TACs could release foreigners detained there in a number of cases, including when a foreigner lodged an application for asylum.

121. The Court notes that the subordinate legislation in question did indeed provide for the possibility of a foreigner being released from a centre on the basis of a decision by the centre's director when he applied for asylum. However, it is unclear whether that possibility existed where detention was based on a judicial detention order, as in the applicants' cases.

122. In any event, that authority of centre directors to release a person appears to have been discretionary, and the regulations did not provide for a person's automatic release when he lodged an asylum application, since they also provided for the possibility of a person being released at later stages of the asylum procedure: when the application for asylum was declared admissible, and when asylum was granted (see subsections (б) and (в) of section 6.8 of the regulations in paragraph 60 above).

123. The second applicant applied for asylum on 9 January 2012, and the eighth applicant did the same on 16 January 2012 (see paragraph 33 above). They did not specify whether they had informed the directors of their TACs of this fact, or whether they had asked to be released on those grounds, let alone whether they had appealed against any possible refusal to release them.

124. In such circumstances, the Court is not in a position to speculate as to what the outcome would have been had the applicants asked to be released on the basis of the fact that they had applied for asylum and cannot, taking the position of a tribunal of first instance, replace domestic authorities and courts in adjudicating whether the applicants' interpretation of the relevant regulations was correct.

125. The Court, accordingly, rejects the applicants' arguments in this regard.

(ii) The eighth applicant's detention following determination of the fact that she was a minor

126. Domestic law explicitly banned the detention of unaccompanied minors in TACs (see paragraph 59 above). On 11 April 2012 at the latest the domestic authorities determined that the eighth applicant was a minor (see paragraph 35 above).

127. The Government did not submit that the eighth applicant had continued to be accompanied by her cousin in the TAC – the cousin who had been with her during the initial stages of her detention (in the Chop THF). In fact, there is no information that that cousin was an adult himself.

128. The Court therefore finds it established that the applicant, as an unaccompanied minor, continued to be detained at the TAC from 11 April until 8 October 2012 (when she was released and transferred to an open institution (see paragraph 28 above)) in breach of domestic law.

129. Accordingly, the eighth applicant's detention at the TAC from 11 April to 8 October 2012 was unlawful.

(d) Conclusion

130. There has, accordingly, been:

(i) a violation of Article 5 § 1 of the Convention in respect of the second applicant's detention from 13 to 17 November 2011;

(ii) a violation of Article 5 § 1 of the Convention in respect of the eighth applicant's detention from 27 November to 28 December 2011, and from 11 April to 8 October 2012.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

131. The applicants complained that they had not been informed promptly, in a language which they understood, of the reasons for their arrest because they did not have a sufficient command of English. They relied on Article 5 § 2 of the Convention, which reads:

> "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."

132. The Government contested that argument. They submitted that immediately after their arrest the applicants had been informed, in the presence of an interpreter into English, of the reasons for their arrest and the appropriate procedure for challenging the relevant decisions.

133. Paragraph 2 of Article 5 lays down an elementary safeguard: any person who has been arrested must know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: any person who has been arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his deprivation of liberty, so as to be able to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 115, 15 December 2016).

134. The Court sees no reason to doubt that the applicants were fully aware that they were in Ukraine unlawfully and attempted to cross its western border unlawfully, and therefore that they were aware of the factual grounds for their detention (compare *Khlaifia and Others*, cited above, § 118). That was even more so for the eighth applicant, who had already been arrested previously for an attempted illegal border crossing (see paragraph 47 above).

135. As to the legal grounds, the Court reiterates that Article 5 § 2 does not require that reasons be given to a detained person in writing or some other particular form (see *M.A. v. Cyprus*, no. 41872/10, § 229, ECHR 2013 (extracts)). When a person is arrested with a view to extradition or deportation, the information given may be even less complete (ibid., § 230). In particular, Article 5 § 2 does not require that reference be made to such elaborate details as specific legal provisions authorising detention (see *Suso Musa v. Malta*, no. 42337/12, § 116, 23 July 2013).

136. The Court considers that the information provided to the applicants in the arrest reports and in the documents in English which were served on them (information which was provided with the assistance of a Ukrainian-to-English interpreter, see paragraphs 10 and 11 above) was sufficient to meet those requirements.

137. While the applicants claimed not to have a sufficient command of English – the language into which the proceedings were interpreted – it is notable that despite their allegedly limited command of that language, they were able to convey to the authorities, through an English-to-Ukrainian interpreter, information such as their correct names, alleged dates of birth and nationalities (as was noted in the arrest reports); they were also able to make detailed statements concerning their situation through the same interpretation when they were in court (see paragraphs 8-10 and 16 above).

138. Moreover, in her statements to psychologists, the eighth applicant demonstrated that she had a passive command of English and had more trouble speaking rather than understanding that language (see paragraph 43 above). In her submissions to the Court, she remained silent as to how much interpretation her cousin had provided, although she mentioned to an NGO representative that he had helped her in that regard (see paragraph 47 above).

139. Given the above-mentioned limited scope of the requirements of Article 5 § 2 in an immigration context (contrast, for example, *Vizgirda v. Slovenia*, no. 59868/08, § 102, 28 August 2018, in the context of Article 6 § 3), the Court is unable to find that the authorities failed to inform the applicants of the reasons for their arrest in a language which they could understand.

140. Therefore, this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

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

141. The applicants complained that the authorities had not provided them with any assistance to challenge the detention orders in respect of them on appeal, and that the examination of their appeals against those orders had been excessively lengthy. They relied on Article 5 § 4 of the Convention, which reads:

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

A. Admissibility

142. The Court notes that this part of the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

143. The Government disagreed with the applicant's argument that the authorities had not provided them with any assistance to challenge the

detention orders in respect of them on appeal, and that the examination of their appeals against those orders had been excessively lengthy. The Government submitted that the applicants had been able to challenge the detention orders in respect of them on appeal, with the help of NGO lawyers, and the Court of Appeal had scheduled hearings on their appeals for 11 and 31 October 2012.

144. The applicants appealed against the detention orders in respect of them on 7 May 2012. However, their appeals were not scheduled to be examined until 31 October 2012 in the second applicant's case, and 11 October 2012 in the eighth applicant's case (see paragraphs 24 and 25 above). The applicants were released before that: the eighth applicant was released on 8 October, and the second applicant on 9 October 2012 (see paragraphs 28 and 29 above).

145. The Court has repeatedly held that a failure to examine an appeal before a person's release indicates that the relevant proceedings have not been conducted "speedily" and have, on that account, been deprived of practical effectiveness (see, for example, *Louled Massoud v. Malta*, no. 24340/08, § 44, 27 July 2010; *Frasik v. Poland*, no. 22933/02, § 66, ECHR 2010 (extracts); *S.T.S. v. the Netherlands*, no. 277/05, §§ 60-62, ECHR 2011; and *Aden Ahmed v. Malta*, no. 55352/12, §§ 120-24, 23 July 2013).

146. Therefore, the proceedings in the applicants' cases cannot be considered "speedy", on account of the fact that they could not be completed before the applicants' release.

147. These considerations are sufficient for the Court to find that the applicants did not have at their disposal a procedure by which the lawfulness of their detention could be decided speedily, and there is no call to examine separately the remainder of their arguments in this regard.

148. There has, accordingly, been a violation of Article 5 § 4 of the Convention in respect of the second and eighth applicants.

VI. ALLEGED VIOLATION OF ARTICLE 13 TAKEN IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE SECOND AND EIGHTH APPLICANTS

149. The second and eighth applicants complained, under Article 13 of the Convention, that they did not have an effective domestic remedy in respect of their complaint under Article 3 concerning the risk they allegedly faced in case of their expulsion from Ukraine. Article 13 of the Convention reads:

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

150. The Court notes that, in view of the conclusion it has reached above (see paragraph 79) in respect of the second and eighth applicants' relevant complaint under Article 3 of the Convention, the applicants have no arguable claim for the purposes of Article 13 of the Convention. It follows that their complaint under Article 13 of the Convention must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, pursuant to Article 35 §§ 3 (a) and 4.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

151. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

152. The second applicant claimed 10,000 euros (EUR) and the eighth applicant claimed EUR 25,000 in respect of non-pecuniary damage.

153. The Government contested those claims. They considered that there was no causal link between the alleged violations and the amount of compensation for non-pecuniary damage claimed by the applicants, and that in any case the claimed amounts were excessive.

154. The Court awards the second applicant EUR 2,000 and the eighth applicant EUR 9,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Default interest

155. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the application out of its list in so far as it concerns the first, third to seventh and ninth applicants;

2. *Decides* to strike the application out of its list in so far as it concerns the second and eighth applicants' complaints under Article 3 of the Convention concerning the risk of their expulsion from Ukraine;

3. *Declares* the second and eighth applicants' complaints under Article 5 § 1 of the Convention regarding their detention under the

domestic court's detention orders and their complaint under Article 5 § 4 of the Convention admissible, and the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the second applicant's detention from 13 to 17 November 2011;

5. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the eighth applicant's detention from 27 November to 28 December 2011, and from 11 April to 8 October 2012;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the second and eighth applicants;

7. *Holds*
   (a) that the respondent State is to pay the applicants, within three months, the following amounts:
      (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, to the second applicant, in respect of non-pecuniary damage;
      (ii) EUR 9,800 (nine thousand eight hundred euros), plus any tax that may be chargeable, to the eighth applicant, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 16 July 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin	Mārtiņš Mits
Acting Deputy Registrar	President

APPENDIX

List of applicants:

No.	Applicant's name	Birth date	Nationality	Place of residence
1	Abdiqadir Ahmed NUR	1994	Somali	Unknown
2	Ali Mohamed IBRAHIM	1995	Somali	Vinnytsya
3	Abukar Mohamoud ABDILLAHI	1996	Somali	Unknown
4	Abdiladif ABLDILAHI HASSAN	1996	Somali	Unknown
5	Fowsi DAIR MOHAMOUD	1994	Somali	Unknown
6	Aragsan ISSA WARSAME	1995	Somali	Unknown
7	Tomas MENGISTU BERHANE	1994	Eritrean	Unknown
8	Oumou KANTE	1994	Guinean	Odessa
9	Abdirahman MOHAMED AHMED	1994	Somali	Unknown