



Detention of baby and young child with their immigrant parents in facility unsuitable for children was unlawful and incompatible with respect for family life

In today's Chamber judgment in the case of **Popov v. France** (applications nos. 39472/07 and 39474/07), which is not final¹, the European Court of Human Rights held:

Unanimously, that there had been a **violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights in respect of the administrative detention of the children,

By a majority, that there had been no **violation of Article 3** of the Convention in respect of the administrative detention of the parents,

Unanimously, that there had been a **violation of Article 5 §§ 1 and 4 (right to liberty and security)** in respect of the administrative detention of the children,

Unanimously, that there had been a **violation of Article 8 (right to respect for private and family life)** in respect of the administrative detention of the whole family.

The case concerned the administrative detention of a family for two weeks at the Rouen-Oissel in France centre pending their removal to Kazakhstan.

Principal facts

The applicants are Vladimir and Yekaterina Popov, Kazakhstani nationals, accompanied by their two children who were born in France in 2004 and 2007 respectively.

Fleeing recurrent persecution in their country because of their Russian origin and Orthodox faith, Mrs Yakovenko left the country and arrived in France on 15 December 2002, with a two-week visa. Her husband joined her in France on 19 June 2003.

The applicants applied for asylum, but their application was rejected, as were their applications for residence permits. On 27 August 2007 the applicants and their children, then aged five months and three years, were arrested at their home and taken into police custody. Their administrative detention in a hotel in Angers was ordered the same day. The following day they were transferred to Charles-de-Gaulle airport to be flown back to Kazakhstan. The flight was cancelled, however, and they never boarded the plane. The applicants and their children were then taken to the Rouen-Oissel

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

administrative detention centre, which was authorised to accommodate families. On 29 August 2007 a judge ordered a two-week extension of their detention. The applicants were taken back to Charles-de-Gaulle airport on 11 September 2007, but this second attempt to deport them also failed. Noting that that failure was not the applicants' fault, the judge ordered their release.

On 16 July 2009 the refugee status the applicants had applied for prior to their arrest was granted, on the grounds that the enquiries the Ardennes Prefecture had made to the authorities in Kazakhstan, disregarding the confidentiality of asylum applications, had made it dangerous for them to return there.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security) and 8 (right to respect for private and family life) of the European Convention on Human Rights, the applicants complained about their administrative detention for two weeks at the Rouen-Oissel centre pending their removal to Kazakhstan.

The application was lodged with the European Court of Human Rights on 10 September 2007.

Judgment was given by a Chamber of seven, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
 Elisabet **Fura** (Sweden),
 Karel **Jungwiert** (the Czech Republic),
 Mark **Villiger** (Liechtenstein),
 Ann **Power-Forde** (Ireland),
 Ganna **Yudkivska** (Ukraine),
 André **Potocki** (France), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 3

Conditions of administrative detention of the children

The Court noted that arrangements at detention centres authorised to accommodate families in France were left to the discretion of the head of the establishment, including the existence of amenities suitable for young children. While families were separated from other detainees at the Rouen-Oissel centre, the only beds available were iron-frame beds for adults, which were dangerous for children. Nor were there any play areas or activities for children, and the automatic doors to the rooms were dangerous for them. The Commissioner for Human Rights and the European Committee for the Prevention of Torture also pointed out that the promiscuity, stress, insecurity and hostile atmosphere in these centres were bad for young children, in contradiction with international child protection principles according to which the authorities must do everything in their power to avoid detaining children for lengthy periods. Two weeks' detention, while not in itself excessive, could seem like a very long time for children living in an environment ill-suited to their age. The conditions in which the applicants' children – a three-year-old girl and a baby – were obliged to live with their parents in a situation of particular vulnerability heightened by their detention were bound to cause them distress and have

serious psychological repercussions. The Court found that the authorities had not measured the inevitably harmful effects on the children of being held in a detention centre in conditions that exceeded the minimum level of severity required to fall within the scope of Article 3. There had therefore been a violation of Article 3.

Conditions of administrative detention of the parents

This minimum level of severity was not attained as far as the parents were concerned; the fact that they had not been separated from their children during their detention must have alleviated the feeling of helplessness, distress and frustration their stay at the administrative detention centre must have caused them. The Court held that there had been no violation of Article 3 in respect of the parents.

Under Article 3 the applicants also alleged that they risked being subjected to ill-treatment if returned to Kazakhstan. Now that the family had obtained refugee status and could no longer be sent back to Kazakhstan, the Court rejected that part of the application.

Article 5 § 1 f) and 5 § 4

The Court considered that although the children had been placed with their parents in a wing reserved for families, their particular situation had not been taken into account by the authorities, who had not sought to establish whether any alternative solution, other than administrative detention, could be envisaged. The Court accordingly found a violation of Article 5 § 1 f) (right to liberty and security) in respect of the children.

While the parents had had the possibility to have the lawfulness of their detention examined by the courts, the Court noted that children accompanying their parents found themselves in a legal void, unable to avail themselves of such a remedy. No removal or detention order had been issued against the applicants' children that they might have challenged. The Court accordingly also found a violation of Article 5 § 4 (right to speedy review of the lawfulness of detention) in respect of the children.

Article 8

The interference with the applicants' family life because of their two-week detention at the centre had been in accordance with the French Code governing the entry and residence of foreigners and the right of asylum, and pursued the legitimate aim of combating illegal immigration and preventing crime.

Referring to the broad consensus, particularly in international law, that the children's interests were paramount in all decisions concerning them, the Court noted that France was one of the only three European countries that systematically had accompanied minors placed in detention². The Court also noted that the Office of the High Commissioner for Refugees, the French National Security Ethics Commission (CNDS) and the Defender of Children had all spoken out in favour of alternatives to detention. As there had been no particular risk of the applicants absconding, their detention had not been justified by any pressing social need, especially considering that their placement in a hotel on 27 August 2007 had posed no problem. Yet the authorities did not appear to have sought any solution other than detention, or to have done everything in their power to have the removal order enforced as promptly as possible.

² Report of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament (LIBE), December 2007.

In the *Muskhadzhiyeva and Others v. Belgium* case³ the Court had rejected a complaint similar to the applicants'. However, considering the above factors and the recent case-law developments concerning "the child's best interests" in the context of the detention of child migrants⁴, the Court considered that the child's best interests called not only for families to be kept together but also for the detention of families with young children to be limited. In the applicants' circumstances, two weeks' detention in a closed facility was disproportionate to the aim pursued. The Court accordingly held that there had been a violation of Article 8.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that France was to pay the applicants 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

³ [Judgment of 19 January 2010](#) (application no. 41442/07).

⁴ See [Rahimi v. Greece](#), judgment of the European Court of Human Rights of 5 April 2011 (application no. 8687/08).