



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

FOURTH SECTION

CASE OF Y.F.C. AND OTHERS v. THE NETHERLANDS

(Application no. 21325/19)

JUDGMENT

Art 3 (procedural) • Lack of effective and independent investigation into arguable claims of ill-treatment of migrants (applicants nos. 1-3 and 6) by State agents during an incident in the aliens' barracks immigration detention facility in Curaçao
Art 3 (substantive) • Inhuman or degrading treatment • Use of force against applicants nos. 1-3 by State agents during the incident resulting in injuries not shown to have been strictly necessary to effect their transfer • State's failure to discharge burden of proof given the absence of an effective domestic investigation to establish in detail the exact facts and circumstances of the incident • No information on the existence of domestic rules appropriately circumscribing the use of rubber bullets
Art 3 (substantive) • Inhuman or degrading treatment • No breach of Art 3 in respect of applicant no. 6 in the absence of evidence of injury resulting from the use of force by State agents
Art 5 § 4 • Impossibility for the applicants to access interim relief prior to obtaining the assistance of a lawyer during the first week of their detention • No information concerning the remedy of interim relief
• In case-circumstances, given the absence of legal aid, the applicants could not reasonably have instigated legal proceedings for a speedy review of the lawfulness of their detention from their places of detention

Prepared by the Registry. Does not bind the Court.

STRASBOURG

21 April 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Y.F.C. and Others v. the Netherlands,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lado Chanturia, *President*,

Jolien Schukking,

Faris Vehabović,

Lorraine Schembri Orland,

Ana Maria Guerra Martins,

Sebastian Rădulețu,

András Jakab, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 21325/19) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by 7 Venezuelan nationals, namely Mr Y.F.C. (“applicant 1”), Mr F.C.C. (“applicant 2”), Mr J.M.A. (“applicant 3”), Mr J.R.A. (“applicant 4”), Ms R.T.M. (“applicant 5”), Mr N.M.O. (“applicant 6”) and Mr C.V.S. (“applicant 7”), together referred to as “the applicants”, on 19 June 2019;

the decision to indicate interim measures to the respondent Government under Rule 39 of the Rules of Court;

the decision of granting the applicants’ request for their names not to be disclosed (Rule 47 § 4 of the Rules of Court);

the decision to give notice to the Government of the Kingdom of the Netherlands (“the Government”) of the complaints under Article 3 of the Convention concerning the conditions in which the applicants had been held in detention and the alleged use of force against the applicants during their detention; the complaints under Article 5 of the Convention concerning the lawfulness of the applicants’ detention and the question whether the applicants had been informed of the reasons for their arrest and had been able to challenge their detention in the courts; and the complaint under Article 4 of Protocol No. 4 to the Convention concerning the applicants’ exposure to collective expulsion, and to declare the remainder of the application inadmissible;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Office of the United Nations High Commissioner for Refugees (the UNHCR), (“the third-party intervener”), who was granted leave to intervene by the President of the Section (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

Having deliberated in private on 31 March 2026,

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

INTRODUCTION

1. The applicants were among a larger group of people found on board a small boat (a “lancha”) in Curaçao territorial waters on 11 April 2019, attempting to enter that country. They were then arrested by the coast guard and taken ashore, where they were detained and served with decisions refusing them entry and ordering their detention and removal. The applicants complained that these decisions and orders, as well as the circumstances of their ensuing detention, violated their rights under Articles 3 and 5 of the Convention and Article 4 of Protocol No. 4 to the Convention. They also complained under Article 3 of the Convention that the force used by officers during an incident in the prison had been disproportionate.

THE FACTS

2. The applicants were represented by Ms. G.C.A. Scheperboer-Parris and Mr. B.W. Scheperboer, lawyers practising in Willemstad, Curaçao.

3. The Government were represented by their Agent, Ms B. Koopman, of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

I. DENIAL OF ENTRY, REMOVAL DECISION AND DETENTION DECISION

5. On 11 April 2019 the Minister of Justice made individual decisions in respect of all the applicants. He found that the applicants had entered the territorial waters of Curaçao on a small boat; that applicant 1 had previously been banned from Curaçao for a period of 3 years; that they had no means of subsistence; that their stay in Curaçao was in breach of the immigration legislation; that they did not fulfil the conditions for staying in Curaçao as tourists and they were therefore to be considered as undesirable aliens; and that in view of the foregoing it could be objectively and reasonably feared that they constituted a danger to public order. The applicants were therefore denied entry to Curaçao and would be removed at the latest on 11 May 2019, and they would be kept in detention to ensure their departure. Three-year entry bans were also imposed on all the applicants. These decisions were written in Dutch, except for the decisions served on applicants 2, 5 and 6, which contained a translation of the sentence concerning the entry ban of three years in English, Creole and Spanish. The legal basis for these decisions was Article 19 §1 sub a, §2 and §3 of the National Ordinance on Admission and Expulsion (“*Landsverordening toelating en uitzetting*”, ‘LTU’, see paragraphs 41-42 below), and section 2 §4 of the Admissions Decree (“*Toelatingsbesluit*”, see paragraph 44 below). The decisions included the information that an objection could be lodged with the Minister of Justice, or

an appeal could be lodged with the Court of First Instance within six weeks of the date of the decisions, but that neither would have automatic suspensive effect, and the applicants would have to leave Curaçao to await the outcome.

6. Applicants 1, 2, 3 and 6 were detained at the ‘barracks for aliens’, (*“Vreemdelingenbarakken”*), an immigration detention facility located right next to – but outside the fence of – the ordinary prison Sentro di Detenshon i Korekshon Kòrsou prison (“the SDKK”). Due to the lack of capacity in these barracks for aliens, applicants 4 and 7 were detained at the SDKK, as was applicant 5, who was a minor at the time, in the female section of SDKK.

7. On 12 April 2019 the applicants who were being held in the SDKK went on hunger strike as a protest against the conditions in which they were being held. This came to the attention of a local human rights organisation, which then alerted Ms. G.C.A. Scheperboer-Parris and Mr. B.W. Scheperboer, the applicants’ representatives (see paragraph 2 above), who were able to visit the applicants on 18 April 2019.

8. On 18 April 2019 the applicants’ representatives lodged (pro forma) objections (*bezwaarschrift*) with the Minister of Justice against the removal and detention decisions of 11 April 2019 (see paragraph 5 above). In these objections the applicants referred to Article 3 of the Convention as a ground for not being removed from Curaçao as they feared treatment in violation of that Article in Venezuela and stated that their rights as protected by Article 5 of the Convention and Article 4 of Protocol No. 4 to the Convention had been violated.

II. RULE 39 PROCEDURE BEFORE THE COURT

9. Following the applicants’ request, on 20 April 2019, the Court decided on 23 April 2019, in the interest of the parties and the proper conduct of the proceedings before it, to indicate to the Government under Rule 39 of the Rules of Court that the applicants should not be removed to Venezuela and asked the parties questions about the facts of the case.

10. In reply, the Government submitted that, notwithstanding the formal requirement to seek protection upon arrival (see paragraph 40 below), the requests of all applicants for protection against treatment prohibited under Article 3 of the Convention – including those made later – were processed in practice. The Government asserted that remedies existed against decisions entailing refusal of entry and detention (see paragraphs 45-46 below). They maintained that immigration detention conditions complied with relevant standards, although the aliens’ immigration detention facility was being renovated. Reference was made to a judgment of 9 November 2018 in which the Court of First Instance in Curaçao had found that the conditions of detention of asylum seekers in Curaçao were not so bad that detention should be suspended.

11. The applicants replied that they had been arrested in a hostile atmosphere by armed officers, questioned only about logistical matters, and issued with identical detention and refusal-of-entry decisions without any inquiry into their protection needs, despite several attempts to invoke Article 3 of the Convention. They emphasised that their objections lacked automatic suspensive effect, and that domestic interim relief had been financially inaccessible until UNHCR assistance had been provided. In Curaçao it was not possible, as it was before the Court, to apply for one interim measure for the whole group (which at that time consisted of 32 individuals) and, as the applicants' representatives worked on a *pro bono* basis, they could not afford to pay the costs for 32 interim measure requests. However, their subsequent applications for domestic interim measures to prevent removal had been rejected for lack of interest following the Court's indication under Rule 39 (see paragraphs 16 and 22 below). They contended that domestic remedies had now been exhausted and reiterated that the conditions of their detention fell short of the requirements of Article 3.

12. On 19 June 2019 the Court indicated to the Government under Rule 39 of the Rules of Court that the necessary measures should be taken to ensure that the applicants' conditions of detention were compatible with Article 3 of the Convention. On the same date the Court received the applicants' application forms.

13. On 25 June 2019 the Court, having reconsidered the requests in the light of the information received by the parties, decided not to prolong the interim measure indicated on 23 April 2019 to the effect that the applicants should not be removed to Venezuela. The interim measure, indicated on 19 June 2019, relating to the conditions of detention, was prolonged for the duration of the proceedings before the Court, while the applicants remained in detention. The Court further decided to declare inadmissible the complaint under Article 3 in conjunction with Article 13, lodged by the applicants, of the alleged ineffective procedure in Curaçao for obtaining protection against treatment prohibited by Article 3 of the Convention. The Court found that this complaint was premature, because no decision had yet been taken by the authorities in Curaçao on the applicants' applications for protection.

III. DOMESTIC PROCEEDINGS CONCERNING DETENTION

A. Judicial proceedings for suspension and interim relief

14. On 23 April 2019 the applicants lodged an application with the Court of First Instance in Curaçao, requesting the suspension of the applicants' detention pending the objection proceedings (see paragraph 8 above). The applicants argued that their conditions of detention fell short of the standards required by Article 3 of the Convention because the male applicants were being held in an overcrowded facility, that they could not leave their cells,

which were infested by various vermin, and could not take any physical exercise because their cells were too small. Applicant 5, the female minor, argued that she was held in the female wing of an ordinary prison among inmates who were detained on criminal charges. There were insufficient appropriate sanitary facilities for all the applicants and there was a lack of privacy. The applicants referred to reports of Amnesty International (2018) and the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”) (2015). They also argued under Article 5 that their detention was not lawful as there had been no assessment or (judicial) review of whether it was proportionate. They further argued that the detention procedure had never been explained to them. In addition, the applicants requested not to be expelled to Venezuela pending the objection proceedings.

15. On 26 April 2019 the provisional measures judge visited the facilities where the applicants were detained.

16. On 30 April 2019, deciding on the request of applicant 5 (the female minor), the provisional measures judge suspended her detention pending the objection proceedings and ordered her release from the SDKK as from 7 May 2019. The provisional measures judge considered that there were reasonable grounds to fear that she would abscond given that her presence in Curaçao was irregular and that she had no fixed address, and that the detention order was in that respect not unlawful. However, the judge found that the interests of applicant 5, as a minor, in suspending her detention outweighed those of the authorities in continuing to detain her. In that connection the judge referred to the Court’s case-law on detention of unaccompanied minors, which said that it was only permissible where it was justified by weighty reasons, and also took into account the fact that applicant 5 was detained in the women’s section of an ordinary prison. To prevent applicant 5 from being exposed to extreme poverty and associated dangers such as exploitation, the authorities were ordered to provide for her as they would for any unaccompanied minor under the age of 16.

17. Noting further that there existed no accessible policy as regards immigration detention of unaccompanied minors, the judge urged the authorities to introduce such a policy as soon as possible, in which the point of departure should be that there must be compelling reasons for placing a minor in detention. Costs and expenses incurred for the interim measure procedure were awarded to applicant 5.

18. As regards the request of applicant 5 not to be removed to Venezuela pending the objection proceedings, the provisional measure judge noted that given the Rule 39 measure that had been imposed by the Court on 23 April 2019, she lacked the requisite urgent interest to obtain such a provisional measure.

19. On 13 May 2019, deciding in two separate rulings on the requests of applicants 1, 2, 3 and 6, who were detained in the aliens’ barracks

immigration detention facility, and the requests of applicants 4 and 7, who were detained at SDKK, the provisional measures judge refused to suspend their detention pending the objection proceedings.

20. The judge considered that there were reasonable grounds to fear that they would abscond given that their presence in Curaçao was irregular and that they had no fixed address, and that the detention order was in that respect not unlawful. The judge further considered the conditions in which applicants 4 and 7 were detained at the SDKK and found that their cells seemed clean and only housed other irregular migrants. Those cells were however not physically separate from cells where inmates on criminal charges were detained. The sanitary conditions appeared to the judge to be appropriate, and applicants 4 and 7 were allowed out of their cell every day for two hours. The judge noted the dissatisfaction of applicants 4 and 7 at not being separated from inmates on criminal charges and ordered the authorities to create sufficient capacity elsewhere to detain irregular migrants. However, she concluded that the conditions of detention of applicants 4 and 7 did not amount to inhuman or degrading treatment, and, having weighed the interests at stake, found that their interest in suspending the detention did not outweigh the interest of the authorities to continue it.

21. As regards the conditions of detention of applicants 1, 2, 3 and 6, the judge noted that she had not been able to enter the aliens' barracks immigration detention facility herself but had seen the inside through an opening in the wall. She noted that at the time of her visit nearly 40 men were detained in the section reserved for male irregular migrants, while the sleeping quarter of the aliens' barracks immigration detention facility had room for 20 persons and was therefore rather crowded. She also noted that those 40 men were not allowed to go outside. However, she concluded that these circumstances did not yet amount to a violation under Article 3 given the duration of the detention, noting that it could not be ruled out that, should the period of detention be prolonged, there may well be a breach of Article 3. The judge ordered the authorities to ensure, as a matter of urgency, that the capacity of the aliens' barracks immigration detention facility was not exceeded further and to allow the applicants to leave the facility to get fresh air every day. Having weighed the interests at stake, the judge found that the applicants' interest in suspending the detention did yet not outweigh the interest of the authorities to continue it.

22. As regards their request not to be removed to Venezuela pending the objection proceedings, the judge found that the applicants, like applicant 5, lacked the requisite urgent interest to obtain such a provisional measure (see paragraph 18 above).

23. No appeal was possible against these decisions (see paragraph 46 below).

B. Objection proceedings before the Minister of Justice

24. On 17 May 2019 the applicants' representatives made further arguments in support of the objections that had been filed previously (see paragraph 8 above). She argued that the applicants' detention was not lawful because their need for protection had not been taken into consideration at all and for that reason was arbitrary. She argued that the rights of applicant 5 as a child should have been the first consideration in deciding whether to detain her. However, the decision to deny her entry, detain her and seek her removal had not reflected those rights at all. She further argued that the applicants' individual circumstances had been entirely disregarded in the domestic proceedings so far, and that their removal to Venezuela would therefore be in breach of Article 4 of Protocol No. 4 to the Convention.

25. Applicant 4 was released on 6 August 2019 after he indicated that he wanted to return to Venezuela (see paragraph 39 below).

26. On 13 and 14 August 2019 the Minister of Justice heard the applicants on their objections.

27. On 14 August 2019 all applicants who remained in Curaçao (see paragraph 39 below) were released from detention and ordered to report to the Curaçao immigration authorities on a weekly basis.

28. On 27 December 2019, the Minister of Justice rejected or declared the applicants' objections inadmissible. The decisions included the information that an appeal could be lodged with the Court of First Instance within six weeks of the date of the decision. No appeals were lodged by the applicants.

C. Supervision and custodial order in respect of applicant 5

29. Following the provisional judge's decision of 30 April 2019 to release her from detention in SDKK (see paragraph 16 above), applicant 5 was put under a provisional supervision order ("*voorlopig toezicht*") and a care order ("*uithuisplaatsing*") and was appointed a guardian on 3 May 2019.

30. On 3 May 2019 applicant 5 was transferred to a custodial institution for juveniles JJIC Kara pa Solo ("the JJIC"). On an unknown date the representatives of applicant 5, who claimed it had been difficult to gain access to her, argued before the Court of First Instance to reduce the restrictions imposed on applicant 5 by the detention regime at the JJIC. The representatives claimed that the authorities had failed to consider less oppressive measures than internment in the JJIC although such alternatives were available as a local family had been found that was willing to look after her.

31. On 29 May 2019 the Court of First Instance placed applicant 5 under a supervision order ("*ondertoezichtstelling*") because her development and/or health was threatened and decided that it was in the best interests of applicant 5 for her to remain in the JJIC.

IV. INCIDENT OF 9 JUNE 2019

32. On 9 June 2019, the prison director decided that the detainees in the aliens' barracks immigration detention facility had to be moved to the ordinary prison. When the officers entered the barracks and attempted to transfer the migrants, a scuffle broke out between them. Officers involved in the transfer fired rubber bullets (which are a type of kinetic impact projectiles).

33. Applicants 2 and 3 claimed they were hit by rubber bullets – which is a type of kinetic impact projectiles –, causing grave injuries and serious pain, while applicant 1 said he had been kicked in the back. According to the applicants, they resisted the transfer because they did not want to be detained with detainees on criminal charges in the SDKK. The applicants' representatives did not have access to the applicants until 12 June 2019. The representatives observed that applicant 3 had 17 bullet marks or injuries, applicant 2 had 15 such injuries and a torn earlobe, and applicant 1 had a bruise in the form of the sole of a shoe on his back. The applicants' representatives had been forbidden to take photographs or to take their mobile telephones into the detention facility to document the injuries and had therefore resorted to drawing the injuries. The Court was provided with that drawing. The applicants' representatives had contacted the authorities at the SDKK for an incident report but had not been sent one. Independent medical authorities had not been allowed to visit the applicants.

34. On 13 June 2019 the applicants had submitted, through their representatives, a complaint by e-mail to a member of the Committee Overseeing Detainee Care ("*Commissie Toezicht Arrestantenzorg Curaçao*").

35. The Committee replied to this email on 17 June 2019. It indicated that 3 members of the Committee had visited the management of the SDKK on 10 June 2019 and had gone to see the detainees who had been affected by the incident. During this meeting several of the detainees had shown the Committee members the injuries they had suffered. The Committee had then requested an incident report from the SDKK authorities and had also contacted the Minister of Justice of Curaçao but had not yet received any response. A copy of this e-mail exchange was provided to the Court.

36. An incident report was drawn up by the head of security of the SDKK, dated 18 June 2019. It described in detail how on 9 June 2019 a group of Venezuelan persons detained in the aliens' barracks immigration detention facility had been found vandalising the facility, including damaging the metal bars on the windows, and so had had to be transferred to the SDKK to prevent their absconding. The Venezuelan detainees were verbally aggressive towards one of the guards, threatened to kill her and made it clear that they would not cooperate with this transfer. The head of security called for assistance from colleagues and the Curaçao Police Force ("KPC"). At that

time the detainees had started wrapping clothes around their arms as protection, barricading the entrance to the aliens' barracks immigration detention facility with mattresses and chairs, and spreading soapy water on the floor to prevent the prison authorities from entering. When the KPC officers arrived, a last, unsuccessful, attempt was made to speak to the Venezuelan detainees in Spanish, to calm them. After a final warning, the head of security heard approximately 3 loud bangs, after which she heard the authorities tell the detainees, in Spanish, to lie on the floor. When she then entered the area where the detainees were held, the situation was under control, with the detainees lying handcuffed on the floor. Two of the detainees had been hit by rubber bullets and were being treated by a nurse for their pain. All detainees were eventually transferred to the SDKK. The incident report concluded by saying that the force used was a necessary response to the aggressive behaviour of the Venezuelan detainees.

37. On 19 June 2019 the guard commander wrote a second incident report regarding the incident. It largely corroborated the incident report of the head of security (see paragraph 36 above), with more details of timings and the movement of the guards and security personnel. It also reported that the detainees had started trying to dislodge the iron bars over the windows, which would have enabled them to escape. It was noted that the guard commander and other guards had entered the aliens' barracks immigration detention facility armed with riot shields and a rifle with rubber bullets, after it had become impossible to de-escalate the situation verbally. The Venezuelan detainees had thrown domino stones at the guards to prevent them from advancing into the detention facility. The guards then had decided to discharge their rifle with rubber bullets. An initial shot had been fired at the wall. This led to the Venezuelan detainees coming at the guards with broomsticks. A further shot had been fired at the detainees' legs. The Venezuelan detainees continued their resistance, and one of them had thrown a chair at the guards. Two further, targeted, shots had been fired, and two of the detainees had been hit. Thereafter all detainees had lain down and had been handcuffed, after which they had been transferred to the SDKK.

V. SUBSEQUENT DEVELOPMENTS

38. All applicants were able to formally apply before the Minister of Justice for protection against treatment prohibited by Article 3 of the Convention between July and August 2019. Subsequently, on 13 August 2019, applicant 5 withdrew her application. All other applicants received a rejection of their application. Only applicant 7 submitted an objection against this decision on 19 October 2022.

39. Applicant 4 left Curaçao on 6 August 2019. Applicant 5 returned to Venezuela in November 2019.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. Procedure to obtain protection under Article 3

40. Curaçao is not a signatory to the 1951 United Nations (“UN”) Refugee Convention. It is therefore not possible to apply for international protection as a refugee. However, as an independent country within the Kingdom of the Netherlands, it is bound by the Convention, and it is possible to obtain protection against removal on the basis of Convention obligations. The procedure then current for applying for protection (the so-called “Article 3 of the Convention-procedure”) required applicants to apply for protection on arrival.

B. Denial of entry, detention and expulsion proceedings

1. *Country Regulation on admission and removal (Landsverordening toelating en uitzetting (“LTU”))*

41. On the basis of the LTU, a foreign national who enters the country unlawfully may be placed in detention and expelled. It is possible to derogate from this in the situations listed in the Amended Instructions for the Governors on the application of the National Ordinance on Admission and Expulsion (see paragraph 43 below).

42. Article 19 of the LTU provides as follows:

“1. The Minister of Justice may expel from Curaçao:

a. persons who have entered the country in violation of the statutory provisions governing admission and expulsion; (...)

2. If, in the opinion of the Minister of Justice, the person concerned poses a threat to public policy, public order, national security or public morality or if, in the Minister of Justice’s opinion, there is a well-founded fear that the person will attempt to evade expulsion, he may be placed in detention to ensure that he can be expelled.

3. Expulsion and detention are effected by an reasoned order, which is issued to the person concerned. (...)”

2. *Amended Instructions for the Governors on the application of the National Ordinance on Admission and Expulsion (“Amended Instructions”)*

43. Sections 10.3 and 10.7 of the Amended Instructions read as follows:

“10.3 When a detention order may and may not be made.

A detention order may be made only if there is no reasonable alternative. Detention must be necessary in the interests of public order, public policy or national security. The principle of proportionality entails that a detention order may be made only if it has

been established that a milder means of control, such as reporting to the authorities or the surrender of the person's passport, will not suffice. With regard to the question of whether detention should be ordered, a decision to that effect will, in general, be justified if, without it, the foreign national will almost certainly evade expulsion. It follows that detention may be warranted if there are specific indications that, for example:

- the foreign national intends to go into hiding; or
- the foreign national has refused to assist in efforts to establish his identity; or
- the foreign national has evaded the supervision of the immigration authorities; or
- the criminal record of the foreign national gives reason to suspect he will attempt to flee; or
- the foreign national has provided incorrect or contradictory information.

In the following situations, a detention order may not be warranted:

- private individuals or organisations considered reliable have been found willing to provide accommodation and act as guarantor for the foreign national while a decision on expulsion is being considered or where the foreign national cannot be expelled;
- there is no prospect of expelling the foreign national to any country, primarily because he does not possess or cannot obtain valid travel documents;
- the foreign national has a permanent or temporary place of residence in the Netherlands Antilles;
- a milder measure can be applied (for example a requirement for the foreign national to report to the authorities or to surrender his passport) (...)

10.7 Lifting of detention order

The detention order will be lifted if:

- a. the foreign national is expelled from the Netherlands Antilles to a country where his admission is guaranteed;
- b. the court lifts the detention order;
- c. the Governor or an official authorised under article 19, paragraph 4 of the LTU lifts the detention order for another reason (for example, because of health concerns or other compelling reasons of a humanitarian nature)."

3. *Admissions Decree*

44. Section 2 §4 of the Admissions Decree provides:

"(...) Entry can be refused to tourists who are considered undesirable or they can be denied a continued stay in the Netherlands Antilles by or on behalf of the Minister of Justice. The decision is not open to judicial review."

C. Remedies

45. Remedies against decisions of administrative authorities are laid down in the National Ordinance on Administrative Procedure ("*Landsverordening*

houdende regels betreffende de administratieve rechtspraak”, “LAR”). The relevant provisions are cited below.

CHAPTER 2: The appeal

Section 7

“1. Natural persons or legal entities whose interests are directly affected by a decision can lodge an appeal for judicial review of this decision with the Court of First Instance.
...”

CHAPTER 3: Proceedings at first instance

Section 17

- “1. To submit a notice of appeal, the clerk of the court shall impose a court fee [...]
2. A natural person may be exempted from payment of the court fee referred to in the first paragraph. To that end, he must submit to the Court of First Instance proof of lack of financial resources [...]
3. The Court of First Instance may grant an interim exemption to a natural person who is exempt from the duty referred to in the first paragraph but is unable to provide proof of lack of financial resources in a timely manner.
4. If provisional exemption is refused, the petitioner must pay the full court fee. As soon as proof of lack of financial resources has been submitted by the petitioner and he has been granted exemption on the basis thereof, the amount paid shall be repaid to him by the clerk of the court as soon as possible.
...”

Section 50

- “...
4. If the Court of First Instance upholds the appeal, it may order the administrative authority to adopt a new decision or to take other action in accordance with the judgment, or it may rule that the judgment shall replace the annulled decision or the annulled part thereof.
- The Court may set a time limit for the adoption of a new decision or the performance of another act.”
- “5. If the Court of First Instance upholds the appeal, it may, where there are grounds for doing so, order that compensation be awarded at the expense of the government authority designated in the judgment. If the compensation is awarded at the request of the party itself, that party shall be deemed to have waived its right to claim damages under other statutory provisions.
...”

CHAPTER 4: Administrative review

§ 1. Review at the request of the Court

Section 54

1. If Section 55 has not yet been invoked, the Court may, at any stage prior to the public hearing of the appeal, forward the appeal to the administrative authority that issued the contested decision, together with a reasoned request to state, within a period to be set by the Court, whether it is prepared to reconsider the decision.

2. If the reply to the request referred to in the first paragraph is negative or is not received within the specified time limit, the appeal shall be heard by the Court.

3. If the response to the request referred to in the first paragraph is affirmative, the appeal shall not be considered by the Court. [...]

4. If the Court does not accept the appeal for the reason referred to in the third paragraph, it shall notify the appellant thereof without delay.

§ 1. Review following an objection

Article 55

“The persons referred to in Section 7, paragraph 1, are authorised to lodge an objection with the administrative authority that took the decision, and to lodge an appeal for judicial review referred to in Section 7, first paragraph, only after the administrative authority has decided on the objection.”

Section 68

“1. The administrative authority shall base its reconsidered decision on the notice of objection [...] and the matters raised during the hearing as recorded in the record.

2. The decision shall state the grounds on which it is based and shall replace the contested decision.”

CHAPTER 5: Further appeal

Section 75

“1. Any party may appeal to the Joint Court of Justice of Aruba, Curaçao and Sint Maarten and of Bonaire, Sint Eustatius and Saba against judgments of the Court of First Instance [...].”

CHAPTER 6: Special procedures

§ 3. Suspension and interim relief

Section 85

“1. A decision against which an appeal has been lodged with the First Instance Court, or in respect of which an administrative review is taking place as referred to in Chapter 4, may, at the request of the appellant or the party affected, be suspended in whole or in part by the First Instance Court on the ground that the implementation of the decision would cause disproportionate disadvantages on him in relation to the interest served by the immediate implementation of the decision. At his request, interim relief may also be granted to prevent a disproportionate disadvantageous impact referred to in the first sentence.”

Section 88

“Suspension immediately suspends the effect of the contested decision.”

Section 91

“The suspension and interim relief shall lapse as soon as the First Instance Court has given judgment on the appeal, unless the First Instance Court’s decision specifies an earlier date.”

46. No appeal is possible against a decision by the Court of First Instance on an application for interim relief.

47. If a decision by an administrative authority is declared unlawful, a person can claim compensation in two ways. Firstly, a claim and award for compensation may be made in proceedings for the judicial review of the contested decision on the basis of section 50 of the LAR (see paragraph 45 above). Secondly, a claimant may hold the State liable in separate tort proceedings under the Civil Code.

II. DOMESTIC CASE-LAW

48. On 30 September 2022, in civil proceedings, the interim measures judge of the Court of First Instance awarded compensation to a female applicant who had been held in insolation in immigration detention of SDKK to prevent her from being held together with inmates who were detained on criminal charges (ECLI:NL:OGEAC:2022:273).

49. In a judgment of 2 August 2023 the Court of First Instance found the continued immigration detention of a group of Venezuelan applicants to have been unlawful because the domestic authorities had failed to examine whether, after 6 months’ detention, there still existed a reasonable prospect of removal (ECLI:NL:OGEAC:2023:229).

50. On 30 July 2025 (ECLI:NL:OGHACMB:2025:194) the Joint Court of Justice for Aruba, Curaçao, Sint Maarten and of Bonaire, Saint Eustatius and Saba ruled that the Minister of Justice could not justify the detention of people who entered Curaçao unlawfully solely on the basis of their illegal entry, because Article 5 § 1 (f) of the Convention required a clear domestic legal basis and Article 19 (1) (a) of the LTU (see paragraph 41 above) only authorized removal, not detention. However, detention could be lawful under Article 19 (2) LTU if the Minister demonstrated a threat to public order or another statutory ground. The Joint Court further clarified that even where statutory grounds exist, detention must remain a last resort, requiring the Minister to assess whether a less severe measure would suffice and to inform the detainee that any special personal circumstances must be raised to avoid disproportionate detention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

51. The applicants complained that the use of force by prison guards and police officers against them during their transfer from the aliens' barracks immigration detention facility to the SDKK on 9 June 2019 (see paragraphs 32-37 above) had been unnecessary and disproportionate. They further complained that there had been no effective and independent investigation into their complaints about this ill-treatment. Furthermore, they alleged that the conditions of detention to which they had been exposed in the aliens' barracks immigration detention facility (applicants 1, 2, 3 and 6) and the SDKK (applicants 4, 5 and 7) from 11 April 2019 (see paragraph 6 above) until their respective release from detention (see paragraphs 16 and 27 above) violated their rights under the Convention. Applicant 5 made the same complaint as regards her detention at the JJIC (see paragraph 30 above). They relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Use of force by State agents in the incident of 9 June 2019

1. Admissibility

(a) The parties' submissions

(i) The Government

52. The Government argued that the applicants had failed to exhaust domestic remedies as none of the applicants had made a report or claim to the domestic authorities about this event but had only raised it in the proceedings before the Court.

(ii) The applicants

53. The applicants disputed the Government's objection by referring to their complaint submitted before the Committee Overseeing Detainee Care (see paragraph 34-35 above).

(b) The Court's assessment

54. The Court notes that the complaint regarding use of force by State agents has been submitted on behalf of all applicants, but that only applicants 1, 2, 3 and 6, who were held in the aliens' barracks immigration detention facility, could have been impacted by it. The Court thus declares this complaint, insofar as it relates to applicants 4, 5 and 7, manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention

55. With respect to applicants 1, 2, 3 and 6, the Court observes that the Government's objection raises issues concerning the effectiveness of the investigation into the applicants' allegations of unnecessary and disproportionate use of force by State agents and is thus closely linked to the applicants' complaint under the procedural aspect of Article 3 of the Convention. That being so, the Court considers that the objection should be joined to the merits of that complaint and examined at a later stage (see *Husayn (Abu Zubaydah) v. Poland*, no. 7511/13, § 337, 24 July 2014).

56. The Court further notes that the complaints of applicants 1, 2, 3 and 6 are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicants

57. The applicants reiterated (see paragraph 33 above) that they had used civil disobedience as a way of protesting their detention, given that they had been deprived of any other means to challenge it. They said that the security guards had provoked them, by accusing them of wanting to escape and using physical force towards them, even though they were under the control of the authorities, who should have known that firing rubber bullets at point blank range would cause severe injuries. As a result of these actions, 3 of the applicants had suffered serious injuries: applicant 3 had 17 rubber bullet marks or injuries, applicant 2 had 15 such injuries and a torn earlobe, and applicant 1 had a bruise in the form of the sole of a shoe on his back. The applicants reiterated that no security guard or police officer had been injured or at risk of being injured, given that they were well-equipped and trained to deal with violent riots. The applicants referred to *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 100 and 101, ECHR 2015) and argued that the force used against them had not been strictly necessary given the dominance of the security guards and special forces. They had notified the relevant authorities and the Committee Overseeing Detainee Care, but the authorities had failed to fulfil their legal obligation to diligently investigate the incident without arriving at hasty or ill-founded conclusions (they referred to *Anzhelo Georgiev and Others v. Bulgaria*, no. 51284/09, § 68, 30 September 2014).

(ii) The Government

58. The Government submitted that the migrants detained in the aliens' barracks immigration detention facility had started to damage their unit. According to the prison security officers on duty, the detainees had told them that they would do everything to escape. The prison director decided that the

detainees should be moved to Block 3 of the SDKK. The detainees were informed in Spanish, their native language, that they would be moved to another part of the prison due to the damage in their facility. The detainees protested their transfer and since efforts to negotiate were unsuccessful, the police were called for assistance. With reference to the incident report of 19 June 2019 (see paragraph 37 above) the Government conceded that two detainees had been shot with rubber bullets and had been attended to by the nurses on duty after the unrest had been put down. Any injury sustained by the applicants had been the result of their own aggressive and violent behaviour. The force employed by the prison guards and police had been necessary to respond to the detainees' aggressive conduct, and to prevent further injury and damage. The actions of the guards and police had not exceeded what was proportionate in the circumstances and therefore did not violate Article 3. The Government reiterated that they were not aware of any complaint having been made or of any domestic remedy having been used by the applicants in relation to these allegations.

(b) The Court's assessment

59. The Court observes that the applicants' complaints regarding the incident of 9 June 2019 concern both the substantive and procedural aspects of Article 3 of the Convention. It is sensitive to the subsidiary nature of its task and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not made unavoidable by the circumstances of a particular case. The Court therefore considers it appropriate to firstly examine whether the applicants' complaints of ill-treatment were adequately investigated by the authorities (compare *Panayotopoulos and Others v. Greece*, no. 44758/20, § 102, 21 January 2025, and the references cited therein).

(i) Procedural aspect of Article 3 of the Convention

(α) General principles

60. The general principles concerning the effectiveness of an investigation into allegations of ill-treatment or injury have been summarised in *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC], no. 39630/09, §§ 182-85, ECHR 2012). In particular, where an investigation of serious allegations of ill-treatment is required under Article 3 of the Convention, it must be both prompt and thorough. That means that the authorities must act of their own motion when a matter comes to their attention and must always make a serious attempt to find out what happened. They should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence.

Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. The investigation should be independent of the executive. Independence of the investigation implies not only the absence of a hierarchical or institutional connection, but also independence in practical terms. Furthermore, the victim should be able to participate effectively in the investigation in one form or another (*ibid.*; *Bouyid*, cited above, §§ 116-19; and *Husayn (Abu Zubaydah)*, cited above, § 480).

(β) Application of the above principles to the present case

61. It is undisputed that during the incident on 9 June 2019 two detainees were hit by rubber bullets and that a nurse gave them medical treatment afterwards. These events were described in the two reports of the staff of the prison submitted by the Government (see paragraphs 36 and 37 above). The applicants have submitted drawings of the injuries sustained by applicants 2 and 3 from being hit with rubber bullets (see paragraph 33 above). Those drawings also show that applicant 1, who claimed that he had been kicked in the back, was left with the imprint of a shoe sole on his back. The Court finds that these applicants, as well as applicant 6 who was also detained at the aliens' barracks immigration detention facility at the time of that incident and was directly exposed to the firing rubber bullets at point blank range (see paragraph 57 above), therefore had an arguable claim of treatment infringing Article 3 suffered at the hands of State officials.

62. The applicants submitted documentation to the Court demonstrating that their representatives had lodged a complaint with the Committee Overseeing Detainee Care on 13 June 2019 (see paragraphs 34 and 35 above). Accordingly, the authorities were alerted about the alleged ill-treatment and, consequently, were under an obligation to ensure that an effective investigation was carried out which was capable of leading to findings of fact and to a determination of whether the force used was justified in the circumstances, and capable of identifying and – if appropriate – punishing those responsible (compare *Jeronovičs v. Latvia* [GC], no. 44898/10, § 103, 5 July 2016).

63. The Court finds that the documents in the case file do not show that there was an effective and independent investigation into the applicants' allegations of ill-treatment. In that connection the Court notes that the official incident reports, drawn up by head of security of the SDKK (see paragraph 36 above) and the guard commander (see paragraph 37 above), provide relevant information on the incident, but do not qualify as an effective investigation given that such an investigation must be carried out by an authority independent from those targeted by it (see *Alikaj and Others v. Italy*, no. 47357/08, § 96, 29 March 2011; *Bouyid*, cited above, § 118 and contrast *Hentschel and Stark v. Germany*, no. 47274/15, § 85, 9 November 2017). Furthermore, there is nothing to show that the applicants participated in the

impugned investigation in any form. Having regard to the domestic authorities' duty to undertake investigations into such incidents of their own motion, coupled with their inability to demonstrate any substantive and sufficient action despite the applicants' complaint to the Committee Overseeing Detainee Care, the Court dismisses the Government's preliminary objection on non-exhaustion of domestic remedies (see *Jeronovičs*, cited above, § 124). Ruling on the merits, it finds that there has been a violation of Article 3 of the Convention under its procedural head in respect of applicants 1, 2, 3 and 6.

(ii) *Substantive aspect of Article 3 of the Convention*

(α) General principles

64. The relevant principles of the Court's case-law under Article 3 in relation to the use of force by law-enforcement officers have been set out by the Court in *Bouyid* (cited above, §§ 81-90 and §§ 100-101). Allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but also sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact may be sufficient to meet that standard (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV; *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX; *Ramirez Sanchez v. France* [GC], no. 59450/00, § 117, ECHR 2006-IX; *Gäfgen v. Germany* [GC], no. 22978/05, § 92, ECHR 2010; and *Bouyid*, cited above, § 82). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention (see *Gladović v. Croatia*, no. 28847/08, § 48, 10 May 2011). Indeed, the burden of proof may be regarded as then being on the authorities to provide a satisfactory and convincing explanation why the authorities should not be found liable (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Tali v. Estonia*, no. 66393/10, § 60, 13 February 2014). In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government (see *El-Asmar v. Denmark*, no. 27753/19, § 47, 3 October 2023).

65. According to the approach established in *Bouyid* (cited above, §§ 100 and 101), where a person is deprived of his or her liberty, or, more generally, is confronted with law-enforcement officers, the Court's examination shifts to the necessity, rather than the severity, of the treatment to which that person was subjected in order to determine whether the issue complained of falls within the scope of Article 3 of the Convention. If the treatment was not made strictly necessary by the person's conduct, it diminishes human dignity and is in principle an infringement of the right set forth in Article 3.

66. In addition, according to the Court's case-law, operations involving the use of less-lethal weapons, such as water cannons, tear gas, tear-gas grenades and kinetic impact projectiles, must be sufficiently delimited by domestic law, under a system of adequate and effective safeguards against arbitrary action, misuse of force and avoidable accidents. In *Tsaava and Others v. Georgia* ([GC], nos. 13186/20 and 4 others, §§ 337 and 341-342, 11 December 2025), which concerned the use of rubber bullets by the police to disperse a demonstration, the Court considered that the technical characteristics of kinetic impact projectiles and the health risks they pose, demonstrate that their use can easily turn into a disproportionate use of force, especially in situations in which they are fired on a large scale. In the light of this the Court reiterated that States must have in place rules and precautions to ensure that the use of kinetic impact projectiles is appropriately circumscribed and laid down requirements that domestic law must, as a minimum, meet. These are: (i) that kinetic impact projectiles are used only as a last resort, in response to genuine and imminent threats to life or limb; (ii) that they be deployed only in a targeted manner, rather than as a means of general crowd control, and in such a way (having due regard to the technical characteristics of the model used) as to minimise the risk to the targeted person's life and health; (iii) that multiple projectiles (on account of their inherent imprecision) and projectiles containing metal (on account of their increased capacity to cause serious injury) not be used; (iv) that use of kinetic impact projectiles must follow an appropriate warning, unless such warning is clearly unfeasible; (v) that kinetic impact projectiles are only used by law-enforcement officers who have been properly instructed and trained about the projectiles' technical characteristics but also about the risks that they may pose to life and health; and (vi) that the deployment of kinetic impact projectiles be subjected, in so far as possible, to a strict chain of command and control.

(β) Application of these principles to the present case

67. The Court notes that it is undisputed that on 9 June 2019 unrest broke out in the aliens' barracks immigration detention facility, and that as a result the authorities responded by, *inter alia*, discharging rubber bullets at the detainees. However, there is no agreement between the parties on the exact events of 9 June 2019. In the absence of results of an effective domestic investigation into the incident, the Court must assess the applicants' allegations based on the evidence available to it.

68. The applicants provided the Court with drawings showing bullet marks on applicants 2 and 3 and an imprint of a shoe on the back of applicant 1 (see paragraph 33 above) as the authorities in the SDKK had not allowed the applicants' representatives to take photographs to record the injuries. There is no evidence of injury to applicant 6. They also provided the Court with the complaint they had submitted to the Committee Overseeing

Detainee Care and the initial response they had received. This response shows that Committee members visited the SDKK on 10 June 2019 and were shown traces of injuries suffered by detainees during the incident the day before.

69. The Government have not denied that two detainees were injured by rubber bullets and attended to by the nurse on duty, but have neither denied nor confirmed that these detainees were applicants 2 and 3. With reference to the incident reports submitted to the Court (see paragraphs 36 and 37 above) the Government claimed that only four rubber bullets were fired in total: one at the wall, as a warning, one at the detainees' legs and two targeted shots. This contrasts with the allegations made by the applicants that they sustained 17 bullet marks (applicant 3) and 15 bullet marks (applicant 2). No medical evidence has been submitted by either the applicants or the Government.

70. The Court notes that the applicants' claim that force was used during the incident in which they were involved is corroborated by evidence submitted to it and not contested by the Government. The burden of proof is thus on the Government to show that the use of force against the applicants was not in breach of Article 3 of the Convention. More precisely, the Government must show that resorting to the use of rubber bullets was made strictly necessary by the victim's own conduct (see *Bouyid*, cited above, § 83).

71. Given the absence of an effective domestic investigation to establish in detail the exact facts and circumstances of what happened on 9 June 2019, and in particular whether the extent and nature of the use of force by the officers was strictly necessary to effect the applicants transfer, the Government failed to discharge the burden satisfactorily to disprove the applicant's allegation of ill-treatment (see *Mafalani v. Croatia*, no. 32325/13, § 126, 9 July 2015, and *Asllani v. the former Yugoslav Republic of Macedonia*, no. 24058/13, § 80, 10 December 2015). In addition, the Court notes that the Government have not submitted any information concerning the existence of domestic rules that would ensure that the use of rubber bullets is appropriately circumscribed (compare *Kılıcı v. Turkey*, no. 32738/11, § 34, 27 November 2018 and *Tsaava and Others v. Georgia*, cited above, §§ 343-344).

72. The Court therefore finds that there has been a violation of Article 3 of the Convention under its substantive head in respect of applicants 1, 2 and 3. By contrast, there has been no such violation in respect of applicant 6.

B. Conditions of detention

1. The parties' submissions

(a) The Government

73. The Government argued that the applicants had failed to exhaust domestic remedies available to them. The Government considered that the

legal remedies of objection, judicial review and appeal, and the possibility of applying for interim relief, constituted an effective preventive remedy, because an objection triggers a complete reconsideration by the Minister; because the judicial review at two levels can terminate unlawful situations; and because an application for interim relief can expedite the review of alleged unlawfulness (see paragraph 45 above).

74. The applicants had been represented legally from the moment they had made objections on 18 April 2019, and they should therefore be considered to have been able to make use of the available remedies from that time on. The applicants' circumstances were not such that they should be absolved from using the remedies available to them. While the applicants had filed objections (see paragraph 8 above) these had not made any reference to the conditions of their detention, as the arguments had been limited to their expulsion from the country. The applicants first raised their complaint about their detention conditions in their Rule 39 request to the Court (see paragraph 9 above), and domestically in their application for interim relief (see paragraph 14 above).

75. In relation to applicant 5, the Government argued that she had failed to appeal to the Joint Court of Justice against the judgment of 29 May 2019 of the Court of First Instance which had placed her under a supervision and care order (see paragraph 30 above) to have that court address her concerns about the conditions of her detention in the JJIC.

76. Lastly, the Government submitted that the applicants could have applied for compensation in judicial review or appeal proceedings, or by seeking compensation in separate civil proceedings (see paragraph 47 above). In support of this latter possibility, the Government referred to a judgment of the Court of First Instance from 30 September 2022 (see paragraph 48 above).

(b) The applicants

77. The applicants contested the Government's non-exhaustion objection. They referred to the Court's judgment in *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, § 94, 10 January 2012) and argued that the remedies set out by the Government had, in practice, not been available or effective in the light of their individual circumstances. Even if, in general the applicants could have been expected to use domestic remedies, and those would have been effective, special circumstances absolved them from relying on these remedies given that they were made to feel "vulnerable, powerless and apprehensive of the representatives of the State" (they relied on *Aksoy v. Turkey*, 18 December 1996, § 56, *Reports of Judgments and Decisions* 1996-VI) and they therefore "formed the belief that they could not hope to secure concern and satisfaction through national legal channels" (they relied on *Aydın Çetinkaya v. Turkey*, no. 2082/05, § 83, 2 February 2016).

78. They submitted that the inhumane conditions of detention in Curaçao were a systemic problem. In that context, the applicants referred to the order

made by the CPT after its 2022 visit to Curaçao to have the aliens' barracks immigration detention facility taken out of service immediately. The applicants further asserted that two types of complementary remedies must be available: a remedy that can lead to an improvement of the conditions of detention, and those leading to compensation for the damage suffered, whereby the preventive remedy is of higher value than the compensatory remedy. The applicants observed that there was no provision for judicial review of conditions of detention in Curaçao. The compensatory remedies available to the applicants through civil proceedings were also ineffective because starting proceedings in the civil court would require the payment of court fees which the applicants could not afford. Moreover, the applicants observed that the Government were unable to demonstrate domestic examples of the successful use of a remedy providing appropriate relief within a reasonably short time.

79. As for applicant 5, the applicants reiterated that she was an unaccompanied minor and was held in the women's division of an ordinary prison. Given her obvious vulnerability, the remedies suggested by the Government were not capable of bringing swift redress or offer reasonable prospects of success.

2. *The Court's assessment*

(a) **General principles**

80. The general principles as regards exhaustion of remedies were recently summarised by the Grand Chamber in *Mansouri v. Italy* (dec.) [GC] (no. 63386/16, § 84, 29 April 2025). The rationale for the exhaustion rule is to afford the national authorities, primarily the courts, the opportunity to prevent or put right the alleged violations of the Convention. An applicant is normally only required to have recourse to domestic remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of these remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. It is for a Government claiming non-exhaustion to satisfy the Court on these points, that is to say, that any remedy to which they refer was accessible and capable of providing redress in respect of the applicant's complaints and offered a reasonable prospect of success. However, once this burden of proof has been satisfied it is for the applicants to establish that the remedy advanced by the Government had in fact been used or that it was for some reason inadequate and ineffective in their case, or that there existed special circumstances absolving them from the requirement to have recourse to it (see *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 178, 27 January 2015). A Government's arguments will carry more weight if examples from national case-law are supplied (*Parrillo v. Italy* [GC], no. 46470/11, §§ 87-105, ECHR 2015). Any decisions cited should in

principle have been delivered before an application is lodged with the Court (see *Norbert Sikorski v. Poland*, no. 17599/05, § 115, 22 October 2009). The Court must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 116, ECHR 2007-IV). The applicant's obligation to exhaust domestic remedies, and hence the effectiveness of the remedy, is normally assessed at the date on which the application was lodged with the Court (see *İçyer v. Turkey* (dec.), no. 18888/02, § 72, ECHR 2006-I).

81. Specifically, as regards complaints concerning conditions of detention under Article 3 where the applicant was still detained at the time of the lodging of the application, the remedy must be capable of remedying the alleged continuous situation in order for it to be effective (see *Torreghiani and Others v. Italy*, nos. 43517/09 and 6 others, § 50, 8 January 2013; *Neshkov and Others*, cited above, § 181 and 192-93; and *Vasilescu v. Belgium*, no. 64682/12, §§ 70 and 128, 25 November 2014). In *Norbert Sikorski* (cited above, § 121) the Court considered that when detention in overcrowded and inappropriate conditions is a systemic problem, the Government must show that the applicant could have had the situation giving rise to the complaint under Article 3 of the Convention remedied by using the remedies the Government suggests.

(b) Application of the above principles to the present case

82. When the Court received the application forms on 19 June 2019 (see paragraph 12 above), applicants 1, 2, 3 and 6 were detained in the aliens' barracks immigration detention facility and applicants 4 and 7 at the SDKK. Applicant 5, the female and minor, had already been released from detention in the SDKK by an order of the domestic provisional measures judge and transferred to the JJIC (see paragraphs 16 and 30 above). The Court will therefore deal with the situation of applicant 5 separately from that of the other applicants.

(i) Applicant 5

83. The Court notes that applicant 5's complaints relate to two facilities, the JJIC and the SDKK.

84. As regards the complaint about the detention regime in the JJIC (see paragraph 30 above), the Court agrees with the Government that it should be declared inadmissible for non-exhaustion of domestic remedies. By the time that applicant 5 was transferred to the JJIC, she was represented and able to consult her lawyers. Her representatives could and should have raised their complaints about the conditions of detention in the JJIC by way of an appeal to the Joint Court of Justice against the Court of First Instance's judgment of 29 May 2019. They have not explained specifically why they did not do so,

and the Court does not find convincing their general arguments in this respect described in paragraph 77 *in fine* above.

85. As regards applicant 5's detention in the SDKK, the Court observes that she was released on 7 May 2019. The remainder of her complaint thus relates to conditions of detention in the SDKK between 11 April 2019 and 7 May 2019.

86. The Court observes that the provisional measures judge of the Court of First Instance, in her decision of 30 April 2019 (see paragraph 16 above), acknowledged in substance a violation of applicant 5's rights under Article 3 of the Convention, noting that unaccompanied minors should not be detained save for weighty reasons and that applicant 5 had been held in the women's section of an ordinary prison. In this connection, the Court notes, in addition, that the provisional measures judge urged the authorities to introduce, as soon as possible, an accessible policy with regard to immigration detention of unaccompanied minors, based on the principle that there must be compelling reasons for placing a minor in detention (see paragraph 17 above). While the Court would normally have to assess whether, under those circumstances, applicant 5 could still claim to be a victim of the alleged violation (see, among many authorities, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 180 and 193, ECHR 2006-V), the Court notes that applicant 5 failed to seek compensation through the judicial review which she could have instigated after her objection was rejected (see paragraph 28 above). In so doing, she deprived the domestic authorities of the opportunity to provide redress. In these circumstances, and irrespective of the question of victim status, her complaint must in any event be rejected as inadmissible under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(ii) *Applicants 1-4 and 6-7*

87. The Court observes that when the application forms from the remaining applicants were received on 19 June 2019 (see paragraph 12 above) they were still being detained. Any remedies proposed by the Government should therefore have been capable of improving the material conditions of their detention. The Court notes that the applicants' objections against their detention orders were still pending on 19 June 2019. In their request of 23 April 2019 for a domestic interim measure the applicants complained specifically about the conditions of their detention. However, after the provisional measures judge of the Court of First Instance ruled on 13 May 2019 that the applicants' conditions of detention did not (yet) amount to inhuman or degrading treatment (see paragraphs 20-21 above), the applicants did not, at any stage, raise a complaint regarding the conditions of their detention in the course of their procedure on the merits, i.e. the objection procedure, when it could have led to an improvement in the material conditions of their detention. A decision by an interim relief judge would have a provisional character (such as suspension of detention pending the

objection procedure) and would not be binding on the domestic authorities in the proceedings on the merits.

88. Moreover, the Court observes that applicant 4 was released on 6 August 2019 (see paragraph 25 above) and all the other applicants were released on 14 August 2019 (see paragraph 27 above). At no stage after their release did the applicants claim compensation for having allegedly been detained in violation of Article 3. Moreover, it appears that the applicants made no complaint about the conditions of their detention in their notice of objection. Consequently, even if the applicants had used the remedy of judicial review of the decision on their objection - which they did not (see paragraph 28 above) -, the Court of First Instance would not have been able to consider those conditions in their judicial review and thus also not a thereto related request for compensation. The applicants therefore deprived the authorities of the opportunity to recognise and provide redress for the alleged violation of their rights. The applicants have not sufficiently explained why they never complained that the conditions of their detention were in breach of Article 3 in the proceedings on the merits.

89. Accordingly, the remaining applicants' complaint under Article 3 is therefore also inadmissible and must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

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

90. The applicants complained that they did not have access to a remedy which met the requirements of Article 5 § 4 of the Convention as developed in the Court's case-law and therefore could not challenge the lawfulness of their detention. The provision reads as follows:

“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

1. *The parties' submissions*

(a) **The Government**

91. The Government reiterated their general position as to non-exhaustion of domestic remedies (see paragraph 73 above). In particular, they noted that the applicants had available to them the remedy of lodging an application for interim relief. The Government noted that in the present case the applicants had availed themselves of this remedy and that the provisional measures judge had speedily reviewed the lawfulness of the applicants' detention. In the case of applicant 5, this had resulted in her release from the prison. As regards the case of the other applicants, the Government noted that although

the legal remedies pursued by the applicants had not produced the outcome they desired, there had been a procedure prescribed by law and it had been complied with. The Government noted that the specific circumstances of the applicants were not such as to absolve them from using the legal remedies available to them. Lastly, the Government referred to a judgment of the Court of First Instance of 2 August 2023 as an example of how the applicants could access effective remedies to challenge their detention (see paragraph 49 above).

(b) The applicants

92. In addition to reiterating their overall stance on the exhaustion of domestic remedies (see paragraph 77 above), the applicants maintained that the Court should regard remedies for unlawful detention as effective only if they allow an individual to obtain a prompt judicial review of the legality of their detention and if the proceedings are adversarial and uphold the principle of equality of arms. The applicants claimed that the authorities had not provided information on how to challenge the decisions taken in respect of them in a language they could understand, and that they had not provided access to legal representatives, as there was no statutory legal assistance for asylum seekers in Curaçao. Had a local human rights NGO not become aware of the applicants' situation and ensured their representation (see paragraph 7 above), they would not have been able to use any legal remedies. There were also financial obstacles which had initially prevented the applicants from applying for interim relief domestically. The applicants claimed that submission of an interim measure cost 150 euros (EUR) per applicant, which they would have been unable to afford had it not been for the assistance of the UNHCR. Furthermore, there was no separate *habeas corpus* procedure for immigration detention, and therefore no *ex officio* judicial review of detention was possible. Moreover, because structural problems with the legal system in Curaçao caused appeal proceedings to be excessively lengthy, it would not be possible to have a speedy judicial review leading to release.

(c) Third-party intervener

93. The UNHCR observed that there was no statutory regulation in Curaçao governing the judicial review of the legality, conditions or duration of immigration detention. Similarly, no specific provisions had been made in Curaçao for detained asylum seekers to receive legal assistance while injunctions and appeals with their associated court costs impeded access to legal remedies. The UNHCR referred to the June 2018 report of the Curaçaoan Ombudsman who had investigated the Minister of Justice's role in carrying out policies on immigrants and refugees in Curaçao. The Ombudsman had concluded that these multiple legal obstacles meant that detainees did not have access to an effective remedy in practice. The UNHCR

had found critical gaps in information on how to access international protection and rights and services, because detention orders were written in Dutch and asylum seekers were not provided with a translation in a language they understood. The UNHCR also quoted the Dutch Council for Refugees, which in consultation with Human Rights Defense Curaçao and lawyers practising in Curaçao had described the legal remedies to challenge deportation and detention orders as dysfunctional and had concluded that individuals were forced to sign detention and removal orders which were written in Dutch.

2. The Court's assessment

94. The Court notes that all the applicants have been released (see paragraphs 16, 25 and 27 above). In principle, Article 5 § 4 cannot be relied on by a person who has been lawfully released (see *Stephens v. Malta (no. 1)*, no. 11956/07, § 102, 21 April 2009). However, the Court notes that all applicants were precisely complaining that they did not have an effective remedy to challenge the lawfulness of their detention during the time they were detained.

95. The Court considers that the Government's plea of non-exhaustion of domestic remedies goes to the merits of the complaint under this head, namely, whether or not the applicants, while detained, had access to an adequate and speedy judicial review of the lawfulness of their detention. The Court will therefore join this objection to the merits of the complaint and address it later when examining its substance.

96. The Court further notes that their complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

97. The parties' submissions on the merits of the complaint essentially concerned its admissibility. The Court has described those submissions above (see paragraphs 91-93 above).

2. The Court's assessment

(a) General principles

98. The general principles concerning Article 5 § 4 were summarised by the Court in *Louled Massoud v. Malta*, (no. 24340/08, § 39, 27 July 2010). The Court recalls that "lawfulness" under paragraph 4 of Article 5 has the same meaning as in paragraph 1, so that the arrested or detained person is entitled to a review of the "lawfulness" of his detention in the light not only

of the requirements of domestic law but also of the Convention, the general principles embodied therein, and the aim of the restrictions permitted by Article 5 § 1. The remedies must be made available during a person's detention with a view to that person obtaining a speedy judicial review of the lawfulness of his or her detention capable of leading, where appropriate, to his or her release. The accessibility of a remedy implies, *inter alia*, that the circumstances voluntarily created by the authorities must give applicants a realistic possibility of using the remedy (see *Čonka v. Belgium*, no. 51564/99, §§ 46 and 55, ECHR 2002-I).

99. The requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances (see *Louled Massoud*, cited above, § 40). Although it is not always necessary for an Article 5 § 4 procedure to carry the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, ECHR 2009 [GC], and *J.B. and Others v. Malta*, no. 1766/23, § 143, 22 October 2024). Furthermore, Article 5 § 4 enshrines, as does Article 6 § 1, the right of access to a court, which can only be subject to reasonable limitations that do not impair its very essence (see *Margaretić v. Croatia*, no. 16115/13, § 115, 5 June 2014). The underlying purpose of Article 5 - the protection of the individual's liberty and security - and the significance of its safeguards, including the right of access to a court under paragraph 4, require by implication that any procedural limitations on the right of a person deprived of his liberty to challenge the lawfulness of his continuing detention in a court must be subject to particularly strict scrutiny. The practical realities and specific circumstances of a detained person's position must be taken into consideration (see *Shishkov v. Bulgaria*, no. 38822/97, § 85, ECHR 2003-I (extracts) and the references mentioned therein). It may also be essential that the individual concerned should not only have the opportunity to be heard in person but that he should also have the effective assistance of a lawyer (see *Černák v. Slovakia*, no. 36997/08, § 78, 17 December 2013).

100. The question whether the right to a speedy decision has been respected must – as is the case for the “reasonable time” requirement in Articles 5 § 3 and 6 § 1 of the Convention – be determined in the light of the circumstances of each case (see, among many authorities, *Ilseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 252, 4 December 2018), particularly in the light of the complexity of the case, any specificities of the domestic procedure and the applicant's behaviour in the course of the proceedings (see *Khlaifia and Others*, cited above, § 131).

(b) Application of the above principles to the present case

101. The Court firstly observes that the detention orders issued to the applicants indicated that there were two potential ways for them to challenge the lawfulness of their detention, namely by making a formal objection and by directly appealing for judicial review to the Court of First Instance (see paragraph 5 above). Accordingly, it appears that the applicants had a choice between two remedies. The applicants made a formal objection and did not lodge a direct appeal for judicial review by the Court of First Instance. The existence of this potentially effective remedy therefore raises the question whether the applicants had exhausted domestic remedies in accordance with the domestic rules of procedure (see paragraph 80 above for the general principles on exhaustion of remedies).

102. However, the Court observes that when notice of the applications was given to the Government, they did not raise an objection as to non-exhaustion of the remedy of direct appeal for judicial review (see paragraphs 73 and 91 above).

103. The Court reiterates that it can only address remedies and arguments pertaining to the use of those remedies which are raised by the Government. The Court therefore cannot examine the effectiveness of the direct judicial avenue of redress (a direct appeal to the Court of First Instance) of its own motion (see *Šabanović and Others v. Serbia*, nos. 39819/16 and 4 others, § 81, 7 October 2025 and the authorities cited therein).

104. The Court further notes that it is not in dispute that there is no separate *habeas corpus* procedure for immigration detention in Curaçao, no statutory legal aid for asylum seekers and no *ex officio* judicial review of detention at reasonable intervals. It is also not in dispute that the applicable law provides for the remedy of interim relief, through which a judge can be requested to suspend the detention order pending the objection proceedings (see paragraph 45 above).

105. Turning to the submissions made by the parties, the Court observes that the essence of the parties' dispute is whether the applicants had access to the remedy of interim relief in practice. The Court will therefore focus its assessment on the practical accessibility of the interim relief proceedings.

106. The Court notes that the possibility of interim relief was not mentioned in the detention orders issued to the applicants, which were moreover written in a language they did not understand. There is no evidence of a translation having been provided by the competent authorities. The applicants therefore could not have known about this potential remedy until they obtained legal representation. The Court notes the Government have not denied that the applicants had no access to legal assistance during their first week of detention, from 11 to 18 April 2019 (see paragraph 7 above). The Government have not explained how the applicants could have sought that remedy without the assistance of a lawyer.

107. While it is not for the Court to require a member State to provide legal aid in situations such as those of the applicants, here the Court cannot but note that it appears that, in the particular circumstances of this case, the absence of legal aid meant that the applicants could not reasonably have instigated any legal proceedings to have the lawfulness of their detention speedily reviewed by a court from their places of detention prior to obtaining legal assistance.

108. The Court further notes that after the applicants obtained legal assistance, it took a further 5 days for the applicants to lodge their application to the First Instance Court for interim relief on 23 April 2019 (see paragraph 14 above). In their submission to the Court the applicants have argued that this was due to financial obstacles (see paragraphs 11 and 92 above). The Government have replied that the specific circumstances of the applicants were not such as to absolve them from using the legal remedies available to them (see paragraph 91 above). However, the Court notes that neither party have addressed the possibility of applying for an exemption of court fees (see paragraph 45 above). While noting that financial obstacles can detract from the accessibility of a remedy, the Court finds that it is not in a position to establish that this was the case for the applicants, in the absence of any submissions regarding the possibility of obtaining an exemption from payment of court fees. The Court will therefore not assess this particular aspect of the applicants' complaint.

109. Reiterating that the Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective (see *Čonka*, cited above, § 46), and given the apparent impossibility of accessing interim relief without the assistance of a lawyer, the Court finds that pending the first week of their detention the remedy of interim relief was not sufficiently accessible for the applicants the purposes of Article 5 § 4.

110. For the aforementioned reasons, the Court dismisses the Government's objection in respect of the complaints under Article 5 § 4 of the Convention and finds that there has been a violation of that provision in respect of all applicants.

III. ALLEGED VIOLATION OF ARTICLES 5 §§ 1 AND 2 OF THE CONVENTION

111. The applicants complained that their detention had been unlawful and therefore in breach of Article 5 § 1 (f) of the Convention, and that the detention orders had not been communicated to them in a language they could understand, in breach of their rights under Article 5 § 2. These provisions read as follows:

“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.

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.”

A. The parties’ submissions

112. The parties submissions have been summarised above (see paragraphs 73 and 91 above for those of the Government, and paragraphs 77 and 92 for those of the applicants).

B. The Court’s assessment

113. The relevant general principles on exhaustion of remedies have been set out in paragraph 80 above. In addition, the Court recalls that where an applicant’s complaint of a violation of Article 5 § 1 of the Convention is mainly based on the alleged unlawfulness of his or her detention under domestic law, and where this detention has come to an end, an action capable of leading to a declaration that it was unlawful and to a consequent award of compensation is an effective remedy which needs to be exhausted if its practicability has been convincingly established (see *Oravec v. Croatia*, no. 51249/11, § 33, 11 July 2017).

114. As regards the complaint under Article 5 § 1 (f), the Court notes that while the applicants raised this complaint domestically in their formal objection (see paragraphs 8 and 19) and when applying for interim relief pending the objection proceedings (see paragraph 14 above), they did not lodge an appeal for judicial review of the decisions on their objection (see paragraph 28 above). They also did not seek compensation for their allegedly unlawful detention after they had been released. The judgment of the Joint Court of Justice referred to in paragraph 48 above shows that pursuit of that remedy would not have been futile, as the applicants claimed.

115. Likewise, the Court notes that the applicants did not complain, aside from during their domestic application for interim relief (see paragraph 14 above) that they had not been informed of the reasons for their arrest, in a language they could understand. This argument was not raised at any stage in the proceedings on the merits, either during the applicants’ detention or after their release.

116. The Court therefore makes the same finding with regard to these complaints as it has with the complaint regarding the breach of Article 3 of the Convention concerning the conditions of the applicants’ detention (see paragraphs 87-88 above). It follows that the applicants’ complaints under Articles 5 §§ 1 and 2 are inadmissible for failure to exhaust domestic remedies

within the meaning of Article 35 § 1 of the Convention and must therefore be dismissed in accordance with Article 35 § 4.

IV. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 4 OF THE CONVENTION

117. The applicants complained that the fact they were issued with individual, identical removal decisions on 11 April 2019, without any investigation into their individual circumstances, violated their rights as provided in Article 4 of Protocol No. 4 of the Convention, which reads as follows:

“Collective expulsion of aliens is prohibited.”

A. The parties’ submissions

1. The Government

118. The Government reiterated their general position that the applicants had not exhausted domestic remedies when they first applied to the Court (see paragraph 73 above). They also noted that the competent authorities had assessed the individual situation of each applicant separately, and that none of the applicants, except for applicant 7, had objected to the decisions denying them protection against treatment prohibited by Article 3 of the Convention (further referred to as ‘Article 3 protection’), or appealed against the decision rejecting the objection to the decisions to detain and remove them (see paragraphs 28 and 38 above).

2. The applicants

119. In addition to their general position regarding the absence of accessible and effective remedies (see paragraph 77 above), the applicants reiterated that none of the remedies proposed by the Government had automatic suspensive effect, which had been required given that all the applicants had sought ‘Article 3 protection’ in Curaçao.

3. Third-party intervener

120. The UNHCR referred to the procedure for granting or refusing admission to Curaçao or for ordering removal, which it referred to in summary as asylum procedures. In UNHCR’s view, Curacao’s legislation and practice hindered access to asylum procedures and fail to meet well-established Article 3 standards. The absence of crucial procedural safeguards, including access to information, interpreters and legal counselling and the insufficient training of border guards conducting the initial interview leads to a deficient assessment of the individual circumstances of applicants. As a result, the detention and deportation of applicants take place without a

reasonable and objective examination of the particular case of each individual member of the group and without a genuine and effective possibility of submitting arguments against the expulsion in contravention of Article 4 Protocol No. 4.

B. The Court's assessment

121. The Court notes that all the applicants were allowed to apply for 'Article 3 protection' after they were served with removal orders on 11 April 2019 (see paragraphs 10 and 38 above). On 25 June 2019 the Court decided not to prolong the interim measure indicated on 23 April 2019 because the applicants were no longer at risk of being expelled. Moreover, the applicants' complaint under Article 3 in conjunction with Article 13 of the Convention concerning the alleged ineffective procedure in Curaçao for obtaining international protection, was declared inadmissible by the Court as premature because an individual assessment of their applications for protection was still ongoing (see paragraph 13 above).

122. The Court refers to its decision in *Abdi Ahmed and Others v. Malta* (dec.) (no. 43985/13, §§ 78, 80-82 and 86-87, 16 September 2014). In that case the Court observed that despite initial plans to have the applicants removed, the Maltese Government complied with a Rule 39 measure issued by the Court and the applicants had had an opportunity to apply for asylum. As the applicants in that case had had their asylum applications individually assessed (or had an opportunity to obtain such an individual assessment) and they had not been collectively expelled, the complaint under Article 4 of Protocol No. 4 was subsequently declared inadmissible *ratione personae*.

123. In the light of the circumstances set out in paragraph 121 above, the Court sees no reason to depart from this reasoning in the present case. Accordingly, the applicants' complaint under Article 4 of Protocol No. 4 is inadmissible *ratione personae* with the provisions of the Convention and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. RULE 39 OF THE RULES OF COURT

124. In view of the fact that the Rule 39 measure in place refers to the conditions of the applicants' detention (see paragraph 12 above), and all the applicants have in the meantime been released (see paragraph 27 above), the measure indicated under Rule 39 of the Rules of Court has been extinguished and it no longer applies.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. 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

126. The applicants claimed 5,000 euros (EUR) each, without specifying whether their claim related to pecuniary or non-pecuniary damage.

127. The Government submitted that the applicants’ claims for just satisfaction should be dismissed because they had not exhausted the domestic remedies available to them. Even if the complaints of applicants 1- 4, 6 and 7 had been admissible there had been no violation of their rights. In respect of applicant 5 the Government also submitted that there had been no violation of her rights as alleged but deferred to the considerations of the Court regarding her detention conditions. The Government regarded an award of EUR 5,000 in respect of detention conditions excessive and, in view of domestic caselaw, found 1,100 Netherlands Antilles Guilders (approximately EUR 535) more appropriate.

128. The Court sees no ground to award any pecuniary damage. As regards non-pecuniary damage, the Court finds it appropriate, in view of the multiple violations found in respect of applicants 1, 2, 3 and 6, to award these applicants EUR 5,000 each under this head, plus any tax that may be chargeable. In view of the fact that the Court found a violation of Article 5 § 4 in respect of applicants 4, 5 and 7, it awards these applicants EUR 1,625 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

129. The applicants did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT,

1. *Decides*, unanimously, to join to the merits the Government’s objections of non-exhaustion of domestic remedies in respect of the procedural complaint under Article 3 of the Convention, insofar as it relates to the use of force by State agents in respect of applicants 1, 2, 3 and 6 and the complaint concerning Article 5 § 4 of the Convention in respect of all applicants and *dismisses* them;
2. *Declares*, unanimously, the complaint under Article 3 of the Convention, under its procedural limb, insofar as it relates to the use of force by State agents in respect of applicants 1, 2, 3 and 6, the complaint under Article 3

of the Convention, under its substantive limb, insofar as it relates to the use of force by State agents in respect of applicants 1, 2, 3 and 6, and the complaint concerning Article 5 § 4 in respect of all applicants, admissible, and the remainder of the application inadmissible;

3. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention under its procedural limb, insofar as it relates to the use of force by State agents in respect of applicants 1, 2, 3 and 6;
4. *Holds*, by six votes to one, that there has been a violation of Article 3 of the Convention under its substantive limb, insofar as it relates to the use of force by State agents in respect of applicants 1, 2 and 3;
5. *Holds*, unanimously, that there has been no violation of Article 3 of the Convention under its substantive limb, insofar as it relates to the use of force by State agents in respect of applicant 6;
6. *Holds*, unanimously, that there has been a violation of Article 5 § 4 of the Convention in respect of all applicants;
7. *Decides*, unanimously, to lift the indication made to the Government under Rule 39 of the Rules of Court;
8. *Holds*, unanimously,
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 5,000 (five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to applicants 1, 2, 3 and 6;
 - (ii) EUR 1,625 (one thousand six hundred and twenty-five euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to applicants 4, 5 and 7;
 - (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;
9. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Y.F.C. AND OTHERS v. THE NETHERLANDS JUDGMENT

Done in English, and notified in writing on 21 April 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Lado Chanturia
President

APPENDIX

List of Applicants

No.	Applicant	Birth year	Nationality	Place of residence	Representative
1.	Y.F.C.	1980	Venezuelan	Willemstad	G.C.A. Scheperboer-Parris and Mr. B.W. Scheperboer
2.	F.C.C.	1980			
3.	J.M.A.	1976			
4.	J.R.A.	1985			
5.	R.T.M.	2002			
6.	N.M.O.	1974			
7.	C.V.S.	1992			