



Unlawful detention of a mother and her children

In today's Chamber judgment in the case of **Kanagaratnam and Others v. Belgium** (application no. 15297/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights concerning the three children;

no violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention concerning the mother;

a violation of Article 5 § 1 (right to liberty and security) concerning the mother and her three children.

The case concerned the detention of a mother and her three children, who were asylum seekers, in a closed centre for illegal aliens pending their removal.

Principal facts

The applicants, Renuka Kanagaratnam and her three children, Mary, Gowslaya and Alexkath, are Sri Lankan nationals of Tamil origin who were born in 1972, 1996, 1998 and 2001 respectively and live in Ecklo (Belgium).

In January 2009 Ms Kanagaratnam, accompanied by her children, arrived at the Belgian border having travelled from Kinshasa (Congo), and applied, on that same day, for asylum and subsidiary protection "at the border".² Pursuant to the Belgian law on the entry, residence, settlement and expulsion of aliens, the Belgian authorities decided to refuse them entry and return them, on the ground that the mother was in possession of a false passport.

On the same day, the Aliens Office (the "AO") decided to place the family in a closed transit centre for illegal aliens, 127bis, near the airport, pending processing of their asylum application. The family subsequently applied to the courts to be released, but without success.

Questioned in the meantime by the Office of the Commissioner General for Refugees and Stateless Persons ("the CGRSP"), Ms Kanagaratnam claimed that in the country of her birth, Sri Lanka, she had been arrested, interrogated and detained by the Colombo police on three occasions, in 2001 and 2006, because of her alleged collaboration with the separatist movement. She had fled the country with her children in December 2008 as

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

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

² Subsidiary protection is granted to individuals who do not have refugee status but who would be exposed to serious danger were they to be returned to their home country.

she feared that she would continue to be subject to arbitrary arrest by the police on account of her Tamil origin.

In February 2009 the CGRSP refused the mother and her children asylum and subsidiary protection on the ground that some of her statements lacked credibility.

After having been informed of the decision to return them to Congo, Ms Kanagaratnam sought a temporary measure, fearing that she would be subjected to inhuman treatment were she to be returned to Congo and, subsequently, to Sri Lanka. On 20 March 2009 the Court decided to suspend the family's return until 20 April 2009, which, after the family's refusal to board the plane, was extended by one month.³ The family remained in detention pending their return, in accordance with national legislation.

Because the validity of the family's initial period of detention had expired on 22 March 2009, the AO again decided to refuse the family entry into Belgium and to return them to Congo. The family's detention in the closed centre was subsequently extended.

After having again applied to be released, the family was finally released following a decision of the AO taken on 4 May 2009, after a second asylum application had been made on 23 March 2009 and was under consideration.

Having regard to the fact that the mother and her children had been released and that they could not be removed pending the outcome of their asylum application, the temporary measure suspending their removal was lifted on 18 May 2009.

In September 2009 the CGRSP granted the mother and her children refugee status.

Complaints, procedure and composition of the Court

Relying on Article 3, Ms Kanagaratnam and her three children complained that their detention at secure facility 127 bis, which had lasted almost four months, had amounted to inhuman and degrading treatment. They also complained that their continued detention had not been in accordance with the law and had been arbitrary (Article 5 § 1 (f)).

The application was lodged with the European Court of Human Rights on 20 March 2009.

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

Danutė **Jočienė** (Lithuania), *President*,
Françoise **Tulkens** (Belgium),
Dragoljub **Popović** (Serbia),
Işıl **Karakaş** (Turkey),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

³ Under Rule 39 of the Rules of Court, the Court can indicate temporary measures to any State Party to the European Convention on Human Rights. These are urgent measures which apply only where there is an imminent risk of irreparable damage. The vast majority of temporary measures indicated concern cases of expulsion and extradition, in which the Court may ask the State concerned to suspend the applicant's return.

Decision of the Court

Article 3 (prohibition of inhuman and degrading treatment) concerning the three children

The Court pointed out that it had twice found that Belgium had violated Article 3 on account of having detained alien minors, whether or not accompanied, in a closed centre. The Court observed in the instant case that the family had been detained for almost four months in a centre which the Court had already held to be inappropriate for the needs of children because of the conditions of detention which were disastrous for their balance and development.

The Court reiterated that the particular vulnerability of the children, who were already traumatised even before their arrival in Belgium as a result of circumstances relating to the civil war in their home country and their flight, had also been recognised by the Belgian authorities since they had finally granted the family refugee status. That vulnerability had increased on their arrival in Belgium, following their arrest at the border and placement in a closed centre pending their removal.

Despite the fact that the children had been accompanied by their mother, the Court considered that by placing them in a closed centre, the Belgian authorities had exposed them to feelings of anxiety and inferiority and had, in full knowledge of the facts, risked compromising their development. Consequently, the situation experienced by the children had amounted to inhuman and degrading treatment and the Court concluded that there had been a violation of Article 3 in their regard.

Article 3 (prohibition of inhuman or degrading treatment) concerning the mother

The Court acknowledged that the mother had certainly been deeply concerned, anxious and frustrated on account of her inability to assume her role as mother and her powerlessness to protect her children against detention and the conditions of that detention. However, the Court considered that because the children had accompanied the mother at all times, the threshold of seriousness required by Article 3 had not been reached. The Court therefore held that there had been no violation of Article 3 in respect of the mother.

Article 5 § 1 (right to liberty and security) concerning the mother and the three children

The Court considered that by placing the children in a closed centre designed for adult illegal aliens, in conditions which were ill-suited to their extreme vulnerability as minors, the Belgian authorities had not sufficiently guaranteed the children's right to their liberty.

As regards the mother, the Court noted that her detention had been extended for the period between the end of March and the beginning of May, despite the fact that her second asylum application had been considered in the meantime. Furthermore, taking account of the fact that she had been detained for a particularly lengthy period in clearly inappropriate conditions for a family, the Court considered that her detention had been unlawful.

The Court held that there had been a violation of Article 5 § 1.

Article 41 (just satisfaction)

The Court ordered Belgium to pay Ms Kanagaratnam 46,650 euros (EUR), including EUR 7,650 for herself and EUR 13,000 in respect of non-pecuniary damage suffered by each of her children and EUR 4,000 in respect of costs and expenses.

The judgment is available only in French.

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