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

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ECHR 119 (2023)
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The placement of an Algerian national in administrative detention for security reasons pending his removal to Algeria did not breach the Convention

In today's **Chamber** judgment[1] in the case of N.M. v. Belgium (application no. 43966/19) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 5 § 1 (f) and § 4 (right to liberty and security/right to a speedy review of the lawfulness of detention) of the European Convention on Human Rights**, and**

no violation of Article 3 (prohibition of inhuman or degrading treatment).

The case concerned the detention of an Algerian national for 31 months in a closed centre for aliens pending his removal from Belgium on grounds of a risk to public order and national security, the review of the lawfulness of that measure, and the applicant's conditions of detention in the Vottem (Liège) closed centre.

The Court noted that the domestic authorities had taken the view that the applicant's detention was justified for reasons relating mainly to his dangerousness and to the protection of public order and national security. Those considerations had been reinforced by the applicant's conviction in April 2018 for membership of a terrorist group. In view of the circumstances of the case, the Court considered that the applicant's detention came within the scope of Article 5 of the Convention and that the duration of his detention had not exceeded the reasonable time required to achieve the aim pursued by the Belgian authorities, namely the applicant's removal to Algeria. The Court further noted that the Belgian courts had conducted a sufficient review of the detention measure. It also held that the applicant had not been subjected to treatment contrary to Article 3 of the Convention during his detention in partial isolation in the Vottem closed centre.

Principal facts

The applicant is an Algerian national who was born in 1949. In 1993 he had been sentenced by an Algerian court to thirty months' imprisonment for "procuring equipment for criminal ends and raising funds for the Islamic Salvation Front", a party of which he was a member in the 1990s. On his release the applicant left Algeria for Europe, where he lodged several unsuccessful applications for international protection, including in Belgium.

The Belgian authorities accordingly issued the applicant with several expulsion orders, including an order dated 27 September 2017 which was accompanied by a detention order with a view to removal and a ban on re-entering the country. The detention order – which mentioned, among other things, that the applicant had not possessed a valid residence permit at the time of his arrest and that a warrant for his arrest had been issued in 2015 for his involvement in the activities of a terrorist group – was extended several times. The applicant was eventually released on 20 March 2020.

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.

In the meantime the applicant had been sentenced by the Belgian criminal courts to three years' imprisonment (in 2018) for membership of a terrorist group in Syria, and to eight months' imprisonment (in 2021) for threatening a fellow detainee.

Complaints, procedure and composition of the Court

The applicant relied on Article 5 (right to liberty and security/right to a speedy review of the lawfulness of detention) and Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

The application was lodged with the European Court of Human Rights on 14 August 2019.

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

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Egidijus **Kūris** (Lithuania),
Pauliine **Koskelo** (Finland),
Frédéric **Krenc** (Belgium),
Diana **Sârcu** (the Republic of Moldova),
Davor **Derenčinović** (Croatia),

and also Hasan **Bakırcı**, *Section Registrar.*

Decision of the Court

Article 5: right to liberty and security

With regard to the aim and lawfulness of the applicant's detention, the Court noted that an order for his administrative detention had been made on 20 September 2017, at a time when he was not authorised to reside in Belgium but had been imprisoned there. The Belgian authorities had consistently sought the applicant's removal to Algeria, through successive detention orders and throughout his detention. They had also reassessed the risk he might face in the event of his removal. Public order and national security concerns had weighed heavily in the decision to keep the applicant in detention while his asylum claim was being examined. Consequently, the applicant's initial detention and his continued detention for the subsequent periods came within the scope of Article 5 § 1 (f). Nor was there any reason to consider that his detention had not been in accordance with the law.

Regarding the necessity of the applicant's detention, the Court noted that his situation could not be compared to that of other applicants who claimed asylum but who were particularly vulnerable, in respect of whom the Court had stressed the need to consider alternatives to detention. Furthermore, the applicant had been able to access the medical care and psychological support services offered to him. Accordingly, the Belgian authorities could not be criticised for not opting for alternatives to detention.

As to the length of detention, the Court stressed that it was mindful of the particularly lengthy duration of the applicant's administrative detention. However, it noted that the Belgian authorities had acted with the requisite diligence with regard to the conduct of the expulsion proceedings. Moreover, the examination of the applicant's third asylum application had been particularly complex and had entailed assessing the important matter of the risks he actually faced in Algeria on account of the overall situation in that country and of his personal circumstances. Furthermore, throughout the examination of the asylum application, the applicant's case had involved equally important considerations regarding the maintenance of public order and public safety, in view of the

background information compiled by the Belgian authorities (specifically, the State security services and the risk assessment coordinating body) and the risk of proselytism identified by those bodies. Given the real risk that the applicant posed a danger and his previous criminal convictions, it was not the Court's task to call into question the domestic authorities' assessment, which did not appear arbitrary or manifestly unreasonable. Lastly, the ordinary courts had found on each occasion that the applicant's detention was justified for reasons relating mainly to his dangerousness and to the protection of public order and national security. Those considerations had been reinforced by the applicant's conviction in April 2018 for membership of a terrorist group. Accordingly, the duration of the applicant's detention in the present case had not exceeded the reasonable time required to achieve the aim pursued by the Belgian authorities, namely the applicant's removal to Algeria.

The Court therefore held that there had been no violation of Article 5 § 1 (f) of the Convention.

Article 5: right to a speedy review of the lawfulness of detention

The investigating judicial authorities had systematically verified, having regard to both domestic law and the Convention, that the applicant's detention was aimed at his expulsion, that the administrative authorities had acted with due diligence in that regard, that the applicant's dangerousness had been established, and that the asylum procedure was ongoing. No judicial decision had found the applicant's detention to be unlawful. Accordingly, it could not be said that the review of his detention by the Belgian judicial authorities had not been sufficient in scope for the purposes of Article 5 § 4 of the Convention. There had therefore been no violation of that provision.

Article 3: conditions of detention

The applicant complained of being held in partial isolation (*régime de chambre*) during the first months of his administrative detention in the Vottem closed centre. In that regard the Court reiterated that solitary confinement did not in itself constitute a violation of Article 3 of the Convention. Furthermore, a prohibition of contact with other detainees for reasons of safety, discipline or protection did not amount *per se* to inhuman or degrading treatment.

In the present case the applicant had been placed for five and a half months in a special wing for detainees who were considered "dangerous", where he had been in partial isolation. He had subsequently been allowed to mix with other detainees for a few hours each day. However, following specific incidents involving anti-social and proselytising behaviour towards other residents, he had again been placed in partial isolation. He had been allowed limited contact with other residents as of March 2018 and was subsequently held under the ordinary regime. Thus, the applicant's detention had been reassessed by the management of the centre in the light of his background and his conduct. The domestic authorities had established that the applicant was known for his radical views and had numerous contacts with persons connected to terrorism, and that he was classified as level 3 out of a possible 4 on the scale of seriousness of the terrorist and extremist threat and had been actively involved with a terrorist group while in Syria. Furthermore, the fear that the applicant might display anti-social and proselytising behaviour and recruit other residents on an ordinary wing had indeed materialised. Lastly, there was nothing in the applicant's file concerning his time in partial isolation to suggest that this had adversely affected his physical or mental health.

Consequently, the applicant had not been subjected to treatment contrary to Article 3 of the Convention during his detention in partial isolation in the Vottem closed centre. There had therefore been no violation of that provision.

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.