



European Court partly grants and partly rejects complaints brought by Venezuelans detained in Curaçao

The case [Y.F.C. and Others v. the Netherlands](#) (application no. 21325/19) concerned seven Venezuelan nationals who had been intercepted in April 2019 off the coast of Curaçao (a country within the Kingdom of the Netherlands in the southern Caribbean). They had been arrested, taken ashore and placed in detention pending removal.

In today's **Chamber** judgment¹ the European Court of Human Rights held:

unanimously, that there had been a **violation of Article 3 (prohibition of inhuman and degrading treatment/investigation)** of the European Convention on Human Rights as concerned the lack of an effective and independent investigation into the use of rubber bullets against four of the applicants during an incident that took place when attempting to transfer them from one detention facility to another;

by six votes to one, that there had been a **violation of Article 3 (prohibition of inhuman and degrading treatment)** as concerned the use of force against three of the applicants who had provided evidence that they had either been injured by rubber bullets or kicked in the back during the attempted transfer;

unanimously, that there had been **no violation of Article 3** as concerned an applicant who had been present during the incident but had provided no evidence of injury; and,

unanimously, that there had been a **violation of Article 5 § 4 (right to have lawfulness of detention decided speedily by a court)** in respect of all seven applicants because they had had no access to legal assistance during the first week of their detention and could not therefore have reasonably brought legal proceedings to effectively challenge their situation.

The Court rejected all other complaints submitted by the applicants as inadmissible.

Principal facts

The applicants are seven Venezuelan nationals who were born between 1974 and 2002.

They were intercepted on 11 April 2019 in the territorial waters of Curaçao, attempting to enter that country. They were arrested and taken ashore by the coast guard, then served with decisions refusing them entry and ordering their detention pending removal.

Four of the applicants were held in an immigration detention facility, while the other three were detained in the nearby ordinary prison.

They all lodged objections against the removal and detention decisions on 18 April 2019 when they obtained legal assistance. Their objections were ultimately rejected or declared inadmissible by the Minister of Justice of Curaçao.

On 23 April 2019, the European Court granted the applicants an interim measure under Rule 39 of the Rules of Court to prevent their removal to Venezuela. That measure was lifted on 25 June 2019 as all

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.

the applicants had been able to make requests under the domestic procedure and were no longer at risk of removal. On 19 July 2019, the Court indicated another interim measure under Rule 39 to the Government that it had to ensure that the applicants' conditions of detention were compatible with Article 3 of the Convention.

The applicants also lodged an application with the Curaçao Court of First instance requesting that their detention be suspended pending the main ("objection") proceedings. This court's interim relief judge granted the request in respect of one of the applicants, who was a minor at the time, and ordered her transfer to a custodial institution for juveniles. The requests of the other applicants were refused. These applicants were released in August 2019.

Complaints, procedure and composition of the Court

The applicants complained in particular that the decisions and detention orders against them, as well as the conditions of their detention, had been in breach of Articles 3 (prohibition of inhuman and degrading treatment) and 5 (right to liberty and security) and Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens).

They also complained under Article 3, alleging excessive use of force by prison guards and police officers during an incident on 9 June 2019.

The application was lodged with the European Court of Human Rights on 19 June 2019.

The United Nations High Commissioner for Refugees (UNHCR) was granted leave to intervene as a third party and submitted its comments.

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

Lado **Chanturia** (Georgia), *President*,
Jolien **Schukking** (the Netherlands),
Faris **Vehabović** (Bosnia and Herzegovina),
Lorraine **Schembri Orland** (Malta),
Ana Maria **Guerra Martins** (Portugal),
Sebastian **Rădulețu** (Romania),
András **Jakab** (Austria),

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

Decision of the Court

The Court rejected as inadmissible the applicants' allegations of inadequate conditions under Article 3 and unlawfulness of detention under Article 5 because they had not raised those complaints in the main proceedings before the domestic authorities in Curaçao. The same applied to the applicants' complaint under Article 5 § 2 that they had not been informed in a language they understood of the reasons for their arrest. They had not therefore given those courts the opportunity to assess and potentially resolve the matter before it reached the European Court. See Q&A on "[Exhaustion of domestic remedies](#)".

The Court also rejected as inadmissible the applicants' complaint under Article 4 of Protocol No. 4 that they had been issued identical removal decisions, noting that the domestic proceedings against these decisions were still pending when they had turned to the Court.

Article 3 (allegations of excessive use of force / investigation)

As concerned the incident on 9 June 2019, the Court noted that there was no dispute that unrest had broken out in the immigration detention facility where four of the applicants were being detained and that the authorities had responded by firing rubber bullets.

Incident reports drawn up by prison staff showed that two of the detainees had been hit by rubber bullets and treated by a nurse. The applicants also provided the Court with drawings of their injuries (because the prison authorities had not allowed their representatives to take photographs), showing bullet marks on two of the applicants, and the imprint of a shoe on the applicant who alleged that he had been kicked in the back.

Given that evidence, the Court found that those four applicants had been directly exposed to the firing of rubber bullets and therefore had an arguable claim of ill-treatment. The authorities had, moreover, been alerted to those allegations of ill-treatment because the applicants had lodged complaints with the Committee Overseeing Detainee Care. The authorities had therefore been under an obligation to carry out an effective investigation as to whether the force used had been justified and to identify those responsible.

However, to be effective an investigation had to be independent. That was not the case for the incident reports, which had been drawn up by prison staff, that is the same authority as those who had been the target of the investigation. Nor was there anything to show that the applicants had been able to participate in the investigation in any way.

The Court found that the investigation carried out had been neither effective nor independent, and therefore in violation of Article 3, in respect of those four applicants. The complaint of the three remaining applicants was rejected as inadmissible because they had not been present during the incident.

It found that there had been a further violation of Article 3 as concerned the use of force against three of the four applicants who had provided evidence of their injuries. None of that evidence had been contested by the Government who therefore had to show that resorting to the violence used had been made strictly necessary by the victims' conduct. However, the Government had failed to discharge their burden of proof. There had therefore been a violation of Article 3 in respect of those three applicants.

Article 5 § 4 (right to have lawfulness of detention decided speedily by a court)

The crux of the dispute under this Article was whether the applicants had been able, in practice, to make use of the remedy provided for in Curaçao, namely, to request the suspension of their detention orders pending the main proceedings. The applicants had had no access to legal assistance from 11 to 18 April 2019. Without such assistance, they could not reasonably have brought any legal proceedings to have the lawfulness of their detention speedily reviewed by a court from their places of detention. The Court found that the remedy of interim relief had not therefore been sufficiently accessible for the applicants during their first week of detention, in breach of Article 5 § 4.

Article 41 (just satisfaction)

The Court held that the Kingdom of the Netherlands was to pay, in respect of non-pecuniary damage, four of the applicants 5,000 euros (EUR) and three of the applicants EUR 1,625.

The judgment is available only in English.

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