



Multiple violations of asylum-seeking family's rights during their stay in the Röszke transit zone

In today's **Chamber judgment**¹ in the case of [R.R. and Others v. Hungary](#) (application no. 36037/17) the European Court of Human Rights held that there had been:

unanimously, a **violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights,

by 6 votes to 1, a **violation of Article 5 § 1 (right to liberty and security), and**

by 6 votes to 1, a **violation of Article 5 § 4 (right to have lawfulness of detention decided speedily by a court).**

The case concerned the applicants' confinement in the Röszke transit zone on the border with Serbia in April-August 2017.

The Court found, in particular, that the lack of food provided to R.R. and the conditions of stay of the other applicants (a pregnant woman and children) had led to a violation of Article 3. It also found that the applicants' stay in the transit zone had amounted to a *de facto* deprivation of liberty and that the absence of any formal decision of the authorities and any proceedings by which the lawfulness of their detention could have been decided speedily by a court had led to violations of Article 5.

Principal facts

The applicants, R.R., S.H., M.H., R.H. and A.R., are an Iranian and four Afghan nationals respectively. They are a family of five.

In 2017 they arrived in Hungary and applied for asylum there. On 19 April 2017 the Office for Immigration and Asylum ordered that the applicants be accommodated in the Röszke transit zone.

They were accommodated together in a 13 sq. m container, with bunk beds without guard rails. According to the applicants, it was extremely hot and poorly ventilated in summer. There was a common area in the family section and some limited activities were provided.

On 29 June 2017 the applicants were moved to an isolation section within the transit zone because the applicant mother and children had hepatitis B. There, they had no baby cot. There was no shared fridge or washing machine, and no activities for the children, who were given only sand to play with.

According to the Government, the applicant children were given three meals, fruit and dairy products; however, the applicants submitted that the food had been inadequate for children, and that the mother had not been provided with maternity clothes. The applicants received basic medical care including some hospital visits, but no psychiatric treatment. According to the applicants, male guards had been present even during gynaecological examinations.

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.

Owing to R.R.'s seeking asylum for a third time, he was not entitled to provision of food by the authorities, although the authorities stated that he had not been left starving and could have received food from NGOs or bought food.

Following examination of their application, the applicants were granted leave to enter and temporarily stay in Hungary. On 25 August 2017 the applicants left for Germany, where they were later granted international protection.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), 13 (right to an effective remedy), 5 (right to liberty and security), and 34 (right of individual petition) of the European Convention, the applicants complained, in particular, of the fact of and the conditions of their detention in the transit zone, of the lack of a legal remedy to complain of the conditions of detention, the lack of judicial review of their detention, and of the authorities failure to comply with an interim measure concerning them.

The application was lodged with the European Court of Human Rights on 19 May 2017.

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

Yonko **Grozev** (Bulgaria), *President*,
Branko **Lubarda** (Serbia),
Carlo **Ranzoni** (Liechtenstein),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),
Jolien **Schukking** (the Netherlands),
Péter **Paczolay** (Hungary),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

Article 3

The Court reiterated that confinement of minors raised particular issues since children, whether accompanied or not, were extremely vulnerable. The Court also reiterated that Article 3 could not be interpreted as entailing any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living.

In the case of *Ilias and Ahmed v. Hungary* (no. 47287/15) the Grand Chamber of the Court had examined the living conditions experienced by adult asylum-seekers in the Röske transit zone. Noting, in particular, the satisfactory material conditions in the zone, the relatively short length of the applicants' stay there (23 days), and the possibility to have contact with other asylum seekers, UNHCR representatives, NGOs and a lawyer, it had concluded that the conditions in which the applicants had spent twenty-three days in the transit zone had not reached the Article 3 threshold. In the present case, however, the Court considered that the applicants' situation was characterised by the first applicant's repeat asylum-seeker status, the applicant children's young age and the applicant mother's pregnancy and state of health.

In particular, R.R. had not had adequate access to food. As a repeat asylum-seeker, the Government had had in principle been allowed to decide to reduce or even withdraw material aid in respect of him. But such a decision should have contained reasons for the withdrawal or reduction and should have taken into account the principle of proportionality. The Court was not aware of such a decision. The Court noted, in particular, that the applicant had not been able to leave the zone without

forfeiting his asylum application and thus had been dependent on the Hungarian authorities. Overall, the authorities had not sufficiently assessed R.R.'s circumstances before denying him food, leading to a violation of his rights.

The Court noted that States were obliged to take into account the specific situation of minors and pregnant women. However, no individualised assessment of the applicants' needs had been made in this case. In particular the Court noted the heat and lack of ventilation in the applicants' accommodation for much of their stay. The Court noted that the beds had been unsuitable for children and they had no access to activities for part of their stay while in isolation. The Court noted the lack of adequate medical and psychiatric provision, the presence of male officers at gynaecological examinations and the constant security checks.

Accordingly, in view of the applicant children's young age, the applicant mother's pregnancy and health situation and the length of the applicants' stay in the conditions in the transit zone, the Court found that the situation complained of had subjected the applicant children and the applicant mother to treatment in breach of the Convention. There had therefore been a violation of Article 3 in respect of those applicants.

Article 5 § 1 and 4

Contrary to the case of *Ilias and Ahmed*, the Court found that, having particular regard to the lack of any domestic legal provisions fixing the maximum duration of the applicants' stay in the transit zone, the excessive duration of that stay and the considerable delays in the domestic examination of the applicants' asylum claims, as well as the conditions in which the applicants were held during the relevant period, the applicants' stay in the transit zone amounted to a *de facto* deprivation of liberty. Article 5 § 1 was found to be applicable.

According to the Government, the relevant law (section 80/J of the Asylum Act) stated that asylum applications could only be submitted, with certain exceptions, in the transit zone, and that asylum seekers were required to wait there until a final decision was taken on their asylum applications. However, the Court considered that without any formal decision of the authorities and solely by virtue of an overly broad interpretation of a general provision of the law, the applicants' detention could not be considered to have been lawful. Accordingly, it concluded that in the present case there had been no strictly defined statutory basis for the applicants' detention.

There had thus been a violation of Article 5 § 1 of the Convention.

The Court found that there had been only a *de facto* decision to keep the applicants in the zone and that it had not been established that the applicants could have sought a judicial review of their detention in the transit zone.

The Court found that there had accordingly been a violation of Article 5 § 4 of the Convention.

Other articles

The Court did not find it necessary to examine the complaints under Article 13 and Article 34 of the Convention.

Just satisfaction (Article 41)

The Court held that Hungary was to pay the applicant children 6,500 euros (EUR) each and the adults EUR 4,500 each in respect of non-pecuniary damage, and EUR 5,000 overall in respect of costs and expenses.

Separate opinion

Judge Mourou-Vikström expressed a statement of dissent, which is annexed to the judgment.

The judgment is available only in English.

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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.