



## Use of handcuffs and leash on asylum seeker amounted to inhuman and degrading treatment

The case [H.M. and Others v. Hungary](#) (application no. 38967/17) concerned an Iraqi family's detention in a transit zone at the border between Hungary and Serbia after fleeing Iraq.

In today's **Chamber** judgment<sup>1</sup> in the case 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 on account of the conditions the mother and children had faced during their four-month-long stay in the transit zone. The Court also considered that the use of handcuffs and leash on the father when accompanying his wife to a hospital appointment had not been justified.

In addition, it held, unanimously, that there had been:

**a violation of Article 5 §§ 1 (right to liberty and security) and 4 (right to have lawfulness of detention decided speedily by a court)** of the Convention because there had been no legal basis for the family's detention, and they had not had any way of having their situation examined speedily by a court.

### Principal facts

The applicants are an Iraqi couple, born in 1978 and 1980, and four of their children who were born between 2001 and 2013. They live in Aachen, Germany.

The applicant family left Iraq after the father had allegedly been tortured by the national security services. After travelling through several countries, they arrived at the Tompa transit zone at the border between Hungary and Serbia on 3 April 2017, and submitted asylum requests.

At the transit zone, they were housed in a container in the family section which they were only allowed to leave in order to attend medical or other appointments, and always under police escort. The mother was pregnant and, as there were some complications, her pregnancy was considered to be high risk. She had to be taken into hospital a number of times. On one such occasion, ten days after their arrival in the transit zone, her husband went with her and was handcuffed and attached to a leash in full view of their children. He was made to remain in handcuffs throughout the hospital visit while acting as interpreter for his wife.

On 3 July 2017, the Immigration and Asylum Office ("the IAO") was ordered to examine the family's asylum requests. The applicants repeatedly asked the IAO to speed up the proceedings, referring to the mother's complicated pregnancy and the needs of the children. It appears that, as a sign of protest, the mother went on hunger strike for a few days.

On 24 August 2017, their fifth child was born, and the family was transferred from the Tompa transit zone to an open reception facility.

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](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying mainly on Articles 3 (prohibition of inhuman or degrading treatment) and 5 §§ 1 (right to liberty and security) and 4 (right to have lawfulness of detention decided speedily by a court), the applicants complained about the conditions and the unlawfulness of their confinement and the way they had been treated in the transit zone.

The application was lodged with the European Court of Human Rights on 1 June 2017.

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

Marko **Bošnjak** (Slovenia), *President*,  
Péter **Paczolay** (Hungary),  
Alena **Poláčková** (Slovakia),  
Erik **Wennerström** (Sweden),  
Raffaele **Sabato** (Italy),  
Ioannis **Ktistakis** (Greece),  
Davor **Derenčinović** (Croatia),

and also Renata **Degener**, *Section Registrar*.

## Decision of the Court

### Article 3

The Court considered that, while the mother appeared to have received the necessary medical attention, the constraints she had suffered throughout her advanced stage of pregnancy had to have caused anxiety and mental health issues which, given her vulnerability, were serious enough to engage Article 3 of the Convention. As regards the children, in keeping with previous case-law, the Court found a violation of Article 3 on account of the conditions they had faced during their more than four-month-long stay in the transit zone.

The Court found that, in contrast to the mother, the father had been no more vulnerable than any other adult asylum-seeker confined to the transit zone. Although it had been alleged that he had mental health problems related to his treatment in Iraq, it seemed that he had not sought any assistance from the staff present. The Court did not find that the general conditions in the transit zone had been particularly ill-suited in his circumstances. However, the fact that he had been handcuffed and publicly attached to a leash on one occasion was humiliating. The key was to determine whether the use of restraints had been necessary, as resorting to physical force when it was not called for diminished human dignity and was in principle an infringement of the rights set forth under Article 3 of the Convention.

The Court found that the applicants had been detained in the transit zone as a matter of course, and not due to a legal decision depriving them of their liberty. It concluded therefore that the use of handcuffs and leash had not been “imposed in connection with lawful arrest or detention”. Moreover, the father was an asylum-seeker and had been taken to hospital to assist his pregnant wife. There was no evidence that he had posed any danger to himself or to anyone else. Even if the handcuffs and leash had been used on only one occasion, there was no basis to think that the measure had been justified.

For those reasons, the Court considered that there had been a violation of Article 3 of the Convention also in the father’s case.

## Article 5

In accordance with its previous case-law, the Court found that the family's stay for over four months in the transit zone had amounted to deprivation of liberty. It concluded that their detention could not be considered "lawful" and that it had not been possible for them to have their situation examined in a timely way by a court. There had therefore been a violation of Article 5 §§ 1 and 4 of the Convention.

## Just satisfaction (Article 41)

The Court held that Hungary was to pay the father 3,000 euros (EUR) and the mother and children jointly EUR 12,500 in respect of non-pecuniary damage and EUR 1,500 to them all jointly in respect of costs and expenses.

*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.