

ECtHR- A. and others v. the United Kingdom, Application no. 3455/05, 19 February 2009

Country of Applicant:

Algeria
France
Jordan
Morocco
Tunisia

Date of Decision:

19-02-2009

Citation:

ECtHR- A. and others v. the United Kingdom, Application no. 3455/05, 19 February 2009

Court Name:

European Court of Human Rights Grand Chamber

Keywords:

[Effective remedy \(right to\)](#) [1]
[Country of origin](#) [2]
[Detention](#) [3]
[Real risk](#) [4]
[Inhuman or degrading treatment or punishment](#) [5]
[Refugee Status](#) [6]
[Safe country of origin](#) [7]
[Return](#) [8]
[Terrorism](#) [9]

Relevant Legislative Provisions:

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 3](#) [11]
Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 5](#) [12]
Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 6](#) [13]
Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 8](#) [14]
Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#)

[10] > [Article 13](#) [15]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 14](#) [16]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 15](#) [17]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 27](#) [18]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 30](#) [19]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 34](#) [20]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 35](#) [21]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 36](#) [22]

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 41](#) [23]

Headnote:

The European Court of Human Rights found a violation of Article 5 para 1 (f), 4 and 5 with regards to some of the eleven applicants in this case, who were detained as suspected terrorists by UK authorities.

Facts:

The case relates to eleven applicants, detained in high security conditions as suspected terrorists by UK authorities, pursuant to antiterrorist legislation passed after the 9/11 attacks. They were all allegedly involved in extreme Islamist terrorist groups linked to Al Qaeda and were suspected of supporting financially those groups through fund raising, fraud or forgery activities. Given that they could not be deported because they would be at risk of ill-treatment, at different times between December 2001 and October 2003, each of the applicants were detained as an international terrorist under the Anti-Terrorism, Crime and Security Act 2001 (the 2001 Act). Two of the applicants were released because they had chosen to leave the United Kingdom, three of them were transferred to a Psychiatric Hospital and one was released on conditions equal to house arrest. The other eight applicants remained in prison until the 2001 Act was repealed by Parliament in March 2005. Following their release they were subject to restrictive regimes and were placed in immigration custody pending removal to their countries of origin.

The applicants complained that their detention breached their rights under Article 3 of the Convention and that they were denied an effective remedy for their Article 3 complaints, in breach of Article 13 of the Convention. Further, they complained that it was discriminatory and in breach of Article 14 of the Convention to detain them when UK nationals suspected of involvement with Al-Qaeda were left at liberty. The applicants also contended that the procedure before the domestic courts to challenge their detention did not comply with the requirements of Article 5 para 4.

Decision & Reasoning:

Turning to the complaint under Article 3, the Court noted that unlike in *Kafkaris v. Cyprus* (no. 21906/04), the applicants in this case were not without any prospect or hope of release and

furthermore, they were able to bring proceedings to challenge the legality of their detention [131]. With regards to their complaint of degrading detention conditions, the Court highlighted that the applicants did not exhaust the domestic remedies available to them. Therefore, it could not examine the applicant's complaints about their detention conditions, nor perceive the conditions of detention as forming a global assessment of the applicant's treatment for the purposes of Article 3 [133]. As to the complaint of the lack of effective domestic remedies for their Article 3 complaints, in breach of Article 13, the Court reiterated that the applicants had domestic remedies at their disposal to complain about their detention conditions but did not make use of them [135]. Therefore, it found no violation of Article 3, taken alone or in conjunction with Article 13 [136].

Turning to the complaint under Article 5 para 1, the Court noted that- save in the case of the second and fourth applicant who were detained for some days before leaving the United Kingdom- the applicants' detention did not fall within the exception to the right to liberty set out in Article 5 para 1 (f) of the Convention, given that it was not possible to deport or extradite them [170]. Further, the Court observed that the applicants were detained on the ground of constituting a threat to national security and rejected the Government's argument that Article 5 permits a balance to be struck between the individual's right to liberty and the interest in protecting its population from terrorist threat [171]. It acknowledged the Contracting States' right under Article 15 to take derogating measures from its obligations under the Convention to the extent strictly required by the exigencies of the situation [182]. However, like the House of Lords, it considered that the derogating measures in the present case were disproportionate and discriminating to non-nationals, since the potential terrorist threat was in principle posed equally by nationals and by non-nationals [186]. It therefore found a violation of this provision in respect of the first, third, fifth, sixth, seventh, eighth, ninth, tenth and eleventh applicants [190].

Concerning the alleged violation of Article 5 para 1 in conjunction with Article 14, the Court did not consider it necessary to examine these complaints separately [192].

Finally, the Court examined the applicants' complaint under Article 5 para 4, that the proceedings did not satisfy due process proceedings taking into account that some of the evidence in the proceedings was not disclosed to the applicants and that the Special Immigration Appeals Commission advocates could not communicate with their clients. Accordingly, it found no violation of this provision in respect of the sixth, seventh, eighth, ninth and eleventh applicants and a violation in respect of the first, third, fifth and tenth applicant since the latter were not in a position to challenge the allegations against them [222-224].

The Court found a breach of Article 5 para 5, providing for the right to compensation for unlawful detention, in respect of all the applicants, save the second and fourth [229].

Outcome:

Violation of Article 5 para 1 (f)

Violation of Article 5 para 4 with regards to some of the applicants

Violation of Article 5 para 5 regarding some of the applicants

Observations/Comments:

Third-party comments were received from two London-based non-governmental organisations, Liberty and Justice, which had been given leave by the President to intervene in the written procedure. According to Liberty, given that the Government were unable to remove the applicants

because of the Article 3 rights, the proper course was to either derogate from Article 5 (to the extent strictly required by the situation) or to prosecute the individuals with one of the criminal terrorist offences.

Justice advanced submissions from the special advocates of the Special Immigration Appeals Commission (SIAC) highlighting the difficulties they faced in representing appellants in closed proceedings due to the prohibition on communication concerning closed material.

Case Law Cited:

ECtHR- Assanidze v. Georgia [GC], Application no. 71503/01

ECtHR - Nikolova v. Bulgaria [GC], Application No. 31195/96

ECtHR- Keenan v. the United Kingdom, Application No. 27229/95

ECtHR - Reinprecht v. Austria, no. 67175/01

ECtHR - Kafkaris v. Cyprus, (no. 21906/04)

ECtHR - Aksoy v Turkey, Application No. 21987/93

[ECtHR - Gebremedhin \(Gaberamadhien\) v France, Application No. 25389/05 \[24\]](#)

ECtHR - Weeks v UK, Application No. 9787/82

[ECtHR - Saadi v. United Kingdom, no. 13229/03, 29 January 2008 \[25\]](#)

ECtHR - Bouamar v. Belgium, Application No. 9106/80

ECtHR - E. v. Norway, Application No. 11701/85

ECtHR- Mouisel v. France, Application no. 67263/01

ECtHR - Ramirez Sanchez v. France [GC], Application No. 59450/00

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ECtHR - Winterwerp v. the Netherlands, Application No. 6301/73

ECtHR - Kudla v Poland [GC], Application No. 30210/96

ECtHR - Z v United Kingdom (Application no. 29392/95)

[ECtHR - Brogan & Ors v The United Kingdom \(Application nos. 11209/84, 11234/84, 11266/84, 11386/85\) \[26\]](#)

ECtHR- Hurtado v. Switzerland, Application no. 17549/90

ECtHR- James and Others v. the United Kingdom, Application no. 7601/76; 7806/77

ECtHR- Hood v. the United Kingdom [GC], Application no. 27267/95

ECtHR- S.N. v. Sweden, Application no. 34209/96

ECtHR- Kingsley v. the United Kingdom [GC], Application no. 35605/97

ECtHR- McCann and Others v. the United Kingdom, Application no. 18984/91

ECtHR- Tsirlis and Kouloumpas v. Greece, Application nos 19233/91 19234/91

ECtHR- Perks and Others v. the United Kingdom, Application nos. 25277/94, 25279/94, 25280/94, 25282/94, 25285/94, 28048/95, 28192/95 and 28456/95

ECtHR- Garcia Alva v. Germany, Application no. 23541/94

ECtHR- Lucà v. Italy, Application no. 33354/96

ECtHR- Edwards and Lewis v. the United Kingdom ([GC], Application nos. 39647/98 and 40461/98

ECtHR- Botmeh and Alami v. the United Kingdom, Application no. 15187/03

ECtHR- Jasper v. the United Kingdom [GC], Application no. 27052/95

ECtHR- Burden v. the United Kingdom [GC], Application no. 13378/05

ECtHR- Van Mechelen and Others v. the Netherlands, Application no. 42857/05

ECtHR- Doorson v. the Netherlands, Application no. 20524/92

ECtHR- Fodale v. Italy, Application no. 70148/01

ECtHR- Lamy v. Belgium, Application no. 10444/83

ECtHR- ?urcan v. Moldova, Application no. 39835/05

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ECtHR- W?och v. Poland, Application no. 27785/95

ECtHR- Marshall v. the United Kingdom (dec.), Application no. 41571/98

ECtHR- Brannigan and McBride v. the United Kingdom, Application no. 14553/89 14554/89

[ECtHR - Chahal v the United Kingdom \(Application no. 22414/93\) \[27\]](#)

Attachment(s):



[CASE OF A. AND OTHERS v. THE UNITED KINGDOM.pdf\[28\]](#)

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The European Commission against Racism and Intolerance (ECRI), [General Policy Recommendation No. 8 on combating racism while fighting terrorism](#) [33], 8 June 2004

[International Covenant on Civil and Political Rights](#) [34]

Authentic Language:

English

State Party:

United Kingdom

National / Other Legislative Provisions:

United Kingdom- Anti-terrorism

Crime and Security Act 2001

United Kingdom- Immigration Act 1971 (The 1971 Act)

United Kingdom- Human Rights Act 1998

United Kingdom- The Terrorism Act 2000

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Links:

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