

ECtHR - Popov v France, Application Nos. 39472/07 and 39474/07

Country of Applicant:

Kazakhstan

Date of Decision:

19-01-2012

Citation:

Application Nos. 39472/07 and 39474/07

Court Name:

ECtHR Fifth Section

Keywords:[Detention](#) [1][Inhuman or degrading treatment or punishment](#) [2][Return](#) [3][Vulnerable person](#) [4]**Headnote:**

The case concerned the administrative detention of a family for two weeks at the Rouen-Oissel centre in France pending their removal to Kazakhstan.

Facts:

The applicants are a married couple from Kazakhstan who arrived in France in 2002 and their two young children who were born in France. The parents allege that they were the victims of recurrent persecution in Kazakhstan because of their Russian origin and Orthodox faith. They applied for asylum, but their application was rejected, as were their applications for residence permits. On 27 August 2007 the parents and their children, then aged five months and three years, were arrested at their home and taken into police custody. Their administrative detention in a hotel was ordered the same day. The following day they were transferred to an airport to be flown back to Kazakhstan. The flight was cancelled, however, and they never boarded the plane. The applicants were then taken to the Rouen-Oissel administrative-detention centre. On 29 August 2007 the liberties and detention judge ordered a two-week extension of their detention. The applicants were taken back to the airport on 11 September 2007, but this second attempt to deport them also failed. Noting that the applicants were not to blame for that failure, the judge ordered their release.

In 2009 the refugee status the applicants had applied for prior to their arrest was granted, on the grounds that the enquiries the Prefecture had made to the authorities in Kazakhstan, disregarding the confidentiality of asylum applications, had made it dangerous for them to return there.

Decision & Reasoning:

The Rouen-Oissel administrative-detention centre was authorised to accommodate families. However, the French legislation only referred to the need to provide 'specially equipped rooms, and in particular amenities suitable for small children', without explaining exactly what those amenities were. While families were separated from other detainees at the Rouen-Oissel centre, the only beds available were iron-frame beds for adults, which were dangerous for children. Nor were there any play areas or activities for children, and the automatic doors to the rooms were dangerous for them. The Council of Europe's Commissioner for Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment ([CPT](#) [5]) also pointed out that the promiscuity, stress, insecurity and hostile atmosphere in these centres were bad for young children, in contradiction with international child protection principles according to which the authorities must do everything in their power to avoid detaining children for lengthy periods. Two weeks' detention, while not in itself excessive, could seem like a very long time to children living in an environment ill-suited to their age. The conditions in which the applicants' children were detained for two weeks, in an adult environment with a strong police presence, with no activities to keep them occupied, combined with their parents' distress, were clearly ill-suited to their age. The two children found themselves in a situation of vulnerability heightened by their detention, which was bound to cause them stress and distress and have serious psychological repercussions. In view of the children's young age, and the duration and conditions of their detention, the authorities had not measured the inevitably harmful effects on the children. The way in which they had treated the children was incompatible with the provisions of the Convention and exceeded the minimum level of severity required to fall within the scope of Article 3.

While the parents' administrative detention with their children in a holding centre must have caused them feelings of helplessness, distress and frustration, the fact that they had not been separated from their children must have somewhat alleviated those feelings, so the minimum level of severity for a violation of Article 3 was not attained.

The members of the family were held in administrative detention on account of the illegality of their presence in France, on premises that were not adapted to the children's extreme vulnerability. The Court found the children's particular situation was not examined and the authorities did not verify that the placement in administrative detention was a measure of last resort for which no alternative was available. The Court came to a conclusion that the French system did not sufficiently protect their right to liberty and that there has been a violation of Article 5 § 1 (f) of the Convention in respect of the children.

The parents had had the possibility to have the lawfulness of their detention examined by the courts. However, the law made no provision for children to be placed in administrative detention, so children 'accompanying' their parents found themselves in a legal void, unable to avail themselves of such a remedy. In the present case no removal order had been issued against the children that they might have challenged in court. Nor had their administrative detention been ordered, so the courts had not been able to examine the lawfulness of their presence in the administrative-detention centre. The Court have found the violation of Article 5 § 4 in relation to children.

The applicants' detention in a holding centre for two weeks, in the prison-like conditions inherent in that type of establishment, amounted to an interference with their right to respect for their family

life. The measure pursued the legitimate aim of combating illegal immigration and controlling the entry and residence of foreigners in France. It served, *inter alia*, to protect national security, law and order and the country's economy and to prevent crime. Detention measures, however, had to be proportionate to the aim pursued by the authorities, which in this case was the applicants' removal. In dealing with families, it was the authorities' duty, when considering the proportionality of the measure, to take the children's best interests into account. In this case there had been no particular risk of the applicants absconding that might have justified their detention. Thus their detention did not appear to have been justified by any pressing social need. The Court considered that the child's best interests called not only for families to be kept together but also for the authorities to do everything in their power to limit the detention of families with young children and effectively protect their right to respect for their family life. Therefore, two weeks' detention in a closed facility was disproportionate to the aim pursued and amounted to violation of Article 8.

Outcome:

A **violation of Article 3** in respect of the administrative detention of the children.

No **violation of Article 3** of the Convention in respect of the administrative detention of the parents.

A **violation of Article 5 §§ 1 and 4** in respect of the administrative detention of the children.

A **violation of Article 8** in respect of the administrative detention of the whole family.

EUR 10,000 jointly in respect of non-pecuniary damage

Observations/Comments:

A request for the interim measures was refused by the Court.

Case Law Cited:

ECtHR - Witold Litwa v. Poland, Application No. 26629/95

ECtHR - Eckle v. Germany, Application No. 8130/78

ECtHR - S.D. v Greece (Application no. 53541/07)

[ECtHR - Mubilanzila Mayeka and Kaniki Mitunga v Belgium, Application No. 13178/03](#) [6]

ECtHR - Case of Saadi v United Kingdom (Application no.13229/03) - (UP)

ECtHR - Amuur v. France, Application No. 19776/92

ECtHR - Marckx v Belgium, 13 June 1979, § 41, Series A No. 31

France - Rennes Court of Appeal, 87/2007

France - Rennes Court of Appeal, 29 September 2008, 271/2008

France - Toulouse Court of Appeal, 21 February 2008, 08/00088

France - Court of Cassation, 10 December 2009, Bulletin 2009, I, No. 250

ECtHR - Guisset v. France, Application No 33933/96

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

ECtHR - Kaftailova v. Latvia, Application No 59653/00

ECtHR - Keegan v Ireland, Application no. 16969/90

ECtHR - Maire v. Portugal, Application No. 48206/99

ECtHR - Mikheyeva v. Latvia, Application No. 50029/99

[ECtHR - Muskhadzhieva and Others v. Belgium, Application No. 41442/07](#) [7]

ECtHR - Neulinger and Shuruk v. Switzerland [GC], Application No. 41615/07

ECtHR - Olsson v. Sweden (no 1), Application No. 10465/83

ECtHR - Rahimi v. Greece, Application No. 8687/08

ECtHR - Wagner and J.M.W.L. v. Luxembourg, Application No. 76240/01

[ECtHR - Chahal v the United Kingdom \(Application no. 22414/93\)](#) [8]

Attachment(s):



[POPOV v FRANCE_French.pdf](#)[9]

Authentic Language:

English

State Party:

France

National / Other Legislative Provisions:

UNCRC - Art 37

France - Ceseda (Code of the Entry and Stay of Foreigners and Asylum Law)

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A27

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A43

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2490

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2495

[5] <http://www.cpt.coe.int/en/default.htm>

[6] <https://www.asylumlawdatabase.eu/en/case-law/ecthr-mubilanzila-mayeka-and-kaniki-mitunga-v-belgium-application-no-1317803>

[7] <https://www.asylumlawdatabase.eu/en/content/ecthr-muskhadzhieva-and-others-v-belgium-application-no-4144207>

[8] <https://www.asylumlawdatabase.eu/en/content/ecthr-chahal-v-united-kingdom-application-no-2241493>

2241493

[9]

https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/POPOV%20v%20FRANCE_French.pdf