EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 239 (2021)
22.07.2021

Detention of a mother and her young child at the Mesnil-Amelot no. 2 administrative detention centre for 11 days: multiple violations of the Convention

In today's **Chamber** judgment[1] in the case of M.D. and A.D. v. France (application no. 57035/18) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights;

a violation of Article 5 § 1 (right to liberty and security); and

a violation of Article 5 § 4 (right to a speedy review of the lawfulness of detention).

The case concerned the administrative detention of a mother and her four-month-old daughter in the Mesnil-Amelot no. 2 administrative detention centre pending their transfer to Italy, the country responsible for examining their application for asylum.

Having regard to the very young age of the child, the reception conditions at the Mesnil-Amelot no. 2 administrative detention centre and the length of the detention (11 days), the Court found that the competent authorities had subjected the child and her mother to treatment exceeding the level of severity required for Article 3 of the Convention to apply.

The Court also found a violation of paragraphs 1 and 4 of Article 5 of the Convention. In principle, it was not the Court's task to substitute its own assessment for that of the national authorities. However, in view of the circumstances of the case, the Court held that the evidence before it was sufficient to conclude that the domestic authorities had not carried out a proper examination, as required by the legal rules now applicable in France, to satisfy themselves that the initial administrative detention of the mother, accompanied by her infant daughter, and its subsequent extension were measures of last resort which could not be replaced by a less restrictive alternative.

The Court observed that neither the liberties and detention judge at the Meaux *tribunal de grande instance* nor the judge delegated by the President of the Paris Court of Appeal had had sufficient regard, while performing their function of judicial review, to the second applicant's status as a minor in the assessment of the lawfulness of the initial administrative detention and the decision to order its extension for 28 days, a period that had ended after 11 days following the indication of an interim measure by the Court. It had been the task of the domestic courts to carry out an effective review of the lawfulness of the child's initial and continued detention while considering whether a less restrictive alternative such as a compulsory residence order might be envisaged, a measure to which the applicants had previously been subjected. The minor applicant had therefore not had the benefit of a judicial review encompassing all the conditions required for administrative detention to be lawful for the purposes of Article 5 § 1 of the Convention.

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.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Principal facts

The applicants, Ms M.D. and Ms A.D., are Malian nationals who were born in 1995 and 2018 respectively and live in France.

Having fled from Mali claiming to be at risk of female genital mutilation and forced marriage, M.D. arrived in France, via Italy, on 15 January 2018. On 14 June 2018 the prefect of Loir-et-Cher issued an order for her transfer to the Italian authorities, which were responsible under the "Dublin III" Regulation for examining her application for asylum. In a decision of 6 July 2018 the Orléans Administrative Court dismissed an application for judicial review of the order.

On 20 July 2018 M.D. gave birth to her daughter in France.

In an initial order of 17 October 2018 M.D. was subjected to compulsory residence for 45 days pending her transfer to Italy. The order was set aside on the grounds that it imposed excessive obligations on her, and it was replaced by another order entailing less restrictive conditions. The Orléans Administrative Court dismissed an application for judicial review of that order.

On 26 November 2018 the first applicant was notified of an order by which the prefect of Loir-et-Cher, finding that there was a considerable risk of her absconding, decided to place her in an administrative detention centre together with her child for a maximum duration of 48 hours with a view to her transfer to Italy. M.D. and A.D. were taken to the Mesnil-Amelot no. 2 administrative detention centre.

On 27 November 2018, after refusing to board a flight to Italy, M.D. and her daughter were taken back to the administrative detention centre.

In an order of 28 November 2018, the judge responsible for matters relating to civil liberties and detention ("the liberties and detention judge") at the Meaux *tribunal de grande instance* dismissed an appeal by M.D. against the order for her administrative detention and allowed an application by the prefect of Loir-et-Cher for her detention to be extended by 28 days. In an order of 1 December 2018 the judge delegated by the President of the Paris Court of Appeal upheld the order made on 28 November 2018 by the liberties and detention judge.

Following an urgent application by M.D. for protection of a fundamental freedom, the urgent-applications judge of the Melun Administrative Court instructed the prefect of Loir-et-Cher to send the necessary information about the particular situation of M.D. and her child to the Italian authorities, in accordance with the requirements of the Dublin III Regulation, in advance of the implementation of the order for their transfer to Italy, so that those authorities would be in a position to provide the first applicant with adequate assistance.

On 6 December 2018 the applicants made a request to the Court for an interim measure under Rule 39 of the Rules of Court. On the same day, the Court granted the request and asked the French authorities to end the applicants' administrative detention. The authorities executed the measure.

M.D. and her child were subsequently taken into the care of the *département* council services.

As the order for M.D.'s transfer had not been implemented by 6 January 2020, France became responsible for examining her application for asylum. She lodged an asylum application with the Office for the Protection of Refugees and Stateless Persons and was granted a temporary residence permit on that account.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman and degrading treatment), the applicants complained that their administrative detention had amounted to inhuman and degrading treatment. They submitted that the child's detention was in breach of Article 5 § 1 (right to liberty and security).

Relying on Article 5 § 4 (right to a speedy decision on the lawfulness of detention), they complained that the second applicant had not had an effective remedy by which to challenge the lawfulness of her initial administrative detention and its extension. Relying on Article 8 (right to respect for family life), they also submitted that their detention breached that Article.

The application was lodged with the European Court of Human Rights on 6 December 2018.

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

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Jovan **Ilievski** (North Macedonia),
Lado **Chanturia** (Georgia),
Arnfinn **Bårdsen** (Norway),
Mattias **Guyomar** (France),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 3

The Court pointed out that the absolute right protected by Article 3 prohibited an accompanied minor from being held in administrative detention in conditions such as those in the present case for a period whose excessive length contributed to crossing the severity threshold for proscribed treatment. The parent's behaviour – in this instance, the first applicant's refusal to board the flight – was not decisive for the assessment of whether the proscribed level of severity had been attained in respect of the child. The Court found that the detention of a four-month-old baby in the conditions observed at the time of the events in question in the Mesnil-Amelot no. 2 administrative detention centre, for a period extending over 11 days which had only ended after the Court had indicated an interim measure, was excessive in terms of the requirements of Article 3.

Having regard to the very young age of the second applicant, the reception conditions at the Mesnil-Amelot no. 2 administrative detention centre and the length of the detention, the Court found that the competent authorities had subjected the child to treatment exceeding the level of severity required for Article 3 of the Convention to apply. In view of the ties between a mother and her four-month-old baby, the interaction between them as a result of breastfeeding, and the emotions they shared, the Court held that in the particular circumstances of the case, the same finding applied to the first applicant.

There had therefore been a violation of Article 3 of the Convention in respect of both applicants.

Article 5 § 1

The Court observed firstly that since its judgment in A.B. and Others v. France (no. 11593/12, 12 July 2016), there had been significant amendments to French legislation. French law now set out an exhaustive list of cases in which the administrative detention of a person accompanied by minor children could be ordered, and the conditions in which the duration of such detention could be extended. French law also provided, in accordance with the requirements of Article 5 § 1, that the administrative detention of a minor could only be ordered as a measure of last resort and for the shortest appropriate period of time.

Secondly, the Court observed that it was apparent from the order for the administrative detention of the first applicant, issued the day before a flight had been scheduled to transfer her to Italy, that the prefect had sought to determine whether, in view of the presence of a minor, a less restrictive

alternative to detention was possible. The prefect had considered that the compulsory residence orders initially in place were no longer feasible, in view of the risk of absconding that, in the prefect's view, could be inferred from the first applicant's stated refusal to comply with the transfer procedure. The order of 28 November 2018 indicated that the liberties and detention judge had carried out similar checks and assessments before extending the applicants' administrative detention for a further 28 days.

Although it was not the Court's task to substitute its own assessment for that of the national authorities, the evidence before it was sufficient to conclude that the domestic authorities had not carried out a proper examination, while applying the legal rules now in force in France, to satisfy themselves that the initial administrative detention of the first applicant, accompanied by her infant daughter, and its subsequent extension were measures of last resort which could not be replaced by a less restrictive alternative.

There had therefore been a violation of Article 5 § 1 of the Convention in respect of the second applicant.

Article 5 § 4

First of all, the Court noted with satisfaction that French law gave a precise definition of the conditions in which the liberties and detention judge reviewed the lawfulness of the initial detention order (Article L. 512-1 III of the Entry and Residence of Aliens and Right of Asylum Code (CESEDA)) and then decided, where appropriate, to extend the duration of the detention (Article L. 552-1 of the CESEDA).

Secondly, the Court found that the liberties and detention judge and subsequently the judge delegated by the President of the Paris Court of Appeal had had regard, while performing their function of judicial review, to the presence of the child in the assessments they were required to make as to the lawfulness of the initial detention and the need for its extension. The Court observed, however, that the liberties and detention judge had simply noted that the administrative detention centre was authorised to admit families and had specially equipped facilities, and, when assessing the lawfulness of the detention order and whether it could be extended beyond a brief period, had also mentioned the limited duration of the detention without addressing the specific conditions in which the baby had been deprived of her liberty.

Next, the Court noted that despite the fact that no flights to Italy had been scheduled in the short term, the liberties and detention judge had held that no alternative solutions were available after finding that the applicants had not put forward any alternative accommodation and did not satisfy the conditions for a compulsory residence order as laid down in Article L. 552-4 of the CESEDA. The Court observed, nevertheless, that no serious consideration had been given to the fact that until they had been admitted to the detention centre, the applicants had been the subject of compulsory residence orders, which they had complied with.

Lastly, the Court noted that neither the liberties and detention judge at the Meaux *tribunal de grande instance* nor the judge delegated by the President of the Paris Court of Appeal had had sufficient regard to the presence of the second applicant and her status as a minor before assessing the lawfulness of the initial detention and ordering its extension for 28 days.

The Court found a violation of Article 5 § 1 on the grounds that the domestic authorities had not carried out a proper examination to satisfy themselves that the initial administrative detention of the first applicant, accompanied by her infant daughter, and its subsequent extension were measures of last resort which could not be replaced by a less restrictive alternative. This failure to conduct an effective review of compliance with the conditions relating both to the lawfulness of the detention order and to the principle of legality for the purposes of the Convention was attributable in particular to the domestic courts, which had been under an obligation to ensure that the child's initial and continued detention was in fact lawful. The minor applicant had therefore not had the

benefit of a judicial review encompassing all the conditions required for administrative detention to be lawful for the purposes of paragraph 1 of Article 5.

There had therefore been a violation of Article 5 § 4 of the Convention in respect of the second applicant.

Article 8

Having found a violation of Article 3 of the Convention in respect of both applicants, the Court found that in the circumstances of the case, there was no need for a separate examination of the complaint under Article 8.

Rule 39 of the Rules of Court

As the applicants' administrative detention had ended on 6 December 2018, the Court found that the interim measure had become devoid of purpose and decided to discontinue it.

Just satisfaction (Article 41)

The Court held that France was to pay the applicants 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,780 in respect of costs and expenses.

Separate opinions

Judge **Mourou-Vikström** expressed a separate opinion, which is annexed to the judgment.

The judgment is available only in French.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel : + 33 3 90 21 41 09)
Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)
Inci Ertekin (tel : + 33 3 90 21 55 30)
Neil Connolly (tel : + 33 3 90 21 48 05)
Jane Swift (tel : + 33 3 88 41 29 04)