



## Detention of an asylum-seeker at the Belgian border did not infringe the right to liberty and security secured under the Convention

In today's Chamber judgment<sup>1</sup> in the case of [Thimothawes v. Belgium](#) (application no. 39061/11) the European Court of Human Rights held, by a majority, that there had been:

**no violation of Article 5 (right to liberty and security) of the European Convention on Human Rights.**

The case concerned the five-month detention of an Egyptian asylum-seeker at the Belgian border.

The Court found in particular that any measure depriving a person of his liberty had to be prescribed by law. Where the legal provision in question originated in international law, only the domestic courts, except in the case of an arbitrary or manifestly unreasonable interpretation, were empowered to interpret domestic law pursuant to the supranational provisions in question. The Court only scrutinised the conformity of the effects of that interpretation with the Convention.

In the present case, the scrutiny of lawfulness conducted by the domestic courts of the detention order had taken account of the case-law of the Court. Moreover, the issue of the applicant's mental health was not, on its own, sufficient for a finding that his detention had been arbitrary. Finally, the assessment of the facts of the case supported a finding that his period of detention had not been unreasonably long.

### Principal facts

The applicant, Waleed Nasser Thimothawes, is an Egyptian national who was born in 1984 and lives in Bruges (Belgium).

On 1 February 2011 Mr Thimothawes arrived from Turkey at the Belgian border. He immediately lodged an asylum application, which was rejected on 17 February 2011 by the Commissioner General for Refugees and Stateless Persons.

Meanwhile Mr Thimothawes was served with a refusal-of-entry decision, accompanied by expulsion (*refoulement*) and detention in a designated place close to the border. On 1 March 2011 he lodged an application for release from detention, which was declared ill-founded by both the Brussels Regional Court and the Indictment Division of the Brussels Court of Appeal.

On 26 March 2011, after having refused to be repatriated to Turkey, a second decision was taken to detain him in a designated place. Mr Thimothawes reapplied for release, which application was once again dismissed by the Indictment Division of the Brussels Court of Appeal. On 5 May 2011, before he could even lodge an appeal with the Court of Cassation, the Aliens' Office issued a third refusal-of-entry decision, accompanied by expulsion and detention in a designated holding centre. One last application for release was dismissed at first and second instances.

Mr Thimothawes was released on 4 July 2011 on expiry of the maximum legal period of detention.

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).

Concurrently, on 5 May 2011, Mr Thimothawes had lodged a second application for asylum based on new documents relating to his mental health, which had been rejected by decision of the Commissioner General for Refugees and Stateless Persons, that decision having been upheld by the Aliens' Litigation Council.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 22 June 2011.

The applicant complained that his detention as an asylum-seeker had been contrary to Article 5 § 1 (f) of the Convention (right to liberty and security).

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

Işıl **Karakaş** (Turkey), *President*,  
Nebojša **Vučinić** (Montenegro),  
Paul **Lemmens** (Belgium),  
Valeriu **Griţco** (the Republic of Moldova),  
Ksenija **Turković** (Croatia),  
Stéphanie **Mourou-Vikström** (Monaco),  
Georges **Ravarani** (Luxembourg),

and also Hasan **Bakırcı**, *Deputy Section Registrar*.

## Decision of the Court

### Article 5 § 1

The Court reiterated that pursuant to Article 5 of the Convention detention orders had to be prescribed by law, which refers to either a domestic provision or a legal standard laid down in international law.

The Court observed that the Aliens Act had been applied to Mr Thimothawes, which legislation he considered contrary to two European Union directives.

The Court reiterated that it was incumbent on the national authorities to interpret domestic law in conformity with European Union law. Save in the case of an arbitrary or manifestly unreasonable interpretation, the Court confined itself to assessing the compatibility of the effects of that interpretation with the Convention. The Court pointed out that general or automatic decisions to detain asylum-seekers without any individual appraisal of any special needs could raise an issue under Article 5 § 1. In the instant case, however, the Court held that the succinct, stereotypical wording of the detention orders with which Mr Thimothawes had been served had not prevented the Belgian courts from conducting scrutiny which, although confined to supervision of lawfulness, took account of the case-law of the Court.

Furthermore, the Court considered that the applicant's mental health was not a factor clearly conducive to the conclusion that his detention had not been justified. It observed that Mr Thimothawes had been given proper care in both the holding centres in which he had been detained and that the reports drawn up by the psychological services had not mentioned any obstacles to his detention. The Court concluded that the detention order had not been unsuited to his mental state and that the authorities had been under no obligation to seek less coercive measures.

Finally, as regards the allegation of an unreasonable length of detention, the Court held that in the circumstances the repatriation procedure to Turkey, the expulsion procedure to Egypt and the

assessment of the various asylum applications demonstrated that the duration of detention, totalling five months, had not been excessive.

There had therefore been no violation of Article 5 § 1.

*The judgment is available only in French.*

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