



KEY THEME¹

Immigration

Detention of migrant children

(Last updated: 13/12/2022)

Introduction

The Court has dealt with immigration detention of children – both accompanied and unaccompanied – upon entry into the territory and for the purposes of removal. The detention of migrant children has been addressed under different Convention provisions, namely Articles 3, 5 and 8 of the Convention.

Principles drawn from the current case-law

Article 3 of the Convention:

- States have a positive obligation to protect children under Article 3 of the Convention. The Court has established in its case law that the “extreme vulnerability” of the child is a decisive factor which takes precedence over any considerations relating to the child’s irregular migration status (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006, § 55; *Muskhadzhiyeva and Others v. Belgium*, 2010, § 56; *Popov v. France*, 2012, § 91; *Tarakhel v. Switzerland* [GC], 2014, § 99; *Abdullahi Elmi and Aweys Abubakar v. Malta*, 2016, § 103; *R.C. and V.C. v. France*, 2016, § 35; *R.M. and Others v. France*, 2016, § 71; *S.F. and Others v. Bulgaria*, 2017, § 79; *G.B. and Others v. Turkey*, 2019, § 101; *Khan v. France*, 2019, § 74; *Darboe and Camara v. Italy*, 2022, § 173).
- Accordingly, States are required to take the necessary steps to provide appropriate protection and humanitarian assistance to asylum seeking children, whether they are accompanied by their parents or not (*Muskhadzhiyeva and Others v. Belgium*, 2010, § 62; *Popov v. France*, 2012, § 91). In the same vein, the Court demonstrates a heightened awareness of special protection for asylum seeking children when it comes to their reception conditions (*Tarakhel v. Switzerland* [GC], 2014, § 119).
- Children under immigration detention, whether accompanied or not, are regarded as being extremely vulnerable and in need of special attention from the authorities due to their specific needs arising from their age, lack of independence and asylum-seeker or migrant status (*Popov v. France*, 2012, § 91; *Abdullahi Elmi and Aweys Abubakar v. Malta*, 2016, § 103; *A.B. and Others v. France*, 2016, § 110; *R.M. and Others v. France*, 2016, § 71; *S.F. and Others v. Bulgaria*, 2017, § 79; *R.R. and Others v. Hungary*, 2021, § 49).

Accompanied children

- As noted above, according to the Court’s case-law, States have a positive obligation to provide asylum-seeking accompanied children with protection and humanitarian assistance (*Popov v. France*, 2012, § 91; *Tarakhel v. Switzerland* [GC], 2014, § 99; *Abdullahi Elmi and*

¹ Prepared by the Registry. It does not bind the Court.

Aweys Abubakar v. Malta, 2016, § 103; *A.B. and Others v. France*, 2016, § 110; *R.M. and Others v. France*, 2016, § 71; *S.F. and Others v. Bulgaria*, 2017, § 79; *R.R. and Others v. Hungary*, 2021, § 49).

- In several cases, the Court addressed the relationship between state obligations and parental responsibilities with regard to children who had been placed in immigration detention with their parents. With respect to the detention of accompanied children, the Court has emphasised that the fact that children are accompanied by their parents throughout the period of detention does not suffice to exempt authorities from their duty to protect children and take appropriate measures in accordance with their positive obligations under Article 3 of the Convention (*Muskhadzhiyeva and Others v. Belgium*, 2010, §§ 57-58; *Popov v. France*, 2012, § 91; *R.M. and Others v. France*, 2016, § 71; *M.H. and Others v. Croatia*, 2021, § 192; *R.R. and Others v. Hungary*, 2021, § 59). Moreover, the conduct of the accompanying parent is not decisive for the question whether the threshold of severity to engage Article 3 of the Convention has been reached in respect of the child (*M.D. and A.D. v. France*, 2021, § 70).
- In cases regarding the immigration detention of accompanied children upon entry and for the purposes of removal, the Court considers the following three factors in finding a violation of Article 3 of the Convention: (i) the children’s young age; (ii) the duration of the detention; and (iii) the suitability of the premises with regard to the specific needs of children (*A.B. and Others v. France*, 2016, § 109; *R.M. and Others v. France*, 2016, § 70; *A.M. and Others v. France*, 2016, § 46; *R.C. and V.C. v. France*, 2016, § 34; *R.K. and Others v. France*, 2016, § 66; *M.D. and A.D. v. France*, 2021, § 63; *R.R. and Others v. Hungary*, 2021, § 49).
- If the material conditions are satisfactory, the detention of children for a short period may not be sufficient to meet the minimum level of severity to engage Article 3; in such cases, the duration of the detention is of paramount importance and may lead to a violation of Article 3 (*A.B. and Others v. France*, 2016, § 114; *R.M. and Others v. France*, 2016, § 75; *M.D. and A.D. v. France*, 2021, § 69; *M.H. and Others v. Croatia*, 2021, § 199).
- In addition to the three factors mentioned above, in a number of cases the Court also considered children’s vulnerability in terms of their health status or their personal history as a relevant factor in the context of Article 3 (*Muskhadzhiyeva and Others v. Belgium*, 2010, § 63, where children’s psychological problems had been certified by doctors; *Kanagaratnam and Others v. Belgium*, 2011, § 67, where the children had experienced a traumatic situation in the country of origin; *G.B. and Others v. Turkey*, 2019, §95, where children who had been suffering from a high fever required urgent medical care; *M.H. and Others v. Croatia*, 2021, § 201, where the children had witnessed the death of their sister near the border).
- **Parents:**
 - In some cases concerning detention of children accompanied by their parents, the Court found no violation of Article 3 of the Convention in respect of the parents but only in respect of the children. In those cases, while acknowledging parent’s feelings of anxiety and frustration, the Court reasoned that “the fact that they were not separated from their children during the detention must have provided some degree of relief from those feelings” (*Muskhadzhiyeva and Others v. Belgium*, 2010, § 66; *Popov v. France*, 2012, § 105; *M.H. and Others v. Croatia*, 2021, § 210). Accordingly, the Court viewed the continuity of the parent-child relationship as a mitigating factor for the distress that the detention caused and determined that the threshold of severity required to engage Article 3 has not been met in the aforementioned cases (*Popov v. France*, 2012, § 104) .
 - In other cases, the Court also found a violation of Article 3 of the Convention in respect of the accompanying parent, in particular in view of the parent’s particular vulnerability (*R.R. and Others v. Hungary*, 2021, §§ 58-65; *M.D. and A.D. v. France*, 2021, § 71; *H.M. and Others v. Hungary*, 2022, § 18).

Unaccompanied children

- While in principle States have a positive obligation to provide asylum-seeking children with protection and humanitarian assistance irrespective of whether they are accompanied or not, some specific State obligations may nevertheless differ depending on whether children are alone or accompanied by their parents (*Rahimi v. Greece*, 2011, § 63; *Abdullahi Elmi and Aweys Abubakar v. Malta*, 2016, § 112).
- In a number of cases, in respect of unaccompanied children, the Court found a violation of Article 3 having regard to the length and conditions of the detention (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006, §§ 50-59; *Rahimi v. Greece*, 2011, §§ 81-86; *Abdullahi Elmi and Aweys Abubakar v. Malta*, 2016, §§ 113-115).
- In *Rahimi v. Greece*, where the unaccompanied minor had been detained for two days pending his removal from the country, the Court, without taking into consideration the duration of the detention, found a violation of Article 3 on the basis of the applicant's extremely vulnerable situation and the poor conditions of the detention centre, which undermined the very essence of human dignity (§§ 85-86).
- **Parents:**
 - In cases concerning unaccompanied children, the Court also ruled in respect of their parents who were separated from their children at the material time. In *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006, the Court found a violation of Article 3 in respect of both the unaccompanied child who had been detained on her own for two months in a transit centre pending her removal and the child's mother who was in another country. In view of the vulnerable situation and young age of the unaccompanied child (five years old) who had become separated from her family, the Court found that the Belgian authorities failed to meet their positive obligation to protect the child by placing her in a closed centre intended for adults, failing to provide her with adequate care and exposing her to such conditions that show a lack of humanity, which amounted to inhuman treatment under Article 3 (§§ 50-59). In determining that the mother's distress and anxiety over her daughter's detention attained the threshold of severity to constitute a violation of Article 3, the Court considered the authorities' disregard to inform the mother about her daughter's deportation as a factor which aggravated such feelings (§§ 60-70).
 - Conversely, in another case, while finding a violation of Article 3 in respect of children, the Court found no violation of Article 3 in relation to the father who suffered as a result of the detention and removal of his children who were unaccompanied at the material time, based on the fact that he was aware that his own mother could take care of his children when they return (*Moustahi v. France*, 2020, §§ 77-78).

Article 5 of the Convention:

- In its case-law, the Court has highlighted the fact that international institutions, particularly the Council of Europe, encourage States to end immigration detention of children (*G.B. and Others v. Turkey*, 2019, § 151; *M.H. and Others v. Croatia*, 2021, § 236).
- The Court has held that the confinement of young children in inappropriate conditions within the meaning of Article 3 in itself may lead to a breach of Article 5 § 1, irrespective of whether the children were accompanied by their parents or not (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006, §§ 102-105; *Muskhadzhiyeva and Others v. Belgium*, 2010, § 74; *Rahimi v. Greece*, 2011, § 110; *Kanagaratnam and Others v. Belgium*, 2011, §§ 94-95; *G.B. and Others v. Turkey*, 2019, § 151; *M.H. and Others v. Croatia*, 2021, § 239).
- The Court has frequently noted that the detention of migrant children should be avoided and placing children in detention facilities should be implemented as a measure of last resort

by the state authorities after establishing that no alternative measures involving a lesser restriction of their freedom were available (*Popov v. France*, 2012, § 119; *A.B. and Others v. France*, 2016, § 123; *G.B. and Others v. Turkey*, 2019, § 151; *Bilalova and Others v. Poland*, 2020, § 79; *M.H. and Others v. Croatia*, 2021, § 237; *Nikoghosyan and Others v. Poland*, 2022, § 86).

- The state authorities' failure to conduct a proper assessment to determine less coercive alternatives to detention has led the Court to find a violation of Article 5 § 1 in a number of cases in respect of children (*Rahimi v. Greece*, 2011, §§ 109-110; *Popov v. France*, 2012, § 119; *A.B. and Others v. France*, 2016, § 124; *R.M. and Others v. France*, 2016, §§ 86-88; *R.K. and Others v. France*, 2016, §§ 85-87; *H.A and Others v. Greece*, 2019, §§ 206-207; *Bilalova and Others v. Poland*, 2020, §§ 80-82; *M.D. and A.D. v. France*, 2021, § 89; *M.H. and Others v. Croatia*, 2021, § 249; *R.R. and Others v. Hungary*, 2021, §§ 90-92; *Nikoghosyan and Others v. Poland*, 2022, § 88).
- In the light of recent developments in international law, the Court has recognised States' obligations to explore viable alternatives to immigration detention not only in respect of children but also in respect of their parents in cases, where it has determined that both children and their parents were the subject of a violation of Article 5 § 1 (*G.B. and Others v. Turkey*, 2019, § 168; *M.H. and Others v. Croatia*, 2021, § 238).
- However, in some cases, where the possibility of resorting to a less coercive measure had been dismissed on account of the applicant's actions, the Court found no violation of Article 5 § 1 on the basis that the authorities had effectively investigated whether the detention was a measure of last resort for which no alternative was available (*A.M. and Others v. France*, 2016, §§ 68-69; *R.C. and V.C. v. France*, 2016, §§ 55-57).
- In *Rahimi v. Greece*, 2011, concerning the detention of an unaccompanied child, the Court found a violation of Article 5 § 1 due to the authorities' failure to consider the best interests of the child and to examine whether the detention was implemented as a measure of last resort, which raised doubts in the Court's view as to the good faith of the authorities, as well as the poor conditions of detention (§§ 109-110).
- The Court has held that the detention of children constituted a violation of Article 5 § 1 in *Moustahi v. France*, 2020, where the authorities arbitrarily associated two children with an unrelated adult by including their names in the adult's removal order with aim of enabling their detention and subsequent removal from the country, rather than safeguarding their best interests (§§ 92-94).

Article 8 of the Convention:

- The Court has reaffirmed under Article 8 that the child's best interests cannot be limited to just keeping the family together and that state authorities are obliged to undertake all necessary measures to cease the detention of families and protect the right to family life (*Popov v. France*, 2012, § 147; *Bistieva and Others v. Poland*, 2018, § 85; *Nikoghosyan and Others v. Poland*, 2022, § 84).
- In cases concerning both accompanied and unaccompanied children, the Court further stated in relation to Article 8 that, in light of the broad consensus in international law, the principle of the best interests of the child must be paramount in all decisions involving children (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006, § 83; *Rahimi v. Greece*, 2011, § 108; *Popov v. France*, 2012, § 140).
- In some cases, the Court found a violation of Article 8 in respect of all applicants, where it held that the administrative detention of the family was disproportionate to the aim pursued (*Popov v. France*, 2012, § 148; *A.B. and Others v. France*, 2016, §§ 145-156; *R.K. and Others v. France*, 2016, §117) and the authorities failed to provide sufficient reasons to justify the

detention (*Bistieva and Others v. Poland*, 2018, §§ 87-88); whereas in other cases the Court found no violation of Article 8 in respect of all family members (*A.M. and Others v. France*, 2016, §§ 96-97; *R.C. and V.C. v. France*, 2016, §§ 82-83).

- In *Moustahi v. France*, 2020, the authorities' decision refusing to reunite the children with their father was not in the best interests of the children, which led to a violation of Article 8 in respect both children and their father (§§ 113-115).
- In *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006, considering that the detention was not in best interests of the child, the Court decided that there has been a violation of Article 8 in respect of both the unaccompanied child and the child's mother who was in another country (§§ 83-87).

Noteworthy examples

Unaccompanied children:

- *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006: a five-year-old unaccompanied child detained for two months in a centre for adults; violation of Article 3, violation of Article 5 § 1.
- *Rahimi v. Greece*, 2011: a fifteen-year old unaccompanied child asylum-seeker detained in an adult detention centre for two days, in very poor conditions; violation of Article 3, violation of Article 5 § 1.
- *Abdullahi Elmi and Aweys Abubakar v. Malta*, 2016: two unaccompanied children, 16/17 years old, detained for approximately eight months in poor conditions awaiting the outcome of the age-assessment procedure; violation of Article 3, violation of Article 5 § 1.
- *H.A and Others v. Greece*, 2019: unaccompanied children, between 14 and 17 years old, detained under "protective custody" between 21 and 33 days at a police station; violation of Article 3, violation of Article 5 § 1.

Accompanied children:

- Findings in relation to the children
 - Cases where families were detained in inappropriate conditions:
 - *Muskhadzhiyeva and Others v. Belgium*, 2010: four children aged seven months, three and a half years, five and seven years held in a closed transit centre for over a month pending their removal; violation of Article 3, violation of Article 5 § 1.
 - *Popov v. France*, 2012: children aged five months and three years were held pending expulsion for fifteen days in a detention centre which was ill-adapted to their age; violation of Article 3, violation of Article 5 § 1, violation of Article 8.
 - *S.F. and Others v. Bulgaria*, 2017: children aged one and a half years, eleven years and sixteen years were detained in poor conditions of detention for thirty-two to forty-one hours; violation of Article 3.
 - *R.R. and Others v. Hungary*, 2021, and *H.M. and Others v. Hungary*, 2022: children were detained with their parents in a transit zone with poor living conditions for nearly four months awaiting the outcome of their requests for asylum: violation of Article 3, violation of Article 5 § 1.
 - *M.D. and A.D. v. France*, 2021: a four-month old baby and the breastfeeding mother were detained in unsuitable premises for eleven days; violation of Article 3, violation of Article 5 § 1.
 - Cases where the material conditions were not per se in breach of Article 3:

- *A.B. and Others v. France*, 2016: a child aged four years detained for eighteen days: violation of Article 3, violation of Article 5 § 1, violation of Article 8.
 - *R.M. and Others v. France*, 2016: a child of seven months detained for seven days; violation of Article 3, violation of Article 5 § 1.
 - *A.M. and Others v. France*, 2016: a child of two-and-a-half years and another of four months detained for at least seven days; violation of Article 3, no violation of Article 5 § 1, no violation of Article 8.
 - *R.K. and Others v. France*, 2016: a child of fifteen months detained for nine days; violation of Article 3, violation of Article 5 § 1, violation of Article 8.
 - *M.H. and Others v. Croatia*, 2021: children aged between one and 17 years detained for two months and fourteen days; violation of Article 3, violation of Article 5 § 1.
 - *N.B. and Others v. France*, 2022: an eight-year-old child detained for fourteen days; violation of Article 3, violation of Article 34.
- Findings in relation to the accompanying parents:
 - *Muskhadzhiyeva and Others v. Belgium*, 2010: no violation of Article 3, no violation of Article 5 § 1.
 - *Popov v. France*, 2012: no violation of Article 3, no violation of Article 5 § 1, violation of Article 8.
 - *A.B. and Others v. France*, 2016: violation of Article 8.
 - *A.M. and Others v. France*, 2016: no violation of Article 5 § 1, no violation of Article 8.
 - *Bistieva and Others v. Poland*, 2018: violation of Article 8.
 - *R.R. and Others v. Hungary*, 2021: violation of Article 3 (pregnant woman with a serious health condition), violation of Article 5 § 1.
 - *M.D. and A.D. v. France*, 2021: violation of Article 3 (breastfeeding mother).
 - *M.H. and Others v. Croatia*, 2021: no violation of Article 3, violation of Article 5 § 1.

Related topics

- Age assessment procedures may arise as an issue of the immigration detention of children under Articles 3 and 5 of the Convention (for example *Mahamed Jama v. Malta*, 2015, and *Abdullahi Elmi and Aweys Abubakar v. Malta*, 2016) or, in some instances, as a self-standing issue under Article 8 of the Convention as in *Darboe and Camara v. Italy*, 2022).
- In the context of immigration detention, a specific obligation to consider less coercive alternative methods has been articulated only as regards vulnerable individuals detained under Article 5 § 1(f) (for example, *Rahimi v. Greece*, 2011, as regards minors and *Yoh-Ekale Mwanje v. Belgium*, 2011, as regards vulnerable adults), while the assessment of the necessity of detention is not required in the context of the immigration detention of adults (*Saadi v. the United Kingdom* [GC], 2008, § 72). However, where domestic law, potentially read conjunction with EU law, sets stricter requirements in respect of the immigration detention of adults without particular vulnerabilities, the lawfulness of the detention includes a requirement to conform to the substantive and procedural rules of domestic law (see *Muhammad Saqawat v. Belgium*, 2020, §§ 47-49).

Further references

Case-law guides:

- [Guide on Immigration](#)
- [Guide on Article 3 - Prohibition of torture](#)
- [Guide on Article 5 - Right to liberty and security](#)
- [Guide on Article 8 - Right to respect for private and family life, home and correspondence](#)

Other key themes:

- [Health and immigration \(Immigration\)](#)

Press factsheets:

- [Accompanied migrant minors in detention](#)
- [Unaccompanied migrant minors in detention](#)
- [Migrants in detention](#)

Other:

- [EU Fundamental Rights Agency, European legal and policy framework on immigration detention of children \(2017\)](#)

KEY CASE-LAW REFERENCES

Leading cases:

- *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, 12 October 2006;
- *Rahimi v. Greece*, no. 8687/08, 5 April 2011;
- *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012;
- *A.B. and Others v. France*, no. 11593/12, 12 July 2016.

Cases under Article 3:

- *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, 12 October 2006;
- *Muskhadzhiyeva and Others v. Belgium*, 41442/07, 19 January 2010;
- *Rahimi v. Greece*, no. 8687/08, 5 April 2011;
- *Kanagaratnam and Others v. Belgium*, no. 15297/09, 13 December 2011;
- *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012;
- *Mohamad v. Greece*, no. 70586/11, 11 December 2014;
- *A.B. and Others v. France*, no. 11593/12, 12 July 2016;
- *A.M. and Others v. France*, no. 24587/12, 12 July 2016;
- *R.C. and V.C. v. France*, no. 76491/14, 12 July 2016;
- *R.K. and Others v. France*, no.68264/14, 12 July 2016;
- *R.M. and Others v. France*, no. 33201/11, 12 July 2016;
- *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, 22 November 2016;
- *S.F. and Others v. Bulgaria*, no. 8138/16, 7 December 2017;
- *H.A and Others v. Greece*, no. 19951/16, 28 February 2019;
- *G.B. and Others v. Turkey*, no. 4633/15, 17 October 2019;
- *Bilalova and Others v. Poland*, no. 23685/14, 26 March 2020;
- *Moustahi v. France*, no. 9347/14, 25 June 2020;
- *R.R. and Others v. Hungary*, no. 36037/17, 2 March 2021;
- *M.D. and A.D. v. France*, no. 57035/18, 22 July 2021;
- *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, 18 November 2021;
- *N.B. and Others v. France*, no. 49775/20, 31 March 2022;
- *H.M. and Others v. Hungary*, no. 38967/17, 2 June 2022.

Cases under Article 5:

- *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, 12 October 2006;
- *Muskhadzhiyeva and Others v. Belgium*, 41442/07, 19 January 2010;
- *Rahimi v. Greece*, no. 8687/08, 5 April 2011;
- *Kanagaratnam and Others v. Belgium*, no. 15297/09, 13 December 2011;
- *Yoh-Ekale Mwanje v. Belgium*, no. 10486/10, 20 December 2011;
- *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012;
- *Mohamad v. Greece*, no. 70586/11, 11 December 2014;
- *Mahamed Jama v. Malta*, no. 10290/13, 26 November 2015;

- *A.B. and Others v. France*, no. 11593/12, 12 July 2016;
- *A.M. and Others v. France*, no. 24587/12, 12 July 2016;
- *R.C. and V.C. v. France*, no. 76491/14, 12 July 2016;
- *R.K. and Others v. France*, no.68264/14, 12 July 2016;
- *R.M. and Others v. France*, no. 33201/11, 12 July 2016;
- *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, 22 November 2016;
- *H.A and Others v. Greece*, no. 19951/16, 28 February 2019;
- *G.B. and Others v. Turkey*, no. 4633/15, 17 October 2019;
- *Bilalova and Others v. Poland*, no. 23685/14, 26 March 2020;
- *Moustahi v. France*, no. 9347/14, 25 June 2020;
- *R.R. and Others v. Hungary*, no. 36037/17, 2 March 2021;
- *M.D. and A.D. v. France*, no. 57035/18, 22 July 2021;
- *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, 18 November 2021;
- *Nikoghosyan and Others v. Poland*, no. 14743/17, 3 March 2022;
- *H.M. and Others v. Hungary*, no. 38967/17, 2 June 2022.

Cases under Article 8:

- *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, 12 October 2006;
- *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012;
- *A.B. and Others v. France*, no. 11593/12, 12 July 2016;
- *A.M. and Others v. France*, no. 24587/12, 12 July 2016;
- *R.C. and V.C. v. France*, no. 76491/14, 12 July 2016;
- *R.K. and Others v. France*, no.68264/14, 12 July 2016;
- *Bistieva and Others v. Poland*, no. 75157/14, 10 April 2018;
- *Moustahi v. France*, no. 9347/14, 25 June 2020.