



Applicant's detention in an immigration centre violated the Convention after it became clear that no safe third country would admit him

In today's Chamber judgment¹ in the case of [Al Husin v. Bosnia and Herzegovina \(no. 2\)](#) (application no. 10112/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights as regards the applicant's detention from August 2014 to February 2016, and,

no violation of Article 5 § 1 over his detention between July 2012 and March 2013 and March 2014 to August 2014, and

no violation of Article 5 § 4 (right to liberty and security/proceedings on lawfulness of detention).

The case concerned a man who was held in detention pending possible deportation for extended periods while the authorities sought a safe third country to remove him to. This case concerned his detention from July 2012.

The Court found in particular that from August 2014 it should have been obvious to the authorities that no country was willing to admit the applicant, who had been classed as a national security risk. He had not been released until February 2016 as the search for a country to accept him had continued, however, that period of detention had led to a violation of his rights as the grounds to justify it had no longer been valid.

Principal facts

The applicant, Imad Al Husin, was born in Syria in 1963 and currently lives in Ilidža, Sarajevo Canton (Bosnia and Herzegovina).

Mr Al Husin studied in the former Yugoslavia in the 1980s and fought as part of a foreign mujahedin unit on the Bosnian side during the 1992-95 war. At some point he obtained citizenship of Bosnia and Herzegovina, but this was revoked in 2007. He was placed in an immigration detention centre in October 2008 as a threat to national security. He claimed asylum, but this was dismissed and a deportation order was issued in February 2011.

The applicant lodged a first application with the Court in January 2008. In February 2012 it [found](#) that he faced a violation of his rights under Article 3 (prohibition of torture) if he were to be deported to Syria and that his detention between October 2008 and the end of January 2011 had violated Article 5 § 1 (right to liberty and security) as there had been no deportation order.

The authorities issued a new deportation order in March 2012 and proceeded over the following years to extend his detention on national security grounds, despite appeals by the applicant in which, among other things, he denied being a security risk.

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.

In the meantime, the authorities tried to find a safe third country to deport him to, but many countries in Europe and the Middle East refused to accept him.

In February 2016 he was released subject to restrictions, such as a ban on leaving his area of residence and having to report to the police.

Complaints, procedure and composition of the Court

The applicant complained about his detention under Article 5 § 1 (right to liberty and security), Article 5 § 4 (proceedings on lawfulness of detention) and Article 5 § 5 (enforceable right to compensation) of the European Convention on Human Rights. He also alleged that his conditions of detention had violated Article 3 (prohibition of torture or inhuman or degrading treatment).

The application was lodged with the European Court of Human Rights on 17 February 2016.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Paul **Lemmens** (Belgium),
Iulia Antoanella **Motoc** (Romania),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),
Jolien **Schukking** (the Netherlands),

and also Marialena **Tsirli**, *Section Registrar*.

Decision of the Court

Article 5 § 1

The Court upheld an objection by the Government that the applicant could no longer claim to be a victim of a violation of his rights owing to his detention between 21 March 2013 and 14 March 2014 as the Constitutional Court had acknowledged a violation of Article 5 § 1 for that period and he could reasonably have been expected to seek compensation at domestic level for it.

It went on to consider two admissible periods of detention: 9 July 2012 to 21 March 2013 and 14 March 2014 to 17 February 2016.

Mr Al Husin argued that he had been kept in detention for more than eight years, from October 2008 to February 2016. As he had been classified as a security risk, the authorities had known that no third country would accept him and that his removal had thus been impossible.

The Government submitted that the detention decisions had been duly ordered under the law and had been reviewed in court. It had also all long regarded his removal as a realistic prospect.

The Court noted its findings in Mr Al Husin's first case and that an interim measure to prevent his deportation to Syria had remained in force until 9 July 2012, when the first judgment had become final. That date was thus the starting point for considering his second application while 17 February 2016 was the end point.

It held that Mr Al Husin's detention for the periods under consideration had been "in accordance with the law" within the meaning of the Convention.

It noted that detention could be justified under Article 5 § 1 (f) of the Convention if there had been active efforts by a country's authorities to organise removal to a third country, and that was indeed the key question in the applicant's case.

The Court noted that the authorities had from September 2012 begun to seek a safe third country to accept the applicant. However, by August 2014 a total of 38 countries had refused to admit him and it had to have been clear at the latest from that date that his removal in that way was bound to fail.

The authorities had contacted more countries after August 2014, including Canada and Kazakhstan, sent fresh requests to the United Arab Emirates and Turkey and had tried unsuccessfully to organise a meeting at the embassy of Saudi Arabia. Those efforts had failed and he had finally been released in February 2016 as, under a new Aliens Act, he had reached the maximum period of detention.

The Court concluded that the grounds for Mr Al Husin's detention had not remained valid for the whole period of his detention owing to the lack of a realistic prospect of his expulsion. There had therefore been a violation of his rights under Article 5 § 1 (f) for the period from August 2014 to 17 February 2016, but no violation for 9 July 2012 to 21 March 2013 and 14 March 2014 to August 2014.

Article 5 § 4

Mr Al Husin alleged that he had not been able to challenge the lawfulness of his detention because he had not had access to evidence related to national security issues. The Government submitted in particular that both the State Court and the Constitutional Court had reviewed the decisions to extend his detention and that those courts had had access to restricted material.

The Court reiterated that issues of procedural fairness had to be balanced against the public interest of national security.

It found that Mr Al Husin had been given access to evidence that had been classified as open evidence, had had legal representation, and had benefited from reviews in the State Court, the Appeals Chamber of the State Court and the Constitutional Court. Furthermore, some of the allegations against him had been quite specific, allowing him to challenge them.

Overall he had been given a reasonable opportunity to present his case and there had been no violation of Article 5 § 4 of the Convention.

Other Articles

The Court held that the applicant's complaint under Article 5 § 5 was inadmissible for non-exhaustion of domestic remedies as he had not used any of the available domestic provisions to seek compensation for the period of detention that had violated his rights.

It found that his allegations under Article 3 about the conditions of his detention at the Immigration Centre were general, vague, and unsubstantiated. The complaint was therefore manifestly ill-founded and had to be rejected.

Just satisfaction (Article 41)

The Court held that Bosnia and Herzegovina was to pay the applicant 9,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.