



FLASH NEWS

6/19

EUROPEAN COURT OF HUMAN RIGHTS

OVERVIEW FROM 18/03 TO 12/04/2019

EL / O.S.A AND OTHERS v. GREECE

Right to liberty and security - Reception centre for migrants - Possibility to appeal against a detention measure

Violation of Article 5 § 4 (right to have the lawfulness of one's detention decided speedily) of the ECHR.

Non-violation of Article 3 (prohibition of inhuman or degrading treatment) of the ECHR.

Following their arrival on the island of Chios (Greece), the day after the entry into force of the "EU-Turkey Statement", the applicants, Afghan nationals, were arrested and detained with a view to their expulsion. They complained that it was not possible to obtain a judicial decision on the lawfulness of such detention, as well as the fact that they had not received information in a language they understood regarding the reasons for this detention and on the possibility to appeal. In addition, they claimed that the conditions of their detention were unlawful.

Ruling of 21/03/2019 (application no. 39065/16) ([FR](#))

MT / ABOYA BOA JEAN v. MALTA

Right to liberty and security - Detention of an asylum seeker - Appeal against this measure

Non-violation of articles 5 § 1 (right to have the lawfulness of one's detention determined speedily) of the ECHR.

The applicant, an Ivorian national, had informed the Maltese authorities upon his arrival on the territory that he had been granted refugee status in Armenia and that he wished to submit an asylum application in Malta. He was then detained on the grounds that he represented a flight risk before his application was examined. The applicant alleged that this detention was unlawful and arbitrary. He also argued that the appeal which allowed him to challenge this detention measure had not been effective and that it had not been processed speedily.

Ruling of 02/04/2019 (application no. 62676/16) ([EN](#))
Press release ([FR](#) / [EN](#))

RU / V.D. AND OTHERS v. RUSSIA

Right to respect for private and family life - Return of a child to their parents - Foster family access rights

Non-violation of Article 8 (right to respect for private and family life) of the ECHR due to the decision to remove a child from his foster mother and return him to their biological parents.

Violation of Article 8 of the ECHR due to the decision to deprive the foster family of a right of access to the child.

The first applicant, a Russian national, had been the guardian for nine years of a seriously ill child whose parents had declared that they were unable to care for him. She was also the guardian of seven other children (the other applicants in this case) who had established close ties with the child concerned. Following the stabilisation of the child's state of health, his parents requested his return to them. The applicants complained, in particular, about the decisions of the courts which granted this application and deprived them of access to the child.

Ruling of 09/04/2019 (application no. 72931/10) ([EN](#)) Press release ([FR](#) / [EN](#))



DE / HARISCH v. GERMANY

Right to a fair trial - Refusal to refer a case to the Court of Justice for a preliminary ruling

Non-violation of Article 6 § 1 (right to a fair trial) of the ECHR

In civil proceedings, the applicant, a German national, had requested the Court of Appeal to refer the matter to the Court for a preliminary ruling. The Court of Appeal dismissed this request, providing detailed reasons on why the Court's jurisprudence did not support the person's legal opinion. In addition, it refused to allow an appeal to be lodged in cassation. The applicant then challenged this decision and reiterated his request for referral. The Federal Court of Justice dismissed his action, stating only (and briefly) the reasons why it did not allow the appeal in cassation. The applicant complained about these refusals to refer for a preliminary ruling and their lack of grounding.

Ruling of 11/04/2019 (application no. 50053/16) ([EN](#))
Press release ([FR](#) / [EN](#))

OTHER INFORMATION

Announcement of a Grand Chamber hearing

On 24 April 2019, the Grand Chamber of the ECtHR will hold the hearing in the case of M.N. And Others v. Belgium (Application No. 3599/18). In this case, a Syrian couple and their two children were refused short-stay visas, which they had requested from the Belgian Embassy in Beirut (Lebanon) in order to seek asylum in Belgium. The Aliens Litigation Council (CCE) suspended this refusal decision as a matter of extreme urgency and ordered the State to issue the applicants with a laissez-passer or a visa valid for three months in order to safeguard their interests.

Citing Article 1 (obligation to respect human rights) of the ECHR, as well as Articles 3 (prohibition of inhuman or degrading treatment), 6 § 1 (right to a fair trial) and 13 (right to an effective remedy), the applicants complain of the Belgian authorities' refusal to implement the measures ordered by the CCE.

Eleven States (including 10 EU Member States) and several NGOs have been authorised to intervene in the proceedings before the European Court of Human Rights.

Press release ([FR](#) / [EN](#))

ADVISORY OPINION UNDER PROTOCOL 16 TO THE ECHR

Right to respect for private and family life - Establishment of parentage of the intended mother of a child born abroad by surrogate gestation

In the first opinion delivered under Protocol no. 16 to the ECHR, the ECtHR held that in the situation where, as in the case formulated in the questions of the French Court of Cassation, a child is born abroad through surrogate gestation for and is born from the gametes of the intended father and a third party donor, and where the parentage between the child and the intended father is recognised in national law:

1. the right to respect for the child's private life within the meaning of Article 8 of the ECHR requires that national law provide a possibility of recognition of a parent-child relationship between the child and the intended mother, referred to in the birth certificate legally established abroad as the "legal mother";

2. the right to respect for the child's private life within the meaning of Article 8 of the ECHR does not require that this recognition be made by transcribing the birth certificate legally established abroad into the civil status registers. It may be performed in another way, such as through adoption of the child by the intended mother, provided that the procedures laid down in national law guarantee the effectiveness and speed of its implementation, in accordance with the best interests of the child.

Opinion of 10/04/2019 (application no. P16-2018-001)

([FR](#) / [EN](#))

Press release ([FR](#) / [EN](#))