

Important decisions of the European Court of Human Rights *

1. **Tuquabo-Tekle and others v. The Netherlands, Application no. 60665/00, 1 December 2005**

First applicant (a mother) fled Ethiopia to Norway, where she was granted a residence permit on humanitarian grounds. First applicant's three children stayed behind in Ethiopia. Permission was granted by the Norwegian authorities for the first applicant's children to reside with the first applicant- her son subsequently entered Norway. It did not prove possible at that time to procure the departure of the other two children from Ethiopia but it was the first applicant's intention to bring them to Norway later.

First applicant married Mr Tuquabo (K) who was living in the Netherlands. First applicant and her son moved to the Netherlands. Two children were subsequently born to the couple.

First applicant and K filed a request for the first applicant's fifteen-year-old daughter (second applicant), who was still resident in Ethiopia, to join them in the Netherlands on a provisional residence permit. The request was rejected.

First applicant and K raised an objection, through counsel, with the Minister of Foreign Affairs but this was rejected. First applicant and K then lodged an appeal against this decision of the Minister, through Counsel, with the Regional Court. This appeal was dismissed. The Regional Court's decision was final and not subject to appeal.

The refusal by the Netherlands authorities to allow the second applicant to reside in the Netherlands failed to strike a fair balance between the applicants' interests on the one hand and its own interests in controlling immigration on the other. The refusal consequently constituted a breach of the applicant's right to respect for family life. (Held: Violation of Article 8 of the Convention).

(Held: Applicants entitled to damages under Article 41 ECHR).

Full decision [here](#)

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2. **Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, Application no. 13178/03, 12 October 2006**

First applicant (a mother) seeking asylum in Canada. Second applicant (five-year-old daughter) travelling to Belgium from the Dominican Republic of the Congo (the DRC), with her Uncle (K), who was to look after her until she was able to join the first applicant in Canada. K arrived in Belgium with the second applicant, but did not have the necessary travel and immigration papers to show that he had parental authority. The second applicant was detained in an adult Transit Centre in Belgium for two months until she was deported back to the DRC.

Owing to the detention of the second applicant in a closed centre intended for illegal immigrants in the same conditions as adults, the Belgian authorities failed to fulfil their Article 3 obligation to provide adequate care. The Belgian authorities also failed to provide adequate preparation, supervision and safeguards for the applicant's deportation; and consequently failed to fulfil their positive obligation to take requisite measures and precautions. With regards to the first applicant, the only action the Belgian authorities took was to inform her that her daughter had been detained and to provide her with a telephone number where she could be reached. Belgian authorities did not advise the first applicant of her daughters' deportation so that she only became aware of it when she tried to reach her at the Transit Centre, on the telephone, after the deportation had already taken case. The resulting deep distress for the first applicant, in both circumstances, was sufficient to meet the level of severity for a violation. (Held: Violation Article 3 ECHR).

Second applicant was an unaccompanied foreign minor; subsequently the State was under a positive obligation to facilitate the family reunification. Both the detention and the deportation hindered reunification and thus Belgian authorities failed to meet this positive obligation. (Held: Violation of Article 8 ECHR). Conditions of the second applicant's detention were not adapted to the applicant's position of extreme vulnerability as an unaccompanied foreign minor. In these circumstances, Belgian legal system did not sufficiently protect the second applicant's right to liberty. (Held: Violation of Article 5 (1) ECHR).

Prior to the applicant's deportation the *chamber du conseil* of the Brussels Court of First Instance held that the second applicant's detention was incompatible with Article 3 (1) and 2 of the Convention on the Rights of the Child and ordered her immediate release. Even assuming the second applicant's deportation could be equated to a 'release' for the purposes of this Article, there was no link between her deportation and the exercise of the remedy or the fact it was granted. The

second applicant's appeal to the *chamber du conseil* was therefore ineffective. (Held: Violation of Article 5 (4) ECHR).

(Held: Applicants entitled to damages under Article 41 ECHR).

Full decision [here](#)

3. Jeunesse v. The Netherlands, Application no. 12738/10, 3 October 2014

Surinamese applicant entered The Netherlands in 1997 and has been living in the Netherlands to date. She entered initially on a tourist visa but made attempts to acquire a residence permit, all unsuccessful. She marries a Netherlands national of Surinamese origin and they have three children- all which hold Netherlands nationality. The Netherlands refuse to allow her to reside in country.

Applicant claims that refusal to release her from obligation to hold a provisional residence visa and the refusal to allow her in The Netherlands violates her right of private and family life, her home and her correspondence. Courts say domestic authorities must have some regard to the situation for the applicant's children. They must assess evidence to give effective protection and weight to the best interests of the children directly affected. Courts say in this instance, domestic authorities did not sufficiently consider this. In these circumstances, the applicant's case is considered exceptional, the court says a fair balance has not been struck between the personal interests of the applicant and her family, and the public order interests of the national government in controlling immigration. This violates the applicant's Article 8 ECHR right of private and family life, home and correspondence. (Held: Violation Article 8 ECHR).

Full decision [here](#)

4. Tarakhel v. Switzerland, Application no. 29217/12, 4 November 2014

Afghan applicants apply for asylum in Switzerland, although first documented in Italy- claiming that conditions in Italy were difficult. Switzerland rejects their application and refers their removal back to Italy. Applicants husband, wife and six minor children claim that return to Italy from Switzerland will subject them to inhuman and degrading treatment or punishment, because of lack of accommodation or accommodation conditions being degrading and inhuman. To claim under Article 3, court states 'ill-treatment must attain a minimum level of severity.' This is assessed on the specific circumstances of the claimant such as age, sex etc. It specifies that asylum seekers

require 'special protection' because of their underprivileged and vulnerable status, and particularly when regarding children. Special preventions are required to ensure that children are not subject to stress and anxiety, or to any traumatic consequence. Courts note that although the Italian government 'apparently guarantees' accommodation and necessary requirements for the family, the Swiss authorities do not possess sufficient assurances that the Italian authorities will adapt their provisions accordingly in relation to the age of the children, nor that the family will be kept together. This violates the claimants' Article 3 rights under the ECHR. (Held: Violation Article 3 ECHR).

Full decision [here](#)

5. V. M. and others v. Belgium, Application no. 60125/11, 7 July 2015

Serbian family (2 adults and their 5 children) seeking asylum in Belgium. Belgium law terminated material assistance for Dublin asylum-seekers on the date of expiry of the time limit for complying with an order to leave the country, without waiting for the conclusion of the asylum proceedings. Family were evicted from the accommodation centre and then unable to obtain reception facilities enabling them to provide for their essential needs, until their departure back to Serbia. Exposed to conditions of extreme poverty for four weeks- bar two nights- left out on the streets with no resources, no access to sanitary facilities, and no means of providing for their essential needs

Owing to the applicant's reception conditions in Belgium, the Belgium authorities failed to satisfy their obligation not to expose the applicants to conditions of extreme poverty for four weeks –bar two nights. The applicants living conditions amounted to degrading treatment under Article 3. This violated the claimants' Article 3 rights under the ECHR. (Held: Violation of Article 3 ECHR). Applicants were unable to show beyond all reasonable doubt that their eldest daughters death was caused by the conditions of their stay in Belgium and that the Belgium authorities failed to satisfy any positive obligation in that respect (Held: No violation of Article 2).

There was no effective remedy granted to the applicants in the sense of one producing automatic suspensive effect and by which they could obtain an effective review of their arguments alleging a violation of Article 3. (Held: Violation of Article 13 ECHR taken in conjunction with Article 3 ECHR).

(Held: Applicants entitled to damages under Article 41 ECHR).

Full decision [here](#)

6. **I.A.A. and others v. UK, Application no. 25960/13, 31 mars 2016**

Applicants apply for entry clearance to join mother in the U.K. Applicants are four siblings and a cousin who is sibling by adoption. Mother's second husband granted refugee status in the U.K, she joins him leaving applicants in Somalia. Applicants in custody of aunt in Somalia, who later all relocate to Ethiopia. In mother's UK application she does not mention the applicants. Entry clearance was granted to two further siblings of the applicants, with reference to the young age of one and the poor health of the other. Following this, aunt leaves Ethiopia and returns to Somalia leaving applicants in custody of eldest, sixteen year old daughter. Applicants apply for entry clearance to join mother. Secretary of State refuses applicants as they fail under Immigration Rules HC395 where they must prove: dependent on their mother's support or biological children of a recognised refugee. Also fail under Article 8, 'Right to respect for private and family life.' Applicants appeal but dismissed.

Permission to appeal later granted as judge had not adequately considered Article 8. Specifically, he had not used the correct test of whether family life existed 'at date of decision' and not 'at present time.' Judge accepts Article 8 exists however states interference must be proportionate. Judge considers the applicants' mother had made a conscious decision to leave them in Somalia, knowing that the separation might be permanent, and she had been living separately from them for more than four years.' Dismissed. Court of Appeal orders applicants' appeal should be remitted to the Immigration and Asylum Chamber of the Upper Tribunal. Tribunal assesses whether refusal amounts to disproportionate interference with applicants' Article 8 rights. Tribunal accepts best interests of children should be accounted for, albeit not as primary consideration. Whilst in applicants' best interest to be allowed to join mother, principle that foreign national who does not satisfy Immigration Rules (undisputed in this case) would not normally show that exclusion from U.K. is a disproportionate interference with his Article 8 Right. Unless can show good reason why his case should be treated more favourably than the generality of such cases. Applicants' mother's decision to leave them in Somalia, knowing separation likely and allowing five years to pass before attempt to bring them to U.K. considered (claim violation of Article 8 ECHR) – no violation.

Full decision [here](#)

7. **J. K. and others v Sweden, Application no. 59166/12, 23 August 2016**

Applicants are Iraqi family claiming asylum in Sweden. Family subject to attacks in Iraq by al-Qaeda including murder attempts, kidnapping of applicant's brother, fires on house and business stock and murder of daughter. Last threat was in 2008. Applicants apply for asylum and a residence permit in Sweden, submitting documents, including identity papers, death certificate for daughter and a medical certificate for injury of husband who has open wound from shot. All applicants given interview by Migration Agency and application rejected, then ordered deportation. Applicants appealed to the Migration Court saying Iraqi authorities would be unable to protect them. Application fails. Under Swedish Aliens Act, refugees entitled to residence permit. Refugee includes person with fear of prosecution for political reasons. Alien must also not be deported if fear of torture or inhumane treatment, violation of Article 3 ECHR. Chamber dismisses Article 3 on basis of; applicant ceased threatened business, last attack was significantly long time previous in 2008 and that applicants had stayed in Iraq until 2010. European Court of Human Rights finds, although the Iraqi state can provide security to individuals regardless of volatile security system, when faced with the personal circumstances of applicants, the court is not convinced they would be protected. Courts find deportation could lead to violation of Article 3 ECHR.

Full decision [here](#).