



## Restriction of liberty in asylum proceedings I

### *Facts of the case*

Mr Magomed is a third-country national. On 17<sup>th</sup> September 2017 he applied for asylum in one of the Member States.

On 17<sup>th</sup> September 2017, upon lodging asylum application, Mr Magomed was placed in the detention centre in order to determine those elements on which the application for international protection was based which could not be obtained in the absence of detention, in particular since there was a risk of absconding of the applicant.

Mr Magomed appealed this decision. He claimed that asylum authorities were not planning to take any evidence with his presence required. Yet the court upheld the detention decision. His detention was further prolonged on the same basis. In total Mr Magomed spent 6 months in detention centre.

While in detention, Mr Magomed was not interviewed in an asylum proceeding. No evidence was taken with his presence.

After his release from detention negative asylum decision was issued based on the information given by Mr Magomed while lodging the asylum application and the general country of origin information gathered by authorities.

Mr Magomed wants to claim compensation for unlawful detention.

### *Arguments to be considered*

EU law provides strict limitations when it comes to the deprivation of liberty. The reception directive 2013/33/UE lists permissible grounds for the detention of asylum seekers. The need to determine those elements on which the application for international protection was based which could not be obtained in the absence of detention is one of the permissible grounds for detention.

The question to be considered is how individualized the need to obtain information from asylum seekers need to be established in order to deprive him of liberty.



## *Legal Framework*

### **Relevant European Law**

Reception directive. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

#### *Article 8. Detention*

1. *Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (8).*

2. *When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.*

3. *An applicant may be detained only: (...)*

*(b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant; (...)*

*The grounds for detention shall be laid down in national law. (...)*

#### *Article 9. Guarantees for detained applicants*

1. *An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.*

*Administrative procedures relevant to the grounds for detention set out in Article 8(3) shall be executed with due diligence. Delays in administrative procedures that cannot be attributed to the applicant shall not justify a continuation of detention.*

2. *Detention of applicants shall be ordered in writing by judicial or administrative authorities. The detention order shall state the reasons in fact and in law on which it is based.*

3. *Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention to be conducted ex officio and/or at the request of the applicant. When conducted ex officio, such review shall be decided on as speedily as possible from the beginning of detention. When conducted at the request of the applicant, it shall be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall define in national law the period within which the judicial review ex officio and/or the judicial review at the request of the applicant shall be conducted.*

*Where, as a result of the judicial review, detention is held to be unlawful, the applicant concerned shall be released immediately.*

*4. Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, as well as of the possibility to request free legal assistance and representation.*

*5. Detention shall be reviewed by a judicial authority at reasonable intervals of time, ex officio and/or at the request of the applicant concerned, in particular whenever it is of a prolonged duration, relevant circumstances arise or new information becomes available which may affect the lawfulness of detention. (...)*

## **National Law**

We assume that national law is essentially equivalent to the EU legislation.

## **Questions**

1. Is the Charter of Fundamental Rights applicable to third-country nationals placed in detention centres during asylum procedures?
2. Was the detention of Mr Magomed justified?