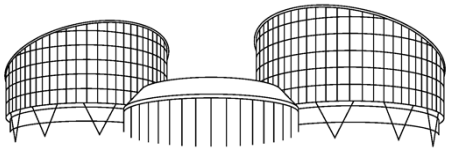

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MINASIAN AND OTHERS v. THE REPUBLIC OF MOLDOVA

(Application no. 26879/17)

JUDGMENT

Art 5 § 1 • Detention of minor children without a legal basis when they accompanied their mother into detention • Domestic courts' failure to examine whether children's detention a measure of last resort and whether detention centre appropriate for housing families with minor children
Art 5 § 4 • Inability of children to challenge lawfulness of their detention

STRASBOURG

17 January 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Minasian and Others v. the Republic of Moldova,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Pauliine Koskelo,
Frédéric Krenc,
Diana Sârcu,
Davor Derenčinović*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 26879/17) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Georgian nationals, Ms Eleonora Minasian and her three children ("the applicants"), on 5 April 2017;

the decision to give notice to the Moldovan Government ("the Government") of the complaints under Article 5 §§ 1 and 4 and to declare the remainder of the application inadmissible;

the fact that the Georgian Government did not express the wish to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court);

the parties' observations;

Having deliberated in private on 6 December 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the detention of the first applicant's children without a legal basis (Article 5 § 1 (f) of the Convention) when they accompanied their mother into detention. It also concerns the children's inability to take proceedings by which the lawfulness of their detention would be decided, in alleged breach of Article 5 § 4 of the Convention.

THE FACTS

2. The applicants were born in 1984, 2002, 2009 and 2012, respectively, and live in Tbilisi. The applicants were represented by Mr V. Ropot, a lawyer practising in Chișinău.

3. The Government were represented by their then Agent, Mr O. Rotari.

4. The facts of the case may be summarised as follows.

I. THE APPLICANTS' DETENTION AND THE DECISION TO EXPEL

5. The first applicant, Mrs Eleonora Minasian, her husband G. S. and their three children (applicants two, three and four) were lawfully on the territory of the Republic of Moldova, allegedly fleeing from persecution in their home country, Georgia. On 16 February 2017 the entire family illegally crossed the border between the Republic of Moldova and Romania. They were detained by the Romanian border police and returned to the territory of the Republic of Moldova. G. S., who was taken into pre-trial detention pending criminal proceedings against him, is not an applicant in the present case and the parties did not submit any further information about him.

6. On 17 February 2017 the Moldovan Bureau for Migration and Asylum ("the BMA") ordered the first applicant's return to Ukraine, from where she had come to the Republic of Moldova in the first place, because she had crossed over the frontier with Romania illegally. Her children were not mentioned in any manner in that decision.

7. On the same day the BMA asked a court to order the taking into public custody of the first applicant "accompanied by minors: [the names and birth dates of her three children]". In its request, the BMA mentioned, among other things, that the minors were cared for by the applicant and, in her absence, would be unaccompanied.

8. Also on 17 February 2017 the Central Office of the Chișinău District Court found that the BMA had ordered "the expulsion under escort of [the first applicant] from the territory of the Republic of Moldova". It added that the existence of such a decision, not yet enforced, constituted grounds for taking the first applicant into custody. It found that "since the decision to expel [the first applicant] was not enforced, the court concludes that it is necessary to accept the request to detain [the first applicant], accompanied by her minor children [names and birthdates] in custody". Lastly, the court noted that the legal basis for its decision was Article 64 (4) of Law No. 200 of 16 June 2010 on Foreigners in the Republic of Moldova ("Law No. 200") (see paragraph 18 below).

9. In her appeal, the first applicant's lawyer noted, among other things, that she was not given the assistance of a lawyer within three hours of being deprived of her liberty. He added that, in the absence of any effective protection, the three children had been completely defenceless in court from a legal point of view, in breach of the principle of equality of arms. He relied on Article 5 § 1(f) of the Convention and cited Article 64 (1) of Law No. 200 (see paragraph 18 below).

10. On 20 March 2017 the Chișinău Court of Appeal partly allowed the first applicant's appeal. It found that the lower court had observed the applicable law and that detention in custody had been necessary in the circumstances. In particular, the BMA had ordered the first applicant's expulsion under escort from the territory of the Republic of Moldova because

she had crossed the state border illegally. Moreover, she was not in any of the situations in which the law allowed her presence on the national territory to be tolerated. The first applicant had not contested and did not intend to contest her expulsion, did not have the financial means needed to leave, refused to voluntarily leave and thus created a risk of absconding so that her expulsion could not be enforced. All of these reasons made detention in custody necessary, since milder measures had not been effective. The court also noted that the first applicant had the care of her three children, did not have a permanent place of residence in the Republic of Moldova, and that given the risk of her absconding and the need to prepare her expulsion to Ukraine, detention in public custody (*luare în custodie publică*) was necessary. Moreover, the first applicant countersigned a document confirming that she had been informed of the above BMA decision and had not contested it. At the same time, the law (see paragraph 18 below) provided for the detention in custody of minors and of families with minors only as a last resort and for the shortest period possible. The lower court had not shown a need to detain the first applicant, accompanied by her minor children, for 90 days, which was not a short period of time. The court considered that a period of 60 days would have sufficed for the authorities to prepare the first applicant's expulsion, while reminding the BMA that detention in custody constituted deprivation of liberty, thus requiring proceedings to be held with the utmost urgency. Accordingly, the court found that "the period of detention in custody of the Georgian national [the first applicant] shall be reduced". It added that under Article 40 (4) of the Contraventions Code (*Codul contravențional*, see paragraph 20 below) the court could order the detention in custody of foreign nationals subject to an expulsion order or who had been declared undesirable. In the operative part of its judgment, the court gave a new decision reducing the period of detention in custody of the first applicant, accompanied by her minor children, to 60 days.

II. THE APPLICANTS' ASYLUM REQUEST AND REQUESTS FOR RELEASE

11. Following their being taken into custody on 17 February 2017, the applicants were placed in the Centre for the Temporary Placement of Foreigners (CTPF).

12. On 31 March 2017 the first applicant's lawyer informed the BMA that the first applicant had asked for asylum in the Republic of Moldova. He asked for the applicants' release from the CTPF and their placement in the Centre for the Temporary Placement of Asylum Seekers (CTPAS). He referred to the relevant legal provision stating that families with minor children should be detained in custody only as a measure of last resort and for the shortest time possible (see paragraph 18 below) and noted that the minors needed

social interaction with other children, walks and recreational activities which were unavailable in the CTPF.

13. In response, the BMA informed the lawyer that the first applicant had indeed requested asylum on 28 March 2017 and that her request for asylum was being considered.

14. On 13 April 2017 the first applicant was convicted of illegally crossing the state border and was ordered to pay a fine. She was eventually acquitted by the Supreme Court of Justice on 12 September 2018.

15. On 13 April 2017 the BMA asked the Central Office of the Chișinău District Court to extend the detention in custody of the first applicant, accompanied by her minor children, by 30 days. On 14 April 2017 that court extended the detention of the first applicant, accompanied by her children, by another 30 days, referring to the pending criminal proceedings against her and the pending request for asylum. It noted that the applicant had supported that extension.

16. On 5 May 2017 the BMA replied to the applicant's lawyer that the first applicant and the children could not be released in view of the first applicant's conviction on 13 April 2017 and of the extension of her detention in custody that had been ordered on 14 April 2017, a decision that the BMA had to enforce.

17. According to the Government, the applicants were released from custody on 11 May 2017. Their asylum request was refused on 25 September 2017 and the applicants left the country on 12 March 2018.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

18. Under Article 64 (1) of Law No. 200, in force since 24 December 2010, detention in public custody is a measure of deprivation of liberty taken by the court in respect of a foreign person who has not complied with a removal decision or who could not be removed, or who has illegally crossed or tried to cross the state border or returned to the Republic of Moldova while under a previously imposed prohibition against doing so, or whose identity could not be established, or who was formally declared undesirable or made subject to an expulsion order, or if there is a risk of that person's absconding.

Under Article 64 (4), as it was in force at the time (this provision was repealed on 23 December 2016 and was no longer in force at the time of the events), the court could make a reasoned order for detention in custody, on the request of the authority responsible for dealing with foreigners.

Under Article 64 (1) of the same law, minors and families with minors may be detained in custody only as a last resort and for the shortest possible period of time.

19. Both Article 6 of the Criminal Code of the Republic of Moldova (No. 985 of 2002) and Article 8 of the Contraventions Code of the Republic of Moldova (No. 218 of 2008) ("the Contraventions Code") establish the

principle of personal responsibility, whether in relation to a crime or a contravention, whereby a person can only be responsible for his or her own unlawful acts.

20. Under Article 40 of the Contraventions Code, a court may order the detention of a foreigner in custody if that person is subject to an expulsion order which cannot be executed immediately or has been required to return to their own country or has been declared undesirable.

21. As reported by Ombudsman after a visit to the CTPF on 28 September 2020, there was no psychologist, psychiatrist, social assistant or medical staff at that institution.

THE LAW

I. PRELIMINARY REMARKS

22. The Court first needs to determine, of its own motion and despite the Government not raising the issue, whether the first applicant's children can be considered applicants in the present case. Although the situation in respect of all the applicants was described, only the first applicant was mentioned as such in the application form.

23. In this connection, the issue in the present case is not whether the person lodging the application could do so in the name of another person, since a parent can clearly do so in the name of his or her minor children. Rather, the question is whether the application was actually made in those children's names.

24. The Court observes that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions, both procedural and substantive, be interpreted and applied so as to render its safeguards both practical and effective. In this context, the position of children under Article 34 deserves careful consideration, as they must generally rely on other persons to present their claims and represent their interests, and may not be of an age or capacity to authorise any steps to be taken on their behalf in any real sense. A restrictive or technical approach in this area is therefore to be avoided and the key consideration in such cases is that any serious issues concerning respect for a child's rights should be examined (see *Hromadka and Hromadkova v. Russia*, no. 22909/10, § 118, 11 December 2014, with further references, and *T.A. and Others v. the Republic of Moldova*, no. 25450/20, § 31, 30 November 2021).

25. In the present case, it is to be noted that in the factual part of the application the situation of the first applicant's children was described in detail along with that of their mother. Moreover, the complaints in the application form referred to the applicant and her children, while one of the complaints (about not providing the children with a separate lawyer and about failing to ask the eldest of the children, who was 14, whether she wanted to

be taken into custody with her mother) referred to the children exclusively. Moreover, copies of the children's passports were annexed, thus providing the Court with all the relevant information about each child. In the light of all these elements, the Court is of the opinion that the first applicant clearly expressed the intention of lodging an application in respect of the alleged breaches not only of her own rights but also of her children's. It therefore considers that the first applicant's children can be considered as being applicants in the present case.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1(f) OF THE CONVENTION

26. The applicants complained that their detention was contrary to the domestic law providing for the shortest possible period of detention of families with minor children. The children (applicants two, three and four) also complained that they had been detained in the absence of a decision ordering such detention and in conditions not suitable for them. In particular, they had not been the subject of any decision either by the BMA or the courts to expel them from the territory of the Republic of Moldova or to detain them in custody. They all relied on Article 5 § 1 of the Convention, the relevant part of which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> ..."

A. Admissibility

1. Standing

27. The Government argued that nothing in the file showed the agreement of the eldest of the first applicant's children (M. I.) to continue with the application once she reached the age of majority in 2020. She could thus be considered to have lost interest in the case.

28. In reply, M. I. sent a letter confirming her intention to continue with the application and a signed authority form for the lawyer representing all the applicants.

29. In the light of the material on the case file, the Court is satisfied that M. I. wishes to pursue the application lodged in her name by her mother. Accordingly, this objection must be dismissed.

2. Exhaustion of domestic remedies

30. The Government argued that the applicants had not exhausted available domestic remedies because they had failed to complain through the domestic courts, even in substance and without specifically mentioning the Convention, of any breaches of Article 5. In particular, no such complaint was made in the appeal filed by the applicants' lawyer against the court decision of 17 February 2017 (see paragraph 9 above). Moreover, they did not challenge in time the BMA decision concerning their return.

31. The Court considers that, despite relying among other things on Article 5 § 1(f) of the Convention, the first applicant did not properly raise the complaint concerning her deprivation of liberty in the domestic courts. Her lawyer focused squarely on her right to be defended by a lawyer within three hours of the start of her detention (see paragraph 9 above). Accordingly, this complaint is inadmissible due to the applicant's failure to exhaust domestic remedies, in accordance with Article 35 § 1 of the Convention.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention as far as it concerns the first applicant.

32. As for the first applicant's children (the second, third and fourth applicants), the Government argued that they had been affected in the same way as their mother by the relevant decisions of the BMA and the courts and that, therefore, they had also failed to exhaust available domestic remedies. The Court notes that Article 64 (1) of Law No. 200 (see paragraph 18 above) and Article 40 of the Contraventions Code (see paragraph 20 above) provide an exhaustive list of the situations in which a domestic court has the power to order the detention of a person in custody. It also notes that the BMA decision of 17 February 2017 concerned the first applicant exclusively and did not mention the children in any manner (see paragraph 6 above). Accordingly, the second, third and fourth applicants could not appeal against that decision since they were not concerned by it.

33. Moreover, the court decisions adopted on 17 February, 20 March and 14 April 2017 relied on the BMA decision (see, for instance, the decision of 17 February 2017, mentioned in paragraph 8 above, which expressly noted that the existence of the BMA decision to expel the first applicant under escort constituted the grounds for her detention in custody) and also concerned the first applicant (see the last quotation in paragraph 8 above). The reasons for ordering detention in custody were always expressed in terms of the first applicant's illegal border crossing, her refusal to return voluntarily to her own country, the risk of her absconding and her lack of means to fund her return (see paragraphs 8 and 10 above). This is most evident from the decision of 20 March 2017, which dealt only with the need to reduce the period of detention of the first applicant, without mentioning a similar reduction in the time her children would spend in custody, but which included the children in the operative part without any reasoning or analysis in respect of them (see paragraph 10 above). In none of those court decisions was there any finding

that the first applicant's children were in any of the situations listed in Article 64 (1) of Law No. 200, mentioned above, which allows for detention in custody. Nor was there any analysis of the existence of any other independent grounds for taking the children into the care of the public authorities, even though the BMA had expressly raised with the Central Office of the Chișinău District Court the issue of the children remaining unaccompanied (see paragraph 7 above). The children were only mentioned as accompanying the first applicant into detention and it was subsequently argued by the Government that had the mother been released, the children would have been released unconditionally (see paragraph 50 below). However, neither the domestic courts, nor the Government clarified the legal grounds for the detention of a person accompanying another detained person, without establishing, for each individual concerned, the need and reasons for his or her deprivation of liberty. Moreover, such "accompanying detention" would apparently also contravene domestic legal provisions concerning the strictly personal nature of criminal or contravention responsibility (see paragraph 19 above).

34. The Government referred to Article 64 (1) of Law No. 200 (see paragraph 18 above) as the basis for the children's detention. However, that provision only ensures an additional level of protection for families with minors, without removing the need to justify, for each individual detained, the legal basis for their detention as defined in Article 64 (1) of the same law.

35. In the absence of a decision either by the BMA or the courts establishing that the second, third and fourth applicants were in one of the situations provided in Article 64 (1) of Law No. 200 and were the subjects of a court decision expressly justifying their being taken into custody, as opposed to them simply accompanying their mother into such custody, the first applicant's children did not have an effective appeal available to them. Therefore the lawyer, who moreover had the express mandate of representing only the first applicant and not her children as well, could not pursue any effective remedy in their name as the reasons for the detention of the children remained unknown.

36. Accordingly, this objection must be rejected as far as it concerns the second, third and fourth applicants.

37. The Court notes that this complaint, raised by the second, third and fourth applicants, is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

38. The second, third and fourth applicants submitted that their detention had been unlawful. In particular, they had not been the subject of any decision either by the BMA or the courts to expel them from the territory of the

Republic of Moldova or to detain them in custody. However, they were detained with their mother despite the absence of any legal basis for that and in spite of legal provisions limiting detention of minors for the shortest possible period of time. Moreover, they were detained for 42 days in inappropriate conditions, given their needs to socialise with other children. The authorities did not even explore the possibility of placing the family in an environment where they could be together and at liberty. The applicants argued that the Chișinău District Court had wrongly noted their agreement for the extension of their detention on 14 April 2017 (see paragraph 15 above), whereas they had actually opposed to it.

39. The Government argued that the applicants had been detained in custody in accordance with the applicable domestic legal provisions. They had been the subject of the BMA expulsion order because they had crossed the national border illegally and thus posed a danger of absconding. Moreover, the minor children would have been unaccompanied if not kept together with their mother. The courts had accepted those arguments and had taken into account the best interests of the children when ordering them to be detained in custody, which was expressly regulated and allowed under Article 64 of Law No. 200. The first applicant's request for asylum did not have a suspensive effect. The duration of their custody was limited and the applicants themselves supported the extension of their custody on 14 April 2017.

40. The Court reiterates that any deprivation of liberty must be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008). To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (*A. and Others v. the United Kingdom* [GC], no. 3455/05, § 164, ECHR 2009).

41. The Court refers to its finding (see paragraphs 32-35 above) that the second, third and fourth applicants were not the subject of the BMA decision concerning the first applicant's expulsion from the country or of the court

decisions on her detention in custody, but merely accompanied their mother. Their detention thus lacked any legal basis.

42. The finding above is sufficient for the Court to establish a breach of Article 5 § 1 of the Convention. It nevertheless reiterates that the detention of young children in unsuitable conditions may on its own lead to a finding of a violation of Article 5 § 1, regardless of whether the children were accompanied by an adult or not (see, for instance, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, §§ 102-05, ECHR 2006-XI, *Muskhadzhiyeva and Others v. Belgium*, no. 41442/07, § 74, 19 January 2010, and *G.B. and Others v. Turkey*, no. 4633/15, § 151, 17 October 2019). The Court also notes that various international bodies, including the Council of Europe, are increasingly calling on States to expeditiously and completely cease or eradicate the immigration detention of children (see *G.B. and Others*, cited above, §§ 67-79 and 151). The Court has found that the presence in a detention centre of a child accompanying its parents will comply with Article 5 § 1 (f) only where the national authorities can establish that such a measure of last resort was taken after verification that no other measure involving a lesser restriction of their freedom could be implemented (see, for instance, *Popov v. France*, nos. 39472/07 and 39474/07, § 119, 19 January 2012; and *A.B. and Others v. France*, no. 11593/12, § 123, 12 July 2016).

43. In the present case, the courts made no analysis of whether the detention of the children in custody was a measure of last resort, as required by the law, since the courts did not devote any examination specifically to the children's situation. In particular, the courts did not even hear the eldest applicant, M. I., who was 14 years old at the time and had a good understanding of the situation. The courts did not consider whether the family could be kept together outside any detention setting or housed in another institution such as the CTPAS. In fact, the first applicant's lawyer expressly asked the BMA to transfer the family to that institution, at least after 28 March 2017 when the first applicant made an asylum request. Before replying, the BMA waited until the custody order had been extended and there is no evidence that it had informed the court of the change in the first applicant's situation as an asylum seeker.

44. There was also no analysis of whether the CTPF was appropriate for housing families with minor children, notably in respect of contacts with their peers, recreational and other activities, etc. (*Popov* § 119; and *Muskhadzhiyeva and Others* §§ 69-75, both cited above). In particular, it would appear that by 2020 the CTPF still lacked a number of the personnel important for the wellbeing of young persons, such as a psychologist and medical staff (see paragraph 21 above). Moreover, it has not been disputed that the minors did not have any opportunity to communicate with their peers or participate in recreational activities.

45. There has accordingly been a violation of Article 5 § 1 of the Convention in respect of the second, third and fourth applicants.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

46. The second, third and fourth applicants complained that they had not been able to bring or participate in proceedings by which the lawfulness of their detention would be decided. They relied on Article 6 § 3 of the Convention.

47. Being the master of the characterisation to be given in law to the facts of a case, the Court is not bound by the characterisation given by an applicant or a Government. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Şerife Yiğit v. Turkey* [GC], no. 3976/05, § 52, 2 November 2010, and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/10, §§ 123-26, 20 March 2018, and the references therein). The Court considers therefore that this complaint is to be examined under Article 5 § 4, which reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

48. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

49. The second, third and fourth applicants argued that they did not have at their disposal a procedure by which they could challenge the lawfulness of their detention. The first applicant's lawyer had not asked the Court of Appeal to reduce the period of detention in custody, but that court decided that issue of its own motion.

50. The Government submitted that all the applicants had had the opportunity to take proceedings by which the lawfulness of their detention would be decided. Moreover, they did precisely that and the Court of Appeal partly accepted their request and reduced the period of their detention in custody from 90 to 60 days (see paragraph 10 above). The applicants, including the minor ones, benefited from the assistance of a lawyer. Had the first applicant been released by the courts, her children would have been unconditionally released with their mother.

51. The Court reiterates that the notion of "lawfulness" under paragraph 4 of Article 5 has the same meaning as in paragraph 1, such that the detained

person is entitled to a review of his or her detention in the light not only of the requirements of domestic law but also of the text of the Convention, the general principles embodied therein and the aim of the restrictions permitted by Article 5 § 1. Article 5 § 4 does not guarantee a right to judicial review of such breadth as to empower the court, on all aspects of the case including questions of pure expediency, to substitute its own discretion for that of the decision-making authority. The review should, however, be wide enough to bear on those conditions which are essential for the lawful detention of a person according to Article 5 § 1 (see *Chahal v. the United Kingdom,* 15 November 1996, § 127, Reports of Judgments and Decisions 1996-V; *S.D. v. Greece*, no. 53541/07, § 72, 11 June 2009; and *Popov*, cited above, § 122).

52. The Court observes that the first applicant was able to challenge her detention before the domestic courts (see paragraph 9 above). However, it refers to its finding (see paragraphs 32-35 above) that the BMA decision did not mention the second, third and fourth applicants at all and that the court decisions analysed only the first applicant's situation, mentioning her children only as accompanying her into detention. In the absence of a decision finding that they were in one of the situations exhaustively described in Article 64 (1) of Law No. 200 and of court decisions giving reasons for their detention in custody, the second, third and fourth applicants could not properly challenge their detention. They were thus in a legal limbo for more than a month without an effective remedy at their disposal (see *G.B. and Others*, cited above, § 173; contrast with *Tarak and Depe v. Turkey*, no. 70472/12, § 45, 9 April 2019, where the minor was in fact directly concerned by the prosecutor's charges). In other words, their detention or release depended wholly on their mother's legal situation.

53. The Court thus finds that the second, third and fourth applicants were not guaranteed the protection required by the Convention (see, *mutatis mutandis*, *Popov*, cited above, § 124).

54. Accordingly, there has been a violation of Article 5 § 4 of the Convention in respect of the second, third and fourth applicants.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

Damage

56. The applicants claimed 40,000 euros (EUR) in respect of non-pecuniary damage only.

57. The Government considered that that sum was excessive.

58. Ruling on an equitable basis, the Court awards the second, third and fourth applicants jointly EUR 10,000 in respect of non-pecuniary damage, to be paid to their mother, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints made by the first applicant inadmissible, and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the second, third and fourth applicants;

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention in respect of the second, third and fourth applicants;

4. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros)**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President

APPENDIX

List of applicants:

Application no. 26879/17

No.	Applicant's Name	Year of birth/ registration	Nationality	Place of residence
1.	Eleonora MINASIAN	1984	Georgian	Tbilisi
2.	Ilona MINASIAN	2002	Georgian	Tbilisi
3.	Nicolozi SHEKLASHVILI	2009	Georgian	Tbilisi
4.	Sofia SHEKLASHVILI	2012	Georgian	Tbilisi