



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

THIRD SECTION

CASE OF O.R. v. GREECE

(Application no. 24650/19)

JUDGMENT

Art 3 (substantive) • Inhuman or degrading treatment • Unaccompanied minor with traumatic family history, asylum seeker, left to fend for himself for almost six months without access to stable accommodation and in extreme material poverty • Totally unsuitable environment in terms of safety, accommodation, hygiene, access to food and care, and unacceptable vulnerability • Failure to appoint a guardian and to expedite the applicant's placement in an appropriate structure, in breach of the domestic law applicable at the relevant time • Obligation on the State to provide for and protect the applicant, who came within the class of highly vulnerable members of society.

Prepared by the Registry. Does not bind the Court.

STRASBOURG

23 January 2024

FINAL

23/04/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of O.R. v. Greece,

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

Pere Pastor Vilanova, *President*,

Jolien Schukking,

Yonko Grozev,

Darian Pavli,

Ioannis Ktistakis,

Andreas Zünd,

Oddný Mjöll Arnardóttir, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 24650/19) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Afghan national, Mr O.R. (“the applicant”), on 8 May 2019;

the decision to give notice to the Greek Government (“the Government”) of the complaints concerning Articles 3 and 8 of the Convention,

the decision not to have the applicant’s name disclosed;

the parties’ observations;

Having deliberated in private on 12 December 2023,

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

INTRODUCTION

1. The application concerns, under Article 3 and Article 8 of the Convention, the living conditions experienced by the applicant in Greece; as an unaccompanied minor who had applied for international protection, he was allegedly left for almost six months without accommodation or access to basic necessities, and without a permanent legal guardian being appointed by the authorities.

THE FACTS

2. The applicant was born in 2003. He was represented by Ms M. Tzeferakou, a lawyer practising in Athens.

3. The Government were represented by their Agent’s Delegates, Ms A. Dimitrakopoulou and Ms O. Patsopoulou, advisors at the State Legal Council.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE ADMINISTRATIVE PROCEEDINGS

5. The applicant alleged that he had arrived in Greece in November 2018 as an unaccompanied minor.

6. It appears from documents submitted by the applicant that on 24 November 2018 his representative sent an email to the Piraeus Regional Asylum Office, informing it that the applicant was an unaccompanied minor living in Athens, and that he wished to request international protection. The Athens Public Prosecutor with responsibility for Minors and the National Service of Social Solidarity (“EKKA”) were notified by email on 26 and 29 November 2018, respectively, of these facts, and of the need to find accommodation for the applicant.

7. On 19 December 2018 the applicant filed a request for international protection at the Piraeus Regional Asylum Office, which registered it on the same day. In the form submitted to the authorities, the applicant stated that he did not wish to return to his country because his father, a drug addict, forced him to work there. He also explained that he had decided to travel to Greece in order to request family reunification with his mother, who lived in Germany.

8. On the same date the Piraeus Regional Asylum Office sent a request to the EKKA, asking it to find accommodation for the applicant. It also informed the Athens Public Prosecutor with responsibility for Minors of his request for international protection, the requests for accommodation and for the appointment of a permanent legal guardian, and the ongoing investigations into the possibility of family reunification with his mother in Germany.

9. In the form used to assess the best interests of the child for the purposes of the Dublin Regulation, submitted to the Court by the applicant, a social worker from the non-governmental organisation ARSIS testified on 8 and 12 February 2019 that the applicant had not grown up in a safe environment and had experienced traumatic treatment at the hands of his father and the latter’s family, including physical violence, being prevented from attending school and being forced to work. She also noted that during his stay in Athens he had slept in a church in the Agios Panteleimonas area, before being accommodated for some days by fellow countrymen, but that he was again homeless.

10. The applicant also submitted to the Court a copy of a letter dated 12 February 2019, in which his representative again alerted the authorities, including, in particular, the Athens Public Prosecutor with responsibility for Minors, that he was living in precarious conditions and was homeless. She also informed them that he was at that time staying “informally”, that is, without authorisation, in the Malakasa camp, where he did not feel safe, having been subjected to attempted sexual harassment.

11. According to the documents submitted by the applicant, on 30 April 2019 his representative sent a follow-up email to the EKKA, stating that he

still required safe accommodation. Attached to this email was an undated note from a psychosocial case-worker who had assessed the applicant at the representative's request. The note stated that the applicant's paternal family had mistreated him in Afghanistan – where, in his submission, he was living when he was two; in particular, he had been forbidden to attend school. It also stated that in Iran where, according to the applicant, he had been moved at the age of ten – his father, who was a violent drug addict, had forced him to work to fund the latter's drug habit. It was also stated that the applicant was a minor at high risk, lacked suitable accommodation and had been sexually harassed by adults on two occasions.

12. On 10 May 2019 a place was set aside for the applicant in a reception facility for unaccompanied minors in Athens, which he entered on 16 May 2019.

13. On 14 June 2019 the applicant's request for international protection was declared inadmissible, on the grounds that a procedure for family reunification with his mother, who lived in Germany, was ongoing. The applicant stayed in the above-mentioned facility until 25 September 2019, when he left Greece for Berlin.

II. LIVING CONDITIONS

A. The applicant's version

14. The applicant alleged that from the time he arrived in Greece in November 2018 until 10 May 2019 he was subjected to very stressful and inappropriate conditions that were unsuited to his personal situation.

15. He maintained, in particular, that he had not had access to safe and suitable accommodation. In this connection, he stated that he had been obliged to spend several nights outside on Agios Panteleimonas Square in Athens, and had been placed for several days in overcrowded houses, in the company of adult men. He also mentioned having slept for a few nights, without authorisation, in the Skaramagas and Malakasa camps, either on the floor of rooms reserved for adult men, or outdoors, for fear of being detected by the camps' security staff. He submitted that he had been homeless over the winter months and had suffered from the cold and from bad weather.

16. He also claimed that he had not had access to drinking water, food, heating, warm water or toilets. This had prevented him from maintaining personal hygiene and from looking after his physical and mental health. In view of his lack of resources, the NGO ARSIS had helped him to obtain clothing and food. He added that he had been unable to access educational facilities or any other activities for minors.

17. He also alleged that he had been sexually harassed by adults on two occasions during this period, and that he had raised this with his ARSIS psychosocial case-worker.

18. The applicant further submitted that he had developed psychological problems on account of his reception conditions in Greece and his past trauma, and that he had unsuccessfully requested psychological support.

19. He also noted that, despite his status as a minor, the Public Prosecutor with responsibility for Minors, as his temporary legal guardian, had never assigned him a permanent guardian, and no guardianship measures had been taken in his best interests.

20. He claimed to have felt afraid, unsafe, desperate and lonely, due to what he perceived as the authorities' indifference, and considered that during this period he had been unable to live a dignified life.

21. Lastly, he argued that he had fallen within the "class of highly vulnerable members of society", given his situation as a young foreign national in an unfamiliar country, who was an irregular migrant, unaccompanied and thus left to fend for himself. In consequence, the treatment inflicted on him by the authorities, particularly the situation of homelessness and the lack of permanent guardianship for over five months, had placed him at serious risk, and had been humiliating and degrading.

B. The Government's version

22. The Government maintained that the authorities had taken the appropriate available measures in order to ensure that the applicant had suitable living conditions and protection.

23. In particular, they alleged that during the period when the applicant had been living, without authorisation, in the Malakasa and Skaramagas camps, he had had access to the services provided as part of the general procedures for reception, protection, interpreting and alternative education, and to the protection services for vulnerable individuals and children; the latter bodies dealt with psychosocial support, legal information and representation for unaccompanied minors. They added that the applicant had also had access to the food and health services in both of these structures, explaining that all of the above-mentioned services were also provided to unregistered residents.

24. The Government also pointed out that, under national law, the applicant had enjoyed free access to public health services, even before lodging the request for international protection.

RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Law no. 4540/2018

25. Law no. 4540/2018 of May 2018, which transposed EU standards for persons seeking international protection (Directive 2013/33/EU (recast)), provided as follows at the relevant time:

Article 21

Minors (Article 23 of Directive 2013/33/EU)

“1. The best interests of the child shall be a primary consideration for the competent authorities when implementing the provisions of the present Law. The competent authorities shall ensure a standard of living adequate for the minor’s physical, mental, spiritual, moral and social development. In assessing the best interests of the child, the competent authorities shall in particular take due account of the following factors: family reunification possibilities; the minor’s well-being and social development, taking into particular consideration the minor’s background; safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking; the views of the minor in accordance with his or her age and maturity.

2. The competent authorities shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

3. The competent authorities shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres and to open-air activities.”

Article 22

Unaccompanied Minors (Article 24 of Directive 2013/33/EU)

“1. Any competent authority establishing the entry of an unaccompanied or separated minor into Greek territory, including in particular the competent authorities at the points of entry into Greek territory, shall notify without delay the nearest public prosecution authority and the competent authority for the protection of unaccompanied and separated minors.

2. The reception and identification service shall be responsible for the reception and identification of unaccompanied minors in the reception and identification centres. In this context, it shall also ensure, through the competent public prosecutor, that the care of the separated minor is assigned to an adult relative, where this is deemed to be in the minor’s best interests. This relative shall act as representative of the minor and shall perform the duties assigned by the competent public prosecutor.

3. The Directorate-General for Social Solidarity in the Ministry of Labour, Social Security and Social Solidarity is designated as the competent authority for the protection of unaccompanied minors and separated minors. It shall:

a. immediately take appropriate measures to comply with the obligations incumbent on it under the present Law and to ensure that unaccompanied minors and separated minors are properly represented, thus securing their ability to exercise their rights and comply with the obligations provided for in the present Law.

To that end, the competent authority shall take the necessary actions to ensure the appointment of a representative by the prosecutor with territorial jurisdiction, and shall immediately inform the unaccompanied minor of the appointment of this representative. Where a legal entity is appointed as representative, it shall select a natural person from among its members to perform the duties of representative. The competent authority for the protection of unaccompanied minors and separated minors shall assess on a regular basis the appropriateness of representatives and the methods used to ensure representation of unaccompanied minors;

b. trace the members of the unaccompanied or separated minor's family, with the assistance of accredited bodies and organisations, as soon as possible after an application for international protection has been lodged. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety;

c. ensure the placement of unaccompanied minors with a foster family and provide supervision;

d. ensure that unaccompanied minors are assigned to accommodation centres for unaccompanied minors or to other accommodation centres with special provision for minors, that they are escorted to such structures and reside in them for as long as the unaccompanied minors stay in the country or until they are placed with a foster family or in supervised accommodation. Changes of residence of unaccompanied minors shall be limited to a minimum and shall only take place where it is absolutely necessary;

e. ensure that minors are accommodated with their adult relatives or other adults suitable to undertake their care, if this is in the minors' best interests and provided that the formal legal procedures for placing the minor in those persons' care have been followed;

f. ensure that siblings are accommodated and live together, taking into account the age, gender, degree of maturity and best interests of the minor concerned;

g. ensure accommodation of unaccompanied minors over 16 years old in supervised housing, without prejudice to their protection as minors. The supervisory bodies, the minimum specifications, the terms and procedures for selection, referral, accommodation or termination of the housing provided and all pertinent details shall be regulated by decision of the Minister of Labour, Social Security and Social Solidarity.

4. Persons working for bodies responsible for handling cases of unaccompanied minors and separated minors shall be adequately and regularly trained on the needs of minors. Those persons shall be bound by a code of conduct and by confidentiality rules in relation to personal data they obtain in the performance of their duties or in the course of their work.

5. The representative of an unaccompanied minor appointed pursuant to paragraph (1)(a) must have the necessary knowledge and experience to carry out his or her duties in a manner that serves the minor's best interests and general well-being. An individual whose interests conflict or could potentially conflict with those of the

unaccompanied minor shall not be eligible to be appointed as a representative. A person appointed as representative may be replaced by the authority referred to in paragraph 1 only when this person is unable to represent the minor for practical or legal reasons.”

B. Presidential Decree no. 220/2007

26. Presidential Decree no. 220/2007 transposed into Greek law European Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in Member States. It was abrogated by Law no. 455/2018, which was enacted on 18 July 2018 and entered into force on 1 March 2020, and which set out a new regulatory framework for the guardianship of unaccompanied minors. However, Article 19 of the Decree remained in force as Article 30 § 6 of Law no. 4540/2018, before subsequently being abrogated. At the relevant time Article 19 was worded as follows:

“1. The competent authorities shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors. To this end, they shall inform the Public Prosecutor for Minors and, when no such position exists, the public prosecutor at the territorially competent court of first instance, who shall act as a temporary guardian and take the necessary steps for the appointment of a guardian.”

C. Law no. 4375/2016

27. Law no. 4375/2016, applicable at the relevant time, transposed Directive 2013/32/EU of the European Parliament and of the Council on “common procedures for granting and withdrawing international protection (recast)”. It provided, *inter alia*, as follows:

Article 45 (Article 25 of the Directive) Requests from unaccompanied minors

“1. When an unaccompanied minor lodges an application, the competent authorities shall take measures to appoint a guardian, pursuant to Article 19 (1) of Presidential Decree 220/2007. The unaccompanied minor shall be informed immediately about the identity of the guardian. The guardian shall represent the minor, ensure that his or her rights are safeguarded during the asylum procedure and that he or she receives adequate legal assistance and representation before the competent authorities. The guardian or an individual exercising specific guardianship powers shall ensure that the unaccompanied minor is duly informed in a timely and adequate manner, especially about the meaning and possible consequences of the personal interview, and how to prepare for it. The guardian or an individual exercising specific guardianship powers shall be invited to and may attend the minor’s interview, and may submit questions or make observations to facilitate the procedure. The presence of the unaccompanied minor may be considered necessary at the personal interview, even if the guardian or an individual exercising specific guardianship powers is present.

2. The persons responsible for conducting interviews with unaccompanied minors and taking relevant decisions shall have the necessary knowledge regarding the special

needs of minors, and shall conduct the interview in such a way that the applicant fully understands its content, taking account, in particular, of his or her age.

...

8. Ensuring the child's best interests shall be a primary obligation when implementing the provisions of this article.

..."

Article 50
(Article 24 of the Directive)
Applicants in need of special procedural guarantees

1. "The Receiving Authorities shall assess within a reasonable period of time after an application for international protection is made, or at any point of the procedure if deemed necessary, whether the applicant is in need of special procedural guarantees, in particular where there are indications or allegations that he or she is a victim of torture, rape or other serious forms of psychological, physical or sexual violence.

2. Where applicants have been identified as being in need of special procedural guarantees, they shall be provided with adequate support in order to allow them to benefit from the rights and comply with the obligations [laid down in] this part [of the Law]. Applications for international protection from persons in need of special procedural guarantees shall always be examined under the regular procedure."

D. Code of Administrative Procedure

28. The relevant part of Article 210 of the Code of Administrative Procedure is worded as follows:

"A person who has lodged an appeal or brought an action may apply to the court for interim measures ..."

E. Code of Civil Procedure and Introductory Law to the Civil Code

29. Article 682 of the Code of Civil Procedure states:

"1. In accordance with the special procedure set out in Articles 683 to 703, the courts may, in urgent cases or in order to avert an imminent danger, order the adoption of interim measures for the purpose of safeguarding or maintaining a right or resolving a situation, and may review and withdraw those measures. This right may be subject to a condition or a time limit, or may concern a future claim.

2. Interim measures may also be ordered during the proceedings in the main case."

30. Article 105 of the Introductory Law to the Code of Civil Procedure provides:

"The State shall be under a duty to make good any damage caused by the unlawful acts or omissions of its organs in the exercise of public authority, except where the unlawful act or omission is in breach of an existing provision but is intended to serve the public interest. The person responsible and the State shall be jointly and severally liable, without prejudice to the special provisions on ministerial responsibility."

II. RELEVANT INTERNATIONAL LAW AND THE FINDINGS OF INTERNATIONAL ORGANISATIONS

A. The Convention on the Rights of the Child of 20 November 1989, ratified by Greece on 11 May 1993

31. The relevant articles of this Convention are set out in the cases of *Rahimi* (cited above, § 33) and *Khan v. France* (no. 12267/16, § 38, 28 February 2019).

B. Texts adopted by Council of Europe bodies

1. *The report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018, dated 19 February 2019*

32. Expressing its concerns about the accommodation for unaccompanied child migrants to continental Greece, the CPT stated, in particular:

“122. ... As of 31 May 2018, out of the estimated number of 3,500 unaccompanied children currently in Greece, less than 1,000 were accommodated in dedicated shelter facilities.

...

As a result, the number of unaccompanied and separated children on the waiting list has soared to more than 2,700.

...

That said, in their communication of 3 July 2018, the Hellenic Police re-affirmed that the issue of unaccompanied children was a matter of special concern. Its Headquarters had long requested the establishment of a national strategy for the management of unaccompanied children, the reform of the institution of guardianship and the creation of more specialised shelters for unaccompanied children but all these matters were still pending implementation in practice.

...

The CPT reiterates its previous recommendation that the Greek authorities pursue their efforts to increase significantly and rapidly the number of dedicated open (or semi-open) shelter facilities for unaccompanied children.”

2. *The European Committee of Social Rights*

33. In its decision of 26 January 2021 on the merits of the case *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece* (no. 173/2018), the European Committee of Social Rights held:

“137. ... from the complainant organisations’ submissions that two out of three unaccompanied children on the mainland are deprived of an age-appropriate reception/accommodation place and that a significant number of these children are

homeless or living in substandard conditions in hotels or open accommodation centres. According to the EKKA data of 30 September 2018, 2,363 unaccompanied children were on the waiting list for a shelter, out of which 272 resided under informal housing arrangements and 451 reported as homeless.

138. ... from the UNCHR's submissions that despite some progress concerning the institutional framework and the development of more holistic models of care arrangements for unaccompanied children, deficiencies in the number, type and quality of care arrangements available for these children remain. UNCHR submits that according to the EKKA (31 May 2019), there were 2,858 children outside the long term care system, including 1,060 in informal and insecure housing conditions or homeless. UNCHR draws attention to the fact that a significant number of unaccompanied children (27%) are homeless or living in informal or insecure housing.

...

141. ... [T]he situation of unaccompanied children has not improved. According to more recent data from the EKKA (15 May 2020), the estimated overall number of unaccompanied children present in Greece was 5,028 including 341 separated children. Out of these, 1,485 were in long term accommodation (unaccompanied children shelters and SIL apartments) and 589 in temporary accommodation (Safe Zones and emergency hotels). Besides those in other types of emergency or temporary facilities (1,987 children in emergency unaccompanied children accommodation sites, open temporary accommodation facilities, RICs and protective custody), 967 unaccompanied children were reported as living in informal/insecure housing conditions such as living temporarily in apartments with others, living in squats, being homeless and moving frequently between different types of accommodation. Although these data refer to the overall situation of unaccompanied children in Greece, the Committee understands that the majority of the children living on the streets or homeless are on the mainland following their transfer from one of the RICs, having regard also to the specific allegations put forward in the complaint.

142. ... the fact that a significant number of unaccompanied children are homeless or live in informal/insecure housing conditions show that the shelter provided for these children on the mainland fails to fulfil the requirements of Article 31§2 in terms of quantity or capacity. The Committee is therefore of the view that Greece fails to guarantee the right to shelter for unaccompanied migrant children, for the purpose of preventing and reducing homelessness, in breach of Article 31§2.

...

191. The Committee does not have any information at its disposal to indicate that the authorities do not react properly to specific allegations of sexual violence, abuse, sexual exploitation or trafficking concerning migrant children, for instance by opening a criminal investigation into such allegations. It considers however that the persistent failure to provide appropriate accommodation and care to a significant proportion of such children exposes them to serious physical and moral dangers, which can consist of abuse, violence, including sexual and gender-based violence, sexual exploitation and trafficking."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 8 OF THE CONVENTION

34. Relying on Articles 3 and 8 of the Convention, the applicant complained of his living conditions, which he considered to have been inadequate. In particular, he complained of a lack of stable housing and basic material necessities, and about the domestic authorities' failure to assign him a permanent guardian.

35. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), finds it more appropriate to examine the applicant's grievances under Article 3 of the Convention. Article 3 reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. *The Government's objection as to lack of victim status*

36. The Government submitted that the applicant did not have victim status. They criticised, in particular, the fact that he had not informed the authorities in a timely manner, specifically when entering the country, about his status as an unaccompanied minor; nor had he clarified the exact date and circumstances of his arrival in Athens. They also considered that the applicant had not produced sufficient evidence about where he had stayed, in order to confirm the alleged living conditions. They maintained that when the applicant contacted the authorities, they had immediately provided age-appropriate support, arguing that he had been placed in an accommodation centre for minors very quickly after his request for international protection was registered. The Government also invited the Court to strike the case out of its list, stating, without further clarification, that the dispute in question had already been resolved and that further examination of the case was not justified.

37. The applicant replied that he did indeed have victim status. He alleged that, for five months, he had experienced inadequate reception conditions, vagrancy, desperation, poverty, lack of safety and the absence of appropriate guardianship. In his view, this situation amounted to a breach of his rights, which the authorities had neither acknowledged nor rectified.

38. The Court considers that the Government's objection forms part of the examination of the merits of the complaint raised by the applicant under

Article 3 of the Convention. It decides therefore to join this objection to the merits.

2. The Government's objection as to the non-exhaustion of domestic remedies

(a) The parties' submissions

39. The Government submitted that the request was inadmissible for non-exhaustion of domestic remedies. In this connection, they argued that the applicant had not immediately presented himself to the competent administrative authorities upon entering the country; he had not informed them about the crucial details of his personal situation; and he had not applied to benefit from the living conditions to which he was entitled under the applicable domestic and European law. As such, the Government argued that the defendant State had not been given the opportunity to recognise and rectify, as necessary, the alleged violations of the Convention.

40. They also explained that, in the event of negligence by the administrative authorities, and depending on the nature of the complaint, a request for interim measures could be made at a civil court under Articles 682 and 683 of the Code of Civil Procedure. Alternatively, proceedings to obtain an interim judgment could be initiated before an administrative court under Article 210 of the Code of Administrative Procedure. They added that the applicant himself or his representatives, after having received permission from the prosecutor at the first-instance court (acting in his or her capacity as temporary guardian), could have exercised the said remedies.

41. In their additional observations, the Government, taking the view that all of the applicant's requests had been dealt with in fine at domestic level, submitted for the first time that he could have brought an action for damages against the State under Article 105 of the Introductory Law to the Civil Code, in respect of the non-pecuniary damage he claimed to have sustained.

42. The applicant responded that he had done everything that could reasonably have been expected of him in order to satisfy the requirement that he exhaust domestic remedies. Referring to the statement of facts that he had submitted to the Court, he alleged that he had made himself known to the competent administrative authorities as early as 24 November 2018, that is, as soon as possible after his arrival in Greece, and had informed them, through his representative, of his personal situation and his need for protection, including with regard to accommodation and the appointment of a permanent guardian.

43. As to the remedies before the administrative courts cited by the Government, he argued that no such action could be taken in cases where an appeal or main proceedings were pending. Thus, in his view, the national legislation did not provide for any remedies by which he could have challenged the reception and living conditions that had been imposed upon

him, or the shortcomings, amounting to ineffectiveness, in the temporary guardianship arrangement. He also argued that the civil courts had not had jurisdiction to examine living conditions and that, accordingly, any request for an interim measure on the basis of the Code of Civil Procedure would have been inadmissible. He added that, in view of his lack of legal capacity, any legal proceedings should have been brought on his behalf by the Public Prosecutor with responsibility for Minors, acting as his temporary guardian, and represented by a lawyer empowered to do so. On this point, he noted that the prosecutor in question had taken no measures to ensure his representation or protection.

(b) The Court's assessment

44. With regard to the Government's allegation that the applicant did not make himself known to authorities immediately upon entering the country, the Court considers this to be irrelevant for the purposes of the exhaustion of domestic remedies. The Court notes that from 24 November 2018 onwards, the applicant, via his representative, approached the competent administrative authorities on several occasions, in order to inform them of his presence in Athens, his personal situation (especially his status as an unaccompanied minor), his need for protection and his intention to request international protection. The Court also notes that between the above date and 30 April 2019 the applicant's representative alerted the administrative authorities several times to the applicant's living conditions, particularly with regard to housing. It also observes that the Government have not specified what additional remedies the applicant should have pursued, or could have used when entering the country, to bring to the administrative authorities' attention his personal situation, need for protection and living conditions. The Court accordingly dismisses this limb of the Government's preliminary objection.

45. As to the remedies available before the civil or administrative courts, the Court notes that interim measures are inextricably linked to remedies and main proceedings, and will depend on their merits (for the interim resolution of a situation under Article 210 of the Code of Administrative Procedure, see *Pitsiladi and Vasilellis v. Greece*, nos. 5049/14 and 5122/14, § 32, 6 June 2023). On this point, the Court considers the Government's objection to be vague and unsubstantiated, given that they do not specify which remedies or main proceedings were available to the applicant in relation to the interim measures in question, the nature of those remedies or proceedings, or, lastly, the relevant provisions of national legislation governing them. In any event, the Government have not provided any examples of judgments in which the complainants had obtained appropriate redress for Convention violations under similar circumstances. The second limb of the objection must therefore also be dismissed.

46. With regard to an action for damages under Article 105 of the Introductory Law to the Civil Code, the Court notes that the Government

raised the applicant's failure to pursue this remedy for the first time in their additional observations and submissions on just satisfaction on 29 March 2022. The Court reiterates that under Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X). In the present case, the Government did not clearly refer to Article 105 of the Introductory Law to the Civil Code in support of the objection of non-exhaustion of domestic remedies raised in their observations of 18 November 2021. Moreover, the applicant's failure to bring an action for damages under Article 105 of the Introductory Law to the Civil Code was addressed for the first time by the respondent party in their additional observations and submissions on just satisfaction. The Court further notes that during the proceedings before it the Government did not indicate any obstacle that might have prevented them from referring, in their initial observations on the admissibility and merits of the case on 18 November 2021, to the applicant's failure to make use of the remedy set out in that provision. It considers therefore that the Government are estopped from raising an objection in respect of the applicant's failure to use this domestic remedy applicant (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 51-54, 15 December 2016).

47. In any event, the Court reiterates that Article 105 of the Introductory Law to the Civil Code is a cross-sectoral provision of Greek law which applies to numerous situations. In the context of an action brought under this Article, the courts examine, as an incidental issue, whether there was an illegal act or an omission on the part of the authorities, and, where they find this to have been the case, they award the claimant compensation in respect of non-pecuniary damage (see *A.F. v. Greece*, no. 53709/11, § 55, 13 June 2013). Thus, the action or damages provided for in Article 105 is inextricably linked to the provisions of a legislative or regulatory text, which, moreover, must be worded in sufficiently precise terms and guarantee "justiciable" rights (see *De los Santos and de la Cruz v. Greece*, nos. 2134/12 and 2161/12, § 34, 26 June 2014).

48. In the present case, the Court notes that the Government have not explained which unlawful acts or omissions the national authorities had allegedly committed. Nor do they indicate which relevant provision of national legislation should have been relied on in support of an action for damages under Article 105, or specify if this amounted, in the applicant's case, to a solid legal basis that would guarantee a "justiciable" right. The Court also notes that the Government have not submitted judgments whereby individuals in a similar situation to that of the applicant were awarded damages on account of having been subjected to inadequate living conditions. In the light of the above considerations, the Court is not convinced that an action for damages under Article 105 of the Introductory Law to the Civil

Code, based on the allegedly inappropriate living conditions, would have had reasonable prospects of success or offered suitable redress at the relevant time.

49. 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

1. The parties' submissions

50. Referring to the statement of facts that he had submitted to the Court, the applicant criticised the authorities' inertia in assisting him pending a response to his request for accommodation, although, in his submission, they had been aware that he was homeless or residing, without authorisation, in the Malakasa and Skaramagas camps.

51. In this last respect, he submitted that, without authorisation to stay in these camps, he had not had access to any services, food or support. He alleged that he had, however, been permitted to sleep on the floor of tents or containers, with adults, some of whom, by his account, had sexually harassed him. He pointed out that no measures had been taken to regularise his stay in the camps on a temporary basis, or at the very least to provide him with food and a sleeping bag, and that no steps had been taken to relocate him to a safe zone adapted to his needs. He added that the authorities had not retained any individualised record of his stay in the camps, although, in his argument, it was incumbent on them to identify and keep track of the unregistered minors who were living there.

52. He also argued that the fact of being deprived of stable accommodation and appropriate guardianship had affected his right to access healthcare, explaining that his previous traumatic experiences, taken together with two incidents of sexual harassment, had caused his mental health to deteriorate.

53. He also criticised the Public Prosecutor with responsibility for Minors, in his capacity as temporary guardian, for his failure to address the situation.

54. He stated that his case was not isolated and that the Greek authorities systematically refused to take adequate charge of unaccompanied migrant minors, particularly with regard to accommodation and guardianship.

55. For their part, the Government submitted that, given the extreme difficulties caused by the growing number of unaccompanied minors entering the country illegally at the relevant time, the authorities had provided the applicant with suitable living conditions. The Government also considered that the applicant's allegations concerning his living conditions were vague and unsubstantiated, particularly those pertaining to his unauthorised presence in the Malakasa and Skaramagas camps. They asserted that in these camps the applicant had had access to basic necessities, particularly food and

healthcare, and to protection services for vulnerable groups, which, in their submission, were also provided to unregistered persons. For those reasons, the Government considered that the threshold of severity required for the application of Article 3 of the Convention had not been met.

2. *The Court's assessment*

56. The Court has held on numerous occasions that to fall within the scope of Article 3 treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, including the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 219, ECHR 2011; *Tarakhel v. Switzerland* [GC], no. 29217/12, § 94, ECHR 2014 (extracts); *Khan v. France*, no. 12267/16, § 72, 28 February 2019; and *N.H. and Others v. France*, nos. 28820/13 and 2 others, § 158, 2 July 2020).

57. The obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment. Article 3 taken in conjunction with Article 1 must therefore enable effective protection to be provided, particularly to children and other vulnerable persons, and include reasonable measures to prevent ill-treatment of which the authorities had or should have been aware (see, among many other authorities, *Khan*, cited above, § 73, and *Rahimi v. Greece*, no. 8687/08, §§ 60 and 62, 5 April 2011).

58. The Court further notes that in cases concerning the reception of foreign minors, whether accompanied or unaccompanied, it has to be borne in mind that the child's extreme vulnerability is the decisive factor and takes precedence over considerations relating to his or her status as an illegal immigrant (see *N.T.P. and Others v. France*, no. 68862/13, § 44, 24 May 2018, and *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 55, ECHR 2006-XI).

59. The Court also points out that it has already examined living conditions in Greece for asylum seekers who were left to fend for themselves and lived for long months in a state of extreme poverty (see *M.S.S.* (cited above); §§ 263-264; *Rahimi* (cited above), §§ 92-94; and *Al. K. v. Greece*, no. 63542/11, §§ 59 and 62, 11 December 2014). In particular, the *M.S.S.* judgment stated as follows:

“... in view of the obligations incumbent on the Greek authorities under the Reception Directive ..., the Court considers that the Greek authorities have not had due regard to the applicant's vulnerability as an asylum-seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any

means of providing for his essential needs. The Court considers that the applicant has been the victim of humiliating treatment showing a lack of respect for his dignity and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation. It considers that such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of Article 3 of the Convention.”

60. The Court deems these considerations to also be relevant to the circumstances of the present case (see *N.H. and Others v. France*, cited above, §§ 161-162 and 164, and *Tarakhel v. Switzerland* [GC], no. 29217/12, §§ 96-98, 4 November 2014).

61. It observes, first, that the Government argue that the applicant made himself known to the authorities on 19 December 2018, the date on which he lodged his request for international protection. However, it is clear from the copies of emails submitted by the applicant that the Greek authorities had already been informed of his personal situation and his need for accommodation on 24, 26 and 29 November 2018 (see paragraph 6 above). The Court also notes that after those dates, the applicant alerted the authorities on several occasions about his situation, particularly with regard to accommodation (see paragraphs 10 and 11). It notes that on 19 December 2018 the authorities themselves sent a request for accommodation to the National Service of Social Solidarity (see paragraph 8). However, it was not until 16 May 2019 that the applicant was placed in a reception centre for unaccompanied minors in Athens (see paragraph 12), that is, almost six months after he first informed the authorities that he needed somewhere to live.

62. The Court is aware of the complexity of the task faced by the domestic authorities, particularly given the number of unaccompanied minors who were entering the country at the material time. However, given the absolute nature of Article 3, this cannot absolve a State from its obligations under that provision (see *N.H. and Others v. France*, cited above, § 157, and *M.S.S.*, cited above, § 223).

63. The Court considers that the situation in which the applicant found himself was particularly serious. It observes in this regard that the authorities left him to fend for himself, without access to stable housing, for several months, including over the winter. He explained that he had spent the nights either homeless in the squares of Athens, or in precarious and unofficial accommodation that he entered of his own volition, without authorisation from the authorities and without benefitting from the associated support services. The Court notes that, in consequence, the applicant lived for almost six months without being able to meet any of his most basic needs, given that it was impossible for him to obtain food, wash himself or find shelter. He was therefore in extreme material poverty, although the Greek authorities were under an obligation to provide him with decent living conditions under the

express provisions of the relevant national legislation transposing European Union law, namely the Reception Directive (see paragraph 25 above).

64. On this point, the Court considers the applicant's allegations to be corroborated by the CPT's report as well as by the observations of the European Committee of Social Rights (see paragraphs 32 and 33 above), which show that the situation described by the applicant existed on a large scale at the relevant time and was the everyday lot of a large number of asylum seekers with the same profile as that of the applicant.

65. Moreover, the Court notes, with regard to the Malakasa camp, that on 19 February the applicant informed the authorities that he did not feel safe there and that he had been subjected to attempted sexual harassment (see paragraph 10 above). It refers in this connection to the psychosocial assessment sent to the EKKKA on 30 April 2019, which stated that the applicant had been the victim of sexual harassment by adults in the camp on two occasions (see paragraph 11). It observes that the Government did not contest either this allegation by the applicant or the corresponding passages in the psychosocial assessment. In the Court's opinion, these factors undermine the Government's argument that the applicant had access to healthy living conditions in the camps. On the contrary, they point to a situation of vulnerability, lack of safety, and material and psychological deprivation, which was such as to seriously affect the applicant's already fragile mental state and undermined the very essence of human dignity.

66. The Court further notes that when the applicant lodged his application for international protection, he informed the authorities about his traumatic family history, which was also confirmed in the social worker's assessment report of 8 and 12 February 2019 (see paragraphs 7 and 9 above). The authorities had therefore been aware as early as 19 December 2018, the date on which the application for international protection was registered, that the applicant was particularly vulnerable.

67. It does not appear from the case file, however, that the authorities, and especially the Public Prosecutor with responsibility for Minors, in his capacity as temporary guardian, took any subsequent steps to comply with the obligations arising, in particular, from Article 19 of Presidential Decree no. 220/2007, by appointing a guardian and expediting his placement in an appropriate facility (see paragraphs 26 and 27 above).

68. The Court is therefore not convinced that the competent authorities, who failed to provide the applicant with living conditions appropriate to his needs for a particularly long period, namely almost six months, did everything that could reasonably have been expected of them to fulfil the respondent State's obligation to provide care and protection to the applicant, since he was an unaccompanied minor and irregular migrant, claiming to be the victim of a violent and traumatic family history, that is, an individual falling within the class of highly vulnerable members of society.

69. Having regard to the conclusions it has reached above, the Court considers that from 24 November 2018 to 16 May 2019, the applicant was left to his own devices by the Greek authorities, in an environment that was totally unsuitable for his status as a minor, whether in terms of safety, housing, hygiene or access to food and care, and, more generally, the way in which his care was handled and his unacceptably vulnerable situation as an asylum seeker and unaccompanied minor.

70. It follows that the applicant found himself, through the fault of the authorities, in an inhuman and degrading situation, contrary to Article 3 of the Convention. Accordingly, the Court dismisses the Government's preliminary objection alleging the applicant's lack of victim status and concludes that there has been a violation of Article 3 of the Convention in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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.”

A. Damage

72. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage.

73. The Government deemed the sum claimed by the applicant to be excessive and argued that the finding of a violation constituted sufficient just satisfaction.

74. The Court takes the view that the applicant sustained non-pecuniary damage, particularly on account of the inhuman and degrading situation stemming from the violation of his rights guaranteed by Article 3 of the Convention. This non-pecuniary damage is not sufficiently compensated by the finding of a violation. Ruling on an equitable basis, the Court considers it appropriate to award the applicant the full amount claimed, namely EUR 8,000, in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

75. The applicant also claimed EUR 500 in legal aid costs that he had incurred; however, he did not produce any bills or invoices to support his claims.

76. The Government considered these sums to be excessive and unsubstantiated.

77. The Court rejects the claim in respect of costs and expenses, as no supporting documents were provided by the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the preliminary objection that the applicant lacked victim status, and dismisses it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention;
4. *Holds*,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), 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.

Done in French, and notified in writing on 23 January 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Pere Pastor Vilanova
President