



Inadequate care and unlawful detention of an unaccompanied minor seeking asylum

In today's Chamber judgment in the case [Rahimi v. Greece](#) (application no. 8687/08), which is not final¹, the European Court of Human Rights held unanimously that there had been:

A violation of Article 3 (prohibition of inhuman or degrading treatment), Article 13 (right to an effective remedy) and Article 5 § § 1 and 4 (right to liberty and security) of the European Convention on Human Rights.

The case concerned the conditions in which a minor, a migrant from Afghanistan, who had entered Greece illegally, was held in the Pagani detention centre on the island of Lesbos and subsequently released with a view to his expulsion.

Principal facts

The applicant, Eivas Rahimi, is an Afghan national who was born in 1992 and currently lives in Athens. Following the death of his parents in the armed conflicts in Afghanistan, he left the country and arrived on the Greek island of Lesbos. He was arrested there on 19 July 2007 and was placed in the Pagani detention centre pending an order for his expulsion.

The parties provided differing versions of the facts. The authorities contended that Eivas had been informed, by means of a note written in Arabic, of his right to address a complaint to the chief of police and to apply to the president of the administrative court concerning his placement in detention. The applicant alleged that he had not received any information on the possibility of applying for political asylum and that the failure to provide him with an approved translator had hampered his communication with the authorities, since the Afghan national who had acted as interpreter was not bound by any duty of confidentiality. Eivas claimed that he had not been informed in a language he could understand of his rights and legal situation.

The applicant was held in the Pagani detention centre until 21 July 2007. He alleged that he had been placed with adults, had slept on a dirty mattress, had had to eat sitting on the floor and had not been allowed contact with the outside world: he had merely met one representative of the German non-governmental organisation (NGO) Pro Asyl who was on official business on the island. According to the Greek Government, the applicant had been held in a cell specially adapted for minors and had made no complaints to the local authorities about his conditions of detention.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

An order for the applicant's deportation was issued on 20 July, mentioning that his cousin, N.M., born in 1987, was accompanying him. The phrase "he is accompanying his minor cousin..." appeared as standard text. The applicant alleged that he did not know N.M. and had never stated otherwise to the authorities. According to the Greek Government, the applicant had at no point complained that the person accompanying him was not his cousin or that he did not wish to leave with him.

On his release, the applicant was left without any accommodation or transport, and apparently received assistance only from Prosfygi, an NGO offering assistance to migrants. After remaining homeless for several days after his arrival in Athens, he was subsequently provided with accommodation by the NGO Arsis in an Athens hostel, where he remains to date. According to a certificate issued by Arsis in 2009, the applicant had arrived in Athens unaccompanied, together with other unaccompanied minors. He had had difficulties integrating, sleeping in the dark and speaking, and was very emaciated. According to the certificate, no guardian had been appointed although the public prosecutor responsible for minors had been apprised of the situation. The certificate also stated that Eivas had apparently fled Afghanistan because he feared being conscripted into the Taliban armed forces.

The report drawn up when the applicant's request for political asylum was registered on 27 July 2007 made no mention of his being accompanied by a member of his family. It stated that the interview with the authorities had been conducted in Farsi. In September 2007 the applicant's application for political asylum was rejected; his appeal is still pending.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy), the applicant complained of a lack of support appropriate to his status as a minor and of the fact that he had not been accompanied when he was arrested and placed in detention or after his release. He also complained about the conditions in the Pagani detention centre and of having been placed with adults. Under Article 5 §§ 1, 2 and 4 (right to liberty and security), he alleged that his situation as an illegally resident minor had been consistently disregarded and that he had not been informed of the reasons for his arrest or of any remedies in that connection.

The application was lodged with the European Court of Human Rights on 21 January 2008.

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,
 Christos **Rozakis** (Greece),
 Peer **Lorenzen** (Denmark),
 Khanlar **Hajiyev** (Azerbaijan),
 George **Nicolaou** (Cyprus),
 Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),
 Julia **Laffranque** (Estonia), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Articles 3 and 13

Whether the applicant had been accompanied

In assessing the evidence, the Court adopted the standard of proof “beyond reasonable doubt” and compared the information provided by the authorities with information from other reliable sources. In deportation or extradition cases it would be unduly restrictive for the Court to confine its attention to the information supplied by the authorities.

The question whether Eivas had been accompanied, on which the parties disagreed, was decisive in terms of the State’s obligations towards him. Basing its findings on the registration of the applicant’s request for political asylum and the report written by Arsis, the Court considered that since 27 July 2007 the applicant had not been accompanied by a close relative.

With regard to the period from 19 to 27 July 2007, the applicant’s claims concerning the situation of migrant children, especially on the island of Lesbos, were corroborated by several reports noting, in particular, the persistence of serious failings in the supervision of unaccompanied minors claiming asylum², statistical issues and the problem of unaccompanied minors being registered by the authorities on Lesbos as accompanied³, as well as the arbitrary assignment of minors to adults from Afghanistan described as their “brother” or “cousin”.

The official documents did not contain any information concerning the supposed family ties between the applicant and N.M. The Court attached particular significance to the fact that the phrase “he is accompanying his minor cousin” appeared as standard text on the expulsion order. Furthermore, the authorities had based their decision solely on the statements made by the applicant although the latter, being unable to speak English, had communicated with the authorities through a fellow national. Hence, the family tie between the applicant and N.M. had been established by the competent authorities on the basis of an uncertain procedure which provided no guarantee that he was in fact accompanied; this had important implications, since the designated adult was supposed to act as guardian. The Court noted that the Greek Government had not furnished any information concerning N.M. following his release.

Finally, the Court’s conclusion concerning the period from 27 July to date, to the effect that the applicant had been without a guardian for a lengthy period, simply added further weight to its findings concerning the preceding period. Accordingly, the Court considered that the Government’s contention that the applicant had been an accompanied minor was not established for the period from 19 to 27 July 2007.

The issue of exhaustion of domestic remedies

The information brochure provided to the applicant did not indicate the procedure to be followed in order to make a complaint to the chief of police, as relied on by the Government. Furthermore, the Government did not specify whether the chief of police was obliged to respond to complaints and, if so, within what period. The Court pointed out that in 2008 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had noted the absence in Greece of a fully-fledged, independent authority for the inspection of detention facilities of the law-enforcement agencies⁴. The Court also sought to ascertain whether the chief of police represented an authority satisfying the requirements of impartiality and objectivity necessary to make the remedy effective. With regard to Law no. 3386/2005, to which the Government referred, the Court noted that the courts were not empowered to

² Report on the visit to Greece from 8 to 10 December 2008 by the Commissioner for Human Rights of the Council of Europe (see § 32 of the judgment).

³ Report published in 2008 by the Office of the United Nations High Commissioner for Refugees (UNHCR) in Greece entitled “Unaccompanied minors asylum seekers in Greece – a study on the treatment of unaccompanied minors applying for asylum in Greece” (see §§ 36 and 39 of the judgment).

⁴ Report on the CPT’s visit to Greece from 23 to 29 September 2008, published on 30 June 2009.

examine living conditions in detention centres for illegal immigrants and to order the release of a detainee on those grounds. Lastly, the Court did not consider that the information brochure in Arabic referring to the available remedies would have been comprehensible to the applicant, whose native language was Farsi. Accordingly, it rejected the Government's objection of non-exhaustion of domestic remedies.

Conditions of detention in the Pagani detention centre

The Court could not say with certainty whether the applicant had been placed in detention with adults, but his allegations concerning overall conditions in the Pagani centre were corroborated by several concordant reports by the Greek Ombudsman, the CPT⁵ - which described the centre as "filthy beyond description" and as "a health hazard for staff and detainees alike" - and several international organisations and Greek NGOs. The problem of overcrowding was highlighted⁶, as were the extremely poor sanitary conditions: detainees sleeping on the ground, one toilet and one shower for 150 people during periods of overcrowding, partial flooding of the floors due to overflowing toilets, etc. The Court also attached particular importance to the violent incidents (rioting, hunger strikes) that had taken place in the centre in 2009 owing to the very poor conditions of detention. The Pagani centre was reportedly closed in 2009.

In view of the failure to take into account the applicant's extremely vulnerable individual situation and the conditions of detention in the Pagani centre, which were so serious as to be an affront to human dignity, the Court held that Mr Rahimi had been subjected to degrading treatment, despite the fact that his detention had lasted for only two days.

The period following the applicant's release

As the applicant came within the class of highly vulnerable members of society, the authorities had been required to take adequate measures to provide him with care and protection; in particular, the prosecutor responsible for minors had been under a duty to appoint a guardian. UNHCR had already expressed deep concern at the fact that Greek prosecutors, although designated by law as the temporary guardians of minors seeking asylum, rarely intervened in matters relating to the latter's living conditions and treatment. To date, no guardian appeared to have been appointed for the applicant, although his case had been brought to the attention of the prosecutor responsible for minors. According to the Pro Asyl report, some of the asylum seekers released on 20 and 21 July 2007 had had to spend the night in the port of Lesbos because they had no tickets for travel to Athens. Furthermore, the Greek Ombudsman had noted that no policy existed aimed at ensuring the survival of unaccompanied minors after their release from the Pagani centre. It was clear that the authorities were undertaking no efforts to protect them from possible violence and exploitation⁷.

Owing to the authorities' indifference, the applicant, left to fend for himself, must have experienced profound anxiety and concern, particularly between the time he was released and his being taken in by the organisation Arsis, which had noted problems on his arrival (emaciation, fear of the dark, etc.). The Court considered it relevant to refer in that regard to the Grand Chamber judgment of 21 January 2011 in *M.S.S. v. Belgium and Greece*, in which it had noted "the particular state of insecurity and vulnerability in which asylum seekers are known to live in Greece" and had found that the Greek

⁵ In its report of 30 June 2009 the CPT observed that the infrastructure in the Pagani detention centre had not changed since its 2007 visit.

⁶ 720 detainees in a facility with a maximum capacity of 300 in 2008, and a number of detainees four times in excess of capacity in 2009, noted respectively by the CPT report cited above and by a *Médecins sans Frontières* report dated June 2010 (see § 46 of the judgment). See also §§ 43 and 49 concerning the 2010 Amnesty International report and the 2008 Human Rights Watch report.

⁷ 2008 Human Rights Watch report entitled "Left to survive: systematic failure to protect unaccompanied migrant children in Greece" (see § 50 of the judgment).

authorities were to be held responsible “because of their inaction”. Accordingly, the Court held that the threshold of severity required by Article 3 had been attained also in respect of the period following Mr Rahimi’s release.

The Court concluded that both the applicant’s conditions of detention in the Pagani centre and the authorities’ failure to take care of him as an unaccompanied minor following his release amounted to degrading treatment in breach of Article 3.

In view of its findings concerning the exhaustion of domestic remedies, the Court held that the State had also failed to comply with its obligations under Article 13.

Article 5 § 1

To avoid being branded as arbitrary, detention had to be carried out in good faith; it had to be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention had to be appropriate; and, lastly, the length of the detention should not exceed that reasonably required for the purpose pursued.

The applicant’s detention had been based on Law no. 3386/2005 and had been carried out with the aim of ensuring his expulsion. In principle, the length of his detention could not be said to have been unreasonable in that regard. However, the automatic application of the legislation in question did not appear compatible with the need to give paramount consideration to the child’s best interests, enshrined in the international instruments and the Court’s case-law. The Greek authorities had given no consideration to the best interests of the applicant as a minor and had not explored the possibility of replacing detention with a less drastic measure. These factors led the Court to doubt the authorities’ good faith in carrying out the detention measure. The Court therefore held that the applicant’s detention had not been “lawful” within the meaning of Article 5 § 1 (f).

Article 5 §§ 2 and 4

The Court had already identified shortcomings in Greek legislation regarding judicial review of detention with a view to expulsion and had found violations of Article 5 § 4⁸. Section 76 of Law no. 3386/2005 did not make express provision for reviewing the lawfulness of an expulsion order, and enabled the Greek courts to examine the detention decision only from the standpoint of the risk of absconding or of a threat to public order. The Court reiterated that a number of recent court decisions at first instance allowing the administrative courts to examine the lawfulness of the detention of foreign nationals and to order their release if they were found to have been held illegally had not been sufficient to overcome the ambiguity in the wording of Law no. 3386/2005.

As to the application to the Minister of Public Order to have the expulsion decision set aside, provided for by section 77 of that Law, this was an interlocutory application which was a pre-requisite for applying to the administrative courts seeking the setting-aside of the expulsion decision, and did not entail the lifting of the detention measure.

Moreover, the applicant had been unable in practice to contact a lawyer and the information brochure had been incomprehensible to him. Even assuming that the remedies relied on had been effective, the Court failed to see how the applicant could have exercised them.

Accordingly, there had been a violation of Article 5 § 4.

⁸ [A.A. v. Greece](#), judgment of 22 July 2010.

The Court was of the view that the applicant's chief complaint under Article 5 § 2 concerned the fact that he had been unable to understand the content of the brochure setting out his rights. In view of its conclusion under Article 5 § 4, the Court did not deem it necessary to rule separately from the standpoint of Article 5 § 2.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Greece was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.