

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

FIRST SECTION

DECISION

Application no. 34298/18
A.J.
against Greece

The European Court of Human Rights (First Section), sitting on 26 April 2022 as a Chamber composed of:

Marko Bošnjak, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Erik Wennerström,
Ioannis Ktistakis,
Davor Derenčinović, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the above application lodged on 22 August 2018,

the decision of 24 July 2018 to grant interim measures under Rule 39 of the Rules of Court and stop the applicant's return to the Occupied Palestinian Territory;

the decision to give notice to the Greek Government ("the Government") of the complaints concerning the applicant's return to the Occupied Palestinian Territory, the lack of psychosocial support provided to him, the procedure followed in respect of his return, combined with the non-appointment of a guardian, and his placement in separate accommodation from his siblings, and to declare inadmissible the remainder of the application;

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

the observations submitted by the respondent Government and the decision not to include the observations submitted by the applicant in reply in the case file as belated (Rule 38 § 1);

the comments submitted by Defence for Children, who were granted leave to intervene in the written procedure by the President of the Section (Article 36 § 2 of the Convention and Rule 44 § 3);

Having deliberated, decides as follows:

INTRODUCTION

1. The applicant is a stateless Palestinian and unaccompanied minor who was granted asylum in Greece in 2016. The application concerns the revocation of his refugee status and the decision to return him to the Occupied Palestinian Territory, as well as the reception conditions he faced in Greece, initially as a child of a single-parent family and later as an unaccompanied minor, namely a lack of psychosocial support and separation from his siblings, who were hosted at different accommodation facilities. The applicant also complained that the procedure which had led to the revocation of his refugee status, combined with the failure to appoint a guardian for him, had been deficient.

THE FACTS

2. The applicant was born in 2005 and lives in Athens. He was represented by Mrs P. Masouridou and Mrs I. Tzeferakou, lawyers practising in Athens.

3. The Government were represented by their Agent's delegates, Mrs A. Magrippi and Mrs S. Papaioannou, legal representatives A at the State Legal Council.

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

5. The applicant was born in Tulkarem in the Occupied Palestinian Territory.

6. He arrived in Greece in August 2016 with his father, H.J., his older brother A. (born in December 2002), his sister M. (born in January 2004) and his younger brother M. (born in April 2010). They were hosted at the Elaionas Open Reception Facility for Persons Seeking International Protection in Athens (hereinafter "the Elaionas reception facility"). The applicant's mother, O.M., is from the Philippines and lives in Tulkarem with the fifth child of the family and the applicant's aunt, W.J., the sister of the applicant's father.

7. On 29 August 2016 the applicant's father applied for asylum to the Attica Regional Asylum Service for himself and his four children. By decision no. 53148/9.9.2016 he and all his family members were granted refugee status under Article 1D of the Geneva Convention relating to the Status of Refugees. In particular, the Asylum Service agreed that the applicant's family were stateless Palestinians, recognised as such by UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East), as descendants of Palestinian refugees forced to displace following the events of 1948. Having regard to the fact that they were in Greece, where UNRWA was not active, and the fact that objective reasons did not allow for their return to the Occupied Palestinian Territory, the

applicant and his family were considered *ipso facto* refugees. On 14 September 2016 they were all granted residence permits.

8. On 3 October 2016 the Department for Minors of the Public Prosecutor's Office at the Athens First-Instance Court was notified by the police in the Exarcheia district of the city that following the applicant's father's transfer to Aiginiteio General Hospital due to epileptic seizures, the four children were now unaccompanied. By order of the Public Prosecutor for Minors (hereinafter "the prosecutor"), acting as a temporary guardian under the law, the applicant and his siblings were taken to Penteli General Children's Hospital, where they stayed until their father recovered and was discharged.

9. On 1 November 2016 a child psychiatric assessment was conducted by the competent department of child psychiatry at Penteli General Children's Hospital, at the request of the prosecutor. The report stated that:

> "The mother, of Filipino origin, is pregnant with a fifth child and is still in Palestine, where she works. The children talk to her almost daily and express their wish for their family to be reunited. All the children are presentable, with good psycho-emotional development, no symptoms of any major psychopathology and appear to be well taken care of, both physically and psychologically, by their family. They have mentioned traumatic experiences in Palestine (the killing of third parties and threats against the father's life), while they are emotionally burdened by their father's epileptic seizures as well as by the physical weakness and confusion that accompanies them [the seizures].
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> ...
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> More specifically:
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> ...
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> 3) A.J.... expresses fears which arise in places he has to visit alone (e.g. the bathroom), while he seems to lean a lot on his older brother for support. He has described that he often relives traumatic scenes that he experienced in Palestine."

10. In view of the health problems faced by the applicant's father (epilepsy and possible excessive alcohol consumption), it was considered necessary that he undertake antiepileptic treatment, that both he and the children receive psychological support from a specialist facility, that the children be integrated into the education system, that the family be supervised by the social services of their host facility, and that the competent department investigate the possibility of family reunification as soon as possible. The report concluded that:

> "Given that at present Mr J. is the only guardian of the four children and given his inability to take care of [them], we propose that social services deal with the issue."

11. An additional report was drawn up by the same hospital's social services on 7 November 2016. It stated that it would be appropriate for the children to return with their father to the Elaionas reception facility, where they had been staying until the father's admission, and for the family to remain under the supervision of social services. It also stated that the

hospital's social services had been in contact with the social worker of the Elaionas reception facility, who had agreed to provide support and supervision to the family, in collaboration with Babel, the mental health centre for migrants.

12. Following the reports dated 1 and 7 November 2016, the applicant and his siblings returned with their father to the Elaionas reception facility, where they remained under the supervision of the social worker.

13. During their stay, it was established that the children's father drank alcohol excessively, neglected his children and became violent towards them. For those reasons, on 3 May 2017 the children were taken from their father and transferred to P. and A. Kyriakou Children's Hospital for childcare, where they received psychological support. An assessment was conducted on 31 May 2017 by the hospital psychologist concerning the four siblings. The report described that the four siblings had been deeply traumatised by their father, who had threatened and abused them.

14. On 31 May 2017 the National Centre for Social Solidarity (hereinafter "EKKA") decided to place the children in a reception facility for unaccompanied minors run by the NGO Metadrasis in Plagiari, Thessaloniki. During their stay, a child psychiatric assessment was conducted on 21 September 2017 by a child psychiatrist of the mental health department at Papanikolaou General Hospital. The report stated that the applicant and his siblings had expressed the wish to be reunited with their mother and to keep in contact with a volunteer in Athens with whom they had developed an emotional bond. A stable environment was highlighted as important for their well-being. As regards the applicant specifically, it was mentioned that he did not show signs of mental illness which required hospitalisation, but that an emotional burden due to his past experiences was possible.

15. On 25 September 2017 the facility in which the applicant and his siblings were accommodated closed down. They returned to Athens on 28 September 2017 and stayed in P. and A. Kyriakou Children's Hospital until suitable accommodation could be found so that they could stay together. A child psychiatric assessment carried out by the hospital on 10 October 2017 stated that the four children should stay away from their father and that during their stay in the hospital they had received psychological support and advice. They had all been traumatised by their father's behaviour and the constant changes in their environment. As regards the applicant, he had reiterated in his consultations that their father was abusive and had expressed the wish for their mother to come to Greece.

16. According to the information provided by the Government, it proved impossible to have all the children accommodated in one facility as the existing facilities for unaccompanied minors were intended for those of the same sex and separated into two age groups, one for 8 to 12 year olds and the other for 12 to 18 year olds. For that reason, EKKA tried to place the siblings in reception facilities run by the same NGO so as to facilitate contact between

them. On 13 December 2017 the applicant was placed in a reception facility in Pylaia, Thessaloniki, operated by the NGO Arsis. His older brother was initially accommodated in a centre run by Arsis in Tagarades, Thessaloniki, and in May 2018 was placed in SOS Children's Villages in Athens. His younger brother was accommodated in a reception facility operated by Metadrasis in Athens. Lastly, their sister was placed provisionally in the care of a volunteer with whom she had developed an emotional bond, under the supervision of Metadrasis in Attica. At the same time, the children's communication was facilitated through meetings organised in Athens with the help of the above-mentioned volunteer.

17. On 20 April 2018 the applicant's father died. In a letter dated 8 June 2018 addressed to the prosecutor, the social worker and psychologist of the Arsis facility in which the applicant was staying stressed how important it was for the applicant to become reunited with his siblings and for all the children to become a family again, the need to find an appropriate solution for the siblings to stay together, and how the applicant's psychological well-being had been positively influenced by the volunteer providing accommodation to his sister M. The volunteer had also provided support to the applicant and his siblings and had expressed her wish to foster and accommodate all of them. The applicant's poor psychological state was also highlighted, in particular his feelings of loneliness and vulnerability, particularly given that his three siblings were 504 km away in Athens.

18. In a letter dated 9 June 2018, social workers of Metadrasis at the facility at which the applicant's younger brother was being accommodated reported to the prosecutor that, according to their information, their older brother had expressed the wish to return to the Occupied Palestinian Territory and be reunited with his mother and paternal aunt. The younger brother had maintained contact with his aunt and was happy about that contact; in addition, his sister had had regular contact with their mother. In that context, the Government maintained that the prosecutor had been informed that, according to the reports by the social workers of the children's reception facilities and their caregivers, all four siblings had expressed positive and affectionate feelings for their mother and paternal aunt.

19. Taking the above into consideration, the prosecutor asked to have contact with the applicant's mother. During that communication, the mother expressed her wish and her ability to take over the care of her children with the help of her late husband's sister.

20. In order to verify the mother's living conditions and examine whether she was capable of taking care of her children, the prosecutor requested the assistance of the Palestinian Diplomatic Representation in Greece. Through it, it was confirmed that the applicant's mother and aunt lived in Tulkarem, which was a safe city. The applicant's mother worked in Tel Aviv as a home help four times a week. The aunt ran a craft workshop and was willing to

provide financial support to her late brother's family. It was also established that the mother was legally resident in the Occupied Palestinian Territory.

21. In view of the above, the prosecutor decided that family reunification of the applicant and his siblings with his mother and aunt in the Occupied Palestinian Territory was in the best interests of the children compared to their living in institutional care in a reception facility in Greece. By returning them to their place of origin, where they had lived until September 2016, the four siblings would be more easily integrated and could continue their education. Therefore, in line with the principle of maintaining family unity, it was decided that the four siblings would be repatriated to their place of origin, in order to be reunited with their mother, their younger sister and their paternal aunt.

22. Through the Palestinian Diplomatic Representation in Greece, the mother sent her written consent for the return of the children, as well as authorisation by the Council of the Islamic Court in Tulkarem for the paternal aunt to accompany the children from Greece to the Occupied Palestinian Territory, as the mother did not have a travel visa or any identification documents.

23. The lawyers who had been authorised by the prosecutor to act on behalf of the four siblings submitted the necessary asylum waivers on 17 July 2018 in order for the children to be able to retrieve their passports and travel.

24. The managers of the relevant reception facilities were requested to inform the children of that decision. In a document dated 20 July 2018 from the Arsis facility in which the applicant was being accommodated, the social worker informed the prosecutor that they had been indirectly informed of the return decision in respect of the applicant on 29 June 2018, without any prior notification. When they had tried to contact the Public Prosecutor's Office, they had not learned why or who had acted on behalf of the applicant to revoke his refugee status. In addition, the decision had been so sudden that the applicant and the staff members of the facility could not properly handle the news. Two of the psychologists had had to intervene, as well as all the staff members of the facility, to help the applicant come to terms with the new situation. The siblings had communicated with each other and leaned towards a decision to refuse to return. In addition, in a telephone communication with their mother, the latter had stated that she had not known that her children had been granted refugee status and that had she known, she would not have insisted on their return. In addition, neither the staff members of the facility providing psychosocial support to the applicant nor the applicant himself had been contacted, let alone consulted about the developments, even though he was old and mature enough. The document concluded that the staff of the facility could not properly prepare the applicant in such short notice about a return to the Occupied Palestinian Territory, as they had not received all the necessary information. They referred to several unanswered questions, such as what his living conditions would be there, whether social services had

visited the applicant's new place of residence and what assurances had been given in respect of the mother's residency status. There appears to have been no reply to the questions contained in that document.

25. When the applicant's siblings A. and M. were informed of the developments, they expressed negative feelings against their aunt, contacting her via Skype to ask her not to come to Greece to take them away. In view of the two children's strong reaction, their aunt decided not to fly to Greece to accompany them.

26. The applicant and his siblings were booked onto a flight scheduled for 24 July 2018 from Athens to Amman. By order of the prosecutor, a volunteer social worker would accompany them from the airport in Athens to the airport in Amman, where their aunt was expected to pick them up and drive them to Tulkarem. An officer from the Palestinian Diplomatic Representation would accompany them until they were reunited with their aunt.

27. However, after the prosecutor was informed of the siblings' wish not to be reunited with their mother in the Occupied Palestinian Territory and their preference to stay in Greece, she withdrew her order regarding the children's travel. She further wrote to EKKA on 24 July 2018 requesting that a reception facility be found to accommodate all the siblings together. On that day, the Public Prosecutor's Office was notified via the Legal Department of the Ministry of Foreign Affairs that the Court had issued an interim measure on 24 July 2018 prohibiting the applicant's removal from Greece until further notice.

28. On 31 July 2018 the prosecutor asked the Asylum Service to take the necessary steps so that the applicant and his siblings could regain their refugee status. Indeed, after the relevant instructions were issued by the Asylum Service, the applicant and his siblings were re-registered and reissued international protection applicant cards.

29. Following this and the relevant action taken by EKKA, the applicant and his siblings are all staying in reception facilities in Athens to facilitate their communication. More specifically, since 21 September 2018 the applicant has been staying in an Arsis facility in Athens, since 24 October 2018 his brother A. has been staying in the Praksis facility in Petralona, his brother M. remains in a reception facility run by Metadrasis in Athens, and their sister M. continues to live under the care of a foster volunteer in Athens. Moreover, the prosecutor continues to monitor the situation of all four children.

30. On 21 January 2019 the Asylum Service issued decision no. 1310/2019 by which the applicant, following a personal interview conducted in the presence of a guardian from Metadrasis and a lawyer, both authorised by the Public Prosecutor's Office, was regranted refugee status. Similar decisions were issued in respect of his siblings.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic law

1. Law no. 4375/2016

31. Law 4375/2016 transposing Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), as applicable at the time, provided as follows:

Article 34
Definitions

"...

f. 'refugee' means a third-country national or a stateless person who fulfils the requirements of Article 1A of the Geneva Convention and Article 2e of Presidential Decree 141/2013;

g. 'refugee status' means recognition by a member State of a third-country national or a stateless person as a refugee pursuant to the provisions of Presidential Decree 141/2013;

k. 'unaccompanied minor' means a person under 18 years of age who arrives in Greece unaccompanied by an adult who exercises parental care on him or her in accordance with Greek legislation and for as long as such parental care has not been assigned by law and exercised in practice, or a minor who is left unaccompanied after he or she has entered Greece;

l. 'representative of an unaccompanied minor' is the temporary or permanent guardian or person appointed by the competent Public Prosecutor for Minors or, in the absence of the latter, the First-Instance Public Prosecutor, to ensure the minor's best interests. The task of the representative, as defined in the previous sentence, can be assigned to the legal representation of a non-profit legal entity. In the latter case, the representative of that legal entity may authorise another person to represent the minor, in accordance with the provisions of this Law."

Article 36
Access to the procedure

"a. Any alien or stateless person has the right to apply for international protection. The application is submitted to the competent receiving authorities, which shall immediately proceed to register it fully.

...

6. The applicant may submit an application of behalf of his or her family members.

...

8. A minor above 15 years of age may lodge an application, independently and in person. If he or she is unaccompanied, the provisions of Article 45 of this Law shall apply.

9. An unaccompanied minor under 15 years old may lodge an application through a representative, as defined in Article 45 of this Law.

10. The representative of the minor, as well as the representative of the accommodation centre at which the minor is being hosted, in accordance with Article 19 of Presidential Decree 220/2007, may submit an application for international protection on the minor's behalf, as long as, on the basis of an individual assessment of the personal circumstances, they consider that the minor might need international protection. The minor shall be present during the lodging of the application unless this is not possible due to *force majeure*."

Article 45
Applications of unaccompanied minors

"1. Where an unaccompanied minor lodge an application, the competent authorities shall take action in accordance with Article 19 § 1 of Presidential Decree 220/2007 in order to appoint a guardian for the minor. The minor is immediately informed of the identity of the guardian. The guardian represents the minor, ensures 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 person exercising a particular guardianship act shall ensure that the minor is duly informed in a timely and adequate manner especially of the meaning and possible consequences of the personal interview, as well as how to be prepared for it. The guardian or person exercising a particular guardianship act is invited and may attend the minor's interview and submit questions or make observations to facilitate the procedure. During the interview, the presence of the minor may be considered necessary, despite the presence of the guardian or person exercising a particular guardianship act.

2. The caseworkers who conduct interviews with unaccompanied minors and take relevant decisions shall have the necessary knowledge regarding the special needs of the minors and shall conduct the interview in such a way as to make it fully understandable to the applicant, taking particular account of his or her age.

3. If the guardian or person exercising a particular guardianship act is a lawyer, the applicant cannot have the benefit of free legal assistance, pursuant to Article 44 § 3, first indent.

...

7. Applications for international protection of unaccompanied minors shall always be examined under the regular procedure.

8. Ensuring the best interests of the child shall be a primary obligation when implementing the provisions of this Article."

Article 52
Personal Interview

"...

7. A separate interview shall be conducted for every adult member of the family. Where minors are concerned, the personal interview shall be conducted taking into consideration their maturity and the psychological consequences of their traumatic experiences."

2. Presidential Decree No. 220/2007

32. Article 19 of Presidential Decree no. 220/2007 on the transposition into Greek legislation of Council Directive 2003/9/EC of 27 January 2003

laying down minimum standards for the reception of asylum seekers, whose effect was maintained by virtue of Article 30 § 6 of Law no. 4540/2018, entitled "Unaccompanied minors", provides as follows:

> "1. As far as unaccompanied minors are concerned, the competent authorities shall take the appropriate measures so as to ensure the minor's necessary representation. To this purpose, they shall inform the Public Prosecutor for Minors or, in the absence of the latter, the locally competent First-Instance Public Prosecutor, who shall act as a temporary guardian and take the necessary steps in view of the appointment of a guardian for the minor."

3. Civil Code

33. The relevant provisions of the Civil Code read as follows:

Article 1532
Consequences of defective exercise of parental care

> "If the father or mother violates [his or her] duty to take care of the child or administer his or her property, or if he or she abusively exercises or is not unable to perform this function, the court may, at the request of the other parent, the child's closest relatives, the public prosecutor, or of its own motion, order any appropriate measure ... In extremely urgent cases, if the conditions of the preceding paragraph are met and there is an imminent risk to the child's physical or mental health, the public prosecutor may order any appropriate protection measure, until a decision is issued by the court, to which the case must be referred within thirty days."

Article 1589
Who is under guardianship

> "A minor is under guardianship where neither parent has or can exercise parental care, where the court appoints a guardian under Articles 1532 and 1535 or entrusts the exercise of parental responsibility to a third party under Articles 1513 and 1514, and in the cases stipulated in Articles 1660 and 1661."

Article 1592
Appointment of a guardian

> "The guardian is always appointed by the court (given guardianship). As guardian is preferably appointed one of the following persons, in the order in which they are mentioned: 1. the adult spouse of the minor 2. the natural or legal person appointed by will or declaration to the Magistrate or to the notary by the person exercising parental care at the time of the statement and at the time of his death 3. the most appropriate person according to the court's judgment with preference for the closest relatives of the minor. A person that shall be preferred according to the preceding subparagraph shall not be appointed guardian if one of the reasons of Article 1595 exists, if he renounces the guardianship or if the interests of the minor so dictate.
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> Until the appointment of the commissioner, the provisions of Articles 1601 and 1602 shall be applicable."

4. Presidential decree no. 141/2013

34. Article 23 of Presidential Decree no. 141/2013 on the transposition into Greek legislation of Council Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on minimum standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted (recast), under the title "Maintaining family unity", reads as follows:

> "1. The competent authorities shall ensure that all necessary measures are taken so that family unity is maintained."

5. Law no. 4540/2018

35. Article 21 of Law no. 4540/2018 on the transposition into Greek legislation of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) provides as follows:

> "1. The best interests of the child shall be a primary consideration for the competent authorities when implementing the provisions of this Law. Minors shall be ensured a standard of living adequate for their 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 family reunification possibilities, the minor's well-being and social development, safety and security considerations, particularly where there is a risk of the minor being a victim of human trafficking, and the views of the minor in accordance with his or her age and maturity."

6. Accommodation applications by asylum seekers

36. By virtue of Decision no. Π2δ/ΓΠ93510 of the Deputy Minister for Health and Social Solidarity, entitled "Assigning to EKKA the administration of accommodation applications submitted by asylum seekers", it was decided that the administration of accommodation applications submitted by aliens and unaccompanied minors applying for asylum should be assigned to EKKA, whose role would include: (a) the collection and management of the applications of asylum seekers and unaccompanied alien minors referred to EKKA by the competent public authorities or cooperating target group reception services and social support organisations; (b) the establishment and observation of a registration, management and monitoring system for accommodation applications, whose data would be forwarded for information to the Central Authority and the Ministry of Health and Social Solidarity's Directorate of Social Welfare and Solidarity, in accordance with the guidelines of the Hellenic Data Protection Authority; (c) the coordination of the organisations authorised by the Ministry of Health and Social Solidarity or volunteer transportation programmes, to provide assistance to the Central

Authority in implementing the necessary transportation of asylum seekers and unaccompanied minors from the islands or the border area to reception centres or to Athens for temporary accommodation.

B. Relevant Reports by National Human Rights Institutions

1. Greek Ombudsman

37. The Greek Ombudsman, in its annual report of 2018 entitled "Rights of Children on the Move", noted, *inter alia*, as follows:

> "...
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> This new regulatory framework [Law no. 4554/2018] replaces the previous system established by P.D. 220/2007, which had proved to be dysfunctional and ineffective. The pre-existing specific legislative provision of the institution of guardianship under the Public Prosecutor's Office had become void of content, as there was practically a substantial and complete inability of the competent Prosecutors to exercise their duties, taking into account the large number of unaccompanied minors and the workload of the competent Prosecutors. In the absence of a permanent guardian who carries out all acts of representation on a daily basis, such as registration at school and medical procedures, there had been significant gaps and problems in the daily lives of minors. This system had led to a diffusion of the responsibilities of the child protection system, as it was characterised by a fragmentation of tasks amongst various authorities, resulting in either an overlap of authorities or inadequate communication between them and a consequent compromise of the best interests, but also an inability to monitor the child's progress ... The provision of these services, however, does not replace the need to establish a legislative framework for the special guardianship of unaccompanied minors, the appointment of guardians by the competent national authorities and the development of a system of accountability and monitoring, which are essential conditions of an effective system of guardianship ..."

2. Greek National Commission for Human Rights

38. The Greek National Commission for Human Rights (GNCHR), as the independent advisory body to the State on matters pertaining to human rights protection, issued in September 2019 the Reference Report on Refugees. It noted, *inter alia*, as follows:

> "The GNCHR has already pointed out that the search for and giving the highest priority to the best interests of the child, as well as the obligation of each State to ensure the protection and care of childhood reflects the letter and spirit of a multitude of provisions of the Constitution as well as European and international texts concerning the protection of human rights and children in particular ... In particular, as regards unaccompanied minors and their protection, which is an obligation of the Greek State, GNCHR has highlighted the problems and gaps in the system as early as in 2007 with its Special Report, proposing specific measures for unaccompanied minors. Unaccompanied minors by definition are deprived of an adult who exercises parental responsibility. The provision, which was first introduced in 1999 and has remained in force ever since, according to which the Public Prosecutor for Minors, and when such does not exist, the competent First-Instance Public Prosecutors, act as temporary guardians for unaccompanied minors, was deemed to be entirely problematic in practice

as their role was limited by law to the appointment of a guardian and obviously did not include the exercise of daily care and supervision of the minor, for which there was a legislative and real gap in protection ..."

C. International Material

1. Geneva Convention relating to the Status of Refugees

39. Article 1D of the Geneva Convention relating to the Status of Refugees of 28 July 1951 provides as follows:

"This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention."

2. Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees

40. In December 2017 Guidelines HCR/GIP/17/13 on International Protection no. 13 on the applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees were published. The following passages are of particular relevance:

"...

3. ... Paragraph 1 generally excludes from the protection of the 1951 Convention those Palestinian refugees who are receiving protection or assistance from UNRWA, while paragraph 2 of Article 1D operates to include those very same Palestinian refugees when that protection or assistance has ceased. Once the protection or assistance has ceased ... they are entitled *ipso facto* to the benefits of the 1951 Convention...

9. For the purposes of these Guidelines, the term 'Palestinian refugees' is used to encompass 'Palestine refugees', 'displaced persons' and 'descendants' or one or more of these groups, whose position has not been definitively settled in accordance with relevant resolutions of the UN General Assembly.

18. Palestinian refugees ... benefit from 1951 Convention protection under Article 1D(2) when the protection or assistance of UNRWA has ceased. Read in light of its ordinary meaning, considered in context and with due regard to the object and purpose of the 1951 Convention, the phrase 'ceased for any reason' is not to be construed restrictively..."

3. Convention on the Rights of the Child

41. The Convention on the Rights of the Child provides, in so far as relevant, as follows:

Article 3

"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

Article 8

"1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

Article 9

"1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents ...

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known."

Article 12

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

Article 22

"1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present

Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention."

Article 24

"1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries."

Article 39

"States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

42. In General Comment no. 14 on the right of the child to have his or her best interests taken as a primary consideration, published on 29 May 2013 (CRC/C/GC/14), the Committee on the Rights of the Child stated, *inter alia*, as follows:

The child's best interests and the right to be heard (art. 12)

"43. Assessment of a child's best interests must include respect for the child's right to express his or her views freely and due weight given to said views in all matters affecting the child. This is clearly set out in the Committee's general comment No. 12 which also highlights the inextricable links between articles 3, paragraph 1, and 12. The two articles have complementary roles: the first aims to realize the child's best interests, and the second provides the methodology for hearing the views of the child or children and their inclusion in all matters affecting the child, including the assessment of his or her best interests. Article 3, paragraph 1, cannot be correctly applied if the requirements of article 12 are not met. Similarly, article 3, paragraph 1, reinforces the functionality of article 12, by facilitating the essential role of children in all decisions affecting their lives.

44. The evolving capacities of the child (art. 5) must be taken into consideration when the child's best interests and right to be heard are at stake ... [A]s the child matures, his or her views shall have increasing weight in the assessment of his or her best interests. Babies and very young children have the same rights as all children to have their best interests assessed, even if they cannot express their views or represent themselves in the same way as older children. States must ensure appropriate arrangements, including representation, when appropriate, for the assessment of their best interests; the same applies for children who are not able or willing to express a view.

45. The Committee recalls that article 12, paragraph 2, of the Convention provides for the right of the child to be heard, either directly or through a representative, in any judicial or administrative proceeding affecting him or her ...

Elements to be taken into account when assessing the child's best interests

...

(a) The child's views

53. Article 12 of the Convention provides for the right of children to express their views in every decision that affects them. Any decision that does not take into account the child's views or does not give their views due weight according to their age and maturity, does not respect the possibility for the child or children to influence the determination of their best interests."

43. The relevant parts of General Comment no. 12 on the right of the child to be heard, published on 20 July 2009 (CRC/C/GC/12) by the Committee on the Rights of the Child, read as follows:

I. Introduction

"2. The right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention. The Committee on the Rights of the Child (the Committee) has identified article 12 as one of the four general principles of the Convention, the others being the right to non-discrimination, the right to life and

development, and the primary consideration of the child's best interests, which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights ...

A. Legal analysis

(a) Paragraph 1 of article 12

(i) 'Shall assure'

19. Article 12, paragraph 1, provides that States parties 'shall assure' the right of the child to freely express her or his views. 'Shall assure' is a legal term of special strength, which leaves no leeway for State parties' discretion. Accordingly, States parties are under strict obligation to undertake appropriate measures to fully implement this right for all children. This obligation contains two elements in order to ensure that mechanisms are in place to solicit the views of the child in all matters affecting her or him and to give due weight to those views.

ii) 'Capable of forming his or her own views'

20. States parties shall assure the right to be heard to every child 'capable of forming his or her own views'. This phrase should not be seen as a limitation, but rather as an obligation for States parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible. This means that States parties cannot begin with the assumption that a child is incapable of expressing her or his own views. On the contrary, States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.

21. The Committee emphasizes that article 12 imposes no age limit on the right of the child to express her or his views, and discourages States parties from introducing age limits either in law or in practice which would restrict the child's right to be heard in all matters affecting her or him ...

(iii) 'The right to express those views freely'

22. The child has the right 'to express those views freely'. 'Freely' means that the child can express her or his views without pressure and can choose whether or not she or he wants to exercise her or his right to be heard. 'Freely' also means that the child must not be manipulated or subjected to undue influence or pressure. 'Freely' is further intrinsically related to the child's 'own' perspective: the child has the right to express her or his own views and not the views of others.

(iv) 'In all matters affecting the child'

26. States parties must assure that the child is able to express her or his views 'in all matters affecting' her or him. This represents a second qualification of this right: the child must be heard if the matter under discussion affects the child. This basic condition has to be respected and understood broadly.

(v) 'Being given due weight in accordance with the age and maturity of the child'

28. The views of the child must be 'given due weight in accordance with the age and maturity of the child'. This clause refers to the capacity of the child, which has to be assessed in order to give due weight to her or his views, or to communicate to the child the way in which those views have influenced the outcome of the process. Article 12

stipulates that simply listening to the child is insufficient; the views of the child have to be seriously considered when the child is capable of forming her or his own views.

(b) Paragraph 2 of article 12

(i) The right 'to be heard in any judicial and administrative proceedings affecting the child'

32. Article 12, paragraph 2, specifies that opportunities to be heard have to be provided in particular 'in any judicial and administrative proceedings affecting the child'. The Committee emphasizes that this provision applies to all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption ...

33. The right to be heard applies both to proceedings which are initiated by the child, such as complaints against ill-treatment and appeals against school exclusion, as well as to those initiated by others which affect the child, such as parental separation or adoption ...

(ii) 'Either directly, or through a representative or an appropriate body'

35. After the child has decided to be heard, he or she will have to decide how to be heard: 'either directly, or through a representative or appropriate body'. The Committee recommends that, wherever possible, the child must be given the opportunity to be directly heard in any proceedings.

36. The representative can be the parent(s), a lawyer, or another person (*inter alia*, a social worker). However, it must be stressed that in many cases (civil, penal or administrative), there are risks of a conflict of interest between the child and their most obvious representative (parent(s)). If the hearing of the child is undertaken through a representative, it is of utmost importance that the child's views are transmitted correctly to the decision maker by the representative. The method chosen should be determined by the child (or by the appropriate authority as necessary) according to her or his particular situation. Representatives must have sufficient knowledge and understanding of the various aspects of the decision-making process and experience in working with children.

37. The representative must be aware that she or he represents exclusively the interests of the child and not the interests of other persons (parent(s)), institutions or bodies (e.g. residential home, administration or society). Codes of conduct should be developed for representatives who are appointed to represent the child's views.

3. Obligations of States parties

1. Articles 12 and 3

70. The purpose of article 3 is to ensure that in all actions undertaken concerning children, by a public or private welfare institution, courts, administrative authorities or legislative bodies, the best interests of the child are a primary consideration. It means that every action taken on behalf of the child has to respect the best interests of the child. The best interests of the child is similar to a procedural right that obliges States parties to introduce steps into the action process to ensure that the best interests of the child are taken into consideration. The Convention obliges States parties to assure that those responsible for these actions hear the child as stipulated in article 12. This step is mandatory.

71. The best interests of the child, established in consultation with the child, is not the only factor to be considered in the actions of institutions, authorities and administration. It is, however, of crucial importance, as are the views of the child.

...

74. There is no tension between articles 3 and 12, only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives."

THE LAW

A. Alleged violation of Article 3, taken alone and in conjunction with Article 13 of the Convention

44. The applicant complained that his return to the Occupied Palestinian Territory would give rise to a violation of Article 3 of the Convention, taken alone and in conjunction with Article 13.

1. The parties' arguments

45. The Government submitted that the applicant no longer had victim status in respect of the above-mentioned complaint, as he had been regranted refugee status and was no longer at risk of being returned to the Occupied Palestinian Territory. Secondly, they argued that he had not exhausted domestic remedies. In particular, the applicant had claimed that the prosecutor had acted beyond her competencies and that the lawyer who had acted on his behalf by submitting the relevant asylum waiver had not correctly represented him but had rather deprived him of his rights. However, these serious allegations constituted criminal and disciplinary offences that should have been brought to the attention of the competent authorities before being brought before the Court. Lastly, the Government argued that the complaint was manifestly ill-founded, and that the applicant could have requested a

hearing or written to the prosecutor to request her to change her decision, which had been based on his best interests. As it did not appear from the evidence in the case file that the domestic authorities had acted illegally or without the applicant's best interests being taken into consideration, the relevant complaints should be rejected as manifestly ill-founded.

46. The applicant's observations in reply were not included in the case file as being belated.

2. The Court's assessment

47. The Court considers that it is not necessary to examine the Government's preliminary objections since this part of the application should be struck out of the Court's list of cases for the following reasons.

48. Article 37 § 1 of the Convention provides:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that:
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.
>
> 2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

49. Firstly, the Court notes that Article 37 § 1 (a) of the Convention is not applicable to the present case because the applicant did not state that he was withdrawing his application after being regranted refugee status (see, *mutatis mutandis*, *Atmaca v. Germany* (dec.), no. 45293/06, 6 March 2012).

50. Secondly, the Court observes that according to its established case-law, once an applicant under threat of expulsion has been granted a residence permit and no longer risks being expelled, it considers the matter to have been resolved within the meaning of Article 37 § 1 (b) of the Convention and strikes the application out of its list of cases, even without the applicant's agreement. The reason for this is that the Court has consistently approached the issue as one of a potential violation of the Convention, and the threat of a violation is removed by virtue of the decision granting the applicant the right of residence in the respondent State concerned (see *F.G. v. Sweden* [GC], no. 43611/11, § 73, 23 March 2016, and the references to the Court's case-law therein, and *M.E. v. Sweden* (striking out) [GC], no. 71398/12, §§ 32 and 33, 8 April 2015).

51. On the other hand, in cases where the applicant was not granted a residence permit, the Court held that it was no longer justified to continue to examine the applications, within the meaning of Article 37 § 1 (c) of the

Convention, and decided to strike them out of its list of cases, because it was clear from the information available that the applicants no longer faced any risk, at that moment or for a considerable time to come, of being expelled and subjected to treatment contrary to Article 8 of the Convention, and that they could challenge any future removal before the national authorities and, if necessary, before the Court (see *Khan v. Germany* (striking out) [GC], no. 38030/12, § 34, 21 September 2016; *F.I. and Others v. the United Kingdom* (dec.), no. 8655/10, 15 March 2011; *Atayeva and Burmann v. Sweden* (striking out), no. 17471/11, §§ 19-24, 31 October 2013; and, *mutatis mutandis*, as regards Article 3, *Atmaca*, cited above; *Ozbeek v. the Netherlands* (dec.), no. 40938/09, 9 October 2012; *Sharifi v. Switzerland* (dec.), no. 69486/11, 4 December 2012; *P.Z. and Others v. Sweden* (striking out), no. 68194/10, §§ 14-17, 18 December 2012; *B.Z. v. Sweden* (striking out), no. 74352/11, §§ 17-20, 18 December 2012; *L.T. v. Belgium* (dec.), no. 31201/11, 12 March 2013; *Isman v. Switzerland* (dec.), no. 23604/11, § 24, 21 January 2014; *I.A. v. the Netherlands* (dec.), no. 76660/12, 27 May 2014; *H.S. and Others v. Belgium* (dec.), no. 10973/12, 24 March 2015; *A.A. v. Belgium* (dec.), no. 66712/13, 19 May 2015; and *S.S. v. the Netherlands* (dec.), no. 67743/14, 1 September 2015).

52. In all the cases cited above, the Court explicitly or implicitly found that there were no special circumstances relating to respect for human rights as defined in the Convention and the Protocols thereto requiring the continued examination of the application (Article 37 § 1 *in fine*).

53. In the present case the Court notes that, following the revocation of the applicant's refugee status and the subsequent cancellation of his return trip to the Occupied Palestinian Territory, on 21 January 2019 the Asylum Service issued decision no. 1310/2019 by which the applicant was regranted refugee status (see paragraph 30 above).

54. The Court has no reason to doubt the validity of the refugee status granted to the applicant or its binding effect (see, *mutatis mutandis*, *F.I. and Others v. the United Kingdom*, and *Atmaca*, both cited above). Consequently, he is no longer at risk of being returned to the Occupied Palestinian Territory. The Court reiterates in this context that it has struck out applications after being informed by the respondent Government that the national authorities no longer intended to expel the applicant to the country of destination in the near future or for some time to come, even if that information was not accompanied by any formal undertaking on the part of the respondent Government (see, among many other authorities, *Ozbeek*, cited above; *Abdi Mohammed v. the Netherlands* (dec.), no. 2738/11, 4 December 2012; *I.A. v. the Netherlands*, cited above; and *S.S. v. the Netherlands*, cited above).

55. The Court also notes that if the Greek authorities again proceeded to revoke the applicant's refugee status and return him to the Occupied Palestinian Territory, it would be open to the applicant, if necessary, to lodge

a fresh application with the Court (see the Court's case-law cited in paragraph 51 above).

56. The Court accordingly concludes that the applicant is not at risk of being returned to the Occupied Palestinian Territory either at present or in the foreseeable future.

57. In these circumstances and in view of the subsidiary nature of the supervisory mechanism established by the Convention, the Court considers that it is not justified to continue the examination of the application (Article 37 § 1 (c) of the Convention).

58. Furthermore, the Court takes the view that the present case does not involve any special circumstances regarding respect for human rights as guaranteed by the Convention and the Protocols thereto requiring the continued examination of the application (Article 37 § 1 *in fine*). It considers, in particular, that unlike in the case of *F.G. v. Sweden* (cited above, § 82), which raised major issues under Articles 2 and 3 of the Convention, the present case does not go beyond the applicant's specific situation because it primarily concerns the assessment by the domestic authorities of the facts relating to his family situation (unaccompanied minor), which may, moreover, change over time (see *Abdi Mohammed*; *Isman*; and *I.A. v. the Netherlands*, all cited above).

59. The Court also reiterates that after it has struck an application out of its list of cases, it can at any time decide to restore it to the list, pursuant to Article 37 § 2, if the circumstances justify such a course (see *Atmaca*; *Abdi Mohammed; I.A. v. the Netherlands*; and *H.S. and Others v. Belgium*, all cited above).

60. Accordingly, this part of the application should be struck out of the list of cases. This decision is without prejudice to the Court's power to restore it to the list, pursuant to Article 37 § 2 of the Convention.

61. Having regard to its above conclusion that the applicant is no longer at risk of being returned to the Occupied Palestinian Territory, the Court finds that there is no reason for the indication made to the Government under Rule 39 of the Rules of Court to remain in force.

B. Alleged violation of Articles 3 and 8 of the Convention on account of the lack of psychosocial support provided to the applicant, taken alone and in conjunction with Article 13 of the Convention

62. Relying on Articles 3, 8 and 13 of the Convention, the applicant complained that he had not received proper psychosocial support. In addition, he complained that he had had no effective remedy for his complaint in that regard. The relevant provisions read as follows:

Article 3

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

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence."

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

1. The parties' arguments

63. The Government submitted that the domestic authorities from the outset had assessed and monitored the applicant's mental health. Numerous psychological reports had been drawn up, which had been submitted to the applicant's temporary guardian for her to assess them and take the appropriate action in line with his best interests. Based on these reports, a continuous effort had been made to accommodate the applicant in suitable facilities and provide him with the necessary psychological and psychosocial support. For the purposes of ensuring his mental and psychological health, it had been considered vital that he be reunited with his mother, and the temporary guardian had exercised her powers to achieve this aim.

64. In his application, the applicant complained that the Greek authorities had failed to provide him with the proper psychological and psychosocial support, despite the numerous doctors' recommendations. In particular, referring to documents dated 1 November 2016, 31 May 2017, 21 September 2017 and 10 October 2017, he argued that he had been placed in hospital many times and that at every stage the doctors in charge had recommended that he be treated for his past experiences; however, no such treatment had ever taken place. In addition, he had had no effective domestic remedy by which to complain about the lack of proper support. He also relied on multiple reports to show that access to healthcare was in general hindered in Greece, particularly psychosocial support for unaccompanied children at reception and identification centres in Greece, as well as in accommodation facilities.

2. The third-party intervener's observations

65. The organisation Defence for Children highlighted the multiple vulnerabilities faced by refugee children due to their youth and their background. Relying on the Court's case-law under Article 8, they argued that a lack of medical care in respect of mental problems, despite doctors' recommendations, was very harmful, particularly for a child. In this context, they argued that Article 8 of the Convention should be read in the light of the relevant provisions of the Convention on the Rights of the Child, namely the right to the best possible healthcare (Article 24), the right to extra protection for victims of all sorts of violence or neglect in order for them to be reintegrated in society (Article 39) and the right to specific protection for refugee children and asylum seeking children (Article 22).

3. The Court's assessment

(a) As regards the alleged lack of psychological and psychosocial support

66. The Court notes that the applicant complained that he had not received the necessary psychological and psychosocial support throughout his stay in Greece. However, from the information provided to the Court, it appears that he was regularly monitored by competent specialists in the hospitals and facilities in which he was accommodated. The Court also notes that there were several assessment reports drawn up in respect of him; in particular, during his first stay in Penteli General Children's Hospital, there were two child psychiatric assessment reports drawn up, on 1 and 7 November 2016 (see paragraphs 9 and 11 above). He and his siblings were then transferred to P. and A. Kyriakou Children's Hospital for childcare, where they received psychological support. A report was drawn up there on 31 May 2017 by the hospital psychologist (see paragraph 13 above). When the applicant was transferred to the reception facility in Plagiari, Thessaloniki, it appears that there was a follow-up of his mental health, as he was interviewed by a child psychiatrist of the mental health department at Papanikolaou General Hospital and a relevant report was drawn up (see paragraph 14 above). That report concluded that the applicant's mental health did not necessitate hospitalisation. After the facility in Plagiari closed down, the applicant and his siblings were again transferred to P. and A. Kyriakou Children's Hospital, where a new child psychiatric assessment was conducted on 10 October 2017. The report noted that all four siblings had received psychological support and advice during their stay in the hospital (see paragraph 15 above). On 13 December 2017 the applicant was transferred to a reception facility in Pylaia, Thessaloniki, operated by Arsis. It appears that his mental health was regularly monitored by the social worker and psychologist there, as demonstrated by the letter dated 8 June 2018 addressed by that professional to the prosecutor (see paragraph 17 above).

67. From all the information provided to the Court and mentioned above, it is apparent that the applicant's mental health was monitored on a regular basis. Every time he was in hospital or placed in a facility, he received appropriate psychological support and advice from competent professionals, as demonstrated by numerous reports drawn up in that regard. Therefore, his medical treatment does not pose any problem under the Court's case-law under either Article 3 or Article 8 of the Convention.

68. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

(b) As regards the alleged lack of a remedy

69. Turning to the applicant's complaint that he had had no effective remedy in respect of the above-mentioned complaint, the Court notes that it has declared his complaint of a lack of proper psychological and psychosocial support manifestly ill-founded. Therefore, his complaint under Article 13 of the Convention cannot be considered "arguable" for the purposes of the latter provision. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

C. Alleged violation of Article 8 of the Convention on account of non-appointment of a guardian and the procedure followed in respect of the applicant's return to the Occupied Palestinian Territory, taken alone and in conjunction with Article 13 of the Convention

70. The applicant complained that the procedure followed in respect of the revocation of his refugee status, combined with the failure to appoint a guardian, had violated Articles 8 and 13 of the Convention.

1. The parties' submissions

71. The Government submitted that the prosecutor had acted as the applicant's temporary guardian with a view to ensuring his mental and psychosocial health. On the basis of her assessment, it had been considered vital that the applicant be reunited with his mother, so she had designated a representative to handle the applicant's case before the competent asylum and consular services in order to achieve that aim. Moreover, as shown by his application to the Court, the applicant had found other lawyers to represent him and defend his legal interests. The applicant's complaint should therefore be rejected, as he had never submitted a request for a guardian to the domestic courts, even though he had had legal representation. In addition, his complaint that he had not been appointed a guardian pursuant to Article 1532 was manifestly ill-founded as, under domestic law, unaccompanied minors had to be appointed a guardian pursuant to Article 1592 (and not 1532) of the Civil Code. In any event, the applicant had secured legal representation for himself

as he had submitted an application to the Court even though those lawyers had not been appointed by the temporary guardian. Therefore, having regard to the fact that the applicant had been legally represented, it had been entirely possible for him to receive information concerning his rights and even to apply for the appointment of a guardian. The Government submitted that if the opposite were to be argued, namely that the applicant's representation had only been possible after the competent authorities had acted, then the present application should be rejected for lack of authorisation of the lawyers.

72. The applicant submitted in his application form that the failure to appoint a legal guardian for him, combined with the deficient procedure followed by the domestic authorities concerning his return to the Occupied Palestinian Territory, had resulted in a violation of Article 8. The domestic authorities had failed to provide him with the necessary representation, despite his vulnerability as an unaccompanied minor. He had found himself without a guardian from the moment he had been removed from his father's care, and court proceedings had never been initiated to have a guardian appointed. In addition, the prosecutor had, unbeknownst to the applicant, authorised people to act on his behalf, without him being informed of the developments relating to his refugee status, his representation or his eventual reunification with the other members of his family. That situation had eventually resulted in the revocation of his refugee status, and, in consequence, he had not been far from being sent back to the Occupied Palestinian Territory without having been heard or consulted beforehand. He further cited multiple reports in which the system of guardianship applicable at the material time was criticised by various bodies and NGOs. In addition, he had had no effective remedy at his disposal to complain about the above-mentioned situation.

2. The Court's assessment

73. The Court firstly notes that the applicant essentially complains that the procedures followed by the domestic authorities in his case were not in compliance with the requirements of Article 8 of the Convention. In particular, he argues that he was not duly involved in the proceedings that concerned him, focusing mainly on the revocation of his refugee status, and that the decisions taken by the domestic authorities were not dictated by his best interests.

74. While the Court recognises the importance of the principle of the child's best interests and of the child's right to be heard in all decisions that concern him or her, it notes that this complaint relates to the procedure followed in respect of the now obsolete decision to return the applicant to the Occupied Palestinian Territory. In view of its conclusion that it is not justified to continue the examination of the complaint concerning the applicant's return (see paragraph 57 above), and in the absence of any enduring uncertainty (compare *B.A.C. v. Greece*, no. 11981/15, § 40, 13 October 2016)

the Court concludes that there is no need to examine separately the applicant's complaint under Article 8, taken alone and in conjunction with Article 13 of the Convention.

D. Alleged violation of Article 8 of the Convention on account of the applicant's separation from his siblings, taken alone and in conjunction with Article 13 of the Convention

75. The applicant complained that his placement in a reception facility away from his siblings had violated his rights under Article 8. In addition, he complained that he had had no effective remedy for his complaint in that regard.

1. The parties' arguments

76. The Government maintained that the applicant could not be hosted at the same facility as his siblings as they were of different ages and/or sex; that could not be attributed to the authorities. In any event, the four siblings now lived in Athens and were in regular contact.

77. The applicant submitted that from December 2017 he had been living away from his siblings, who had been in different accommodation facilities in Athens. He had been in Thessaloniki, that is to say 504 km away from his brothers and sister, and the relevant authorities had not facilitated his contact with them. He had managed to see them only with the assistance of the volunteer hosting his sister. When the urgent situation had arisen concerning their return to the Occupied Palestinian Territory, the applicant had had no possibility to meet with his siblings so as to understand their possible needs. Moreover, he had had no remedy by which to complain about his separation from his siblings.

2. The third-party intervener's observations

78. Defence for Children submitted that the specific vulnerabilities of unaccompanied child refugees were also relevant when assessing whether the separation between siblings constituted a violation of Article 8 of the Convention. The present case raised the issue of the right to family life of asylum seeking and refugee siblings living separately in a receiving country. In the light of the specific vulnerabilities that children present, the enduring separation of siblings without a parent who took care of them could well constitute a violation of Article 8.

3. The Court's assessment

(a) As regards the complaint under Article 8

79. Noting that the existence of family life in the present case has not been disputed, the Court will proceed to examine whether the applicant's right to respect for his family life has been adequately protected.

80. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There are also positive obligations inherent in effective "respect" for family life. In the context of both negative and positive obligations, regard must be had to the fair balance that has to be struck between the competing interests, and in both contexts the State enjoys a certain margin of appreciation (see *Tuquabo-Tekle and Others v. the Netherlands*, no. 60665/00, § 42, 1 December 2005).

81. In the present case, the Court notes that the applicant and his siblings were removed from their father's care on 3 May 2017 and placed initially in P. and A. Kyriakou Children's Hospital for childcare and subsequently, on 31 May 2017, in a reception facility for unaccompanied minors in Thessaloniki (see paragraph 14 above). When that reception facility closed, the applicant and his siblings were again temporarily accommodated in P. and A. Kyriakou Children's Hospital for childcare and were then placed in different reception facilities on 13 December 2017 in Thessaloniki and Athens. More specifically, the applicant and his older brother were placed in two facilities in Thessaloniki, until May 2018 when his older brother was transferred to Athens (see paragraph 16 above). The two younger siblings were in Athens in separate accommodation.

82. According to the information provided by the Government, the children could not be placed in the same reception facility, as the existing facilities for unaccompanied minors were intended for children of the same sex and were separated into two age groups, 8 to 12 years old and 12 to 18 years old (see paragraph 16 above). The Court does not find it unreasonable that the domestic authorities separated the existing facilities, and therefore accepts that not all the siblings could be accommodated in the same facility for reasons linked to the fact that the establishments were organised according to the age and gender of the children. It thus remains to be examined whether the placement of the children in facilities in different cities, which seems to be the applicant's main complaint, violated Article 8 of the Convention.

83. In this regard, the Court considers that the decision of EKKA to place the children in reception facilities in different cities constituted an interference with the applicant's right to respect for his family life. Noting that the applicant's complaint mainly focuses on the alleged lack of regular contact with his siblings, rather than their separation and placement in different facilities, the Court deems it appropriate to examine whether the respondent State complied with its positive obligation to ensure such contact

between the applicant and his siblings and whether the authorities acted with a view to maintaining and developing their family ties.

84. The Court observes that the applicant's separation from two of his siblings started in December 2017 and that he was separated from all of them in May 2018. This situation lasted until 21 September 2018, when he was transferred to an accommodation facility in Athens (see paragraph 29 above).

85. The Court acknowledges that the ties between members of a family and the prospects of their successful reunification will per force be weakened if impediments are placed in the way of their having easy and regular access to each other. The very placement of the applicant away from his siblings must have adversely affected the possibility of contact between them (see, *mutatis mutandis*, *Olsson v. Sweden (no. 1)*, 24 March 1988, § 81, Series A no. 130). However, while the applicant's gradual separation from his brothers and sister lasted from December 2017 to 21 September 2018, some nine months in total, he was completely separated from them only for a relatively short period of some four months starting in May 2018. Before the separation the first of the five siblings, his older brother, was also accommodated in a reception facility in Thessaloniki. They could thus more easily maintain a certain family relationship, which certainly attenuated the applicant's situation. In addition, it appears that there was regular contact between the siblings, which was facilitated by the competent authorities and the volunteer hosting the applicant's sister (see paragraph 16 above). The Court does not have information as to how many meetings took place, but from the documents provided to it, it appears that there was at least one visit between 24 and 26 December 2017. It also notes that the placement of the siblings in different cities was regarded as a temporary measure, as shown by the older brother's transfer from Thessaloniki to Athens and the applicant's eventual placement in a facility in Athens and that it appears that in the meantime the authorities facilitated their contact. As soon as the issue of the four siblings' return to the Occupied Palestinian Territory was clarified, the authorities took the necessary steps to achieve the ultimate aim of reuniting the children.

86. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

(b) As regards the complaint under Article 13

87. Turning to the applicant's complaint that he had no effective remedy in respect of his above complaint, the Court notes that it has declared the applicant's complaint about the separation from his siblings manifestly ill-founded. Therefore, his complaint under Article 13 of the Convention cannot be considered "arguable" for the purposes of the latter provision. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases in respect of the applicant's complaint under Article 3, taken alone and in conjunction with Article 13, concerning his return to the Occupied Palestinian Territory, and to *discontinue* the application of Rule 39 of the Rules of Court;

Holds that there is no need to examine separately the complaint under Article 8 of the Convention concerning the guardianship and the procedure followed in respect of the applicant's representation and revocation of his refugee status either alone or taken in conjunction with Article 13;

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 19 May 2022.

Liv Tigerstedt	Marko Bošnjak
Deputy Registrar	President