

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

FIRST SECTION

DECISION

Application no. 18483/11
Mohammad Hussein HAIDARI and others
against Denmark and Greece

The European Court of Human Rights (First Section), sitting on 12 June 2012 as a Chamber composed of:

Nina Vajić, *President,*
Peer Lorenzen,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 11 March 2011 against Denmark and Greece,

Having regard to the formal declarations accepting a friendly settlement of the case between the applicants and the Danish Government,

Having regard to the declaration submitted by the applicants that they withdraw their complaints against Greece,

Having deliberated, decides as follows:

PROCEDURE

The applicants, Mr Mohammad Hussein Haidari and Ms Habiba Haidari and their two children are Afghan nationals, who currently live in Denmark. The applicant husband was born in 1971 and the children were born in 2004 and 2006. It is unknown when the applicant's wife was born.

The applicants are represented before the Court by Ms Mary Lisa Jayaseelan, a legal adviser for the Danish Refugee Council (*Dansk Flygtningehjælp*), an NGO.

The Danish Government ("the Government") were represented by their Agent, Mr Thomas Winkler, and their Co-agent, Ms Nina Holst-Christensen.

The Greek Government were represented by their Agent, Mr Fokion P. Georgakopoulos.

On 9 September 2011 the President of the First Section decided to give notice of the application to the Government of Denmark and to the Government of Greece.

FACTS

The applicants left Afghanistan in 2008 and entered Greece in August 2009.

On 16 November 2009 they entered Denmark and requested asylum.

On 1 February 2010, the Immigration Service (*Udlændingeservice*) found that the applicants should be returned to Greece pursuant to the Dublin Regulation.

The decision was upheld on appeal by the Ministry for Refugee, Immigration and Integration Affairs (*Ministeriet for flygtninge, indvandrere og integration*).

The applicants were returned to Greece on 9 September 2010.

Subsequently, at some unknown time the applicants returned to Denmark.

In respect of Greece, referring to *M.S.S. v. Belgium and Greece* [GC] (no. 30696/09, 21 January 2011), the applicants complained that there had been a violation of Article 3 of the Convention because of the applicants' conditions of detention and their living conditions in Greece. Moreover, they complained that there had been a violation of Article 13 taken in conjunction with Article 3 due to the deficiencies in the asylum procedure followed in the applicants' case and the risk of their expulsion to Afghanistan without any serious examination of the merits of their asylum application and without any access to an effective remedy.

In respect of Denmark, the applicants complained that it was in violation of Articles 3 and 13 of the Convention to return them to Greece on 9 September 2010.

On 10 January 2012 the Danish Government submitted a friendly settlement declaration in which they stated, *inter alia:*

> "...Taking into account the ruling of the Court in *M.S.S. v. Belgium and Greece* [GC] [no. 30696/09, 21 January 2011], and having regard to the specific

> circumstances of the present case the Government proposes to pay each of the adult applicants 185,000 Danish Kroner (DKK) and each of the minor applicants DKK 92,500 since they were in the care of their parents throughout their stay in Greece. This amount is intended to compensate the applicants for any non-pecuniary damage they may have suffered as a result of the decision of the Danish authorities to return them to Greece under the Dublin Regulation.
>
> The Government is also prepared to compensate the applicants for necessary and reasonable costs and expenses incurred in relation to the proceedings before the Court, the amount to be determined by the Court..."

On 14 February 2012 the applicants' representative submitted a declaration in which she stated, *inter alia,*:

> "...[the applicants] wish to accept the friendly settlement of DKK 185,000 to each of the adult applicants and DKK 92,500 to each of the minor applicants, as a compensation for the non-pecuniary damage they have suffered as a result of their return to Greece by the Danish authorities...
>
> ...there are no claims [for costs and expenses]"

On 30 April 2012 the applicants' representative submitted a declaration in which she stated, *inter alia:*

> "...on behalf of [the applicants], the Danish Refugee Council hereby informs the Court that [the applicants] wish to withdraw their application against Greece".

THE LAW

The Court takes note of the friendly settlement reached between the applicants and the Danish Government. It notes that the total sum of DKK 555,000 is payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government must pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the application against Denmark.

The Court is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no reasons to justify a continued examination of the application against Denmark (Article 37 § 1 *in fine* of the Convention).

The Court also takes note of the declaration submitted by the applicants that they do not intend to pursue the application against Greece and it finds no reasons to justify a continued examination of that part of the application (Article 37 § 1 *in fine* of the Convention).

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Søren Nielsen Registrar	Nina Vajić President