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

FIFTH SECTION

DECISION

Application no. 30056/18
Z.A.
against Hungary

The European Court of Human Rights (Fifth Section), sitting on 12 September 2024 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
Lado Chanturia,
Kateřina Šimáčková*, judges*,
and Sophie Piquet, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 30056/18) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 15 June 2018 by an Afghan national, Mr Z.A., who was born in 2001 and lives in Fót ("the applicant") and was represented by Mr Sz.M. Sánta, a lawyer practising in Budapest;

the decision to give notice of the application to the Hungarian Government ("the Government"), represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice;

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

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. On 2 November 2017 the applicant, an unaccompanied sixteen-year-old fleeing Afghanistan, entered the Hungarian transit zone in Röszke to seek asylum.

2. The asylum authority ordered the applicant to be accommodated in the Röszke transit zone pending the asylum proceedings. He was residing in the sector for unaccompanied boys.

3. On the day of the applicant's admission, the asylum authority contacted the guardianship office for the appointment of an *ad hoc* guardian (*eseti gyám*) for him.

4. The applicant was interviewed by the authority, in the presence of his guardian, on 8 November 2017. On 15 December 2017 he was granted subsidiary protection. Three days later, on 18 December 2017, he was moved to a children's home in Fót. He left the home on 18 March 2017 for an unknow destination.

5. Relying on Article 3 of the Convention, taken alone and in conjunction with Article 13, he complained about the allegedly inhuman or degrading conditions in which he was held in the transit zone and the lack of an effective remedy in this respect. He further complained under Article 5 §§ 1 and 4 of the Convention due to his confinement to the transit zone.

I. THE APPLICANT'S VERSION OF THE LIVING CONDITIONS IN THE RÖSZKE TRANSIT ZONE

6. With regards to the conditions in the transit zone, the applicant complained about the lack of sufficient personal space in his container, the alleged deficiencies of heating, the fact that he was given hot meals only once a day and the lack of psychological support, educational and leisure activities adapted to his age. He also claimed that he only met his guardian once.

II. THE GOVERNMENT'S VERSION OF THE LIVING CONDITIONS IN THE RÖSZKE TRANSIT ZONE

7. The Government submitted that in each sector of the transit zone asylum seekers were accommodated in five-bed containers. Heating was provided in the containers and the bathrooms, and in the event of a breakdown, the heaters were repaired or replaced. According to the Government's inventory, on 2 November 2017 the applicant was provided with, *inter alia*, a spring/autumn coat, a sweater, a shirt, a T-shirt, shoes, socks and on 10 November 2017 a warm winter coat, as part of the provision of seasonal clothing. They further argued that based on their records, the applicant took three meals a day and on 17 November 2017 he also benefitted from an additional food package financed through the Asylum, Migration and Integration Fund. The same fund provided for the presence of a psychologist in the transit zone once a week. Concerning education, the Government submitted that at the material time there was a teacher in each sector of the transit zone, the trainings being available to people of compulsory school age and beyond. The teaching material allegedly consisted of a variety of playful exercises, aimed at teaching basic subjects and skills, overcoming language barriers. Regarding leisure programmes, the Government noted that on the one hand the programmes for adults (such as board games, chess or sports) were also open to children, and on the other there were programmes specifically targeting children.

III. REPORTS CONCERNING THE LIVING CONDITIONS IN THE RÖSZKE TRANSIT ZONE

8. The main findings of the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in the two Hungarian transit zones between 20 and 26 October 2017 have been summarised in the judgment of *R.R. and Others v. Hungary* (no. 36037/17, § 30, 2 March 2021). In addition to these, the CPT further observed that the school classes had targeted kindergarten-age and young school-age children and that hardly any educational activities had been offered to older juveniles (CPT/Inf (2018) 42).

THE COURT'S ASSESSMENT

I. COMPLAINT UNDER ARTICLE 3 OF THE CONVENTION

9. According to the Court's well-established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of that level is relative and depends on all the circumstances of the case, principally the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (*Muršić v. Croatia* [GC], no. 7334/13, § 97, 20 October 2016).

10. The general principles concerning the confinement and living conditions of asylum-seekers have been summarised in *Khlaifia and Others v. Italy* ([GC], no. 16483/12, §§ 158-69, 15 December 2016) and with respect to the immigration detention of minors in *M.H. and Others v. Croatia* (nos. 15670/18 and 43115/18, §§ 184-186, 18 November 2021).

11. In *R.R. and Others* (cited above) the Court has already examined the physical conditions in the Röszke transit zone, the suitability of the facilities for children placed in the family sector and the provision of medical services at the material time. It concluded that such conditions may not attain the threshold of severity required to engage Article 3, where the confinement is of a short duration, however, in the case of a longer period, their repetition and accumulation would necessarily have harmful consequences for those exposed to them (cited above, §§ 60-64). The Court has repeatedly held in this connection that the passage of time is of primary significance for the application of Article 3 of the Convention (see ibid., § 64 and *M.H. and Others*, cited above, § 199). In cases of a twenty-seven-day-long and forty-day-long stay in the transit zones the Court was of the view that the applicants had not been confined for a prolonged period of time in the conditions complained of, therefore their situation did not reach the minimum level of severity necessary to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention (*N.A. and Others*

v. Hungary, (dec.) [Committee], no. 37325/17, 1 February 2022, and *A.S. and Others v. Hungary*, (dec.) [Committee], no. 34883/17, 17 May 2022).

12. The applicant's stay in the transit zone lasted for forty-six days. He was sixteen years old at the time. As he was unaccompanied, he was placed in a separate section created for unaccompanied boys between the age of 14 and 18 years and was appointed an *ad hoc* guardian, to provide him legal representation during the asylum procedure.

13. As regards the applicant's complaint about the cold and alimentation (see paragraph 6 above) the Court is unable to make any definitive findings on the basis of the material before it, especially in light of the Government's submission refuting his claims (see paragraph 7 above). Concerning the applicant's alleged need for psychological care, the Court notes that there is no indication that it was brought to the attention of the Hungarian authorities, even though psychological assistance was undisputedly available in the transit zone. As regards the education provided to minors around the applicant's age, the Court refers to the observations made by the CPT (see paragraph 8 above) and Ambassador Tomáš Boček, Special Representative of the Secretary General of the Council of Europe on migration and refugees (see *R.R. and Others*, cited above, § 31), according to which there had been no educational programmes adapted to the particular needs and age of juveniles staying in the transit zones. It notes with concern that the Government failed to rebut these allegations with details provided on the nature and frequency of classes held for adolescents of the applicant's age. The Court is also concerned that the government has not dispelled doubts, based on the applicant's complaint, about the quality and effectiveness of the assistance provided to him by his *ad hoc* guardian.

14. At the same time, having regard to the applicant's age and the relatively short duration of his stay in the transit zone (see paragraph 11 above), it cannot be found that these circumstances alone or together with other aspects of the conditions in the Röszke transit zone had reached the threshold of severity necessary to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention. This part of the application is therefore manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected under Article 35 § 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 4 OF THE CONVENTION

15. The Government submitted that placement in the transit zone does not constitute detention. The applicant had not been detained there and he could have left the zone towards Serbia at any time.

16. In Ilias and Ahmed (cited above, §§ 219-49) the Grand Chamber examined a comparable complaint and held that the applicants' twenty-three day-long stay in the Röszke transit zone did not constitute a *de facto*

deprivation of liberty and, consequently, that Article 5 was not applicable. The case of the present applicant is different in that, due to legislative changes, the provision setting the maximum duration of the asylum-seeker's stay in the transit zone did not apply (see *R.R. and Others*, cited above, § 79). Nevertheless, the length of the applicant's stay in the transit zone, that is forty-six days, did not exceed significantly the time needed for the examination of his asylum request (see *Ilias and Ahmed*, cited above, §§ 228-29). Under the domestic legislation the time limit for the asylum procedure is two months (see *R.R. and Others*, cited above, §§ 25 and 79), with the condition that in the case of unaccompanied minors the procedure needs to be conducted with priority. It has not been shown that in the particular case this time-limit had been exceeded or that the Hungarian authorities had failed to act in a speedy and diligent manner (compare and contrast to *R.R. and Others*, cited above, §§ 79 and 80). In view of the foregoing and also noting that the applicant could have left the transit zone in the direction of Serbia at any moment, which question have already been addressed in the cases of *Ilias and Ahmed* (cited above, §§ 220-23 and 231-48) and *R.R. and Others* (cited above, §§75 and 81), the applicant's stay in the transit zone could not be considered as deprivation of liberty within the meaning of Article 5 of the Convention.

17. It follows that the applicant's complaints under Article 5 §§ 1 and 4 of the Convention are incompatible *ratione materiae* with its provisions within the meaning of Article 35 § 3 (a) and must be rejected, in accordance with Article 35 § 4 of the Convention.

III. COMPLAINT UNDER ARTICLE 13 READ IN CONJUNCTION WITH ARTICLE 3

18. The applicant also alleged under Article 13 read in conjunction with Article 3 that there was no effective remedy at his disposal to complain about the conditions in the transit zone.

19. Having declared the complaint under Article 3 of the Convention inadmissible, the Court concludes that the applicant has no arguable claim for the purposes of Article 13 of the Convention and that his complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected, in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 October 2024.

Sophie Piquet Acting Deputy Registrar	Stéphanie Mourou-Vikström President