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

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The conditions of extreme poverty faced by a family of asylum seekers following their eviction from an accommodation centre constituted degrading treatment

In today's **Chamber judgment**[1] in the case of V.M. and Others v. Belgium (application no. 60125/11) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights **and of Article 13 (right to an effective remedy) taken in conjunction with Article 3**, and

no violation of Article 2 (right to life).

The case concerned the reception conditions of a family of Serbian nationals seeking asylum in Belgium. Following an order to leave the country and despite their appeals against the measure, the applicants were left without basic means of subsistence and were obliged to return to their country of origin, where their severely disabled child died.

The Court found in particular that the Belgian authorities had not given due consideration to the vulnerability of the applicants, who had remained for four weeks in conditions of extreme poverty, and that they had failed in their obligation not to expose the applicants to degrading treatment, notwithstanding the fact that the reception network for asylum seekers in Belgium had been severely overstretched at the time (the "reception crisis" of 2008 to 2013). The Court considered that the requirement of special protection of asylum seekers had been even more important in view of the presence of small children, including an infant, and of a disabled child.

Furthermore, the fact that the appeal against the order for the applicants' deportation did not have suspensive effect had resulted in all material support for the applicants being withdrawn and had forced them to return to their country of origin without their fears of a possible violation of Article 3 in that country having been examined.

Principal facts

The applicants are seven Serbian nationals, a father and mother and their five children. They were born in 1981, 1977, 2001, 2004, 2007 and 2011 respectively and live in Serbia. Their eldest daughter, who was born in 2001 and was mentally and physically disabled from birth, died in December 2011. The applicants are of Roma origin and were born in Serbia, where they have lived for most of their lives.

In March 2010 the applicants travelled to France, where they submitted an asylum application which was rejected. In March 2011 they travelled to Belgium and lodged an asylum application there. On 12 April 2011 the Belgian authorities submitted a request to the French authorities to take back the family. On 6 May 2011 France accepted the request under the Dublin II Regulation[2]. On 17 May 2011

[1] Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

[2] Under the terms of this Regulation the European Union Member States must determine, based on a hierarchy of objective criteria, which Member State bears responsibility for examining an asylum application lodged on their territory. See §§ 100 et seq. of the *V.M. and Others*

the Aliens Office in Belgium issued the applicants with an order to leave Belgian territory for France, on the ground that Belgium was not responsible for considering the asylum application under the Dublin II Regulation. On 25 May 2011 the time-limit for enforcement of the order to leave the territory was extended until 25 September 2011 owing to the mother's pregnancy and imminent confinement.

On 16 June 2011 the applicants submitted to the Aliens Appeals Board a request for the suspension and setting-aside of the decision refusing them leave to remain and ordering them to leave the country. On 22 September 2011 the applicants applied for leave to remain on medical grounds on behalf of their disabled eldest daughter. The Aliens Office rejected their application. On 26 September 2011, on expiry of the time-limit for enforcement of the order to leave the country, the applicants were expelled from the Sint-Truiden reception centre where they had been staying, as they were no longer eligible for the material support provided to refugees. They travelled to Brussels, where voluntary associations directed them to a public square in the Schaerbeek municipality in the centre of the Brussels-Capital district, together with other homeless Roma families. They remained there until 5 October 2011. On 7 October 2011 they were assigned to a new reception facility as a mandatory place of registration in the Province of Luxembourg, 160 km from Brussels. The applicants eventually took up residence in Brussels North railway station, where they remained for three weeks until their return to Serbia was arranged on 25 October 2011 by a charity under the return programme run by Fedasil, the federal agency for the reception of asylum seekers.

In a judgment of 29 November 2011 the Aliens Appeals Board set aside the impugned decisions (the refusal of leave to remain and the order to leave the country) on the grounds that the Aliens Office had not established on what legal basis it considered France to be the State responsible for the applicants' asylum application. The Belgian State lodged an appeal on points of law with the *Conseil d'État* against the judgment of the Aliens Appeals Board. In a judgment of 28 February 2013 the *Conseil d'État* declared the appeal inadmissible for lack of current interest, given that the applicants had returned to Serbia and that the Belgian State had been released from its obligations under the procedure for determining the Member State responsible for their asylum application.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants complained that their exclusion from the reception facilities in Belgium from 26 September 2011 onwards had exposed them to inhuman and degrading treatment. Under Article 2 (right to life), they alleged that the reception conditions in Belgium had caused the death of their eldest daughter. Lastly, under Article 13 (right to an effective remedy), they complained that they had been unable to assert before the courts their claim that their removal to Serbia and the refusal to regularise their residence status had exposed them to a risk to their eldest daughter's life (Article 2) and to a risk of suffering inhuman and degrading treatment (Article 3).

The application was lodged with the European Court of Human Rights on 27 September 2011.

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

Işıl **Karakaş** (Turkey), *President*,
András **Sajó** (Hungary),
Nebojša **Vučinić** (Montenegro),
Helen **Keller** (Switzerland),
Paul **Lemmens** (Belgium),
Egidijus **Kūris** (Lithuania),

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judgment.

Jon Fridrik **Kjølbro** (Denmark),

and also Abel **Campos**, *Deputy Section Registrar.*

Decision of the Court

Article 3 (prohibition of inhuman or degrading treatment)

The Court reiterated that neither the Convention nor its Protocols conferred the right to political asylum and that Contracting States had the right, subject to their international undertakings including the Convention, to control the entry, residence and expulsion of non-nationals. Nevertheless, the State's responsibility could be engaged in relation to asylum seekers' conditions of reception. The Court observed[3] that, in order to determine whether the threshold of severity required under Article 3 was met in a given situation, particular importance should be attached to the person's status as an asylum seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection. Asylum seekers' vulnerability was heightened in the case of families with children[4], and the requirement of special protection had been even more important in the applicants' case in view of the presence of small children, including one infant, and of a disabled child.

The Court had to ascertain in this case whether the applicants' living conditions in Belgium between 26 September and 25 October 2011 engaged the responsibility of the Belgian State under Article 3. The Court's review related only to that period, between their eviction from the accommodation centre and their departure for Serbia, since the applicants' reception and the fulfilment of their needs prior to that period were not the subject of dispute. Between 26 September and 25 October 2011 their situation had been particularly serious as they had spent nine days on a public square in Brussels and then, after two nights in a transit centre, a further three weeks in a Brussels train station. The Court noted that this situation could have been avoided or made shorter if the proceedings brought by the applicants seeking the setting-aside and suspension of the decisions refusing them leave to remain and ordering them to leave the country, which had lasted for two months, had been conducted more speedily.

However overstretched the reception network for asylum seekers in Belgium may have been at the time of the events[5], the Court considered that the Belgian authorities had not given due consideration to the applicants' vulnerability and had failed in their obligation not to expose the applicants to conditions of extreme poverty for four weeks, leaving them living on the street, without funds, with no access to sanitary facilities and no means of meeting their basic needs. The Court found that these living conditions, combined with the lack of any prospect of an improvement in the applicants' situation, had attained the level of severity required under Article 3. The applicants had therefore been subjected to degrading treatment, in breach of that provision.

[3] Grand Chamber judgment in *M.S.S. v. Belgium and Greece* (no. 30696/09) of 21 January 2011. In this judgment, which concerned an Afghan asylum seeker deported by the Belgian authorities to Greece under the Dublin II Regulation, the Court established a new line of case-law. It found that, in order to determine whether the threshold of severity required under Article 3 had been attained, particular importance should be attached to the applicant's status as an asylum seeker (see § 136 of the *V.M. and Others* judgment).

[4] Grand Chamber judgment in *Tarakhel v. Switzerland* (no. 29217/12) of 4 November 2014, which concerned the planned return to Italy by the Swiss authorities under the Dublin II Regulation of a family of Afghan nationals seeking asylum. In that case the Court stated that the vulnerability of asylum seekers was heightened in the case of families with children, and that the reception conditions for children seeking asylum had to be adapted to their age, to ensure that those conditions did not create for them a situation of stress and anxiety with particularly traumatic consequences (§ 119).

[5] Between 2008 and 2013, and particularly in 2011, the reception system for asylum seekers in Belgium went through a "crisis" period on account of a sharp and unusual increase in the number of asylum seekers and the ongoing saturation of the reception network managed by Fedasil (see §§ 92 to 96 of the judgment).

Article 2 (right to life)

The Court noted that, although the Belgian authorities must have been aware that the applicants were living in poverty following their eviction from the centre, and must have known about their eldest daughter's medical conditions, the medical certificate had not mentioned the degree of severity of those conditions. It also noted, with regard to the timing of the events, that a number of factors may have contributed to the child's death, including having spent several weeks in insalubrious conditions after the family's return to Serbia. Accordingly, the Court considered that the applicants had not shown that their eldest daughter's death had been caused by their living conditions in Belgium, or that the Belgian authorities had failed in their obligation to protect her life. The Court therefore found no violation of Article 2.

Article 13 (right to an effective remedy) taken in conjunction with Article 3 (prohibition of inhuman or degrading treatment)

On the basis of its analysis of the Belgian system as in force at the time of the events, the Court considered that the applicants had not had an effective remedy available to them, in the sense of one that had automatic suspensive effect and enabled their allegations of a violation of Article 3 to be examined in a rapid and effective manner.

The order for the applicants to leave the country had been liable to be enforced at any time by the Belgian authorities, and the application to set aside and the request for suspension of the measure lodged by the applicants did not have suspensive effect. The Court observed in particular that the lack of suspensive effect had resulted in the material support granted to the applicants being withdrawn and had forced them to return to their country of origin without their fears of a possible violation of Article 3 having been examined. The Court also noted that the length of the proceedings concerning the application to set aside had been unsatisfactory, given that the Aliens Appeals Board had not delivered its judgment until 29 November 2011, after the applicants had left for Serbia, thereby effectively depriving them of the opportunity to continue the proceedings in Belgium and France. Accordingly, since the applicants had not had an effective remedy, there had been a violation of Article 13 taken in conjunction with Article 3.

Article 13 (right to an effective remedy) taken in conjunction with Article 2 (right to life)

The Court considered it unnecessary to examine the applicants' complaint under Article 13 taken in conjunction with Article 2 of the Convention.

Article 41 (just satisfaction)

The Court held that Belgium was to pay the applicants 22,750 euros (EUR) in respect of non-pecuniary damage and EUR 8,120 in respect of costs and expenses.

Separate opinions

Judges Sajó, Keller and Kjølbro each expressed a dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in French.

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