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

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Unaccompanied migrant minors stayed in Greece in conditions unsuited to their age and circumstances

In today's **Chamber** judgment[1] in the case of Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia (application no. 14165/16) concerning the living conditions in Greece of five unaccompanied migrant minors from Afghanistan, the European Court of Human Rights, unanimously:

- declared the complaints against Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia inadmissible as being manifestly ill-founded;

- declared the complaints against Greece under Articles 3 and 5 § 1 of the European Convention on Human Rights admissible;

- held that there had been:

A violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention. Firstly, the Court held that the conditions of detention of three of the applicants in various police stations amounted to degrading treatment, observing that being detained in these places was liable to arouse in the persons concerned feelings of isolation from the outside world, with potentially negative repercussions on their physical and mental well-being. Secondly, the Court held that the authorities had not done all that could reasonably be expected of them to fulfil the obligation to provide for and protect four of the applicants, who had lived for a month in the Idomeni camp in an environment unsuitable for adolescents. That obligation was incumbent on the Greek State with regard to persons who were particularly vulnerable because of their age.

A violation of Article 5 § 1 (right to liberty and security) with regard to three applicants. The Court held that the placement of these three applicants in the police stations amounted to a deprivation of liberty as the Greek Government had not explained why the authorities had first placed the applicants in police stations – and in degrading conditions of detention – rather than in alternative temporary accommodation. The detention of those applicants had therefore not been lawful.

Principal facts

The applicants are five Afghan nationals who entered Greece as unaccompanied migrant minors in 2016, when they were between 14 and 17 years of age. They alleged that they had fled Afghanistan because they feared for their lives as members of the Ismaili religious minority.

In February 2016 they were apprehended by the police. Orders were made for their deportation and they were given one month to leave Greek territory. Some of them attempted to cross the border between Greece and North Macedonia but were stopped by the border guards. Sh.D. was arrested by the Greek police and placed in "protective custody" at Polykastro police station for 24 days. A.A., S.M., M.M. and A.B.M. were arrested on the island of Chios and their deportation was ordered; they subsequently crossed to the Greek mainland and made their way to Idomeni, a settlement on the

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.

border between Greece and North Macedonia. For approximately one month they were accommodated at the makeshift camp in Idomeni.

In March 2016, accompanied by their lawyer, they were escorted to the Central Asylum Service in Athens to apply for asylum. In May 2016 they moved into a squatted hotel in the centre of Athens. In July 2016 S.M., M.M. and A.B.M. were taken into the Faros shelter for unaccompanied minors, a facility operating under the supervision of the Norwegian Embassy and the International Organization for Migration. In August 2016 S.M. and M.M. were transferred to the Mellon special facility for unaccompanied minors, run by the Office of the United Nations High Commissioner for Refugees (UNHCR). In December 2016 M.M. was arrested by the police on account of his status as a minor and was placed in "protective custody" for eight days. A.A. hid under a lorry in an attempt to reach Italy but was arrested and likewise placed in "protective custody" in July 2016 at Igoumenitsa Port police station, and later, after a suicide attempt, at Filiata police station. S.M. and A.A. were granted refugee status in October 2016 and January 2017 respectively.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), all the applicants complained about their living conditions in Greece. More specifically, two of the applicants complained about their living conditions at Polykastro and Filiata police stations, where they had been held in "protective custody", while four applicants complained about their living conditions at the camp in Idomeni.

Relying on Article 5 (right to liberty and security), three of the applicants argued that their placement in protective custody at the police stations in Polykastro, Filiata and Aghios Stefanos had been incompatible with this provision of the Convention.

The application was lodged with the European Court of Human Rights on 15 March 2016.

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

Ksenija **Turković** (Croatia), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Tim **Eicke** (the United Kingdom),
Raffaele **Sabato** (Italy),

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

Decision of the Court

Article 3 (prohibition of inhuman or degrading treatment)

1. The police stations

The Court stressed that the police stations had features that were liable to give those detained there a feeling of solitude (no outdoor access to take a walk or have physical exercise, no internal catering arrangements and no radio or television to allow contact with the outside world) and were unsuited to prolonged detention. Hence, being detained there was apt to arouse in the persons concerned feelings of isolation from the outside world, with potentially negative repercussions on their physical and mental well-being. Consequently, the conditions of detention to which three of the applicants had been subjected in various police stations amounted to degrading treatment. The Court therefore found a violation of Article 3 of the Convention.

2. The Idomeni camp

The Court noted that four of the applicants had spent around one month in the Idomeni camp, with the aim of travelling on to Germany or Switzerland in order to join other family members. They had not been in detention, having themselves chosen to go there, and could leave at any time. The applicants in question stated, among other things, that the camp, with a capacity of 1,500, had housed 13,000 people and had no sanitation.

According to the Court's case-law, States Parties to the Convention were required to protect and provide for unaccompanied foreign minors. More specifically, in cases concerning the reception of foreign minors, whether accompanied or unaccompanied, it had to be borne in mind that the child's extreme vulnerability was the decisive factor and took precedence over considerations relating to the status of illegal immigrant. Thus, the obligation to provide for and protect the applicants was apt to be imposed automatically on the domestic authorities.

The Court was conscious of the fact that the Idomeni camp (a makeshift camp set up by refugees themselves) was wholly outside the control of the State authorities. The camp's occupants lived in a very precarious situation, in deplorable physical conditions, and were dependent for their survival on the assistance given by the non-governmental organisations present at the site. The expansion of the camp and the worsening of living conditions there were attributable to some extent to the time taken by the State to dismantle the camp and especially to the fact that the State itself had not provided the resources needed to alleviate the humanitarian crisis that had been ongoing since the camp was set up. The efforts of a few non-governmental organisations alone were not sufficient to tackle the scale of the problems.

The Court also noted that Article 19 of Decree no. 220/2007 on unaccompanied minors required the competent authorities, among other things, to inform the prosecutor with responsibility for minors or the prosecutor at the first-instance court with territorial jurisdiction, who acted as a temporary guardian and took the necessary steps to appoint a guardian. However, the authorities which had originally arrested the applicants concerned on the island of Chios had released them in a bid to ensure that they left the country within one month, and there was nothing in the case file to indicate that a prosecutor had been informed of their presence in the country. Had the prosecutor been informed, he or she would have had to take the necessary steps to have the applicants transferred to an appropriate reception facility and ensure that they did not have to live for several days in an environment that was patently unsuitable for unaccompanied minors. The applicants in question had thus spent one month in the Idomeni camp, in an environment unsuitable for adolescents – in terms of security, accommodation, hygiene and access to food and care – and in precarious circumstances incompatible with their young age.

Consequently, the Court was not persuaded that the authorities had done everything that could reasonably be expected of them to fulfil the obligation to provide for and protect the applicants in question, an obligation that was incumbent on the respondent State with regard to persons who were particularly vulnerable because of their age. There had therefore been a violation of Article 3 of the Convention on account of the living conditions of these four applicants.

Article 5 (right to liberty and security)

The Court considered that the placement of three of the applicants in police stations amounted to a deprivation of liberty. It noted that the authorities had automatically applied Article 118 of Decree no. 141/1991 providing for "protective custody". That instrument had not been designed with unaccompanied migrant minors in mind and did not establish any time-limits; situations could thus arise in which the detention of unaccompanied minors was extended for quite long periods. The Court also pointed out that Decree no. 114/2010 stipulated that the authorities should avoid detaining minors. Furthermore, Law no. 3907/2011 provided that unaccompanied minors should be placed in immigration detention only as a last resort and for the shortest time possible. Lastly,

Article 3 of the 1989 United Nations Convention on the Rights of the Child placed States under an imperative duty to take the best interests of the child into consideration in any decisions concerning him or her. Accordingly, the Court considered that the Government had not explained why the authorities had first placed these three applicants in police stations, in degrading conditions of detention, rather than in alternative temporary accommodation. The applicants' detention had therefore not been lawful and there had been a violation of Article 5 § 1 of the Convention.

Just satisfaction (Article 41)

The Court held that Greece was to pay 4,000 euros (EUR) to one applicant and EUR 6,000 each to four applicants in respect of non-pecuniary damage, and EUR 1,500 to the applicants jointly in respect of costs and expenses.

The judgment is available only in French.

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