Unofficial translation and summary

Decision of the Court in The Hague in interim injunction proceedings (Civil Section), dated 23 April 2003, nr. KG 03/284, on the reception of unaccompanied minor asylum seekers (UMAs)

Seven refugee organisations went to court to ask for a change in the regime of the two centres for separated children in Vught and Deelen. According to the NGOs, the children do not get a fair chance in the asylum procedure and there is no legal basis to justify the regime applicable in these centres.

Facts

UMAs aged fifteen and up, who have filed an application for asylum on which no decision has yet been taken, and those whose asylum request has been rejected, are eligible for reception in one of the two centres for separated children.

The NIDOS foundation is appointed the legal guardian of the UMAs residing in these centres.

The centres, that started as a pilot project, are the result of new policy as regards UMAs and the request from the Minister of Immigration and Integration to the Agency for the reception of asylum seekers (COA) to create a reception facility aimed at preparing UMAs for return to their country of origin upon becoming of age (18).

The first centre (in Vught) opened in November 2002.

Claim

The principal claim of the NGOs is that it should be forbidden to subject UMAs to the regime that is applicable in the centres in Vught and Deelen, and to order that UMAs are offered reception and education on the basis of laws and/or regulations in accordance with national and international regulations or to prohibit the present centres until such regulations have been established and offer the UMAs reception facilities elsewhere until such time, where they are treated the same way as other asylum seekers.

The alternative claim of the NGOs focuses on certain aspects of the reception regime for UMAs

1 UMAs should not be subjected to detention
2 UMAs should not be subjected to restriction of freedom
3 UMAs should be allowed to communicate in their own language, and doing so should not be subject to sanctions
4 UMAs should be allowed freedom of choice as regards clothing
5 Toilets and showers should have proper locks
6 Hours should be indicated during which UMAs can freely receive visitors in the centre
7 UMAs should be able to go outside the centre without being accompanied

8 The compulsory program should only consist of normal schooling during school hours that are customary in Dutch society
9 During the weekend there should be no compulsory activities program
10 UMAs should be free to leave the premises of the centre if there is no compulsory program
11 UMAs should have free access to their belongings without intervention of a third person
12 Personal belongings of UMAs that have been taken away, should immediately be returned
13 UMAs who are still in the asylum procedure or who still have to go through the asylum procedure, should not be accommodated in a centre for separated children
14 UMAs should receive education that complies with the law on compulsory education and/or that is analogue to the regulations for juvenile judiciary institutions
15 UMAs should receive an temporary identification card for asylum seekers (W-document)
16 There should be a room where UMAs can use the phone in private, without intervention of a third person
17 UMAs should receive pocket money, in accordance with the amount that minors receive elsewhere, which they can spend at their own discretion
18 UMAs should each have a room of their own
19 Measures should be taken to enable UMAs to spend their free time in a relaxed and educational way, either within or outside the centre
20 UMAs should have free access to information from media such as radio, TV, newspapers and magazines
21 All measures preventing UMAs from having contact with Dutch society should be prohibited
22 An independent supervisory committee should be established, with a written description of its tasks
23 An independent complaint committee should be established, with a written complaint procedure
24 UMAs should not be compelled to work in or outside the centre as long as there is no written statement on what can be expected from the UMA in this respect, to which the UMAs guardian has given his/her consent
25 Exercise of legal custody according to the Civil Code (BW) should be prohibited to persons who are not appointed as guardian, and it should be prohibited to limit a guardian in the exercise of legal custody
26 Assistance should be lend to transfer of an UMA to another centre if the responsible guardian institution considers this to be in the best interest of the UMA
27 The discrimination that occurs by submitting UMAs to a different reception regime, to different schooling, etc., than minors who do not stay in the centres for separated children, should be prohibited.

As a second alternative, the NGOs claim that the defendants be ordered to create written laws and/or policy rules explicitly addressing the legal status of UMAs.

In order to substantiate these claims, the NGOs argue that the regime to which UMAs are subjected in the centres, would be in violation of the law and international regulations, at least be contrary to the obligations of authorities towards minors who

turn to them seeking asylum. Moreover, there would be no known rules governing the centres and the applicable regime – deviating from the rules applicable in other centres – and solely aiming at return, whereas in a number of cases the request for asylum has not yet been irrevocably decided on. This would frustrate the course of justice and a fair asylum procedure and would be in contravention of the Convention on the Rights of the Child. The NGOs position is that this would lead to acts in violation of the right to freedom of movement, the right to respect for personal privacy, freedom of speech, the right to an education, the prohibition of forced labour, an infringement on the requirement of due care as regards the asylum procedure, acting contrary to regulations from the Dutch civil code regarding custody and a violation of the ban on discrimination.

Decision

Because some issues had already been solved (e.g. point 4, 5 and 15), and in a number of other cases the claim was considered to be insufficiently substantiated/founded, or unfounded, or it proved to be too difficult to ascertain what the present regime really was (e.g. point 1; point 3; points 7, 10, 19 and 20; points 8 and 14; points 11 and 12; point 13; point 22), the Court rejected most of the claims. The Court also took into consideration that the centres are still in an experimental stage, and will be evaluated after a maximum of one year, with the possibility for evaluations in between. The Court further indicated that several claims were too general in character, and that, given the limited scope of the proceedings, it had found insufficient leads to decide, even on taking less far reaching measures (e.g. points 2 and 9; point 6; point 21; point 25 and 26). The claim in point 27 was also rejected for being too general in character.

In view of the above, however, the Court honoured the claim for institution of an independent complaints committee. In the opinion of the Court such a committee would be better equipped to deal with complaints about the (house)rules of the centres such as formulated in the claim, for its members would be able to assess the situation on the scene and would be able to address concrete complaints of individual UMAs. This would be preferable to a (general) decision of the civil court. The Court also concluded that the (general) complaints procedure of the Agency for the reception of asylum seekers, apparently, did not suffice.

Moreover, the Court considered the claim about the pocket money justified. Reportedly, the Agency for the reception of asylum seekers (COA) keeps part of the weekly pocket money for savings, which it considers would be in the interest of the UMAs, for they would have some money to take with them when they would have to leave the centre. However, since this is done without there being a legal basis for doing so, the Court held that all of the weekly allowance should go directly to the UMAs.

Since the alternative claim was not completely rejected, the Court refrained from deciding on the second alternative claim.