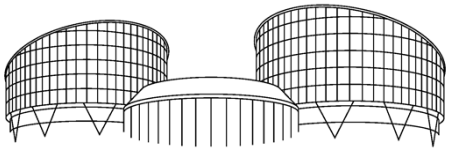

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF R.R. AND OTHERS v. HUNGARY

(Application no. 36037/17)

JUDGMENT

Art 3 (substantive) • Degrading treatment • Living conditions in Röszke transit zone exceeding threshold of severity for repeat asylum-seeker unable to obtain sufficient food, a vulnerable pregnant woman and children, in light of the extended duration of confinement for nearly four months
Art 5 §§ 1 and 4 • Unlawful *de facto* detention in transit zone based on overly-broad interpretation of legal provisions and in the absence of any formal, reasoned decision • Stay constituting a *de facto* deprivation of liberty in light of duration and living conditions of confinement, lack of time-limits, and extent of restriction to free movement • Inability to seek judicial review of the lawfulness of detention

STRASBOURG

2 March 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of R.R. and Others v. Hungary,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Yonko Grozev, *President,*
Branko Lubarda,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Jolien Schukking,
Péter Paczolay, *judges,*

and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by one Iranian national, Mr R.R. ("the first applicant"), and four Afghan nationals, Ms S.H. ("the applicant mother"), M.H., R.H. and A.R. ("the applicant children"), whose details are given in the appendix;

the decision to give notice to the Hungarian Government ("the Government") of the application;

the decision not to have the applicants' names disclosed;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the decision to indicate interim measures to the respondent Government under Rule 39 of the Rules of Court;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the Office of the United Nations High Commissioner for Refugees, which was granted leave to intervene by the President of the Section;

Having deliberated in private on 30 June 2020 and 4 February 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the confinement of an Iranian-Afghan family, including three minor children, to the Röszke transit zone at the border of Hungary and Serbia between 19 April and 15 August 2017. The applicants relied on Article 3 (conditions in the transit zone), taken alone and in conjunction with Article 13, Article 5 (unlawful deprivation of liberty) and Article 34 (non-compliance with an interim measure).

THE FACTS

2. The applicants are an Iranian-Afghan family of five. Their details are set out in the appendix. They were represented before the Court by Ms B. Pohárnok, a lawyer practising in Budapest.

3. The Hungarian Government ("the Government") were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANTS' BACKGROUND AND THEIR TRAVEL TO HUNGARY

5. S.H. ("the applicant mother") claims that she was a victim of torture in Afghanistan; she was allegedly captured, burned and raped by the Taliban, who killed her first husband. On an unknown date between 2012 and 2014 she fled Afghanistan to Iran together with her two daughters from her first marriage, M.H. and R.H. She met R.R. ("the first applicant") there, and entered into a religious marriage with him.

6. R.R., S.H. and her two children left Iran in the beginning of 2016, allegedly escaping reprisals because R.R. had deserted the Iranian army. Having left Iran, they travelled together through Turkey to Greece, where they were separated. R.R. made it to Austria, but allegedly decided to join his family, who were returned to Greece after being arrested in North Macedonia. On 11 March 2016 R.R. was apprehended at Sopron railway station in Hungary. He applied for asylum. On 21 March 2016 he withdrew his asylum application and the asylum proceedings were terminated. Pending enforcement of his expulsion to Iran, the first applicant was held in immigrant detention, where he submitted his second asylum application. On 3 August 2016 he left for an unknown destination and the asylum proceedings were terminated.

7. Subsequently, the applicant family were reunited in Serbia. They spent several months in different camps around the country. On 16 October 2016 A.R., the first biological child of R.R. and S.H., was born.

8. On 19 April 2017 the applicants arrived in Hungary from Serbia and entered the Röszke transit zone, which is situated on Hungarian territory at the border between the two countries. They applied for asylum on the same date.

9. On 19 April 2017 the Office for Immigration and Asylum (hereinafter "the IAO") issued a ruling ordering that the applicants be accommodated in the Röszke transit zone under section 80/J(5) of the Asylum Act (see paragraph 24 below).

II. THE APPLICANTS' STAY IN THE TRANSIT ZONE

10. Since 2015 the two transit zones located at the border with Serbia have been significantly enlarged (see *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 15, 21 November 2019). According to data collected by the Government in July 2017, at the time in question the Röszke transit zone had an official capacity of 460 places and was accommodating 291 foreign nationals. The sections of the transit zone were rectangular in shape, with accommodation "containers" placed adjacent to each other on three sides and a wire mesh fence on the fourth. There was razor wire on the roofs of the containers. People staying in one section could only go to other parts of the zone to see a doctor, a lawyer or IAO staff, and were always escorted by guards.

11. The applicants initially stayed in the section of the Röszke transit zone designated for families. They were placed together in a 13-square-metre living container, which had three bunk beds without child safety rails and five lockable cabinets. According to the Government, a cot bed was provided to families with small children. According to the applicants, the containers were extremely hot in summer and without air conditioning; for ventilation they had to open the window and door, which made the room draughty and allowed insects in. An awning over the front door (to offer shade) and fans were provided in August 2017.

12. In the middle of the family section there was a communal courtyard with a small playground for children, ping-pong table, badminton net, basketball court and goals for football. According to the applicants, there was no shade or greenery in the outdoor area. The section also had a playroom, study room, room for religious worship and common room equipped with a television. The NGOs working within the zone organised activities for children, such as drawing and crafts, once or twice a week for one to two hours. From September 2017 an education programme for children in the transit zone was provided.

13. On 29 June 2017 the applicants were moved to an isolation section within the transit zone because the applicant mother and children had hepatitis B. The isolation section consisted of approximately ten mobile containers placed in a row and a narrow (approximately 2.5 metres wide and 40 to 50 metres long) open-air area surrounded by fencing. Their living container, which was equipped with air conditioning, was furnished with one bunk bed, two single beds (no cot bed for A.R.) and a chest of drawers. There was no refrigerator, microwave or washing machine in the section. The applicants were given sand for the children to play with. There was no playground and no activities were organised for the children in the isolation section. The applicants had access to a television in the common area container and a ping-pong table.

14. The police regularly carried out morning (6 a.m.) checks – headcounts. The applicants submitted that the police officers/guards had often raided their living containers to perform security checks.

15. Free wireless Internet was available in the transit zone. According to the applicants, the connection was poor and could only be used for messaging.

16. According to the Government, children were, in addition to the three meals provided to adult asylum-seekers, provided with two snacks each per day. Like pregnant women, they were also entitled to dairy products and fruit. Children under the age of one were provided infant nutrition and baby food. The applicants submitted that the children had been given chocolate bars for snacks and that fruit had only been provided occasionally. They submitted that the food provided to the children had been inadequate for their age.

17. Upon their arrival at the transit zone, families were provided with a sanitary package, including essential baby hygiene products such as disposable nappies. An additional monthly sanitary package was provided to asylum-seekers and, in justified cases, additional items were provided on request. According to the Government, clothing was provided to asylum-seekers who did not have appropriate clothing for the season. The applicants submitted that the applicant mother had not been provided with maternity clothes, so she had had to sew a dress for herself using bed linen.

18. The applicants received medical treatment on several occasions during their stay in the transit zone. The Government submitted that asylum-seekers were entitled to basic and emergency medical care, including specialist medical treatment, according to their needs. If justified by their health condition, the resident medical staff could transfer them to hospitals or clinics to obtain urgent or specialist care. On 24 April 2017 the applicant mother was examined by a gynaecologist of a Szeged hospital. On 25 April 2017 she was referred to the emergency department of the hospital because of sickness. On 28 April 2017 she was taken to the hospital to have her pregnancy determined. She underwent blood and laboratory tests in relation to her hepatitis B and was prescribed medication for a urinary tract infection. On the same date she was taken to the emergency department of the hospital because of vomiting and cramps. She spent the night there. On 26 May 2017 she attended a prenatal check-up in the hospital and was found to have a high-risk pregnancy. On 13 and 14 June 2017 she was taken to the hospital and prescribed medication for epigastric (abdominal) pain. On 3 July 2017 she had another check-up in the hospital and a consultation took place in relation to her hepatitis B. On 9 August 2017 she attended an ultrasound appointment and was taken to the emergency department of the hospital. She was recommended a high fluid intake and adequate nutrition (fruit), and was prescribed medication for anaemia. Following the family's release from the transit zone, the applicant mother attended two more

medical check-ups. On 24 April and 6 July 2017 the two eldest applicant children were taken to the paediatrics department of the hospital in Szeged. Their hepatitis B was confirmed following blood tests taken during their second visit to the hospital and the doctor suggested a further examination at the hepatology department. On 29 June 2017 the eldest applicant child, M.H., was examined at the ear, nose and throat department of the hospital in Szeged because of frequent nosebleeds. On 16 August 2017 she was taken to the emergency department of a hospital in Győr by ambulance and was subsequently treated at the ear, nose and throat department. The applicants submitted that, although requested, the youngest applicant child had not been given the vaccines recommended at six months. It appears from the case file that she had received some vaccines in Serbia and that the next vaccination appointment was scheduled for 8 April 2017.

19. The applicants submitted that no interpreter had been present in the course of S.H.'s medical examinations and that no anamnesis (medical history) could be collected from her due to the language constraints (she spoke only in her mother tongue). At her hospital visit of 9 August 2017 a "heteroanamnesis" was taken by questioning an interpreter using English and Dari at the doctor's request. The applicants also submitted that they had always been taken to the hospital in an unsuitable police van and escorted by armed police officers, who had remained present during the medical examinations. In particular, (male) armed police officers had been present (standing by her side) during the second applicant's gynaecological examination.

20. As regards psychological assistance in the transit zone, the applicants submitted that there had been no assistance for traumatised asylum-seekers. They drew the Court's attention to their lawyer's submissions in the asylum procedure of 26 and 27 July 2017. With respect to the applicant mother, the lawyer submitted, *inter alia*, that she had been subjected to serious ill-treatment in Afghanistan, the consequences of which she was still suffering, and that she was in need of specialist treatment. In this connection, the lawyer also submitted that, given her mental health problems, the applicant mother had been under psychiatric treatment (medication and psychotherapy) during her stay in Serbia and requested that she be examined by a psychiatrist. In their application form, the applicants submitted that S.H. had had to stop taking that medication because of her pregnancy. The Government submitted that during the period in question the Hungarian Calvinist Charity Service and specialists from Sirius Help had provided psychosocial assistance in the transit zone, the latter specifically for children. On 24 August 2017, at the request of the applicants' lawyer for the purposes of their legal (asylum) procedures, the applicant mother was examined by a psychiatrist, who diagnosed her with major depressive disorder and post-traumatic stress disorder ("PTSD"). The psychiatrist recommended that the applicant mother undergo medical,

psychiatric and psychotherapeutic treatment, as otherwise suicidal urges and impulsive reactions were likely to occur. On the same date the two eldest applicant children were examined, at their lawyer's request, by a psychologist, who observed that they showed signs of PTSD related to their experience in the transit zone and opined that psychological support should be made available to them.

21. As R.R. had already applied for asylum in Hungary before entering the transit zone with his family (see paragraph 6 above), he was considered by the IAO not to be entitled to material reception conditions under the Asylum Act (see paragraph 24 below). He was assigned accommodation together with his family but was not given free meals. The hot meals provided to the other applicants could not be taken out of the canteen where they ate their lunch. The applicants submitted that the NGO Sirius Help, which had operated in the zone until the end of May 2017, had twice organised food shopping for R.R. from outside at the beginning of his stay. He had initially been able to get food by paying other asylum-seekers, who had bought the food in Serbia and delivered it to him upon their arrival at the zone. According to the applicants, such arrangements were difficult to achieve and R.R. was forced to eat his family's leftovers, beg other asylum-seekers for food and search for edible things in the rubbish bins. He could only recall two occasions when Charity Council organisations and the Hungarian Red Cross had provided him with non-perishable food packages. According to the Government, the other applicants were distributed sufficient amounts of long-life food which they could share with R.R. They also submitted that R.R. had several times bought food with the assistance of social workers and that members of the Charity Council had taken care of his needs, in terms of food, toiletries and clothing. According to the Government, R.R. refused to accept food several times, stating that the family had sufficient supplies. On 31 July 2017 the IAO sent an email to the applicants' lawyer noting, in particular, that under the applicable Hungarian law the applicants were not entitled to food in the transit zone; they had the possibility to buy food for themselves, which they had done on multiple occasions, and charity organisations were handing out food. The IAO further noted that it did not appear that the first applicant had lost any weight during his stay in the zone.

III. EXAMINATION OF THE APPLICANTS' ASYLUM APPLICATION

22. The applicants were represented by a lawyer of their choice in the asylum proceedings. The adult applicants were heard by the IAO on 19 April 2017 (both), on 8 June 2017 (only S.H.) and on 10 May and 6 June 2017 (only R.R.). In the course of the asylum proceedings, the IAO, *inter alia*, requested an expert opinion on their marriage certificate, which was delivered on 3 July 2017. On 20 June 2017 the IAO also requested a DNA

test to verify that R.R. was the father of S.H.'s third child. The results of the test, which confirmed his paternity, were received on 14 August 2017.

23. On 15 August 2017 the applicants were granted leave to enter and temporarily stay in the territory of Hungary (admitted alien status, *befogadott*). They were accommodated in the Vámosszabadi Reception Centre the same day. The IAO however refused to recognise them as refugees or persons in need of subsidiary protection. The applicants requested a judicial review of the part of the decision rejecting their applications. Subsequently, on 23 August 2017 the IAO issued a ruling withdrawing the decision on the merits. On 8 September 2017 it issued a new decision on the merits, recognising the applicants as persons in need of subsidiary protection. In the meantime, on 25 August 2017 the applicants left for Germany, where they were later granted international protection.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

24. The relevant provisions of Act no. LXXX of 2007 on Asylum ("the Asylum Act") are outlined in the case of *Ilias and Ahmed* (cited above, §§ 41 and 45). For the purposes of the Asylum Act, persons deserving special treatment include vulnerable persons, in particular minors and pregnant women, who have been found to have special needs after an individual evaluation (section 2k)). According to section 4 of the Act, the best interests and rights of the child shall be a primary consideration when implementing the provisions. Moreover, provisions of the Asylum Act must be applied to persons requiring special treatment with due consideration of the specific needs arising from their situation (section 4(3)). When a crisis situation caused by mass immigration is declared, section 80/J of the Asylum Act, as amended on 28 March 2017, applies and provides as follows:

> "(1) Asylum applications can be submitted in person to the asylum authority, only in the transit zone...
>
> ...
>
> (4) In the proceedings the person seeking recognition is not entitled to the entitlements set forth in subsections a) and c) of section 5(1).
>
> (5) For the time until a decision against which no further remedy lies or an order on a transfer under the Dublin procedure becomes enforceable, the territory of the transit zone shall be designated by the asylum authority as place of residence. Persons seeking recognition may leave the territory of the transit zone through the exit gate.
>
> ..."

The provisions of the Asylum Act regulating border procedure, including section 71/A, which limits border procedure and stay in the transit zone to

four weeks, do not apply. If a person seeking recognition submits another asylum application following the adoption of a final decision rejecting or terminating his or her earlier application, he or she is not entitled to care, assistance and accommodation (section 80/K(11)).

25. All asylum applications submitted in the transit zones are processed either in an accelerated or standard procedure, depending on the circumstances of each case. Under the standard procedure, a decision on an asylum application must be taken by the IAO within sixty days; if the accelerated procedure is applied or if an application is to be declared inadmissible, the IAO must take a decision within fifteen days. Unless refugee status was granted, the decision of the IAO can be appealed against to a court. If the initial decision was taken in the standard asylum procedure, the court has sixty days to decide the appeal; if an appeal was lodged against a decision taken in the accelerated procedure, or in the event that the asylum application was rejected as inadmissible, the court decision must be taken within eight days.

II. EUROPEAN UNION LAW AND PRACTICE

26. The relevant provisions of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) ("the Asylum Procedures Directive") are outlined in the case of *Ilias and Ahmed* (cited above, §§ 47-55).

27. The relevant provisions of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) ("the Reception Conditions Directive") provide as follows:

CHAPTER II
GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 8
Detention

"1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.

3. An applicant may be detained only:

(a) in order to determine or verify his or her identity or nationality;

(b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;

(c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;

(d) when he or she is detained subject to a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (9), in order to prepare the return and/or carry out the removal process, and the Member State concerned can substantiate on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that he or she is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;

(e) when protection of national security or public order so requires;

(f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (10).

The grounds for detention shall be laid down in national law.

..."

Article 11

Detention of vulnerable persons and of applicants with special reception needs

"1. The health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities.

Where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.

2. Minors shall be detained only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.

The minor's best interests, as prescribed in Article 23(2), shall be a primary consideration for Member States.

Where minors are detained, they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.

...

4. Detained families shall be provided with separate accommodation guaranteeing adequate privacy.

...

6. In duly justified cases and for a reasonable period that shall be as short as possible Member States may derogate from the third subparagraph of paragraph 2, paragraph 4 and the first subparagraph of paragraph 5, when the applicant is detained at a border

post or in a transit zone, with the exception of the cases referred to in Article 43 of Directive 2013/32/EU."

Article 17

General rules on material reception conditions and health care

"1. Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection.

2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health. Member States shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21, as well as in relation to the situation of persons who are in detention.

3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.

4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time... ."

Article 19

Health care

"1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders.

2. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed."

CHAPTER III
REDUCTION OR WITHDRAWAL OF MATERIAL RECEPTION CONDITIONS

Article 20

Reduction or withdrawal of material reception conditions

"1. Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions where an applicant:

...

(c) has lodged a subsequent application as defined in Article 2(q) of Directive 2013/32/EU.

...

5. Decisions for reduction or withdrawal of material reception conditions or sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 21, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in

accordance with Article 19 and shall ensure a dignified standard of living for all applicants.

6. Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 5."

CHAPTER IV
PROVISIONS FOR VULNERABLE PERSONS

Article 21
General principle

"Member States shall take into account the specific situation of vulnerable persons such as minors ... pregnant women ... victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive."

Article 22
Assessment of the special reception needs of vulnerable persons

"1. In order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception needs. Member States shall also indicate the nature of such needs.

That assessment shall be initiated within a reasonable period of time after an application for international protection is made and may be integrated into existing national procedures. Member States shall ensure that those special reception needs are also addressed, in accordance with the provisions of this Directive, if they become apparent at a later stage in the asylum procedure.

Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

2. The assessment referred to in paragraph 1 need not take the form of an administrative procedure.

..."

Article 23
Minors

"1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.

2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

(a) family reunification possibilities;

(b) the minor's well-being and social development, taking into particular consideration the minor's background;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

(d) the views of the minor in accordance with his or her age and maturity.

3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres referred to in Article 18(1)(a) and (b) and to open-air activities.

4. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

..."

Article 25

Victims of torture and violence

"1. Member States shall ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.

..."

28. In its judgment of 14 May 2020 in the case of FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság (C-924/19 PPU and C-925/19 PPU) the Court of Justice of the European Union ruled *inter alia* that the conditions, in which asylum-seekers that had arrived in Hungary *via* Serbia had been kept in the Röszke transit zone, amounted to a deprivation of liberty:

"Directives 2008/115 and 2013/33 must be interpreted as meaning that the obligation imposed on a third-country national to remain permanently in a transit zone the perimeter of which is restricted and closed, within which that national's movements are limited and monitored, and which he or she cannot legally leave voluntarily, in any direction whatsoever, appears to be a deprivation of liberty, characterised by 'detention' within the meaning of those directives.

...

Article 43(1) of Directive 2013/32 gives Member States the possibility to provide, at their borders or in their transit zones, for specific procedures in order to decide on the admissibility, under Article 33 of that directive, of an application for international protection made at such locations or on the substance of that application in one of the cases provided for in Article 31(8) of that directive, provided that those procedures comply with the basic principles and fundamental guarantees set out in Chapter II of that directive. Under Article 43(2) of Directive 2013/32, those specific procedures must be carried out within a reasonable time, it being understood that if a decision rejecting the application for international protection has not been taken within a period of four weeks, the Member State concerned must grant the applicant entry to its

territory and the application must be dealt with after that four-week period in accordance with the normal procedure.

...

Article 43 of Directive 2013/32 must be interpreted as not authorising the detention of an applicant for international protection in a transit zone for a period of more than four weeks."

III. INTERNATIONAL LAW

29. Article 22 of the Convention on the Rights of the Child of 20 November 1989 (ratified by Hungary on 7 October 1991) reads as follows:

Article 22

"1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention."

IV. REPORTS OF VISITS BY INTERNATIONAL BODIES

30. The Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment ("CPT") from 20 to 26 October 2017 contains the following passages:

"...according to the information provided to the delegation by staff, the average length of stay [in the transit zone] was some 30 days.

...

The CPT notes the efforts made by the Hungarian authorities to provide decent material conditions for the accommodation of foreign nationals in the transit zones and to maintain the premises in a good state of repair and hygiene. The accommodation containers measured 13m² and were usually equipped with two bunk-beds and a bed (fitted with clean mattresses, pillows and bedding) and five lockers. The containers had good access to natural light and artificial lighting, as well as to electric heating. In addition to the accommodation containers, in each caged

section, there were containers which served as an office for social workers, a dining room (equipped with chairs, tables and a washbasin, as well as with a fridge, an electric kettle and a microwave oven), a laundry room (with a washing machine and a tumble dryer) and separate communal sanitary facilities for men and women (with washbasins, toilets and showers).

...

[T]he overall design of the transit zones is far too carceral – rolls of razor blade wire were omnipresent, as were high wire-mesh fences which sometimes ran in several lines. ... Such an environment cannot be considered adequate for the accommodation of asylum-seekers, even less so where families and children are among them.

...

In addition, some complaints were heard in both transit zones that, during the summer, the containers had often become very hot as they had neither been properly insulated nor equipped with air-conditioning.

As regards activities, it is positive that all foreign nationals were able to move freely within their section and associate with other foreign nationals and had unrestricted access to an adjacent outdoor yard and an air-conditioned communal activity room (equipped with tables, chairs, a television set, board games, playing cards and a table tennis table, as well as some books and toys for children) and a prayer room.

In the middle of each accommodation section, there was a gravel outdoor yard equipped with tables, chairs/benches and parasols, and, in several of these yards, foreign nationals could play basketball and volleyball. ...

Further, apart from the cloth parasols, the yards had no proper shelter against inclement weather.

In both transit zones, some organised activities were offered to adult foreign nationals (such as group discussions, Hungarian language classes, board games/chess). However, many complaints were received from the foreign nationals, in particular those who had been held there for longer periods, about a lack of activities.

Efforts were being made in both transit zones to provide children with organised activities. School classes (basic English, Hungarian, mathematics, "cultural matters") were organised every working day (9 a.m. to 12 noon) by teachers attending from the outside community and there were some leisure activities (2 to 4 p.m.), mostly organised by various NGOs.

It is praiseworthy that, at Röszke, the outdoor yards of most accommodation sections for families with children comprised a playground for children (with slides, swings and a sandbox). ...

...

If, exceptionally, minors are held with their parents in a transit zone, their stay should be for the shortest possible period of time.

...

The living conditions in both transit zones are generally acceptable for holding foreign nationals for a limited period of time (i.e. up to several weeks). However, they are not adequate for holding foreign nationals for prolonged periods, in particular families with children.

...

As regards the specific health-care needs of children, the CPT welcomes the fact that a paediatrician attended both transit zones twice per week. That said, it is regrettable that no immunisation history was usually taken with regard to whether or not newly-arrived children had been vaccinated, nor were any immunisations such as measles, chicken pox, mumps or rubella offered. In this regard, the Committee wishes to recall that the presence of children in transit zones increases the risk of transmission of contagious diseases common in children. Steps should be taken to review the provision of health care for children in both transit zones, in the light of the preceding remarks.

In both transit zones, the health-care staff included a doctor who was present on a rota basis on workdays, and a pool of part-time nurses (feldshers), two of whom were present around the clock, seven days a week. In addition, a military doctor was present for two hours per day seven days a week in both transit zones; he mainly carried out age assessments and provided emergency treatment. A paediatrician visited both of the transit zones twice a week.

...

In both transit zones, the delegation was informed that foreign nationals in need of specialist care were usually transferred to a local hospital (including, if necessary, for psychiatric and psychological consultations) and that a psychologist from the Hungarian Red Cross or a religious organisation occasionally carried out visits (focusing mainly on unaccompanied minors). Notwithstanding that, the provision of psychological and psychiatric care appeared to be insufficient.

...

During the end-of-visit talks, the Hungarian authorities informed the delegation that steps were being taken to recruit a psychologist on a part-time basis in each transit zone.

...

The CPT acknowledges the efforts made by the Hungarian authorities to facilitate in both transit zones foreign nationals' contact with the outside world. ...foreign nationals were allowed to keep their mobile phones. In addition, a Wifi Internet connection had been installed in both transit zones, in order to allow foreign nationals to communicate with relatives and friends outside Hungary free-of-charge, including through Voice-over-Internet-Protocol (VoIP) calls. However, the delegation received many complaints from foreign nationals (especially at Tompa) about the weakness of the Wifi signal and consequent frequent unavailability and/or disruption of communications. ...

In principle, foreign nationals could send/receive letters without any restrictions and were allowed to receive visits every day. However, given their situation, they were not usually in a position to make use of these possibilities. ..."

31. The report on the fact-finding mission of June 2017 of the Special Representative of the Secretary General of the Council of Europe on migration and refugees, Ambassador Tomáš Boček, concerning the Röszke transit zone (SG/Inf(2017)33) is summarised in the judgment of *Ilias and Ahmed* (cited above, § 67). As regards the conditions in the zone, the following observations are also relevant:

"2.2. Conditions

> ... There was razor blade wire on the roofs of the containers. In each section there was a small common courtyard, with a small playground for children. The persons who stayed in the section could get out only to visit the doctor or to have their interviews with the asylum authorities. Whenever they had to move outside the section, they were escorted by the guards of the transit zone. We were informed by the authorities that the guards are not equipped with weapons but only handcuffs.
>
> ...
>
> The food was distributed by social workers three times per day in plastic bags. One hot meal per day was provided to asylum-seekers, including fruit, while two snacks and extra fruit were offered to children. Some unaccompanied children with whom we met complained that the food they received was not sufficient. We saw the Hungarian Charity Council providing food supplies in the transit zones.
>
> ...
>
> Both transit zones had a doctor's room located in a separate container, where asylum-seekers receive basic medical care. In the family sections, in addition to a small playground, there was a container where children could play with each other and engage in some basic leisure activities, such as drawing. However, there are no educational programmes, language learning programmes or curricula adapted to the particular needs and age of children in either transit zone and children cannot attend local schools."

THE LAW

I. PRELIMINARY ISSUE

32. The Court notes that at the time when notice of the application was given to the Government, the "Subject matter of the case" provided as follows:

> "The application concerns the confinement, in conditions which are allegedly inhuman, of an Iranian-Afghan family (the Iranian applicant, his Afghan wife who was six months pregnant at the material time, and three minor children of Afghan nationality) to the Röszke transit zone at the border of Hungary and Serbia since 19 April 2017, pending the examination of their asylum request."

It further notes that the questions to the parties were formulated in the singular ("applicant") owing to a clerical error.

33. In their observations, the Government raised this issue and argued that, although the application had been lodged by five applicants, only the first applicant's complaints had been communicated to them. They therefore focused their observations on his case and covered the situation of the family only to the extent that it was relevant to his complaints. The applicants, in their reply, maintained that all five of them were the applicants in the present case, which was clear from the "Subject matter of the case", as well as from the application form and the authority forms which they had forwarded to the Court in August 2017.

34. The Court notes that when the applicants lodged their application with the Court, they submitted a single application form with the first page

of the form filled in only with respect to the first applicant. By contrast, in other parts of the application form, continuous reference was made to "applicants" in the plural, including each family member's dates and places of birth and facts/complaints relevant to each of them. Furthermore, the "Subject matter of the case", which was forwarded to the parties together with the above-mentioned questions and the application form, referred to the application as concerning "the confinement ... of an Iranian-Afghan family". The Court also notes that the two Rule 39 requests submitted in the present case and the corresponding decisions indicating interim measures to the Government (see paragraphs 102 and 104 below) were made in respect of the whole family (five applicants).

35. While the Court regrets the clerical error on its part as regards the formulation of the questions to the parties, it considers that all the references to the applicants as a family of five in documents forwarded to the Government (see paragraph 34 above) made it sufficiently evident that the application was lodged by all five applicants and that it was communicated to the parties as such.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicants complained that the conditions of their confinement in the Röszke transit zone had been incompatible with the guarantees of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. The parties' submissions

37. The Government argued that any discomfort allegedly suffered by the applicants in the transit zone did not attain the minimum level of severity prompting the applicability of Article 3 of the Convention. As regards the first applicant, they submitted that he had not been entitled to material conditions and that the arrangements in place in the transit zone had satisfied his basic needs. They invited the Court to declare this complaint inadmissible as incompatible *ratione materiae* with the Convention provisions or as manifestly ill-founded.

38. The applicants maintained that the reception conditions in the transit zone had amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

2. The Court's assessment

39. The Court considers that the applicants' complaint under Article 3 of the Convention concerning their living conditions in the transit zone raises complex issues of law and fact, the determination of which requires an examination of the merits.

40. It follows that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

41. In the applicants' view, the substandard conditions of detention in the transit zone (as described in paragraphs 10-20 above) – given their specific circumstances as an asylum-seeking family with three minor children and a pregnant woman with serious health issues undergoing a protracted period of detention without a time-limit – had amounted to inhuman and degrading treatment contrary to Article 3 of the Convention. They relied on the Court's case-law regarding administrative detention of migrant children, emphasising children's extreme vulnerability and their specific needs related to their age, lack of independence and status.

42. As regards the first applicant, they further submitted that he had been denied reception conditions automatically, without a duly reasoned decision being delivered by the IAO or judicial remedies, in violation of the Reception Conditions Directive (see paragraph 27 above). He had been wholly dependent on the support of the State, which had therefore had an obligation to provide for basic needs, including food, and should not have placed the burden on him or the charities, leaving him totally deprived of food during his stay in the transit zone. He had been forced to take food from his family, beg others or search for leftovers in dustbins in order to survive, while the authorities had remained indifferent and had, moreover, failed to comply with the Court's interim measure (see paragraph 104 below).

(b) The Government

43. The Government submitted that asylum-seekers in the transit zones were able to have their most basic needs met, in terms of food, hygiene and shelter, and that nobody was left in a state of the most extreme poverty or a situation of serious deprivation or want. The applicants had only been accommodated in the transit zone for a short period of time, while the authorities had acted with appropriate speed and due diligence, deciding whether the applicants should be granted leave to enter Hungary.

44. Moreover, they submitted that the applicants' vulnerable status had not called for any special treatment which could not be provided to them in the transit zone: material reception conditions were properly adapted to pregnant women and families with minor children. In particular, the applicant mother had been provided with adequate medical care, including prenatal medical care, of a quality at least equal to that available to Hungarian nationals within the Hungarian healthcare system. The children had been generally of good health and had been able to access (specialist) medical services whenever required. Even if the whole range of social services aimed at long-term integration, such as formal schooling for children, had not been fully provided, in their opinion this should not be deemed contrary to the standards of humane treatment.

45. As regards the first applicant, the Government maintained that the asylum authorities had been processing his third asylum application and that he had not been entitled to receive material reception conditions (see paragraph 27 above). Regardless of that fact, he had been assigned accommodation in the transit zone together with his family. Although he had not been provided with free food, he had not been left starving. His family members had been distributed a sufficient amount of long-life food which they could share with him. He could buy food with the assistance of social workers, which he had allegedly done several times. Moreover, charity organisations in the zone had regularly distributed food, which the applicant had refused to accept several times, stating that the family had sufficient supplies. He had also gone on hunger strike, so the resulting starvation and weight loss were not attributable to the Hungarian authorities.

2. Third-party intervener

46. The UNHCR addressed the domestic legislative framework and practice applicable to the treatment of asylum-seekers with specific needs held in the transit zone in Hungary and provided an interpretation of the relevant principles regarding the reception of asylum-seekers. It noted that asylum-seekers in the zone did not receive psychological and psychiatric treatment by qualified practitioners. At the relevant time, no maternity nurse had visited the transit zone, although this service was now provided in the zone.

47. The UNHCR submitted that subsequent/repeat asylum applicants held in the transit zone were allowed to receive food assistance in the form of cold food items (without fruits and vegetables) from authorised charity organisations, although such assistance was not delivered at all times or in every case.

3. The Court's assessment

(a) General principles

48. 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. With regard to the confinement and living conditions of asylum-seekers, the Court summarised the relevant general principles in the case of *Khlaifia and Others v. Italy* ([GC], no. 16483/12, §§ 158-69, 15 December 2016), and there is no need to repeat them here.

49. It should, however, be noted that the confinement of minors raises particular issues in that regard, since children, whether accompanied or not, are considered extremely vulnerable and have specific needs related in particular to their age and lack of independence, but also to their asylum-seeker status (see *Popov v. France*, nos. 39472/07 and 39474/07, § 91, 19 January 2012). Article 22 § 1 of the 1989 Convention on the Rights of the Child (1577 UNTS 3) encourages States to take appropriate measures to ensure that children seeking refugee status, whether or not accompanied by their parents or others, receive appropriate protection and humanitarian assistance (ibid). Likewise, the European Union directives regulating the detention of migrants adopt the position that minors, whether or not they are accompanied, constitute a vulnerable category requiring the special attention of the authorities (see paragraph 27 above). In recent years, the Court has in several cases examined whether or not the conditions in which accompanied minors had been kept in migrant detention centres were in compliance with Article 3 (see *S.F. and Others v. Bulgaria*, no. 8138/16, §§ 80-83, 7 December 2017, and the cases referred to therein). It has found a violation of Article 3 in particular on account of a combination of three factors: the child's young age, the length of the detention and the unsuitability of the premises for the accommodation of children (see *A.B. and Others v. France*, no. 11593/12, § 109, 12 July 2016).

50. Finally, the Court reiterates that Article 3 cannot be interpreted as entailing any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living (see *Müslim v. Turkey*, no. 53566/99, § 85, 26 April 2005, and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 249, ECHR 2011). The Court nevertheless reiterates that State responsibility under Article 3 could arise for "treatment" where an applicant, in circumstances wholly dependent on State support, found him or herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity (see *M.S.S. v. Belgium and Greece,* cited above, §§ 253, and *Budina v. Russia* (dec.), no. 45603/05, 18 June 2009).

(b) Application to the present case

51. The Court has already analysed – in the case of *Ilias and Ahmed* ([GC], no. 47287/15, §§ 186-94, 21 November 2019) – the living conditions experienced by applicants as adult asylum-seekers in the Röszke transit zone. In that case, the Court – noting, in particular, the satisfactory material conditions in the zone, the relatively short length of the applicants' stay there (23 days), and the possibility for human contact with other asylum-seekers, UNHCR representatives, NGOs and a lawyer – concluded that the conditions in which the applicants had spent twenty-three days in the Röszke transit zone did not reach the Article 3 threshold.

52. The Court considers that the living conditions in the transit zone, in terms of accommodation, hygiene and access to food and medical care, were generally acceptable for holding asylum-seekers for a limited period of time, as confirmed by the CPT in its 2017 Report (see paragraph 30 above). However, it finds that, unlike in the case of *Ilias and Ahmed* (cited above), who were both adult asylum-seekers whose basic needs were provided for by the Hungarian authorities, the applicants' situation was characterised by the first applicant's repeat asylum-seeker status, the applicant children's young age and the applicant mother's pregnancy and serious health condition (compare and contrast *Ilias and Ahmed*, cited above, § 192). It further notes that the applicants' complaint as regards the living conditions experienced by them in the Röszke transit zone between 19 April and 15 August 2017 is twofold. The applicant children and the applicant mother complained that the conditions of their confinement had been inadequate in view of their vulnerabilities. The first applicant complained, in particular, that he had been deprived of food in the zone. Given the differences in the arguments advanced by the applicants, the Court finds it appropriate to examine their complaints separately.

(i) The first applicant

53. As regards the first applicant, the Court notes that, like the applicant in *M.S.S. v. Belgium and Greece* (cited above), the applicant in the present case was at the material time an asylum-seeker (compare and contrast *Hunde*, cited above, § 55). It observes that the situation in which he found himself was particularly serious. Even though he had a place to live and did not report any difficulties in accessing medical care, he allegedly spent almost four months living in a state of the most extreme poverty, unable to cater for one of his most basic needs – food (compare *M.S.S. v. Belgium and Greece*, cited above, § 254). The case file does not disclose exactly how often and what food the first applicant could access in the Röszke transit zone. It is however undisputed that the Hungarian authorities refused to provide him with free meals throughout his stay in the zone (see paragraph 24 above).

54. The Court observes that under the Reception Conditions Directive the authorities are in principle required to ensure that material reception conditions are provided to asylum-seekers (see paragraph 27 above). It takes note of the fact that at the relevant time the Hungarian authorities were processing the applicant's third asylum application (see paragraph 6 above) and considered him to be a repeat asylum-seeker (see paragraphs 21 and 24 above). In this connection, the Court notes that Hungary was in principle allowed to decide to reduce or even withdraw material reception conditions from the first applicant as a repeat asylum-seeker (Article 20(1)(c) of the Reception Conditions Directive, see paragraph 27 above). However, any such decision should in view of the obligations incumbent on the Hungarian authorities under the Directive have contained reasons for the withdrawal or reduction and should have taken into account the principle of proportionality (Article 20(5)). The Court was not informed of any such decision of the IAO concerning the withdrawal or reduction of material reception conditions, in particular food, in respect of the first applicant.

55. The Court takes note of the Government's statements that (i) his family members had been distributed sufficient amounts of long-life food which they could share with him, (ii) he had been able to buy food with the assistance of social workers in the zone, and (iii) charity organisations had taken care of his essential needs, including food (see paragraph 45 above). The first applicant challenged their arguments, submitting that he had been forced to eat other asylum-seekers' leftovers and beg for food, while the other food arrangements mentioned by the Government had been difficult to achieve (see paragraph 42 above). The UNHCR in its third-party submissions confirmed that while repeat asylum applicants held in the transit zone were allowed to receive food assistance in the form of cold food items from certain charity organisations, such assistance was not always delivered (see paragraph 47 above). In this connection, while noting that essential needs of asylum-seekers in the transit zone may in fact be taken care of by NGOs, the Court is concerned by what seems to be a lack of any legal agreements or safeguards between the Government and the organisations allegedly supplying food assistance in the transit zone, which would ensure legal certainty of the current arrangements. Having regard to the general statements of the Government that the first applicant had had sufficient food supplies, without any information on the quality, frequency and manner in which the food had actually been provided to him, and the lack of documentation submitted in support of their arguments that the applicant had not been left starving, the Court considers that the applicant's allegations concerning food availability in the transit zone must be regarded as sufficiently substantiated.

56. Moreover, the Court cannot ignore the fact that the applicant could only leave the transit zone in the direction of Serbia, and would have therefore forfeited the examination of his asylum claim in Hungary (see

Ilias and Ahmed, cited above, § 247). It reiterates that while at the Röszke transit zone, he was fully dependent on the Hungarian authorities for his most basic human needs and was under their control (ibid., § 186).

57. Having regard to the above, the Court considers that the Government's arguments (see paragraph 45 above) are unable to change the fact that the domestic authorities did not provide the first applicant with food during his four-months stay in the transit zone without duly assessing his circumstances and giving a reasoned decision in that regard. In short, they failed to have due regard to the state of dependency in which he lived there. The foregoing considerations are sufficient to enable the Court to conclude that, as a result of the failings of the Hungarian authorities in securing his basic subsistence in the transit zone, the first applicant found himself for several months in a situation incompatible with Article 3 of the Convention.

There has accordingly been a violation of this provision with respect to the first applicant.

(ii) The second applicant and the applicant children

58. The Court observes at the outset that under Chapter IV of the Reception Conditions Directive, the authorities were in principle obliged to take into account the specific situation of minors and pregnant women, both categories considered vulnerable by the Directive, as well as assess and monitor any special reception needs linked to their status throughout the duration of their asylum procedures (see paragraph 27 above). Moreover, minors and pregnant women who had been found to have special needs after an individual evaluation were eligible for preferential treatment under the Asylum Act ((section 2k) of the Act, see paragraph 24 above). The Court cannot substitute its own assessment of the applicants' condition under domestic law for that of the national authorities (see *Ilias and Ahmed*, cited above, § 150). It notes, however, that, in the present case, no individualised assessment of the special needs of the applicant children or the second applicant, all of whom were considered vulnerable under the European Union legislation, seems to have been carried out by the Hungarian authorities.

59. The Court further observes that the applicant children, who were seven months, six years and seven years old respectively, were accompanied by their parents throughout their stay in the Röszke transit zone. It finds, however, that this fact is not capable of exempting the Hungarian State from its duty to protect them and take adequate measures as part of its positive obligations under Article 3 of the Convention (see *Muskhadzhiyeva and Others v. Belgium*, no. 41442/07, §§ 57-8, 19 January 2010).

60. As regards the physical conditions of the applicants' stay in the transit zone, the Court observes that after their arrival on 19 April 2017, the applicants were assigned accommodation together as a family. They initially

stayed in the section designated for receiving families only (see paragraph 11 above) and were later, namely on 29 June 2017, moved to the isolation section (see paragraph 13 above). The Court takes note of the fact that fans and awnings were only provided as of August 2017 (see paragraph 11 above). Even though the applicants had unrestricted access to the outdoor yard and an air-conditioned communal activity room (see paragraph 30 above), they were provided with an air-conditioned living container only in the isolation section (see paragraph 13 above). The Court is concerned by the applicants' allegation that they were made to suffer the heat in the family section's accommodation container and that there was no proper ventilation (see paragraph 11 above). It reiterates that suffering from heat cannot be underestimated, as such conditions may affect one's well-being and in extreme circumstances affect health (see *Aden Ahmed v. Malta*, no. 55352/12, § 94, 23 July 2013). Accordingly, this is a factor which cannot be ignored in the overall assessment of the conditions in the transit zone.

61. As regards the suitability of the facilities for children, the Court observes that the applicants' living containers in both sections contained basic furniture and childcare equipment. However, the Government did not submit any evidence to disprove the applicants' allegation that the beds had not been fit for use by children (see paragraph 11 above, and *S.F. and Others v. Bulgaria*, cited above, § 88). What is more, while the applicant children had access to facilities designated for playing and were able to participate in certain activities organised specifically for children in the family section, the situation changed once the family was moved to the isolation section – for a period of a month and a half no activities were organised and there was no playground accessible to the applicant children (see paragraph 13 above and *Popov*, cited above, §§ 95 and 102). The Court notes in this connection that, in the isolation section, the applicants, including the applicant children, had no contact with other asylum-seeking families or NGO representatives in the zone.

62. As regards the provision of medical services, the Court notes that the applicant children and mother received medical (including specialist) treatment on several occasions during their stay in the transit zone (see paragraph 18 above). It does not find it established that the arrangements in place in the zone, such as the system of medical referrals to the local hospital and the transportation arrangement (see paragraph 19 above), were such as to raise an issue under Article 3 of the Convention. As regards the lack of interpretation during the applicant mother's medical examinations (see paragraph 19 above), the Court notes that the possibility for a patient to be treated by staff who speak his or her language is not an established ingredient of the right enshrined in Article 3 of the Convention (see *Rooman v. Belgium* [GC], no. 18052/11, § 151, 31 January 2019). It further notes that at her hospital visit of 9 August 2017 interpretation was provided at the

doctor's request. Although at her other hospital visits an anamnesis could not be collected from her due to the language constraints, the Court does not find any evidence of this language barrier limiting her effective access to treatment that was normally available. What it finds disconcerting, however, is the lack of medical documentation with respect to the youngest applicant child and the applicants' undisputed allegation, confirmed also by the CPT report (see paragraph 30 above), that she had not been given the vaccines recommended at her age. It also accepts that outside medical treatment in the presence of (male) police officers, an allegation not disputed by the Government, must have caused a degree of discomfort to the applicants, particularly during the second applicant's gynaecological examinations (see paragraph 19 above; see also *Aden Ahmed*, cited above, § 95).

63. Of further concern to the Court is the fact that at the material time there was no professional psychological assistance available for traumatised asylum-seekers in the transit zone. It takes note of the applicants' argument that the second applicant (the applicant mother) had had mental health problems for a long time because of trauma in Afghanistan and had been receiving help in Serbia, but had not received any psychological or psychiatric treatment in the transit zone. The Government did not explain why, in particular, the applicant mother, whose condition had been brought to the attention of the authorities, was not examined by a psychiatrist. The Court further finds, without having to rely on the medical certificate produced by the applicants (see paragraph 20 above), that the presence of elements resembling a prison environment even in the sections of the Röszke transit zone designated for families (see paragraph 30 above) and the constraints inherent during confinement, which are particularly arduous for a young child, must have caused the applicants' children anxiety and psychological disturbance. The situation must have also created degradation of the parental image in the eyes of the children (see, *mutatis mutandis*, *A.B. and Others v. France*, § 113, and *Popov*, § 101, both cited above). For example, the applicants, including the applicant children, were accompanied by guards when moving between the sections even if only for the purpose of medical appointments, and armed police officers if they had to leave the zone (see paragraph 19 above). In addition, they were constantly subjected to security checks (see paragraph 14 above).

64. Lastly, the Court takes note of the duration of the applicants' stay; they were held for three months and twenty-seven days at the Röszke transit zone. The CPT in its report raised the issue of families with children in the transit zone, noting that the living conditions there were not adequate for holding them for prolonged periods and that their stay should be for the shortest possible period of time (see paragraph 30 above). The Court is of the view that the above-mentioned conditions, depending on the circumstances of the case, may not attain the threshold of severity required to engage Article 3, where the confinement is of a short duration. It

considers that, in the case of a longer period, their repetition and accumulation would necessarily have harmful consequences for those exposed to them (compare and contrast *Ilias and Ahmed*, cited above, § 193). It reiterates the primary significance of the passage of time for the application of this Article (compare *A.B. and Others v. France*, cited above, § 114).

65. Accordingly, in view of the applicant children's young age, the applicant mother's pregnancy and health situation and the length of the applicants' stay in the transit zone in the conditions set out above, the Court finds that the situation complained of subjected the applicant children and the applicant mother to treatment which exceeded the threshold of severity required to engage Article 3 of the Convention (compare and contrast *Ilias and Ahmed*, cited above, § 194).

There has therefore been a violation of that provision in respect of the applicant children and the applicant mother.

III. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

66. The applicants alleged that there had been no effective remedy at their disposal to complain about the living conditions in the transit zone. They also claimed that the denial of reception conditions in the first applicant's case had been automatic, without any decision being made in that regard or remedies to challenge the denial. They relied on Article 13 read in conjunction with Article 3 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

67. The Government submitted that the applicants had no arguable claim under Article 3 of the Convention and that their Article 13 complaint should therefore be declared inadmissible *ratione materiae*. Alternatively, they argued that this complaint was manifestly ill-founded as the applicants had had several remedies available to them in respect of the material conditions in the transit zone; they could, in particular, have lodged a complaint with the asylum authority, a request to be transferred to another pre-entry accommodation facility and a civil-law action for violation of personality rights.

68. The Court has declared admissible the applicants' complaint under Article 3 in respect of the conditions of detention and found a violation of that provision (see paragraphs 57 and 65 above). The complaints in question were therefore "arguable" for the purposes of Article 13 of the Convention (see *Khlaifia and Others*, cited above, §§ 268-69) and the complaint under Article 13 of the Convention must thus be declared admissible.

69. Having found a violation of Article 3 of the Convention (see paragraphs 57 and 65 and above), and in view of the fact that the alleged procedural shortcomings have been sufficiently examined under that Article (see paragraphs 54 and 58 above), the Court does not find it necessary to examine the complaint under Article 13 regarding those same alleged shortcomings.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

70. The applicants complained that they had been confined to the transit zone in violation of Article 5 § 1 of the Convention, the relevant parts of which provide as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

1. The parties' submissions

71. The Government emphasised that the applicants had entered the zone of their own will and had been free to leave in the direction of Serbia at any time. The restriction of their freedom of movement in the direction of Hungary pending determination of their right to enter the country had been a limitation inherent in the nature of the admission procedure. Their temporary accommodation in the transit zone had not amounted to deprivation of liberty within the meaning of Article 5 of the Convention.

72. The applicants submitted that their placement in the transit zone had amounted to a *de facto* deprivation of liberty for which no detention order had been issued. The fact that they had entered the transit zone of their own will did not mean that they had consented to the confinement. Had they left the zone in the direction of Serbia, this could have been used against their asylum claim and could have amounted to *refoulement*.

2. Third-party intervener

73. The UNHCR provided, as a third-party intervener, an interpretation of the relevant principles of international and European refugee and human rights law regarding the detention of asylum-seekers.

3. The Court's assessment

74. The Court reiterates the factors it has taken into consideration when determining the distinction between a restriction on liberty of movement and deprivation of liberty in the context of confinement of foreigners in transit zones and reception centres for the identification and registration of migrants: (i) the applicants' individual situation and their choices, (ii) the applicable legal regime of the respective country and its purpose, (iii) the relevant duration, especially in the light of the purpose and the procedural protection enjoyed by applicants pending the events, and (iv) the nature and degree of the actual restrictions imposed on or experienced by the applicants (see *Ilias and Ahmed*, cited above, §§ 217-18, and *Z.A. and Others v. Russia* [GC], nos. 61411/15 and 3 others, § 138, 21 November 2019). It further reiterates that in the case of *Ilias and Ahmed* (cited above, § 249), the Grand Chamber examined a comparable complaint and held that the applicants' stay of twenty-three days in the Röszke transit zone did not constitute a *de facto* deprivation of liberty and, consequently, that Article 5 was not applicable. The Court must now examine whether the application of the factors outlined above to the applicants' specific situation warrants a different conclusion in the present case.

(a) The applicants' individual situation and choices

75. As regards the changes in the applicable legal regime related to the fact that the applicants could only submit an application for asylum while in the transit zone (see paragraph 24 above), the Court considers that the fact remains that the applicants entered the Röszke transit zone of their own initiative, with the aim of seeking asylum in Hungary. Having regard to the known facts about the applicants and their respective journeys, it notes in particular that they had waited in Serbia for several months before crossing the border of their own free will and not because of a direct and immediate threat to their life or health in that country. It is also clear that, in any event, the Hungarian authorities were entitled to carry out the necessary verifications and examine their claims before deciding whether or not to admit them (see *Ilias and Ahmed*, §§ 222-23, and *Z.A. and Others v. Russia*, §§ 140-42, both cited above).

(b) The applicable legal regime, its purpose and the relevant duration in the light of that purpose and the procedural protection enjoyed

76. The purpose of the domestic legal regime applicable to the Röszke transit zone was to put in place a waiting area while the authorities decided whether to formally admit the asylum-seekers to Hungary (see *Ilias and Ahmed*, cited above, § 224). The applicants remained in the transit zone essentially because they were awaiting the outcome of their asylum proceedings (see paragraph 23 above).

77. The Court reiterates that the right of States to control the entry of foreigners into their territory necessarily implies that admission authorisation may be conditional on compliance with relevant requirements. Therefore, absent other significant factors, the situation of an individual applying for entry and waiting for a short period for the verification of his or her right to enter cannot be described as deprivation of liberty imputable to the State, since in such cases the State authorities have undertaken *vis-à-vis* the individual no other steps than reacting to his or her wish to enter by carrying out the necessary verifications (see *Ilias and Ahmed*, § 225, and *Z.A. and Others v. Russia*, § 144, both cited above).

78. The Court further reiterates that, in principle, as long as the applicant's stay in the transit zone does not exceed significantly the time needed for the examination of an asylum request and there are no exceptional circumstances, the duration in itself should not affect the Court's analysis on the applicability of Article 5 in a decisive manner. That is particularly so where the individuals, while waiting for the processing of their asylum claims, benefitted from procedural rights and safeguards against excessive waiting periods. The presence of domestic legal regulation limiting the length of stay in the transit zone is of significant importance in this regard (see *Ilias and Ahmed*, § 227, and *Z.A. and Others v. Russia*, § 147, both cited above).

79. The Court observes that unlike the situation in the case of *Ilias and Ahmed* (cited above, § 226), the provision limiting the maximum duration of an asylum-seeker's stay in the transit zone to four weeks did not apply in the present case (see paragraph 24 above) and that the Government were unable to point to any other domestic provision fixing the maximum duration of the applicants' stay in the transit zone. The Court notes, moreover, that the time-limits for processing asylum claims laid down in the asylum procedure (sixty days for the IAO to take a decision on an asylum application) were not respected in the present case (see paragraph 25 above).

80. Furthermore, the Court observes that the processing of the applicants' asylum claims was anything but speedy, as the applicants spent almost four months in the transit zone awaiting the outcome of their asylum proceedings (see paragraphs 22 and 23 above, and compare and contrast *Ilias and Ahmed*, cited above, § 228). It takes note, in particular, of the delays of more than two months related to the provision of an expert opinion on the first and second applicants' marriage certificate and the DNA testing, which was only ordered two months after the applicants had been placed in the transit zone (see paragraph 22 above). Against this background, even though the IAO was entitled to take measures aimed at verifying the existence of family ties between the applicants, the Court cannot accept that the applicants' situation was not influenced by any inaction or lack of diligence on the part of the Hungarian authorities. The

Court would add that the case file contains no indication that the applicants themselves, who were last interviewed on 8 June 2017, failed to comply with the legal regulations in place or did not act in good faith at any time during their stay in the transit zone by, for instance, complicating the examination of their asylum cases (see *Z.A. and Others v. Russia*, cited above, § 149).

(c) The nature and degree of the actual restrictions imposed on or experienced by the applicants

81. While the applicants were not permitted to leave the Röszke transit zone in the direction of the remaining territory of Hungary, they could have left the transit zone in the direction of Serbia at any time (see paragraph 24 above). In this connection, the Court reiterates that the risk of the applicants' forfeiting the examination of their asylum claims in Hungary and their fears about insufficient access to asylum procedures in Serbia (see paragraph 72 above) did not render the possibility of them leaving the transit zone in the direction of Serbia merely theoretical. Therefore, it did not have the effect of making the applicants' stay in the transit zone involuntary from the standpoint of Article 5 and, consequently, could not have triggered, of itself, the applicability of that provision (see *Ilias and Ahmed*, cited above, § 248).

82. As regards the conditions in which the applicants lived in the transit zone, the Court observes that, overall, as in the case of *Ilias and Ahmed* (cited above, § 232), the size of the applicants' section in the transit zone and the manner in which it was controlled were such that the applicants' freedom of movement was severely restricted, in a manner similar to that characteristic of a certain type of light-regime detention facility. In this connection, the Court cannot ignore the fact that the applicants spent a month and a half in the isolation section of the transit zone, under conditions which were, due to its nature, even more restrictive (see paragraph 13 above). The Court also refers to its finding of a violation of Article 3 of the Convention with respect to these conditions (see paragraphs 57 and 65 above).

(d) Conclusion as regards the applicability of Article 5

83. Having regard to the above considerations, in particular to the lack of any domestic legal provisions fixing the maximum duration of the applicants' stay, the excessive duration of that stay and the considerable delays in the domestic examination of the applicants' asylum claims, as well as the conditions in which the applicants were held during the relevant period, the Court finds that, in the circumstances of the present case, the applicants' stay in the transit zone amounted to a *de facto* deprivation of liberty (compare and contrast *Ilias and Ahmed*, cited above, § 249). Article 5 § 1 is therefore applicable.

84. It follows that this part of the application is not incompatible *ratione materiae* with the provisions of the Convention. Moreover, it is not manifestly ill-founded within the meaning of the same provision. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

85. The applicants alleged that the impugned measure had lacked any basis in domestic law and that there had been no decision on deprivation of liberty issued in their case. They further submitted that Hungary, a Member State of the European Union, was under an obligation to act in accordance with Article 8 of Reception Conditions Directive (see paragraph 27 above) according to which Member States should not hold a person in detention for the sole reason that he or she was an asylum-seeker. The applicants stressed that detention should be subject to individual assessment and had to be necessary and proportionate. The IAO's ruling on their placement in the transit zone had lacked any assessment of the best interests of the children and had not verified whether any non-coercive alternatives to detention could be applied.

86. The Government submitted that, even if Article 5 of the Convention was applicable to the case, the deprivation of liberty had had legal basis in Hungarian law and had been justified under the first limb of Article 5 § 1 (f). In this connection, they relied on section 80/J of the Asylum Act (see paragraph 24 above), which provided that asylum-seekers were not entitled to a right of entry and stay in the territory of Hungary and that pending determination of their asylum applications they were accommodated in a transit zone. Pending asylum proceedings were therefore the sole condition for the lawfulness of detention in the transit zone, not requiring any judicial assessment or judicial review.

2. The Court's assessment

87. The Court refers to the general principles on Article 5 § 1 (f) of the Convention as summarised in the case of *Z.A. and Others v. Russia* (cited above, §§ 159-63). It reiterates that any deprivation of liberty must be "in accordance with the procedure prescribed by law" that meets the "quality of law" criteria, as well as be free from arbitrariness. Where deprivation of liberty is concerned, it is essential that the general principle of legal certainty be satisfied and therefore that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application (see *Khlaifia and Others*, cited above, § 92, with further references). Furthermore, the detention of a person constitutes a

major interference with individual freedom and must always be subject to rigorous scrutiny (see, *Z.A. and Others v. Russia*, cited above, § 161).

88. The Court is fully conscious of the difficulties that member States may face during periods of massive arrivals of asylum-seekers at their borders. Subject to the prohibition of arbitrariness, the lawfulness requirement of that provision may be considered generally satisfied by a domestic legal regime that provides, for example, for no more than the name of the authority competent to order deprivation of liberty in a transit zone, the form of the order, its possible grounds and limits, the maximum duration of the confinement and, as required by Article 5 § 4, the applicable avenue of judicial appeal (ibid, § 162).

89. Turning to the present case, the Court notes that the applicants' detention in the transit zone lasted from 19 April to 15 August 2017, that is, three months and twenty-seven days. According to the Government, section 80/J of the Asylum Act provided the legal basis for the measure (see paragraph 24 above). This provision states that asylum applications can only be submitted, with certain exceptions, in the transit zone, and that asylum seekers are required to wait in there until a final decision is taken on their asylum applications. The Court, for its part, cannot identify in the provision in question any reference to the possibility of detention in the transit zone nor any indication of the maximum duration of asylum seekers' detention in the zone. Accordingly, it concludes that in the present case there was no strictly defined statutory basis for the applicants' detention (see, *mutatis mutandis*, *Z.A. and Others v. Russia*, cited above, § 164).

90. The Court further notes that the applicants' detention occurred *de facto*, that is, as a matter of practical arrangement. The Hungarian authorities did not issue any formal decision of legal relevance complete with reasons for the detention, including an individual assessment and consideration of any alternative measures that would have been less coercive than detention for the applicant family (see, *mutatis mutandis*, *A.B. and Others v. France*, cited above, §§ 123-24; see also Article 8 of the Reception Conditions Directive in paragraph 27 above).

91. The motives underlying the applicants' detention may well be those referred to by the Government in the context of Article 5 § 1 (f) of the Convention. However, the fact remains that the applicants were deprived of their liberty without any formal decision of the authorities and solely by virtue of an overly broad interpretation of a general provision of the law – a procedure which in the Court's view falls short of the requirements enounced in its case-law.

92. It follows that the applicants' detention cannot be considered "lawful" for the purposes of Article 5 § 1 of the Convention. There has accordingly been a violation of that provision.

V. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

93. The applicants further complained that the deprivation of their liberty in the transit zone could not be remedied by appropriate judicial review, in breach of Article 5 § 4 of the Convention, which provides:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

94. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

95. The applicants submitted that because they had not received a formal decision on their detention, they could not challenge the lawfulness of the measure in any kind of procedure and could not request their release before a judicial body.

96. The Government submitted that there was an effective judicial remedy against the unlawful silence of the asylum authority and arbitrariness of "pre-entry detention" of asylum-seekers in the transit zone under section 20 of the Administrative Procedure Act (see *Lokpo and Touré v. Hungary*, no. 10816/10, § 13, 20 September 2011).

97. The Court reiterates its above finding that the applicants' detention consisted of a *de facto* measure, not supported by any decision specifically addressing the issue of deprivation of liberty (see paragraph 90 above). Moreover, the administrative remedy suggested by the Government concerned the applicants' asylum applications rather than the question of personal liberty. In these circumstances, the Court does not find it established that the applicants could have sought a judicial review of their detention in the transit zone – which itself had not taken the form of a formal decision.

98. The Court must therefore conclude that the applicants did not have at their disposal any proceedings by which the lawfulness of their detention could have been decided speedily by a court.

99. It follows that there has been a violation of Article 5 § 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

100. The applicants alleged under Article 34 of the Convention that the authorities had failed to comply with the interim measure indicated by the Court on 19 May 2017. The relevant provision reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

101. The Court refers at the outset to the principles set out in its case-law regarding the obligations laid down in Article 34 of the Convention and their relationship to the interim measures provided for by Rule 39 (see, for instance, *Paladi v. Moldova* [GC], no. 39806/05, §§ 84-92, 10 March 2009). According to those principles, the starting-point for verifying whether a respondent State has complied with an interim measure is the formulation of the interim measure itself (ibid., § 91).

102. Turning to the circumstances of the present case, the Court notes that on 19 May 2017 it decided to apply a first measure under Rule 39 of the Rules of Court in the case, indicating to the Hungarian Government:

> "...to place the applicants, as soon as possible, in an environment which complies with the requirements of Article 3 of the Convention, taking into account the presence of three minors and a pregnant woman (see especially *Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012) and to keep the Court informed of the developments of the applicants' situation."

103. By a letter of 30 May 2017 the applicants informed the Court that they were still detained in the transit zone despite the interim measure. They drew the Court's attention to an unanswered letter sent to the IAO by their legal representative requesting their release. In their letter of 7 June 2017 the Government did not dispute their obligation under Article 34 of the Convention to comply with the interim measure. Instead, they contended that the Court's interim measure did not require the applicants' transfer to another reception centre and that it could be complied with within the transit zone. They submitted that the conditions in the zone, where they provided adequate accommodation and care for the applicants and their specific needs, satisfied the requirements of Article 3. In the application form, in which the applicants raised the Article 34 complaint, they maintained that after the Court's Rule 39 decision of 19 May 2017 the conditions of their placement in the transit zone had not improved and, in some ways, had even worsened.

104. The Court notes that on 7 July 2017 the Court decided to apply a second interim measure in the case, reiterating the first Rule 39 measure and, additionally, indicating that the Hungarian Government should "ensure

regular meals also for the first applicant and interpretation for the second applicant during her medical check-ups".

105. In so far as the applicants can be understood as stating that only placement in an open reception centre would have complied with the requirements of Article 3 of the Convention (see paragraph 103 above), the Court observes that the Rule 39 decision of 19 May 2017 did not refer to a specific facility for the applicants' accommodation or request that the Government place the applicants in a reception centre outside the transit zone (see paragraph 101 above). It notes that the applicants' allegation that the conditions in the transit zone worsened following the interim measure of 19 May 2017 (see paragraph 103 above) remained largely unsubstantiated.

106. The Court further notes that the applicants' complaint under Article 34 of the Convention concerns, in effect, the respondent State's obligations under Article 3 of the Convention. The question whether the Government in fact complied with the interim measure at issue is thus closely related to the examination of the complaints raised by the applicants under the latter Convention provision.

107. Given the nature of the interim measures applied in the present case, the parties' submissions and the Court's findings concerning the applicants' complaint under Article 3 of the Convention (see paragraphs 57 and 65 above) – the Court takes the view that it has examined the main legal question raised in respect of their situation in the transit zone and that it does not need to give a separate ruling on the complaint under Article 34 of the Convention (see, *mutatis mutandis*, *Kamil Uzun v. Turkey*, no. 37410/97, § 64, 10 May 2007).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

109. The applicants claimed 15,000 euros (EUR) each in respect of non-pecuniary damage.

110. The Government argued that the claim was excessive.

111. Having regard to the circumstances of the present case and the nature of the violations found, the Court considers it reasonable to award each of the adult applicants (the first and second applicants) the amount of EUR 4,500 and each of the applicant children the amount of EUR 6,500 in respect of non-pecuniary damage.

B. Costs and expenses

112. With respect to the proceedings before the Court, the applicants claimed EUR 18,070 for 121 hours of legal work at the hourly rate of EUR 150 plus EUR 80 in clerical expenses. The lawyer indicated that she had agreed with the applicants that the latter would pay her if they won the case before the Court.

113. The Government submitted that the expenses claimed had not been necessarily incurred and were not reasonable as to quantum, given the number of irrelevant submissions made by the applicants and their similarity to the submissions made in other cases.

114. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession, the Court considers it reasonable to award the sum of EUR 5,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

C. Default interest

115. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;

2. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention in respect of the first applicant;

3. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention in respect of the second to fifth applicants;

4. *Holds*, unanimously, that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*, by six votes to one, that there has been a violation of Article 5 §§ 1 and 4 of the Convention;

6. *Holds*, unanimously, that there is no need to examine the complaint under Article 34 of the Convention;

7. *Holds*, unanimously,
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) to the first and second applicants, each, EUR 4,500 (four thousand five hundred euros), and to each of the applicant children, EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) to the applicants jointly, EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Yonko Grozev
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the statement of dissent of Judge Mourou-Vikström is annexed to this judgment.

YGR
IF

STATEMENT OF DISSENT OF JUDGE MOUROU-VIKSTRÖM

I cannot subscribe to the majority's view that there has been a violation of Article 5 §§ 1 and 4 of the Convention in this case.

The fact that the applicants entered freely into the transit zone and could have left it at any moment means that it cannot be concluded that their stay in the Röszke zone was involuntary from the standpoint of Article 5. Therefore, it must be considered that the applicants' complaints under Article 5 §§ 1 and 4 are incompatible *ratione materiae* with its provisions.