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

Press Release
issued by the Registrar of the Court

ECHR 077 (2019)
28.02.2019

Unaccompanied alien minors detained in degrading conditions in Greek police stations: a number of violations

The case concerned the placement of nine migrants, unaccompanied minors, in different police stations in Greece, for periods ranging between 21 and 33 days. The migrants were subsequently transferred to the Diavata reception centre and then to special facilities for minors.

In today's **Chamber** judgment[1] in the case of **H.A. and Others v. Greece** (application no. 19951/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on account of the conditions of the applicants' detention in the police stations;

no violation of Article 3 as regards the living conditions in the Diavata centre;

a violation of Article 13 (right to an effective remedy) taken together with Article 3;

a violation of Article 5 §§ 1 and 4 (right to liberty and security / right to a speedy decision on the lawfulness of a detention measure).

The Court found, first, that the detention conditions to which the applicants had been subjected in the various police stations represented degrading treatment, and explained that detention on those premises could have caused them to feel isolated from the outside world, with potentially negative consequences for their physical and moral well-being. The Court also held that the living conditions in the Diavata centre, which had a safe zone for unaccompanied minors, had not exceeded the threshold of seriousness required to engage Article 3. It further took the view that the applicants had not had an effective remedy.

Secondly, the Court found that the applicants' placement in border posts and police stations could be regarded as a deprivation of liberty which was not lawful within the meaning of Article 5 § 1. The Court also noted that the applicants had spent several weeks in police stations before the National Service of Social Solidarity ("EKKA") recommended their placement in reception centres for unaccompanied minors; and that the public prosecutor at the Criminal Court, who was their statutory guardian, had not put them in contact with a lawyer and had not lodged an appeal on their behalf for the purpose of discontinuing their detention in the police stations in order to speed up their transfer to the appropriate facilities.

Principal facts

The applicants are six Syrian nationals, two Iraqi nationals and one Moroccan national who entered Greece just before the signing of the migration agreement concluded in 2016 between the member States of the European Union and Turkey, the "EU-Turkey Declaration". They were seeking to travel on to other European countries. They were between 14 and 17 years of age at the material time and were unaccompanied.

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

On various dates they were placed under "protective custody"[2] in police stations of northern Greece, for periods of between 21 and 33 days. They complained about overcrowding in their cells, a lack of heating, ventilation and lighting, and the poor quality of the food, adding that they had not been allowed to go outside for a walk and that they had slept on the floor in dirty sheets. One of them claimed to have suffered from asthma. They were subsequently transferred to the Diavata open reception centre, which since April 2016 has had a safe zone for unaccompanied minors, and is run by the NGO ARSIS. They were later taken to a special facility for unaccompanied minors.

The applicants complained about the conditions of their detention. The public prosecutor at the Criminal Court shelved their complaint after questioning three adults who were held in the police stations concerned. Two of the applicants also complained of ill-treatment at the Kilkis police station. The criminal and disciplinary proceedings conducted in that connection were discontinued in 2017.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), all the applicants complained of their detention conditions and of a lack of an effective remedy by which to complain about those conditions.

Under Article 3, two of the applicants claimed to have been ill-treated by police officers at Kilkis police station.

Relying on Article 5 §§ 1 (d), and 4 (right to liberty and security / right to a speedy decision on the lawfulness of a detention measure), all the applicants complained that they had been placed in police cells and had been unable to lodge an appeal challenging the lawfulness of their detention.

The application was lodged with the European Court of Human Rights on 13 April 2016.

The Office of the UN High Commissioner for Refugees (UNHCR), the AIRE Centre, the Dutch Council for Refugees, the European Council for Refugees and Exiles (ECRE), and the International Commission of Jurists (ICJ), were given leave to make written submissions as third parties.

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

Ksenija **Turković** (Croatia), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** ("the former Yugoslav Republic of Macedonia"),

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

Decision of the Court

Article 3 (prohibition of torture and inhuman or degrading treatment)

The applicants' detention in police stations*:* The Court found that the police stations had features which could make detainees feel lonely (no outer courtyard for walks or physical exercise, no catering facility, no radio or television for communication with the outside world) and were not suited to lengthy periods of imprisonment. Thus detention on those premises was capable of arousing in them a feeling of isolation from the outside world, with potentially negative

[2] Article 118 of Decree no. 141/1991.

consequences for their physical and moral well-being. The Court found that the applicants had been unable to go outside and that this situation was aggravated by the fact that they were all minors. It further pointed out that, in its report of 26 September 2017, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had emphasised that the practice of detaining unaccompanied or separated minors, for "protective" purposes, for several days or even weeks, without any psychological or social assistance, was unacceptable. Consequently, the Court took the view that the detention conditions to which the applicants had been subjected in the various police stations could be regarded as degrading treatment and found that there had been a violation of Article 3.

As regards the Diavata centre*:* The Court noted that this centre was an open facility where the applicants could go in and out as they pleased. It also found that, between January 2015 and March 2016, the flow of migrants into Greece had created an unprecedented migratory and humanitarian crisis, triggering a sudden increase in the demand for accommodation from asylum seekers and unaccompanied minors. Thus the "safe zone" of the Diavata centre, which was run by an NGO, had been set up in order to meet the needs of unaccompanied minors who had reached certain areas of northern Greece. In that connection, the Court noted that in its submissions to the Court, the UNHCR had not made any criticism of the "safe zones", including that of Diavata. Consequently, the living conditions in the Diavata centre had not exceeded the threshold of seriousness required to engage Article 3 and there had been no violation of that provision.

As to the complaint of two applicants alleging ill-treatment at Kilkis police station, the Court took the view that it was manifestly ill-founded because the applicants had not substantiated their allegations by appropriate evidence. The medical certificate issued by the hospital concerning the applicant who claimed to have broken his arm – after being kicked in the chest and falling over – made no mention of his arm being in plaster. In addition, the neurologist and cardiologist who examined him had indicated that he had no health problems. The doctor who had examined the other applicant – who claimed to have been hit on the head – had found that he did not need any treatment.

Article 13 (right to an effective remedy)

The Court took the view that the domestic remedy available[3], namely an appeal to the public prosecutor, had not been an effective one, neither for the applicants' transfer to the open facility of the Diavata centre, nor for an examination of their complaints concerning the conditions of their detention. The report drawn up in the domestic procedure[4] had not mentioned, as required, the date of the end of the "protective custody" period. Thus the applicants and the NGO which had been helping them were not able to know the duration of the placement in order to report it to the public prosecutor, and it had taken them several days to realise that this "protective custody" was being prolonged beyond a reasonable time. Moreover, while the applicants had been transferred to Diavata on the day after their complaint, it was thanks to the intervention of the NGO ARSIS. Lastly, over six months after the applicants had filed a criminal complaint about the conditions of their detention, the public prosecutor had shelved that complaint, after questioning three adults who had been held in the same police stations. There had thus been a violation of Article 13, taken together with Article 3.

Article 5 § 1 (right to liberty and security)

The Court found that the applicants' placement in border posts and police stations could be regarded as a deprivation of liberty. In that connection it noted that the authorities had automatically applied Article 118 of Decree no. 141/1991 providing for "protective custody". However, that legislation had not been intended for unaccompanied minor migrants and did not

[3] Remedies provided for by Articles 118 § 5 of Decree no. 141/1991 and 19 of Decree no. 220/2007.
[4] Article 118 § 5 of Decree no. 141/1991.

provide for any time-limit, thus potentially leading to situations where the deprivation of liberty of such minors could be prolonged for lengthy periods. This was all the more problematic as they were detained in police stations, where the conditions were incompatible with lengthy periods of imprisonment. In addition, the Court pointed out that Article 13 § 6 (b) of Decree no. 114/2010, which transposed into Greek law Directive 2005/85/EC of the Council of the European Union, provided that the authorities should avoid the detention of minors. Section 32 of Law no. 3907/2011 provided that unaccompanied minors could only be held as a last resort, for the shortest period possible. Lastly, Article 3 of the UN Convention on the Rights of the Child, of 1989, obliged States to take into consideration the best interests of children in taking decisions concerning them. The Court therefore took the view that the Government had failed to explain why the authorities had initially placed the applicants in a number of police stations and in degrading conditions of detention and not in other temporary accommodation facilities. It found that the applicants' detention had not been "lawful" within the meaning of Article 5 § 1 and that there had been a violation.

Article 5 § 4 (right to a speedy decision on the lawfulness of a detention measure)

The Court was of the view that "protective custody" in police stations could last for long periods during which the minors concerned could not be identified by lawyers working for NGOs in order to bring, within a reasonable time, an appeal against what they regarded as a detention measure. The applicants had spent several weeks in police stations before the National Service of Social Solidarity ("EKKA") recommended their placement in reception centres for unaccompanied minors. Moreover, the public prosecutor at the Criminal Court of Kilkis, who was the applicants' statutory guardian, had not put them in contact with a lawyer and had not lodged an appeal on their behalf for the purpose of discontinuing their detention in the police stations in order to speed up their transfer to the appropriate facilities. Moreover, as they had not officially been given the status of detainee, the applicants had been unable to bring – or take part in – a case before the Administrative Court in order to challenge their detention. The Court consequently found that there had been a violation of Article 5 § 4.

Just satisfaction (Article 41)

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

The judgment is available only in French.

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