

ECtHR - Rahimi v. Greece, Application No. 8687/08

Country of Applicant:

Afghanistan

Date of Decision:

05-07-2011

Citation:

Application No. 8687/08

Court Name:

First Section; European Court of Human Rights

Keywords:[Effective access to procedures](#) [1][Best interest of the child](#) [2][Child Specific Considerations](#) [3][Effective remedy \(right to\)](#) [4][Family member](#) [5][Detention](#) [6][Inhuman or degrading treatment or punishment](#) [7][Reception conditions](#) [8][Unaccompanied minor](#) [9][Vulnerable person](#) [10]

Relevant Legislative Provisions:Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [11] > [Article 3](#) [12]European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [13]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [11] > [Article 5](#) [14]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [11] > [Article 13](#) [15]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [11] > [Article 41](#) [16]European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [17] > [Article 19](#) [18]European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [17] > [Article 19](#) [18] > [1.](#) [19]

Headnote:

Inadequate care and unlawful detention of an unaccompanied minor seeking asylum: the case concerned the conditions in which a minor from Afghanistan, who had entered Greece illegally, was held in the Pagani adult detention centre on the island of Lesbos.

Facts:

The Applicant, who was born in 1992, left Afghanistan to flee the armed conflicts there and arrived in Greece, where he was arrested on 19 July 2007. He was placed in a detention centre pending an order for his deportation and was held there until 21 July 2007. A deportation order was issued on 20 July 2007, which mentioned that the Applicant's cousin, N.M., was accompanying him. On his release the Applicant was not offered any assistance by the authorities. He was homeless for several days and subsequently, with the aid of local NGOs, found accommodation in a hostel. In September 2007 an application he made for political asylum was rejected; his appeal is still pending.

Before the European Court the Applicant complained, among other things, of a complete lack of support or accompaniment appropriate to his status as an unaccompanied minor, and of the conditions in the detention centre, in particular the fact that he had been placed together with adults.

Decision & Reasoning:

Articles 3 and 13:

The Applicant had not been accompanied by a relative when his asylum application was registered on 27 July 2007. Between 19 and 27 July 2007 the authorities, on the basis of an uncertain procedure, had assigned the Applicant to an adult, N.M., who was supposed to act as a guardian and represent the Applicant in his dealings with the authorities. However, the established fact that the Applicant had been without a guardian for a lengthy period lent credence to the Applicant's claims concerning the preceding period, to the effect that he had not known N.M. In the light of these considerations and the reports by international organisations and NGOs on the subject, it was clear that the Applicant had been an unaccompanied minor.

The information brochure provided by the authorities to the Applicant, outlining some of the available remedies, mentioned the possibility of making a complaint to the chief of police but did not indicate the procedure to be followed or whether the chief of police was required to respond to complaints and, if so, within what period. The Court further questioned whether the chief of police represented an authority satisfying the requirements of impartiality and objectivity necessary to make the remedy effective. As to the legislation, it did not empower the courts to examine living conditions in detention centres for illegal aliens and to order the release of a detainee on those grounds. The Court attached particular importance to the specific circumstances of the present case. Firstly, the Applicant was a minor who had had no legal representation while in detention. Secondly, his complaints about his personal situation in detention related solely to the fact that he had been detained together with adults. Lastly, the information brochure in Arabic would have been incomprehensible to the Applicant, whose native language was Farsi. Accordingly, the Court rejected the respondent Government's objection of non-exhaustion of domestic remedies in respect of the Applicant's conditions of detention.

The Court could not say with certainty whether the Applicant had been placed together with adults.

However, the conditions of detention in the centre, particularly with regard to the accommodation, hygiene and infrastructure, had been so bad that they undermined the very meaning of human dignity. Moreover, the Applicant, on account of his age and personal circumstances, had been in an extremely vulnerable position and the authorities had given no consideration to his individual circumstances when placing him in detention. Accordingly, even allowing for the fact that the detention had lasted for only two days, the Applicant's conditions of detention had in themselves amounted to degrading treatment in breach of Article 3.

Owing to his youth, the fact that he was an illegal alien in a country he did not know and the fact that he was unaccompanied and therefore left to fend for himself, the Applicant undoubtedly came within the category of highly vulnerable members of society, and it had been incumbent on the Greek State to protect and care for him by taking appropriate measures in the light of its positive obligations under Article 3. With regard to the period after 27 July 2007, the date on which the Applicant had lodged his asylum application, the record of that application had made no mention of any member of his family accompanying him. There was no indication in the case file that the authorities had taken action subsequently to assign a guardian to him. On this point, the Commissioner for Human Rights of the Council of Europe, the Office of the United Nations High Commissioner for Refugees and Amnesty International had all noted persistent and serious shortcomings in Greece regarding the supervision of unaccompanied migrant children. After the Applicant's release and until the lodging of his asylum application, he had been left to fend for himself and had been taken care of by local NGOs. Hence, the authorities' indifference towards him must have caused the Applicant profound anxiety and concern. In its judgment in *M.S.S. v. Belgium and Greece*, the Court had noted 'the particular state of insecurity and vulnerability in which asylum seekers are known to live in Greece' and had found that the Greek authorities were to be held responsible 'because of their inaction'. Accordingly, the threshold of severity required by Article 3 had also been attained in the present case.

In sum, the Applicant's conditions of detention in the detention centre and the authorities' failure to take care of him, as an unaccompanied minor, following his release had amounted to degrading treatment. There had therefore been a violation of Article 3. Furthermore, in view of the Court's findings with regard to the exhaustion of domestic remedies, the State had also failed to comply with its obligations under Article 13.

Article 5:

Article 5 § 1 (f): The Applicant's detention had been based on the law and had been aimed at ensuring his deportation. In principle, the length of his detention 'two days' could not be said to have been unreasonable with a view to achieving that aim. Nevertheless, the detention order in the present case appeared to have resulted from automatic application of the legislation in question. The national authorities had given no consideration to the best interests of the Applicant as a minor or his individual situation as an unaccompanied minor. Furthermore, they had not examined whether it had been necessary as a measure of last resort to place the Applicant in the detention centre or whether less drastic action might not have sufficed to secure his deportation. These factors gave cause to doubt the authorities' good faith in executing the detention measure. This was all the more true since the conditions of detention in the centre, particularly with regard to the accommodation, hygiene and infrastructure, had been so severe as to undermine the very meaning of human dignity.

Article 5 § 4: The Applicant had been unable in practice to contact a lawyer. Furthermore, the information brochure outlining some of the remedies available had been written in a language, which he would not have understood, although the interview with him had been conducted in his native language. The Applicant had also been registered as an accompanied minor although he

had had no guardian who could act as his legal representative. Accordingly, even assuming that the remedies had been effective, the Court failed to see how the Applicant could have exercised them.

Outcome:

Violation of Art. 3, 13, 5 § 1(f) and 5 § 4.

Article 41: EUR 15,000 in respect of non-pecuniary damage.

Subsequent Proceedings :

Execution of judgment under the enhanced supervision of the Committee of Ministers

2015 Update

In its interim decisions concerning the execution of the judgments rendered in *Rahimi (& M.S.S) v. Greece* (adopted between December 2014 and December 2015), the CoE Committee of Ministers welcomed the creation of a new administrative authority for migration (responsible for all issues concerning the reception of asylum seekers), and the adoption of a new action plan to give full execution to the Court's judgments. On the other hand, the CM called upon the Greek authorities for further efforts to ensure reception facilities and correlated services (included medical and psychological care) to all asylum seekers entitled to those, to guarantee the right to free legal aid, and to ensure that all unaccompanied minors are immediately referred to special accommodation centres and assisted by specialized personnel.

2017 Update

The Committee invited the Greek authorities to develop a plan for the registration and processing of asylum applications within a reasonable timeline and to provide information on any new measures regarding the handling of new arrivals taken with regard to the emergency situation in the Country. Authorities were also invited to develop a strategy to secure the full protection of unaccompanied minors, especially with regard to an effective guardianship system.

With regard to detention, the Committee invited the authorities to improve conditions and healthcare for detained migrants and asylum applicants, as well as to make sure that detention of minors is used as a measure of last resort.

2019 Update

The Council of Europe Committee of Ministers released its [decision](#) [20] in the supervision of the execution of the *M.S.S. and Rahimi groups v. Greece* following its 1348th meeting from 4-6 June 2019.

With regard to asylum procedures, the Committee recognized the improvements made by Greek Authorities and the notable increase in the overall rate of granting asylum. However, the Committee expressed concern with the delays in asylum procedures, especially with the increase in arrivals, as well as the deficiencies of the appeals procedure which have been reported by the Greek Ombudsman and expert NGOs.

The Committee recognized progress made in the area of living conditions of asylum applicants,

particularly given the continued high number of arrivals. However, they expressed concern that the living conditions remain critical and called on the authorities to step up efforts. It further called on authorities to implement the recommendations of the Council of Europe Commissioner for Human Rights on the need to improve health care provision to asylum seekers and irregular migrants in detention.

Concerning unaccompanied minors, the Committee welcomed the new law on guardianship but expressed concern about the inadequate number of suitable places available in accommodation facilities for minors and the significant number of minors placed in 'protective custody' or in reception centres at the borders. It called on the authorities to intensify their efforts to increase the capacity of accommodation suitable for unaccompanied minors.

With regard to detention, the Committee noted that domestic and ECtHR case law has evolved to grant access to an effective remedy for those held in detention and decided to cease monitoring of this aspect. It noted that the Committee for the Prevention of Torture (CPT) visits in 2018 found that some immigration detention centres provided decent conditions, but expressed concern at the number of police stations and immigration facilities found by the CPT to be below Convention standard, as well as at the continued detention of unaccompanied minors.

The Committee decided to resume examination of these cases at their September 2020 DH meeting.

Case Law Cited:

ECtHR - Vaden v. Greece, Application No. 35115/03

ECtHR - Tabesh v. Greece, Application No. 8256/07

ECtHR - Witold Litwa v. Poland, Application No. 26629/95

ECtHR - Winterwerp v. the Netherlands, Application No. 6301/73

ECtHR - Neulinger and Shuruk v. Switzerland [GC], Application No. 41615/07

ECtHR - Baranowski v Poland, Application No. 28358/95

ECtHR - Kudla v Poland [GC], Application No. 30210/96

ECtHR - Mooren v. Germany [GC], Application No. 11364/03

ECtHR - Amuur v. France, Application No. 19776/92

ECtHR - Dougoz v. Greece, Application No. 40907/98

[ECtHR - Mubilanzila Mayeka and Kaniki Mitunga v Belgium, Application No. 13178/03 \[21\]](#)

ECtHR - S.D. v Greece (Application no. 53541/07)

ECtHR - Z v United Kingdom (Application no. 29392/95)

[ECtHR - Salah Sheekh v The Netherlands \(Application no. 1948/04\) - resource \[22\]](#)

[ECtHR - MSS v Belgium and Greece \(Application no. 30696/09\) - resource](#)

[23]

[ECtHR - Chahal v the United Kingdom \(Application no. 22414/93\)](#) [24]

ECtHR - A v United Kingdom, Application No. 25599/94

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ECtHR - Dalia v. France, Application No. 26102/95

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ECtHR - Van der Ven v. the Netherlands, Application No. 50901/99

ECtHR - Cardot v. France, Application No. 11069/84

ECtHR - A.A. v. Greece, Application No. 12186/08

[ECtHR - Osman v United Kingdom \(Application no. 23452/94\)](#) [25]

Attachment(s):



[AFFAIRE RAHIMI c. GRECE.pdf](#)[26]

Other sources cited:

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- Report of the Commissioner for Human Rights of the Council of Europe following his visit to Greece from 8 to 10 December 2008;

- Report "The truth may be bitter, but it must be said: the situation of refugees in the Aegean Sea and the practices of the Greek coast guard ," published in October 2007 by the NGO Pro Asyl, NGO Arsis, NGO Prosfygi;
- CPT report published June 30, 2009 following the visit to Greece from 23 to 29 September 2008;
- Report "Greece: Irregular migrants and asylum-seekers routinely detained in substandard conditions" published in 2010 by Amnesty International;
- Report "Left to survive. Systematic failure to protect unaccompanied migrant children in Greece " published in 2008 by Human Rights Watch;
- Resolution 1707 (2010) of the Parliamentary Assembly of the Council of Europe, 28 January 2010;
- Recommendation 1703 (2005) of the Parliamentary Assembly of the Council of Europe.

Authentic Language:

French

State Party:

Greece

National / Other Legislative Provisions:

Greece - Code of Criminal Procedure - Article 572

Greece - Penal Law (Law No. 2776/1999) - Art 6

Greece - Penal Law (Law No. 2776/1999) - Art 86

Greece - Law No. 3386/2005 - Article 76

Greece - Law No. 3386/2005 - Article 77

Greece - Law No. 3386/2005 - Article 16

Greece - Presidential Decree No. 220/2007

UNCRC - Art 3

UNCRC - Art 10

UNCRC - Art 22

UNCRC - Art 37

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A11

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A17

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A237

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30

[5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2481

[6] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A27

[7] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A43

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[13] <https://www.asylumlawdatabase.eu/node/19>

[14] https://www.asylumlawdatabase.eu/node/195#toc_22

[15] https://www.asylumlawdatabase.eu/node/195#toc_60

[16] https://www.asylumlawdatabase.eu/node/195#toc_165

[17] <https://www.asylumlawdatabase.eu/node/353>

[18] https://www.asylumlawdatabase.eu/node/353#toc_342

[19] https://www.asylumlawdatabase.eu/node/353#toc_346

[20] https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168094c62e

[21] <https://www.asylumlawdatabase.eu/en/case-law/ecthr-mubilanzila-mayeka-and-kaniki-mitunga-v-belgium-application-no-1317803>

[22] <https://www.asylumlawdatabase.eu/en/content/ecthr-salah-sheekh-v-netherlands-application-no-194804-resource>

[23] <https://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-application-no-3069609-resource>

[24] <https://www.asylumlawdatabase.eu/en/content/ecthr-chahal-v-united-kingdom-application-no-2241493>

[25] <https://www.asylumlawdatabase.eu/en/content/ecthr-osman-v-united-kingdom-application-no-2345294>

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