

April 2011

Rahimi v. Greece - 8687/08

Judgment 5.4.2011 [Section I]

Article 3

Degrading treatment

Expulsion

Positive obligations

Conditions in detention centre unadapted to minor Afghan asylum-seeker:
violation

Article 5

Article 5-1-f

Expulsion

Detention of unaccompanied foreign minor in adult detention centre: *violation*

Article 13

Effective remedy

Leaflet giving information on procedures for complaining about conditions in detention centres incomplete and in a language the detainee, a minor, could not understand:
violation

Facts – The applicant, who was born in 1992, left Afghanistan to escape 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, where he remains to date. 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.

Law – Articles 3 and 13

(a) *Whether the applicant had been accompanied by a relative* – 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 – from 27 July 2007 to date – 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.

(b) *Exhaustion of domestic remedies* – 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.

(c) *The conditions of detention in the detention centre* – 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.

(d) *The period following the applicant's release* – 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.

Conclusion: violations (unanimously).

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.

Conclusion: violation (unanimously).

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.

Conclusion: violation (unanimously).

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

* *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, 21 January 2011, Information Note no. 137.

