



June 2019

This Factsheet does not bind the Court and is not exhaustive

Unaccompanied migrant minors in detention

See also the factsheets on [“Accompanied migrant children in detention”](#) and [“Migrants in detention”](#).

“[I]t is important to bear in mind that [the child’s extreme vulnerability] is the decisive factor and ... takes precedence over considerations relating to the ... status [of] illegal immigrant.” (judgment [Mubilanzila Mayeka and Kaniki Mitunga v. Belgium](#) of 12 October 2006, § 55)

“Children have specific needs that are related in particular to their age and lack of independence, but also to their asylum-seeker status. The [European] Court [of Human Rights] has also observed that the Convention on the Rights of the Child encourages States to take appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents ...” (judgment [Abdullahi Elmi and Aweys Abubakar v. Malta](#) of 22 November 2016, § 103)

Conditions of detention

[Mubilanzila Mayeka and Kaniki Mitunga v. Belgium](#) (see also below under “Deprivation of liberty” and “Right to respect for family life”)

12 October 2006

This case concerned the nearly two months long detention at a transit centre for adults run by the Aliens Office near Brussels airport of a five-year old Congolese national travelling alone to join her mother who had obtained refugee status in Canada, and her subsequent removal to her country of origin. The applicants (the mother and the child) submitted in particular that the detention of the child had constituted inhuman or degrading treatment.

The European Court of Human Rights held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the [European Convention on Human Rights](#) in respect of the child, finding that her detention had demonstrated a lack of humanity and amounted to inhuman treatment. It noted in particular that the child, unaccompanied by her parents, had been detained for two months in a centre intended for adults, with no counselling or educational assistance from a qualified person specially mandated for that purpose. The care provided to her had also been insufficient to meet her needs. Furthermore, owing to her very young age, the fact that she was an illegal alien in a foreign land and the fact that she was unaccompanied by her family, the child was in an extremely vulnerable situation. However, no specific legal framework existed governing the situation of unaccompanied foreign minors and, although the authorities had been placed in a position to prevent or remedy the situation, they had failed to take adequate measures to discharge their obligation to take care of the child.

Rahimi v. Greece (see also below, under “Deprivation of liberty”)

5 April 2011

This case concerned in particular the conditions in which a minor Afghan asylum-seeker, who had entered Greece illegally, was held in the Pagani detention centre on the island of Lesbos and subsequently released with a view to his expulsion.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that, 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. It noted in particular that 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, on account of his age and personal circumstances, the applicant had been in an extremely vulnerable position and the authorities had given no consideration to his individual circumstances when placing him in detention.

Mohamad v. Greece (see also below, under “Deprivation of liberty”)

11 December 2014

This case concerned in particular the conditions of the detention of the applicant, an Iraqi national who was an unaccompanied minor at the time of his arrest, at the Soufli border post, pending his removal. He complained that his status as minor had not been taken into account when he had been held at the Soufli border post and about his conditions of detention there.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the applicant’s conditions of detention at the Soufli border post had amounted to inhuman and degrading treatment. The Court noted in particular that the applicant remained imprisoned for more than five months, in unacceptable conditions as described by, *inter alia*, the [European Committee for the Prevention of Torture \(CPT\)](#). The Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken in conjunction with Article 3**, finding that the applicant had had no effective remedy by which to complain of the conditions of his detention.

Abdullahi Elmi and Aweys Abubakar v. Malta (see also below, under “Deprivation of liberty”)

22 November 2016

This case concerned the detention in the Safi Barracks Centre of two Somalian nationals, during eight months, waiting for the outcome of their asylum procedure, and in particular, for the outcome of the procedure aiming at determining whether they were minors or not. They complained in particular about the conditions of their immigration detention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that, in the present case, the cumulative effect of the conditions complained of, which had involved overcrowding, lack of light and ventilation, no organised activities and a tense, violent atmosphere, for a period of around eight months, had amounted to degrading treatment. These conditions had been all the more difficult in view of the applicants’ vulnerable status as asylum-seekers and minor. Indeed, there had been no support mechanism for them and this, combined with the lack of information as to what was going to happen to them or how long they would be detained, had exacerbated their fears. Moreover, in the present case the applicants, who were sixteen and seventeen years of age respectively, were even more vulnerable than any other adult asylum seeker detained at the time because of their age.

H.A. and Others v. Greece (no. 19951/16)

28 February 2019

This 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. All the applicants complained in particular of their detention conditions and of a lack of an effective remedy by which to complain about those conditions. They also alleged that they had been placed in police cells and had been unable to lodge an appeal challenging the lawfulness of their detention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the conditions of the applicants' detention in the police stations. It found in particular 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** of the Convention. It further took the view that the applicants had not had an effective remedy and therefore held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken together with Article 3**. Lastly, the Court held that there had been 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) of the Convention, finding in particular that the applicants' placement in border posts and police stations could be regarded as a deprivation of liberty which was not lawful. 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.

Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia (no. 14165/16)

13 June 2019¹

This case concerned the living conditions of five unaccompanied migrant minors from Afghanistan, who entered Greece as unaccompanied migrant minors in 2016, when they were between 14 and 17 years of age. More specifically, two of the applicants complained about their living conditions at Polykastros and Filiata police stations, where they had been held in "protective custody", while four applicants complained about their living conditions at the camp in Idomeni. Three of the applicants also argued that their placement in protective custody at the police stations in Polykastros, Filiata and Aghios Stefanos had amounted to an unlawful deprivation of liberty.

The Court declared the complaints against Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia **inadmissible** as being manifestly ill-founded. It further held that there had been a **violation** by Greece **of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. Firstly, the Court found that the conditions of detention of three of the applicants in various police stations had amounted to degrading treatment, observing that being detained in these places was liable to arouse in the persons concerned feelings of isolation from the outside world, with potentially negative repercussions on their physical and mental well-being. Secondly, it noted that the authorities had not done all that could reasonably be expected of them to fulfil the obligation to provide for and protect four of the applicants, who had lived for a month in the Idomeni camp in an environment unsuitable for adolescents. That obligation was incumbent on the Greek State with regard to persons who were particularly vulnerable because of their age. The Court also held that there had been a **violation** by Greece **of Article 5 § 1** (right to liberty and security) of the Convention with regard to three applicants, finding that the placement of these applicants in the police stations had amounted to a deprivation of liberty as the Greek Government had not explained why

¹. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

the authorities had first placed the applicants in police stations – and in degrading conditions of detention – rather than in alternative temporary accommodation. The detention of those applicants had therefore not been lawful.

Deprivation of liberty and challenging the lawfulness of detention

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (see also above, under “Conditions of detention”, and below, under “Right to respect for family life”)

12 October 2006

This case concerned in particular the nearly two months long detention at a transit centre for adults run by the Aliens Office near Brussels airport of a five-year old Congolese national travelling alone to join her mother who had obtained refugee status in Canada.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the minor applicant, finding that the Belgian legal system at the time and as it had functioned in the case before it had not sufficiently protected her right to liberty. It noted in particular that the child was detained in a closed centre intended for illegal foreign aliens in the same conditions as adults. Those conditions were not adapted to the position of extreme vulnerability in which she had found herself as a result of her status as an unaccompanied foreign minor. The Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention, finding that the child’s successful appeal against detention had been rendered futile. In this respect, it noted in particular that the Belgian authorities had decided on the date of the child’s departure the day after she had lodged her application to the *chambre du conseil* for release from detention, that is to say even before the *chambre du conseil* had ruled on it. They had not sought to reconsider the position at any stage. Moreover, the deportation had proceeded despite the fact that the 24 hour-period for an appeal by the public prosecutor had not expired and that a stay applied during that period.

Bubullima v. Greece

28 October 2010

The first applicant, a minor Albanian national, lived in Greece with his uncle, who had parental rights over him. Arrested by the immigration police, who instituted deportation proceedings against him on the ground that he did not have a valid residence permit, he was subsequently temporarily placed in custody, and then, once the decision to deport him had been taken, kept in detention to prevent him from escaping. He alleged that the Greek courts had failed to decide speedily on his application for release and that he had had no remedy by which to challenge the lawfulness of his detention.

The Court held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention in respect of the first applicant, finding that the remedies provided to him by domestic law had not satisfied the requirements of that provision, in particular the requirement of “speediness”.

Rahimi v. Greece (see also above, under “Conditions of detention”)

5 April 2011

This case concerned the detention of an unaccompanied foreign minor in an adult detention centre. The applicant alleged in particular that he had not been informed of the reasons for his arrest or of any remedies in that connection.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that the applicant’s detention had not been lawful. It noted in particular that the applicant’s detention had been based on the law and had been aimed at ensuring his deportation. Moreover, in principle, the length of his detention – two days – could not be said to have been unreasonable with a view to

achieving that aim. However, the Greek 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. The Court also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention. In this regard, it noted in particular that 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.

See also: judgment in the case of **Housein v. Greece** of 24 October 2013.

Mohamad v. Greece (see also above, under "Conditions of detention")

11 December 2014

This case concerned in particular the lawfulness of the detention of the applicant, an Iraqi national who was an unaccompanied minor at the time of his arrest, at the Soufli border post, pending his removal.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, finding in particular that the applicant had been arrested and detained in disregard of his status as unaccompanied minor and that when he had reached the age of majority the Greek authorities had extended his detention without taking any steps with a view to his removal.

Abdullahi Elmi and Aweys Abubakar v. Malta (see also above, under "Conditions of detention")

22 November 2016

Both applicants alleged in particular that their detention in the Safi Barracks Centre, during eight months, had been arbitrary and unlawful and that they had not had a remedy to challenge the lawfulness of their detention.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, noting in particular that the applicants were minors and that their detention, in inappropriate conditions, had been particularly lengthy. It also held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention, as the applicants had not had an effective remedy to challenge the lawfulness of their detention.

H.A. and Others v. Greece (no. 19951/16)

28 February 2019

See above, under "Conditions of detention".

Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia (no. 14165/16)

13 June 2019²

See above, under "Conditions of detention".

². This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

Right to respect for family life

[Mubilanzila Mayeka et Kaniki Mitunga c. Belgique](#) (see also above, under “Conditions of detention” and “Deprivation of liberty”)

12 October 2006

This case concerned the nearly two months long detention at a transit centre for adults run by the Aliens Office near Brussels airport of a five-year old Congolese national travelling alone to join her mother who had obtained refugee status in Canada, and her subsequent removal to her country of origin. The applicants (the mother and the child) submitted in particular that the child’s detention had constituted disproportionate interference with their right to respect for family life.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in respect of the child and her mother, on account of the child’s detention. It observed in particular that one of the consequences of the child’s detention was to separate her from her uncle (with whom she had arrived at Brussels airport), with the result that she had become an unaccompanied foreign minor, a category in respect of which there was a legal void at the time. The detention had significantly delayed her reunion with her mother. The Court further noted that, far from assisting her reunion with her mother, the Belgian authorities’ actions had hindered it. Having been informed from the outset that the child’s mother was in Canada, the Belgian authorities should have made detailed inquiries of the Canadian authorities in order to clarify the position and bring about an early reunion of mother and daughter. Lastly, the Court observed that, since there was no risk of the child’s seeking to evade the supervision of the Belgian authorities, her detention in a closed centre for adults had served no purpose and that other measures more conducive to the higher interest of the child could have been taken. Furthermore, since the child was an unaccompanied foreign minor, Belgium was under an obligation to facilitate the family’s reunification. The Court therefore found that there had been disproportionate interference with the applicants’ right to respect for their family life. The Court also held in this case that there had been a **violation of Article 8** of the Convention in respect of the child and her mother, on account of the child’s deportation to her country of origin.

Texts and documents

See in particular:

- **[Handbook on European law relating to asylum, borders and immigration](#)**, European Union Fundamental Rights Agency / European Court of Human Rights, 2013
 - Council of Europe Commissioner for Human Rights **[web page](#)** on the thematic work “Migration”
 - Special Representative of the Council of Europe Secretary General on migration and refugees **[web page](#)**
-

Media Contact:

Tel.: +33 (0)3 90 21 42 08