



Report on Research on the Execution of Judgments – European Court of Human Rights Cases on Child Migration

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INTRODUCTION

The purpose of this research was to examine and analyse the supervision by the Council of Europe (CoE)'s Committee of Ministers (CM) of the execution of the judgments of the European Court of Human Rights (ECtHR). The theme of the research was children in the context of migration or asylum. The main research question was to consider whether and to what extent there were obstacles to full execution of the judgments and where possible to pinpoint the reasons for non-execution or delay in the execution of judgments. However, apart from *Rahimi v Greece* which has highlighted the particular difficulties and gaps in protection in the Greek asylum system, the cases I examined did not reveal particular obstacles to execution of the judgments, even though in most case supervision of execution of the judgments by the CM or Deputies took between three to five years. Thus, a question which emerged from this research was the extent to which the CM's supervision of the execution of judgments influenced changes in domestic law to prevent further violations of the ECHR.

METHODOLOGY

This was desk-based research centred on the information provided by the CoE Department for the Execution of Judgments of the European Court of Human Rights¹ and the database, HUDOC-EXEC.² I started by reading through the 'Country Factsheets' for each of the 47 Member States of the Council of Europe. The factsheets present an overview of violations by the individual member state, measures or reforms adopted in response to the ECtHR's findings of violations and the status of execution. These factsheets only provide a snapshot of each country and focus on important or pivotal cases or cases where there has been repetitive violations of ECHR.

From the factsheets, I identified the cases where the ECtHR found violations of Articles 3, 5, 8 and 13 in relation to decisions on immigration (particularly cases involving expulsion or deportation), detention in closed immigration centres, decisions on the issuance (or non-issuance) of visas or residence permits and decisions on family reunification. The factsheets revealed only a handful of cases which mentioned child asylum seekers or migrants specifically. As a result of this scoping exercise I identified twelve Member States where the ECtHR had found violations of Articles 3, 5, 8 and 13 in the context of decisions on immigration or asylum where children were involved.

For each of the twelve states, I used the search terms 'child', 'immigration', 'asylum' and 'residence permit' to identify child migration or asylum cases. I focused on both unaccompanied children and accompanied children as well as children who were applicants along with their parents. I have prepared a table (Excel spreadsheet) which sets out the detail of all the cases I reviewed for this study. This table includes the individual and general measures adopted by the state (and reported in their action plans/action reports or communications with the CM or Deputies) in response to the findings of the ECtHR. Where the information is available, I have indicated reasons why a state had problems complying with the execution of the judgment. In a number of states, for example in Austria and Spain, the ECHR has direct effect and the CM has indicated that in those states sometimes all that is required to execute the judgment (in addition to any individual measures) is proof that the ECtHR judgment has been published, translated and disseminated. In most action plans/reports or in the information supplied to the CM, the member states indicated that the ECtHR judgment had been translated, published and disseminated to relevant offices and bodies and published on government websites, so that it is available to the public.

SCOPE

I have excluded from my examination of cases those which involve child abduction (under the Hague Convention) and human trafficking/forced labour cases. I have included cases where the child/children were an important feature in the Court's judgment and not merely mentioned in passing. For example, where the best interests of the child were a determinative factor in deciding whether the applicant should be returned/expelled/deported. If the Court found a violation of

¹ Department for the Execution of Judgments, available at: <https://www.coe.int/en/web/execution>

² HUDOC-EXEC database available at: <https://hudoc.exec.coe.int/eng#%7B%22EXECDocumentTypeCollection%22%3A%5B%22CEC%22%5D%7D>



Article 8 on grounds which did not include the interests of the child of the family, I did not include the case.

CHALLENGES/LIMITATIONS

This is not a comprehensive study of all 47 Member States. A number of states have never had a case on immigration and asylum come before the ECtHR, others have had one or two which are not covered in this study. Only a few of the immigration/asylum cases involve or mention children.³ A search on the HUDOC-EXEC website using the search term 'child migration' returns 7 cases, but I have dug deeper to find cases where the interests of the child were important. Cases involving child applicants before the ECtHR are rare, especially where the child is an asylum seeker, refugee or migrant.

Although the Committee of Minister's (CM) Resolutions and the state's Action plans/Reports are published in HUDOC-EXEC, it was rare to find a state indicate in its action plan or report difficulties complying with the ECtHR's judgment. In most cases the action plans/reports listed the individual and general measures adopted by the state. In one case (*Rahimi v Greece* – see below) there is an ongoing dialogue between the Committee of Ministers (CM) and the Member State. In most of the cases I examined, there is a final resolution and the case is closed. Some areas of the DEJ website are inaccessible to the public and documents in the closed areas may reveal more information.

DISCUSSION

I examined, in total, 34 ECtHR cases across twelve member states on child migration/asylum/immigration. These are cases which have been or are currently under the supervision of the CM. I focused on the following states:

Austria (2 cases)
Belgium (6 cases)
Denmark (1 case)
France (6 cases)
Greece (1 case)
Italy (1 case)
Lithuania (1 case)
Netherlands (6 cases)
Norway (2 cases)
Spain (2 cases)
Sweden (2 cases)
Switzerland (4 cases).

The CM has closed its supervision in 29 of these cases and there are four with ongoing supervision and one which is new, *Khan v France*. There is not enough information on this case yet to add it to this study, although I have included it in the table. Two of the four ongoing cases are under enhanced supervision: *Rahimi v Greece* and *AC and Others v Spain*. Where supervision of the case is closed, a resolution is published on the HUDOC-EXEC database and I have set out in the excel spreadsheet the individual and general measures undertaken by the Member State to fulfil its obligations under Article 46(1) ECHR. In view of the limited time I had for this research, this report focuses on the cases which remain under supervision. However, I have also included in the discussion below the closed case of *Mayela and Mitunga v Belgium* which received intense publicity and involved negotiations at the highest level of government. The findings of the ECtHR led to a change in the law and Belgium's approach towards the protection of unaccompanied children arriving in the country.

BELGIUM

(a) *Mayela & Mitunga v Belgium* (app no 13178/03, final judgment 12/01/07). Supervision closed 19/11/2014.

Although this case is closed, the controversy and publicity this generated led to a change in Belgian law and its approach to the protection and care unaccompanied children in Belgium.

³ A search on the HUDOC-EXEC database reveals a total of 42 cases where 'immigration' is a key term and 71 'asylum' cases out of a total of 52,434 cases in the database.



Facts/Case Description

The first applicant (Pulcherie) obtained refugee status in Canada in 2001 and wanted to be reunited with her daughter (Tabitha), the second applicant, who was 5 years old and living with her grandmother in the Democratic Republic of Congo (DRC). Pulcherie asked her brother, K, a Dutch national to fetch Tabitha from Kinshasa and live with him in the Netherlands until she could get permission from the Canadian authorities to bring Tabitha to Canada. When they landed at Brussels airport, K did not have the correct papers for Tabitha and could not prove parental authority for Tabitha, so the Belgian immigration officials separated them and placed Tabitha in a detention centre near the airport. Her uncle returned to the Netherlands. A lawyer was appointed to represent her and who applied for asylum on her behalf, but nine days later the application was refused and directions were made for Tabitha's removal to Kinshasa. On appeal, the Belgian Commissioner-General for Refugees and Stateless Persons stated that because the applicant only wished to join her mother in Canada, there were no grounds for granting asylum and she must be refused entry to Belgium. Her lawyer asked for her to be placed in foster care on humanitarian grounds until the mother's application to the Canadian authorities for a visa could be processed. This was rejected by the Aliens Office and instead they arranged for her removal to the DRC. The Belgian authorities informed the UNHCR in the DRC that the 2nd applicant was being returned, but the UNHCR office in Kinshasa urged the Belgian authorities to allow Tabitha to remain in Belgium until her mother's application in Canada is processed because there was no one who could care for her in the DRC. Two months after her arrival in Belgium, Tabitha was returned to the DRC, accompanied by an employee of the airline. There was no one to meet her at the airport, but she was handed over to the National Information Agency in Kinshasa. On the same day her mother learnt of her daughter's deportation to the DRC. After intervention from the Prime Ministers of Belgium and Canada (the latter agreeing to reunite Tabitha with her mother), Tabitha was flown to Paris and onwards to Canada to be reunited with her mother. The case received considerable press coverage at the time. The ECtHR noted the legal void in Belgium law in respect of foreign unaccompanied minors and held that Belgium had violated Article 3 ECHR because she had been held in a detention centre unsuitable for children and this met the threshold of severity under Article 3. In addition, there was a violation of Article 8 because the Belgian authorities deliberately separated Tabitha from members of her family and impeded her reunification with her mother.

Execution of the Judgment

Action Plans: DH-DD(2012)1033 08/11/2012; DH-DD(2014)794 17/06/2014.

Individual measures: Belgium paid €35,000 for non-pecuniary damage and €14,000 for costs and expenses (07/03/2006). Tabitha was reunited with her mother in Canada, in October 2002, following interventions by the Belgian and Canadian Prime Ministers. Both applicants had regularised their residence status in Canada.

General Measures: A new law introduced on 1 May 2004, requires a guardian to be appointed for each unaccompanied child in order to provide him/her with care, under the supervision and coordination of the Guardianship Department. There has been a big campaign to recruit and train new Guardians to make sure every UM has a guardian appointed to represent their interests. Guardians have the capacity to challenge a deportation order and must be involved in the process of finding a lasting solution for the child and where necessary ensure adequate care and protection facilities if the child is to be returned. The Belgian state introduced a new law (12 January 2007) to put an end to the practice of detaining unaccompanied foreign minors who were denied entry into the country. However, if there is any doubt about their minority status, the minors may be held in detention for a short period while determining their age (up to 3 days, with the possibility of a 3 day extension). In addition, unaccompanied children will have access to a guardian and the centre will be suitable for his/her needs. Once identified as an unaccompanied child (UM), he/she will be transferred within 24 hours of notification of the decision to an observation and orientation centre. Belgium has introduced a new law prohibiting the detention of UMs (9 January 2012) and has increased the capacity of observation and orientation centres to cope with the increase of UMs arriving in Belgium. Staff at the Aliens Office have also received more training on how to handle claims made by UM. On the 19 January 2012, new measures were introduced to ensure that an unaccompanied child, who may be deported, will be accompanied by a suitable adult and properly accommodated and cared for in the country she/he is deported to. The Aliens Office must take account of any durable solutions suggested by the guardian of the UM before considering return to the country of origin.



The ECtHR judgment is available on the Juridat website of the Court of Cassation and the case received a lot of publicity at the time, with a strong impact in the public press and among practitioners and academics. There have been a number of academic articles written about the case. The state authorities have also distributed it widely to the Aliens Office, the College of Public Prosecutors and the Ministry of Foreign Affairs.

Most of the main actions in response to the judgment had taken place by the time the judgment of the ECtHR became final. New laws were introduced in 2007 and 2012 and the training of staff and recruitment of new guardians is ongoing. The second action plan updated the CM on the implementation of the new measures and the new procedures introduced for unaccompanied children (3 phases of reception depending on whether they are seeking asylum or not) and updates on providing each UM with a guardian, ensuring appropriate accommodation for unaccompanied minors, to avoid immigration detention. The CM was satisfied that Belgium had adopted measures to fulfil its obligations in relation to execution of the judgment and the CM's supervision of the case was closed on 19 November 2014.

FRANCE

(b) *Senigo-Longue v France* (App No 19113/09; final judgment 10/10/2014); *Mugenzi v France* (App No 52701/09; final judgment 10/10/2014); *Tanda-Muzinga v France* (2260/10; Final judgment 10/10/2014). Standard Procedure.

Facts/Case Description

These three cases concerned the procedures under French law for family reunification applications. The adults in the cases were either recognised refugees (*Mugenzi* and *Tanda-Muzinga*) or were lawfully resident in France (*Senigo-Longue*). All three applied for family reunion with children who were living in Kenya or Cameroon. Although the principle of family reunion had been recognised in their cases, the consular officials in Kenya and Cameroon refused to issue visas to enable the children to reunite with their parents in France. In the *Mugenzi* and *Tanda-Muzinga* cases, the consular officials refused to issue visas for the children on account of difficulties in establishing the child's civil registration status. Family reunification was only permitted for children of the family under 19. The French Embassy in Nairobi ordered a medical examination on Mr Mugenzi's sons to determine their ages, but found a discrepancy between their physical age and the age on their birth certificates and on this basis refused to issue visas. Mr Mugenzi claimed that they risked being returned and persecuted in Rwanda if they were not permitted entry into France. The Appeals Board gave judgment in Mr Mugenzi's favour in February 2007, but his request for visas was refused on the grounds that his sons were not under 19. He submitted a further urgent application on the basis of the ill-health and psychological trauma suffered by both sons and the urgent applications judge held that the 'criterion of urgency' had been met and the appeal should be heard rapidly. The Conseil d'Etat refused his appeal. It took 5 years for Mr Mugenzi to obtain a final decision and this time period was excessive in light of his particular circumstances and what was at stake for him and his family.

In *Tanda-Muzinga's* case the Minister of Immigration had contested the birth certificates of two of his children, even though the French Office for the Protection of Refugees and Stateless Persons (OFPRA) had confirmed his family situation to the visa authorities. His wife had also obtained 'judicial rectification' of her daughter's birth certificate in a different court. When Mr Tanda-Muzinga appealed to the Appeals Board he heard nothing and made an application to the ECtHR. Following his communication to the ECtHR, the urgent appeals judge held that the criterion of urgency had been met and requested that Mr Tanda-Muzinga's application be re-examined. The UNHCR in Cameroon re-issued the daughter's birth certificate and the consular authorities issued visas for both children one month later.

Ms *Senigo-Longue* submitted a request for family reunification in May 2007, but her request was refused by the consular authorities in the Cameroon on the grounds that her children's birth certificates were not authentic. Ms *Senigo-Longue* appealed to the Appeals Board and submitted an urgent application to have the consular decision set aside. When she heard nothing from the Appeals Board, she went back to the Cameroon to have DNA tests which confirmed that she was the children's mother, but the Conseil d'Etat rejected the application on the basis that the parent-child relationship had not been established. The ECtHR communicated the application of Ms *Senigo-Longue* to the French authorities and visas were immediately issued for her children (July 2010).



All 3 applicants claimed violations of Article 8 ECHR and alleged that the refusal of the consular officials to issue visas for their children for the purpose of family reunification had infringed their right to respect for their family life. The ECtHR held that the procedure in France violated Art 8 ECHR. The process for examining family reunification has to contain a number of elements, having regard to the applicant's refugee status on the one hand and the best interests of the child on the other, so that their interests as guaranteed by Article 8 are safeguarded. French authorities should take account of the factors which led to the family's separation and the granting of refugee status. The national authorities had failed to give due consideration to each of the applicant's specific circumstances and the family reunification process had not offered the guarantees of flexibility, promptness, and effectiveness nor had it struck a fair balance between the interests of the applicants and the state interest in controlling immigration.

Execution of the judgment:

Action plan: DH-DD(2015)485 (10/04/2015)

Action Reports: DH-DD(2017)1382 (27/11/2017); DH-DD(2019)309 (18/03/2019).

Individual measures: France paid each of the applicants €5000 for non-pecuniary damage as well as costs and expenses. Visas and/or residence permits were issued for the children of the applicants and they were reunited with their parents in France and thus the violations in respect of the individual applicants were remedied.

General Measures: France notes that the criticism from the ECtHR is not against the domestic legal framework, but relates to its application to individual cases and the particular circumstances of the individual applicants.⁴ The excessive delay referred to by the ECtHR in the *Senigo-Longue* case is explained by the particular circumstances arising in that case and the verification procedures which were necessary to prove the children's relationship with their parents. The consular authorities and the French Office for Immigration and Integration are both instructed to proceed with applications for family reunification without delay and that the process should not exceed four months. Since October 2017, there is a new portal called 'France-Visas' for applicants on the website of the French Office for Immigration and Integration (FOII), which should address the complaint that applicants were not kept informed of the progress of their applications. For people who are recognised as refugees, the Government has adopted measures in family reunification procedures designed to ensure that consular officials take into account the refugee status of the applicant, the best interests of any children of the family and that the processing period for such requests is reduced. This right for refugees is exercised as a derogation from the usual family reunification process and refugees do not have to fulfil the conditions of proving adequate resources, housing or length of stay in France.⁵ The Government claimed that family visas are issued within 2 – 6 months.

France concludes that in the light of the specific circumstances of these cases and the fact that the ECtHR did not criticise French procedures on family reunification, it is not required to reform its family reunification laws and the execution of the judgment does not require the adoption of additional measures, as it is unlikely there will be similar violations.

The first action report was meant to have been considered by the CM at the 1310th meeting held in March 2018, but it was not in this list nor was it placed in the list for the subsequent meeting. A further action report was submitted by France in March 2019 (DH-DD(2019)309) for the 1348th Meeting (June 2019). This report consolidates the key issues in all three cases and generalises the measures undertaken by France, but largely repeats the measures (both individual and general) which were undertaken and set out in the action report DH-DD(2017)1382. It is not clear if the CM or Deputies have asked France to address further questions or issues or whether it was a request for a consolidated report. The action report is not clear on its purpose! France has requested that the CM closes its examination of these cases.

The second action report was due to be considered at the 1348th Meeting (June 2019). However, these cases do not appear on the list for June 2019 or September 2019 and a final resolution has yet to be published. 'Status of Execution' reads: 'updated/revised action plan/report awaited'.

⁴ See Action Report DH-DD(2017)1382.

⁵ It is not clear, but DH-DD(2017)1382 suggests that these reforms were being introduced in any event and are not as a result of the ECtHR judgment in these cases.



- (c) *Popov v France (app no 39472/07; final judgment 19/04/2012)*. Standard procedure. This is a leading case and there are 6 repetitive cases (1 closed and 5 under standard supervision).

Facts/Case Description

The applicants are Kazakhstan nationals – parents and 2 children – who applied for asylum in France. The grounds for their application were that they were repeatedly persecuted because of their Russian origins and their connection to the Russian Orthodox church. Their applications were refused because of inconsistencies in their evidence and the French authorities were unconvinced by their story. In June 2005 the authorities refused to issue residence permits and the applicants were ordered to leave France within a month. The family was placed in administrative detention after their request for residence permits was rejected again. They were held in detention pending removal for a few weeks in August and September 2007 (the children were three years old and six months old). They were held in detention in a centre unsuitable for families. Twice in this period they were taken to the airport, but the deportation flight was cancelled both times at the last minute. The authorities applied for a further extension to the family's detention on the basis that the delay to their deportation was the fault of the applicants. The detention judge could find no evidence that the applicants had impeded their removal from France and ordered their release from detention, but did not remove the deportation order. The Court of Appeal approved extension of the detention because the Prefect had secured another removal date, but this detention period was never enforced. In 2009, the National Asylum tribunal granted the family refugee status on the grounds that the enquiries made by the Ardennes Prefecture to verify their claims had exposed the applicants to the danger of further persecution in Kazakhstan, if they were returned. The ECtHR found violations of Articles 3 and 5 relating to the detention of the family in a facility manifestly unsuitable for young children.

Execution of the Judgment

Government Communication: DH-DD(2015)1100 (30/09/2015);

NGO/NHRI communication: DH-DD(2013)588 (06/05/2013) (I have not had time to translate this);

Action Plans: DH-DD(2012)947 (15/10/2012); DH-DD(2017) 327 (10/03/2017).

Individual measures: The Court awarded the applicants just satisfaction in the amount of €10,000 in respect of non-pecuniary damage and €3,000 in respect of costs and expenses. The sum of €13,000 was paid on 5 July 2012.

General Measures: The judgment was disseminated to the Ministry of Immigration and the Conseil d'Etat and made available to judges and court staff and discussed in legal journals. It was also published widely and available to the public. The Ministry of the Interior has issued a circular recommending house arrest for families in an irregular situation who are liable to be deported and limiting detention of families to cases where the family has refused to leave the territory after their case has been carefully examined. The authorities are required to limit the duration of detention to the time strictly necessary for the preparation of the removal. In addition, the placement must be in conditions adapted to children and the centres must have the capacity to receive families. As a result of this circular, the number of placements of families in administrative detention centres has decreased from 98 in 2012 to 41 in 2013 and 22 families in 2014, for an average duration of two days. Thus, French law reflects the principle that a third country national, who is obliged to leave French territory without delay and is accompanied by one or more children, will be subject to alternative measures to administrative detention. The detention of a foreigner accompanied by a child is permissible only if certain conditions are met: -

- a) when the person concerned has not respected the requirements of a previous assignment to residence;
- b) If he has absconded or refused on the occasion of execution of the expulsion order; -
- c) If the best interests of the child limits detention in the hours before departure.⁶

In addition, detention centres are being adapted so that they are capable of accommodating families with young children. France accepts that there is no remedy for children who are detained under French law (and does not intend to change the law to allow children an independent right to a remedy) but when detention is challenged by parents, the judge is under a duty to consider the circumstances of the children following the *Popov* judgment. If the authorities fail to take account

⁶ Article L. 551-1 of Céseda.



of the circumstances of children of the family, the decision to detain the family should be annulled. The action plan gave examples of administrative courts which looked specifically at the situation of the children when considering detention to demonstrate that the changes in judicial practice since *Popov* at the administrative level. These changes should prevent any further violation of Articles 3, 5 and 8 in these circumstances again. France requests that the examination of this case and the repetitive cases be closed. It remains as pending and the 'Status of Execution' reads: 'updated/revised action plan/report awaited'.

There is also a joint communication from two NGOs: the *Commission Nationale Consultative des Droits de L'Homme* and *Le Défenseur des Droits* (26 April 2013).

GREECE

(d) *Rahimi v Greece* (App No 8687/08; Final Judgment 05/07/2011). This case is under enhanced supervision, jointly with *MSS v Belgium and Greece*. There are 32 repetitive cases.

Facts/Case Description

Rahimi arrived in Greece from Afghanistan as an unaccompanied child and was detained in a detention centre pending an order for his deportation. The centre was unsuitable for young Afghan asylum-seekers. He was given a leaflet on the procedures for complaining about conditions in detention, but it was incomplete and in a language Rahimi did not understand. When he was released from the centre he was given no assistance by the authorities and was homeless for several days before an NGO found him a place in a hostel. He made an application for asylum which was pending at the time of the ECtHR case.

A number of cases are being supervised under the leading cases of *Rahimi* and *MSS*. All of the cases in this group concern the degrading treatment of asylum seekers and migrants including unaccompanied minors. The conditions of detention in Greece are inhuman and degrading. This includes overcrowding, lack of a bed or a mattress, insufficient ventilation, lack to access to toilets/sanitary facilities, lack of outdoor exercise, unsuitable food or inadequate allowance for food – the ECtHR has held that all of these conditions are violations of Article 3. Some of the cases in the *MSS* group concern lack of right to effective remedy (Article 13).

Execution of the judgment

NGO/NHRI Communication: Greek Council for Refugees: DH-DD(2015)606 (29/05/2015); Greek Helsinki Monitor and Refugee Rights Europe: DH-DD(2019)467 (16/04/2019);

UNHCR Communication: DH-DD(2019)600 (15/05/2019);

Government communication: DH-DD(2017)324 (15/03/2017);

Action Plan: [updated] DH-DD(2019)372 (28/03/2019);

CM Decisions: 1243rd DH Meeting Decision cases H46-8 CM/Del/Dec(2015)1243/H46-8; 1348th meeting June 2019 CM/Del/Dec(2019)1348/H46-9

CM Notes: 1348th meeting (June 2019) H46-9 *MSS and Rahimi groups v Greece*.

Individual measures: Rahimi was granted international protection.

NGO communications

(1) **Greek Council of Refugees** (10/06/2015) - DH-DD(2015)606

(this communication was submitted in the context of *MSS v Belgium and Greece*, but focuses on the treatment of unaccompanied minors (UAMs) in Greece and thus relevant to *Rahimi*)

The actual number of UAMs in Greece is unknown, the only information comes from the new Asylum Service's statistical information regarding asylum applications submitted by UAMs and from the National Centre of Social Solidarity (EKKA)'s data on placing UAMs in reception facilities. On detention, Greek law stipulates that UAMs can be detained a) when entering the country irregularly and awaiting deportation, b) while waiting placements at a reception centre and c) when undergoing screening procedures at a First Reception Centre (FRC). But the NGO notes that the numbers arriving mean that the majority of UAMs do not benefit from 'reception services' and are detained. If they are not subject to age assessments at a First Reception Centre (FRC), they are treated as adults and detained for lengthy periods. Many UAMs transferred from Lesbos to mainland detention centres are detained for long periods whilst awaiting placements. The combination of factors which leads to UAMs enduring long periods in adult detention or in facilities unsuitable for children is a matter of concern. Pre-removal detention centres have particular issues with overcrowding, lack of facilities, insufficient healthcare, lack of clothing, food, leisure,



education etc and have been the subject of criticism by international, European and national human rights monitoring bodies and NGOs. The NGO notes the serious gaps in terms of protecting the child, in particular a best interests determination process and a body responsible for the protection of the child and fragmentation of services is alarming – despite the changes in Greek law to deal with UAMs which might alleviate some areas of concern, there are still major issues jeopardising the protection of UAMs in Greece.

The Deputies took 'note of the data regarding accommodation of unaccompanied minors [and] strongly invited the authorities to pursue their efforts, so that in the procedure of best interest determination for minors, all unaccompanied minors are immediately referred to special accommodation centres and assisted by specialised personnel'. The Deputies will resume consideration of all other issues regarding the living conditions of UAMs in December 2016 (1273rd meeting).⁷

In June 2017, CM requested that national authorities:

- a) Elaborate, in cooperation with other stakeholders, a plan for registration and processing of asylum applications so they are processed within a reasonable timeframe
- b) Develop a strategy securing full protection of unaccompanied minors on the basis of an effective guardianship system
- c) Improve conditions of detention in all detention facilities including providing adequate healthcare services (including UAMs)
- d) Ensure, as a matter of priority, that alternatives to the detention of minors are found and if (exceptionally) minors are detained, they are held separately from adults and in conditions adapted to their vulnerable situation.⁸

General Measures: In the latest Action Report,⁹ Greece indicates that some reforms have taken place:

- i. Asylum procedures – a number of measures have been put in place to enhance asylum procedures: A new Asylum service was established in June 2013 and in order to implement asylum procedures, the state has established 12 regional asylum offices, 11 autonomous asylum units with 681 employees (133 more are to be hired in 2019). Training is provided by EASO. Information about asylum procedures is provided to all third country nationals and asylum seekers with a free interpretation service.
There are still significant delays from pre-registration of asylum applications to delivery of a decision (for UAMs it was an average of 153 days in 2017, but 235 days in 2018), some of which is due to the increase in the number of asylum applications being received, but there is still a backlog of cases from applications made before the new service was introduced in 2013. The Greek authorities cite the unprecedented increase in migration flows as the reason for the increase in the length of time between initial registration and processing of asylum applications to a final decision.
- ii. Living conditions of asylum seekers – The provision accommodation, food clothing and healthcare is provided under 3 basic schemes: at Reception and Identification Centres (RICs), by NGOs and in houses, hotel rooms etc leased in the framework housing programme. However, despite the progress made in the living conditions of UAMs and conditions of detention, the country remains under severe migratory pressure. The Greek government calls on the EU to revise the Common European Asylum System (CEAS) to ensure responsibility is shared by all EU Member States.
UNHCR noted that accommodation capacity increased from 1,000 in 2014 to 27,000 accommodation places in apartments and 20,000 places in hosting centres.¹⁰
The Greek authorities provide limited financial support to all asylum seekers for a limited period. Asylum seekers also have access to healthcare and children have access to education with a special educational programme to facilitate all migrant and refugee children in joining mainstream education. Asylum seekers also have access to the labour market.
- iii. Reception and protection of unaccompanied minors: ensuring adequate accommodation and decent living conditions. All unaccompanied and separated children are referred to centres for the reception of unaccompanied minors and priority is given to minors under

⁷ 1243rd DH Meeting: CM/Del/Dec(2015)1243/H46-8.

⁸ CM/Del/Dec(2017)1288/H46-15.

⁹ DH-DD(2019)372.

¹⁰ DH-DD(2019)600 (15/05/2019).



15 or with health problems. There is also a new guardianship system.¹¹ A guardian is appointed for every third country national and stateless person under the age of 18. The system is monitored and administered by the Supervisory Guardianship Board. The guardian is responsible for ensuring decent accommodation, access to healthcare and education and representing and assisting the child in all judicial and administrative procedures. The Department for the Protection of Unaccompanied Minors at the National Centre for Social Solidarity (EKKA) will have the responsibility of guaranteeing safe accommodation for unaccompanied children and evaluating the quality of services provided in the accommodation.

- iv. Conditions of detention: TCNs subject to deportation can be detained. There are 8 pre-return centres and according to the Greek authorities, the occupancy of these centres has never exceeded their operational capacity. All persons detained have access to food, clothing and healthcare services. There is access to outdoor facilities, telephones and areas set aside for worship. All detainees have access to lawyers, NGOs and access to asylum procedures. Unaccompanied children can be detained (571 were detained in the 8 pre-return centres in 2017 and 608 in 2018), but they are detained separately from adults in specially designated areas. Children are detained for the shortest period possible (25 days or for no longer than 45 days). They are supervised by the police until they are transferred to hostel accommodation.
- v. Lack of effective remedy for conditions of administrative detention: the ECtHR has held that the remedy provided for in Article 76 of Law 3386/2005, as amended in 2010 is an effective remedy to complain about conditions of administrative detention.

NGO communication:

(2) Greek Helsinki Monitor (GHM) and Refugee Rights Europe (RRE) (16/04/2019)

The communication is based on RRE's field research between 2016 and 2018 and the relevant work of other NGOs and contradicts the Greek Government's version of measures adopted to fulfil its obligations. The containment policy introduced following the EU-Turkey Statement in March 2016 is a harmful and failed policy and contributes to the hardship and suffering of all refugees on the islands and on the mainland. ECtHR has more recently noted that the practice of detaining UAMs for 'protective purposes' for several days or weeks without any psychological or social assistance was unacceptable and detention in police station amounts to inhuman and degrading treatment in violation of Article 3 ECHR,¹² but Greece continues to detain UAMs in 'protective custody' in defiance of the ruling. RRE reports findings on the degrading, unsanitary and inhuman conditions in the 'camps' on the islands and in facilities in Athens. Some refugees (including unaccompanied children) reported being homeless on the streets of Athens. Access to healthcare facilities is a particular issue for refugees and their families in Greece and contagious diseases spread very easily in the camps. There is no education provision in the camps and on the mainland it is patchy. Some children do not want to have to learn Greek as they wanted to move onto other European countries where there are other family members. RRE reported significant problems with access to asylum procedures and those who had made claims had no idea what was happening in their claim. Some asylum-seekers were handed papers stating that their claims had been rejected, but informed that Turkey would protect them. Immigration detention is a particular problem and is often arbitrary and prolonged. In particular both NGOs criticised the continued use of 'protective custody' by the police for UAMs.

UNHCR Reports¹³

The UNHCR provided an 'Explanatory Memorandum' on developments in the management of asylum and reception in Greece (DH-DD(2017)584) which was submitted in the context of the *MSS v Belgium* and Greece case. This was followed up by Recommendations (DH-DD(2019)600) for the June 2019 meeting of Deputies. The UNHCR's Explanatory Memorandum addresses three thematic areas: access to and quality of the asylum procedure, the reception conditions of asylum seekers and of unaccompanied and separated children and administrative detention of asylum-seekers. In general, the UNHCR noted higher recognition rates for refugees and the improved reception capacity in Greece. However, despite the progress that has been made, the operational, institutional and legal changes as well as the greater numbers of refugees arriving on Greece's shores and borders have taken their toll and have exacerbated the ongoing challenges in Greece

¹¹ Law No 4554/2018.

¹² *HA & Others v Greece* 28/02/2019.

¹³ Reports submitted under Rule 9.3 – International Organisations.



related to reception of refugees, asylum capacity, the protection of vulnerable persons and SGBV (sexual and gender-based violence) prevention. UNHCR estimates that there will continue to be significant delays in the processing of applications and may in some instances last up to 2 years. This compounds tensions in reception camps and can lead to further onward movement which may impede the implementation of durable solutions. Access to asylum systems, for UAMs is particularly challenging. Demand exceeds capacity. Although UAMs and vulnerable persons are prioritised, increased numbers (420 in 2015 and 2352 in 2016) have added to further delays. The absence of a national guardianship system and gaps in legal representation for UAMs causes further problems. As a result of delays and inefficiencies in the system many young people turn 18 while waiting to access and complete the process which can negatively impact their right to, for example family reunion. Problems in the age assessment process have also prevented children from exercising their rights. The UNHCR has made a significant contribution to the living conditions in some of the state-run open accommodation facilities, but there are still problems with adapting facilities to respond to the needs of families and children. Some stay in urban centres such as hotels which are not suitable for their needs. The UNHCR manages some of the shelters for unaccompanied children but demand is above capacity.

Child protection services are weak and the gaps in provision impact on children's social well-being and heighten the risks of sexual exploitation and abuse. There is no overall authority responsible for the development of policies for the protection of UAMs. There is a draft law on guardianship, but Greece still lacks a comprehensive best interests determination and assessment procedure. UAMs can be detained while awaiting a placement, pending return, during asylum procedures and under 'protective custody'. The UNHCR is concerned with this latter ground as it usually means the child is detained at a police station which is inappropriate. The UNHCR considers that detention is never in the best interests of the child and contravenes the CRC. There have been some improvements in the development of alternatives to detention for UAMs. There is also a lack of alternative care options for children and they tend to be accommodated in institutional care/shelters and foster care is only for Greek children. As regards healthcare, in theory child asylum seekers have access to free hospital and medical care, but problems getting social security cards can impede their access to healthcare services. In relation to education provision, refugee and asylum-seeking children can access education even though they have insufficient documentation to register for school. The Ministry of Education is committed to providing education to all refugee and asylum-seeking children, but currently they are educated separately from their Greek counterparts.

In 2019, the UNHCR notes the considerable progress made by Greece since its report in 2017, in particular the legislative initiatives with respect to the protection of unaccompanied children.¹⁴ UNHCR makes 3 recommendations in this communication: (1) improve access to and the quality of the asylum procedure; (2) increase reception capacities and improve reception conditions of asylum-seekers; (3) improve the protection of unaccompanied and separated children (UASC). UNHCR reports that the care and protection conditions for UASC in Reception and Identification Centres (RICs) are unacceptable, especially on the islands of Samos and Lesbos. At these centres children are at great risk of abuse and exploitation. There is a severe lack of cleanliness, hygiene, mattresses, working toilets etc. Delays in the system mean that UASC can be kept in these centres for up to a year, even though the Greek authorities say they should be processed and moved on within 25 days. Most are referred onto institutional care or shelters run by NGOs or IOM. There has been a reduction in the use of 'protective custody' and the police have accelerated procedures to complete referrals within 2-3 weeks. UNHCR continues to be concerned about the 'invisible' UASC in informal accommodation or living on the streets of big cities such as Athens. The new Guardianship system is a positive step¹⁵ and best interests assessments and determination processes have been formalised in law, although the implementation of the law requires 6 regulatory steps! UNHCR are working with various stakeholders including EKKA who will provide the professional guardians to ensure the roll-out of the new system in September 2019.

The UNHCR concludes that there have been 'uneven improvements' in asylum procedures, reception conditions and child protection, but because of multiple challenges and meeting the demands of developing and implementing new procedures, systems and reception provision whilst dealing with an unprecedented number of asylum seekers and third country nationals, entering the

¹⁴ DH-DD(2019)600 (15/05/2019).

¹⁵ Guardianship law 4554/2018.



country has proved very challenging for the Greek authorities. The building of a sustainable and adequate asylum system in Greece will be a long-term project and will only work properly if accompanied by EU solidarity measures.

CM 2019 meeting (6th June 2019) Resolution: CM/ResDH(2019)154 – CM closed examination in 17 similar cases on the basis that individual measures undertaken by Greece and the general measures adopted fulfil the state's obligations under Article 46 (DD-DH(2019)372). This resolution is made without prejudice to the CM's evaluation of the general measures required to resolve the following ongoing problems, which are being examined in the context of the *MSS* and *Rahimi* group of cases:

- a) The conditions of detention
- b) The living conditions of asylum seekers (including UAMs)
- c) Applicants' right to a remedy against expulsion

CM/Del/Dec(2019)1348/H46-9 1348th meeting 4-6 June 2019

Decisions

The Deputies:

- recalling that these cases concern the degrading treatment of the applicants (asylum seekers or irregular migrants, including unaccompanied minors) on account of their conditions of detention; the degrading treatment of asylum-seeking applicants due to their living conditions; the lack of an effective remedy against expulsion, due to deficiencies in the asylum procedure; and the lack of an effective remedy to complain about the conditions of detention.

As regards general measures:

Asylum procedure and absence of an effective remedy against expulsion

The Deputies:

- welcomed the ongoing efforts made by the Greek authorities, in concert with the competent EU institutions and the UNHCR, to improve the national asylum system, and the notable increase in the overall rate of granting asylum;
- however, there was grave concern expressed about the increase of arrivals of third country nationals that could adversely affect the functioning of the asylum system and is the reason for the significant increase in the average time taken to register and process asylum applications, and the deficiencies of the asylum appeal procedure which have been reported by the Greek Ombudsman and expert NGOs;
- the Deputies called on the authorities to provide information on the asylum appeal procedure and on further measures envisaged or adopted in order to enhance the efficiency of the overall administrative procedure and the effectiveness of existing administrative remedies;

Living conditions of asylum seekers

The Deputies:

- welcomed the concerted efforts made and the measures taken to ensure decent accommodation, provision of welfare and healthcare services, access to the labour market and to education for asylum seekers; they took into account the continuing arrival of asylum seekers; and noted the concerns expressed by the Council of Europe Commissioner for Human Rights and NGOs that the living conditions of asylum seekers have remained critical, despite the commendable efforts and the achievements of the authorities to date; therefore called on the authorities to step up their efforts;
- called on the authorities to implement the recommendations of the Council of Europe Commissioner for Human Rights on the need to further enhance the provision of health care services to asylum seekers and irregular migrants in detention;

Reception and protection of unaccompanied minors

The Deputies:

- welcomed the adoption in 2018 of the law on guardianship and invited the authorities to proceed to its prompt implementation in order to put in place a comprehensive and efficient system of reception and protection of all unaccompanied minors;
- expressed, however, 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, and called on the authorities to intensify their efforts to increase the capacity of accommodation suitable for unaccompanied minors;

Conditions of detention

The Deputies:

- noted with satisfaction that domestic case-law has evolved to allow irregular migrants, including unaccompanied minors, to complain about their conditions of detention; noted also the relevant case-law of the Court and decided to close their supervision of this issue;
- while noting with satisfaction that certain immigration detention facilities visited by the CPT in 2018 provided decent conditions, expressed serious concern at the fact that a number of other immigration facilities and police stations seem to be below Convention standards, and that the detention of unaccompanied minors persists;
- recalling the Court’s case-law and recommendations of the CPT, called on the authorities to end the practice of detaining unaccompanied minors and transfer them without delay to a (semi-) open establishment specially adapted for young asylum-seekers;
- invited the authorities to give effect to the recommendations made by the CPT and to improve the conditions in immigration detention facilities, including by providing adequate health-care services;
- invited the authorities to keep the Committee regularly informed about developments on all of the above-mentioned issues;
- decided to resume examination of these cases at their September 2020 DH meeting.

The Greek authorities continue to face considerable challenges and must address each of the issues raised by the Deputies before supervision of the execution of the judgments in these cases can be closed.

SPAIN

(e) *AC & Others v Spain (App No 6528/11; final judgment 22/07/14)*

Facts/Case Description

The applicants in this case are thirty persons of Saharawi origin (in the ECtHR report, dates of birth or ages of the applicants are not recorded, so it is not possible to tell if any of the applicants are under 18). The applicants fled Morocco (Western Sahara) in boats, having being forcibly removed from their camp by Moroccan police, and landed in the Canary Islands seeking international protection. As soon as they arrived on Spanish territory they applied for asylum. The 30 applicants had their requests for international protection dismissed by the Spanish administration on various dates between 2011 and 2012, via an accelerated procedure. Their requests to have their applications reconsidered were also dismissed. The *Audiencia Nacional* initially suspended the order for removal but subsequently rejected all 30 applications for a stay of execution. The applicants applied to the ECtHR for interim measures pending a full hearing of their application. The ECtHR indicated to the Spanish government that the applicants should not be removed for the duration of the proceedings before the ECtHR. Some of the applicants applied for judicial review of the decision and by the time of the ECtHR judgment the appeals before the Spanish Supreme Court were still pending. After their applications for a stay of execution had been rejected by the *Audiencia Nacional*, there was no further obstacle to their removal and without the ECtHR’s intervention the applicants would have been removed to Morocco without a full hearing examining the merits of their cases.

The ECtHR considered that they did not have at their disposal an effective remedy under Article 13, with automatic suspensive effect to complain about their return to Morocco, which resulted from the administrative decisions dismissing their requests for international protection. This exposed them to a risk to their lives or a risk of ill-treatment. It also held that the effectiveness of the existing remedies was called into question due to the length of the proceedings for examination of the applicants’ requests for international protection (which had been pending since 2011). The actions of the Spanish authorities and courts were held to be a violation of Article 13. It was first and foremost for the Spanish authorities themselves to examine the applicants’ applications for asylum and the documents produced by them and to assess the risks they would face in Morocco, thus the ECtHR did not consider the merits of their application under Articles 2 and 3 ECHR. The ECtHR’s fundamental concern was whether effective safeguards were in place to protect the applicants from arbitrary removal, whether direct or indirect, to their country of origin, given that their appeals on the merits were still pending before the domestic courts.



Under Article 46 of the Convention, the ECtHR noted that the Article 13 violation found in this case stemmed from the lack of suspensive effect of the judicial proceedings concerning the applicants' requests for international protection and that the examination of these requests was, at the time of its judgment, still pending before the Spanish courts. The ECtHR, therefore, indicated that the Respondent State should ensure, legally and materially, the applicants' stay on Spanish territory throughout the examination of their applications and until the decision on their requests for international protection becomes final.

Execution of Judgment

Action Reports: DH-DD(2015)1307 23/11/2015; DH-DD(2018)285.rev 16/05/2018

On 8 July 2014, the Spanish authorities submitted preliminary information on the individual and general measures. An action report was provided on 23 November 2015, followed by a revised version on 16 May 2018 which is under assessment by the CM.

Measures taken so far can be summarised as follows:

Individual measures: None of the applicants was expelled while the proceedings concerning them were pending and all of them continue to reside on Spanish territory. The proceedings were concluded in respect of 11 applicants. As regards the other 19 applicants, the Supreme Court directed the Ministry of Interior to examine their applications for international protection in accordance with the ordinary procedure, which guarantees appeals with automatic suspensive effect at each of its stages. This ensures that the applicants' can remain on Spanish territory until a final decision is handed down on their applications for international protection, as indicated by the ECtHR. The procedures concerning these applicants are at varying stages of progress.

General Measures: The authorities indicated that the Supreme Court established in 2013 that Law No. 12/2009 on asylum and subsidiary protection must be applied in full compliance with the right to an effective remedy guaranteed by Article 13 of the Convention. The authorities referred to two decisions of the Supreme Court in March 2013 which annulled the administrative decisions that had erroneously applied the accelerated procedure in cases where the criteria for the application of this procedure were not met. The Supreme Court specified that the accelerated procedure may only be used by strictly applying the legal criteria set out in the relevant law and that the ordinary procedure should be the rule in most applications for international protection. If in application of this case-law, the domestic courts conclude that the accelerated procedure was erroneously used, the case will be referred to the Ministry of Interior to be processed under the ordinary procedure, which guarantees appeals with automatic suspensive effect at each of its stages. The Ministry of Interior has complied with the ruling of the Supreme Court when handling applications for international protection. This is reflected in the high number of border applications which are now examined under the ordinary procedure: 84% in 2018, compared to only 42% in 2011. The authorities further underlined that individuals whose applications for international protection are denied by the Ministry of Interior under the accelerated procedure can apply for judicial review of these decisions and request, as an interim measure, a stay on their removal pending the judicial review. A request for interim measures has automatic suspensive effect in Spanish law. The authorities provided detailed information on the procedure to be followed, regulated by Law No. 29/1998 on the contentious-administrative procedure. They underlined that the suspensive effect triggered by the submission of a request for interim measures lasts at least until a final decision on the interim measure is taken. The removal order is therefore not enforceable while the appeals are pending. The authorities conclude that a situation similar to that in the case of *A.C. and Others* is not expected to reoccur. The Supreme Court case law ensures that decisions applying the accelerated procedure erroneously shall be considered null and void and the applicants can, through a request for interim measures, obtain a stay on removal until a final decision is taken. Spain considers that it has discharged in full its obligation to keep the CM informed of the execution of the judgement and ask for the CM to close their supervision of the case.

This updated Action Report was meant to come before the CM at the 1318th meeting in June 2018 (DH), but it was not considered at that meeting nor on the list for the following meeting in June 2018. It has yet to be considered by the CM or deputies.



CONCLUSION

It is possible to draw some initial conclusions as a result of this study of cases which have been supervised by the Department for the Execution of Judgments (DEJ). The case studies reveal that the ECtHR and the subsequent execution of the judgment has led to significant changes in law on foreign and unaccompanied children (*Mayela & Mitunga v Belgium*), improvements in procedure and application of the law (*Popov v France* and *Senigo v France*), recognition that asylum seekers are entitled to an effective remedy and should not be returned to the place they fled from until their claims are processed (*AC v Spain*) and improvements in the protection and care of unaccompanied children arriving on the shores of Europe (*Rahimi v Greece*).

Given the time available for this research, it has not been possible to carry out a comprehensive examination of all the cases which involve child migrants or refugees. This is a developing field as more cases are being brought before the ECtHR and where violations are found, will be added to the list of cases supervised by the DEJ.¹⁶

¹⁶ For example *Khan v France* (2019) and *ShD v Greece* (2019).

CoE State	Case Name	App No	Date of final judgment	Action Plan/Report	CM meeting	Date of resolution	Enhanced/standard supervision	Ongoing /Closed	Case description	Status of execution	Reasons for non-execution of judgment	Further comments
Albania												
Andorra												
Armenia												
Austria	Yildiz	37295/97	31/01/2003	Not Required		CM/ResDH(2009)117 03/12/2009	N/A (Leading & repetitive)	Closed	<p>The main applicant was an adult who had been convicted of theft and driving offences was liable for deportation to Turkey. He had established family life in Austria with his wife (who had been born in Austria & had Austrian residency) and children. The Court imposed a 5-year residency ban on him. Protection of private and family life: disproportionate interference due to residence prohibitions imposed under The Aliens Acts of 1992 and 1997 relating to the applicants' criminal convictions (art 8).</p>	<p><i>Individual measures:</i> finding of a violation was sufficient just satisfaction for non-pecuniary damage. All applicants in this group of cases were allowed to re-enter the country and residence prohibitions lifted. Mr Y was granted a 'D' visa and allowed to re-enter Austria and the Ministry of the Interior undertook to issue a residence permit upon request. A settlement certificate was issued but he never collected it nor applied for a residence permit.</p> <p><i>General measures:</i> The 1992 Aliens Act was replaced in 1997 and 2005. Since 1997 an explicit reference to the protection of family life (& Art 8(2) ECHR) was included. The authorities have a duty to balance the protection of private and family life against the public interest in expulsion, taking due account of the degree of integration or of his or her family & the strengths of existing family or other ties. ECHR has direct effect in Austrian law. The judgment was published, translated and disseminated, which the Austrian government considered to be sufficient to align the practice of the relevant authorities and courts with the requirements of the ECHR. Judgments are published in the Austrian Institute for Human Rights' Newsletter & available online. The judgments in each of the cases were disseminated to the Administrative Court, the Constitutional Court and the authorities responsible for the decisions on residence permits/prohibitions. These measures fully remedied the applicants in the 4 connected</p>	<p>There was no Action Plan for this case, the status of the case, so it is not possible to look into the history of the case to find out what the CM required of Austria. The govt instead provided information to the CM on measures taken to comply with the judgments in the 4 cases. This is appended to the CM Resolution: CM/ResDH(200)117.</p>	<p>This is a leading case for <i>Jakupovic v Austria</i> (36757/97); <i>Maslov v Austria</i> (1638/03) & <i>Radovanovic</i> (42703/98)</p>

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Belgium	Mayela & Mitunga	13178/03	12/01/2007	DH-DD(2012)1033 08/11/2012; DH-DD(2014)794 17/06/2014	1212,1115 , 1108	CM/ResDH(2014)22 6: 19/11/2014	N/A	Closed	<p>Detention and deportation of an unaccompanied foreign minor seeking to unite with her mother: excessive length and inadequate conditions of detention of an unaccompanied foreign minor, deportation of the minor in violation of the right to family life, lack of effective remedies to contest the legality of the detention. The first applicant (Pulcherie) obtained refugee status in Canada in 2001 and wanted to be reunited with her daughter (Tabitha), the second applicant, who was 5 years old and living with her grandmother in the Democratic Republic of Congo (DRC). Pulcherie asked her brother, K, a Dutch national to fetch Tabitha from Kinshasa and live with him in the Netherlands until she could get permission from the Canadian authorities to bring Tabitha to Canada. When they landed at Brussels airport, K did not have the correct papers for Tabitha and could not prove parental authority for Tabitha, so the Belgian immigration officials separated them and placed Tabitha in a detention centre near the airport. Her uncle returned to the Netherlands. A lawyer was appointed to represent her and who applied for asylum on her behalf, but nine days later the application was refused and directions were made for Tabitha's removal to Kinshasa. On appeal, the Belgian Commissioner-General for Refugees and Stateless Persons stated that because the applicant only wished to join her mother in Canada, there were no grounds for granting asylum and she must be refused entry to Belgium. Her lawyer asked for her to be placed in foster care on humanitarian grounds until the mother's application to the Canadian authorities for a visa could be processed. This was rejected by the Aliens Office and instead they arranged for her removal to the DRC. The Belgian authorities informed the UNHCR in the DRC that the 2nd applicant was being returned, but the UNHCR office in Kinshasa urged the Belgian authorities to allow Tabitha to remain in Belgium until her</p>	<p><u>Individual measures:</u> Belgium paid €35,000 for non-pecuniary damage & €14,000 for costs and expenses (07/03/2006). Tabitha (the child) was reunited with her mother in Canada, in October 2002, following interventions by the Belgian and Canadian Prime Ministers. Both applicants had regularised their residence status in Canada.</p> <p><u>General Measures:</u> The Belgian state introduced a new law (12 January 2007) to put an end to the practice of detaining unaccompanied foreign minors who were denied entry into the country. However, if there is any doubt about their minority status, the minors may be held in detention for a short period while determining their age (up to 3 days, with the possibility of a 3 day extension) & they will have access to a guardian & the centre will be suitable for his/her needs as an UM. Once identified as an unaccompanied child (UM), he/she will be transferred within 24 hours of notification of the decision to an observation and orientation centre. There is a new law prohibiting detention of UMs (9 January 2012). Belgium has also had to increase the capacity of observation and orientation centres to cope with the increase in numbers of UM arriving in Belgium. A new law introduced on 1 May 2004, requires a guardian to be appointed for each unaccompanied foreign minors in order to provide him with care, under the supervision and coordination of the Guardianship Department. There has been a big campaign to recruit and train new Guardians to make sure every UM has a guardian appointed to represent their interests. Guardians have the capacity to challenge a deportation order and must be involved in the process of finding a lasting solution for the minor. Staff at the Aliens office have also</p>	<p>This is a repetitive case - the leading case is <i>Muskhadzhiyeva & Others v Belgium</i>.</p>
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									<p>mother's application in Canada is processed because there was no one who could care for her in the DRC. Two months after her arrival in Belgium, Tabitha was returned to the DRC, accompanied by an employee of the airline. There was no one to meet her at the airport, but she was handed over to the National Information Agency in Kinshasa. On the same day her mother learnt of her daughter's deportation to the DRC. After intervention from the Prime Ministers of Belgium and Canada (the latter agreeing to reunite Tabitha with her mother), Tabitha was flown to Paris and onwards to Canada to be reunited with her mother. The case received considerable press coverage at the time. The ECtHR noted the legal void in Belgium law in respect of foreign unaccompanied minors and held that Belgium had violated Article 3 ECHR because she had been held in a detention centre unsuitable for children and this met the threshold of severity under Article 3. In addition, there was a violation of Article 8 because the Belgian authorities deliberately separated Tabitha from members of her family and impeded her reunification with her mother.</p>	<p>received more training on how to handle claims by UM. On the 19 January 2012, new measures introduced on the Aliens Office to ensure that an unaccompanied foreign minor who may be deported will be accompanied by a suitable adult and properly accommodated and cared for in the country she/he is deported to. The Aliens Office must take account of any durable solutions suggested by the guardian of the UM before considering return to the country of origin (best interests is a primary consideration). The ECtHR judgment is available on the Juridat website of the Court of Cassation and the case received a lot of publicity at the time, with a strong impact in the public press and among practitioners and academics. There have been a number of academic articles written about the case. The state authorities have also distributed it widely to the Aliens Office, the College of Public Prosecutors and the Ministry of foreign Affairs.</p>		
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Belgium	Muskhadzhiyeva & Others	41442/07	19/04/2010	DH-DD(2014)793 17/06/2014; DH-DD(2016)226 26/02/2016	1252, 1115, 1108	CM/ResDH(2016)41 30/03/2016	N/A	Closed	<p>Protection against ill-treatment and detention (Articles 3 and 5): Applicants are Russian of Chechen origin. The case concerned the unlawfulness and unacceptable conditions of the children's detention pending expulsion, in closed facilities inappropriate to their young age. They were kept in an immigration detention centre located near Brussels airport. The family had applied for asylum (although previously had resided in Poland). The Belgian authorities refused their application and issued an order to leave Belgium. The applicants appealed their detention, but this was refused, despite medical reports stating that the children were demonstrating serious psychiatric symptoms & release was necessary to limit the damage. The following day the applicants were removed to Poland. The Cassation refused to hear the appeal as the family had already been removed. Further medical reports revealed the children suffered psychiatric problems because of the detention in Belgium. ECtHR found a violation of Article 3 because of the unsuitable conditions for children in the detention centre as well as a violation of Article 5.</p> <p><u>Individual Measures:</u> €17,000 paid to the applicants for non-pecuniary damage (paid 28/09/2012). The applicant children were repatriated together with their mother to Poland.</p> <p><u>General Measures:</u> On 16/11/2011, Article 74/9 was inserted in the law of 15/12/1980 on "access to the territory, residence, settlement of foreigners" banning the detention of children in closed centres. This law also adopted the principle of non-detention of families with children, unless specially adapted for their needs etc. By way of exception, detention is possible in places adapted to the needs of families with minor children (in which case the unity of the family is preserved and there is no contact with other adults). Various options are now available for housing families with children not lawfully resident in the country, pending an expulsion order or where the family arrives at the border without meeting the requirements for entry and residence: - accommodation in open single-family houses; - residence in private housing; - accommodation in open centers for asylum seekers; - accommodation in specific places for families within closed detention centers (last resort). The judgment was published and disseminated - it is on the website Juridat of the Court of Cassation. the judgment has been disseminated to the Aliens Office and the legal news setting out the reasons for the ECtHR's findings. Received similar publicity to the <i>Mitunga</i> case (above). Several measures have been adopted regarding the accommodation of accompanied foreign minors: The new law enshrines the principle of non-detention of families with children. Families with children shall not be housed in a</p>	As this was part of the <i>Mitunga</i> case in relation to its execution, the new laws introduced there with regard to the detention of foreign children apply in this case too, even though the children in this case were accompanied by their mother. This case was the leading case for <i>Mayeka & Mitunga</i> and the <i>Kanagaratnam</i> cases (2 repetitive cases).
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Belgium	Kanagaratnam	15297/09	13/03/2012	DH-DD(2012)1036 08/11/2012; DH-DD(2016)227 26/02/2016	1252, 1150	CM/ResDH(2016)41 30/03/2016	N/A	Closed	<p>In January 2009 Ms Kanagaratnam, accompanied by her children, arrived at the Belgian border having travelled from Kinshasa (Congo), and applied, on that same day, for asylum and subsidiary protection “at the border”. The Belgian authorities decided to refuse them entry and return them, on the ground that the mother was in possession of a false passport. On the same day, the Aliens Office (the “AO”) decided to place the family in a closed transit centre for illegal aliens, near the airport, pending processing of their asylum application. The family subsequently applied to the courts to be released, but without success. In February 2009 the CGRSP refused the mother and her children asylum and subsidiary protection on the ground that some of her statements lacked credibility. The family remained in the closed centre until May 2009. A second asylum application was made which was successful in September 2009 and the mother was granted refugee status. Relying on Article 3, Ms Kanagaratnam and her three children complained that their detention at secure facility 127 bis, which had lasted almost four months, had amounted to inhuman and degrading treatment. They also complained that their continued detention had not been in accordance with the law and had been arbitrary (Article 5 § 1(f)). The ECtHR held that there were violations of both Articles 3 and 5 on the basis that their detention in a closed facility was unlawful and the family had to endure unacceptable conditions of detention pending expulsion, which were inappropriate to their young age.</p>	<p><u>Individual Measures:</u> €46 650 to be paid within 3 months to the applicant and the legal representative of the children. €7650 for non-pecuniary damage to the applicant and €13000 for non-pecuniary damage sustained by the children. €4000 in costs and expenses (paid on 20/07/2012 and interest accrued on 14/09/2012.</p> <p><u>General Measures:</u> This case had very similar circs to the <i>Mushhadzhyeva</i> case, so execution decision was at same time. See action taken by Belgium above.</p>		
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Belgium	Conka	51564/99	05/05/2002	Not Required	1128;	[Interim resolution: CM/ResDH(2006)25 5 April 2006] CM/ResDH(2011)19 1 29/11/2011	N/A	Closed	<p>Slovak Roma Family (2 parents & 2 children) who were persecuted by skinheads in the Slovak Republic had their application for asylum turned down. They were summoned to the police station on 1 October 1999 on the pretext of completing their applications for asylum, the applicants were in fact placed under arrest, taken to a closed transit centre then deported to Slovakia on 5 October 1999. The ECtHR found it incompatible with Article 5 of the Convention that, in the context of a planned expulsion operation and for the sake of facility or effectiveness, the administration should consciously decide to mislead even persons in an unlawful situation about the purpose of a summons so as to deprive them more easily of their liberty. Furthermore, a number of factors prevented the applicants from effectively putting their case to the committals division, the only judicial authority competent to determine the lawfulness of their detention (violation of Article 5, paragraph 4). In particular, the information on the remedies available was set out in small type and in a language not understood by the applicants, in the document handed to them on arrival at the police station. Only one interpreter was present in the police station for a large no of families and there was none at the closed centre, which made any contact with a lawyer difficult; no other form of legal assistance was provided by the authorities, whether at the police station or at the transit centre; finally, the applicants' lawyer was informed at such a time that any application to the committals division was rendered pointless. The applicants were expelled at the same time as some 70 other asylum seekers, without proper consideration of the individual situation of each of them at any stage from the summoning of the persons concerned to the police station until their expulsion, gave rise to a violation of Article 4 of Protocol No. 4. Means deployed to arrest Slovak asylum seekers of Roma origin and lack of effective remedies to appeal</p>	<p><i>Individual Measures:</i> €10000 non-pecuniary damage; €9000 costs and expenses (paid 27/08/2002). The applicants were expelled by the Belgian authorities on 5 Oct 1999. their appeal against this decision was struck off the list of the Conseil d'Etat because of the failure of the applicants to pay the fees. ECtHHR awarded them just satisfaction for non-pecuniary damage, but the family did not make another request before the CM, so no other individual measure was considered necessary. <i>General Measures:</i> Belgium published the judgment and there was significant publicity about the case and this should avert further violations; The State adopted a royal decree on the functioning of detention centres managed by the Aliens Office - a new court to deal with the entry, stay and expulsion of aliens, the Conseil d'Etat will only hear appeals and any order to leave Belgium will have immediate suspensive effect if appeal is lodged; reforms re removal of a foreigner - still a lack of means to contest the removal decision, esp in light of <i>MSS v Belgium & Greece</i>. In <i>MSS</i> ECtHR held that the application for stay of execution that could be lodged "under extremely urgent procedure" with the Aliens Appeals Board did not meet the criteria established in its case-law (paragraph 390 <i>MSS v Belgium & Greece</i>). The Committee of Ministers is keeping this question under review in connection with the execution of this judgment. Belgium asked that this case be closed subject to aspects relating to Article 13 whose examination is proceeding in connection with the <i>MSS</i> case. The General measures implemented so far will prevent similar violations and Belgium believed it had complied with its obligations under Article 46 (1) ECHR. On 2 December</p>	<p>Belgium implemented interim measures at the time of the original judgment and has implemented further reforms in order to prevent similar violations. The delay in closing the examination of this case was to do with the <i>MSS</i> case.</p>	<p>There was an interim resolution in this case but Belgium provided information to CM on Measures adopted in 2002) as Belgium had not informed the CM of measures taken as a consequence of the ECtHR's judgment to prevent further violations. Belgium was reminded of the need to implement interim measures until the necessary general reforms have taken effect. Belgium had published the judgment through its Ministry of Justice and issued a circular from the Minister of the interior addressed to the DG of the Aliens Office (July 2002). The government had also laid down rules on the functioning of detention centres managed by the Aliens</p>
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									their detention. Violation of collective expulsion under art 4, Protocol 4.	2011 the CM closed its examination of this case at 1128th meeting.		Office (August 2002). This includes information brochures for each inmate explaining the appeal procedure against detention, lodging complaints & obtaining legal assistance. It is translated into 3 national languages and English and available in 15 other languages. Each inmate must be given reasons for his/her detention and remedies against the decision. They can contact their lawyers and lawyers will have access to the detention centre and an interpreter if necessary. The Minister of the Interior has embarked on sweeping reforms of proceedings relating to aliens to take account of the requirements of the ECHR, which went before Parliament in 2006. One
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												reform is the new Court for Asylum claims & the Conseil d'Etat will no longer be involved in proceedings relating to aliens, except as a court of cassation.
Belgium	SJ	70055/10	19/03/2015	Not Required	1302; 1230	CM/ResDH((2017)404 05/12/2017	N/A	Closed (friendly settlement)		The resolution in this case was adopted at the same time as <i>HS v Belgium</i> (34000/12) & <i>Messad and Touahria v Belgium</i> (41208/11). CM satisfied itself of the terms of the FS.		
Belgium	Singh	33210/11	02/01/2013	DH-DD(2014)795-rev 08/09/2014	1206; 1172	CM/ResDH(2014)112 10/09/2014	N/A (Leading)	Closed	Failure to examine the merits of Article 3 complaints and to ensure effective protection against the risk of ill-treatment. Applicants & 3 children from Afghanistan arrived in Belgium from Russian Federation and sought asylum. They claimed persecution on the religious grounds (Sikhs living in Kabul). They were refused entry into Belgium and the Aliens Office took a decision to deport them back to Russia. CGRA rejected their asylum claim on the grounds that they had not proved their Afghan nationality. The Appeals court confirmed this and also held that the applicants should avail themselves of the protection UNHCR provided and there was no reason for them not to return to Russia, so a deportation order was made. The Applicants feared the Russian authorities would return them to Afghanistan. The return order became enforceable, but the applicants applied to the ECtHR for an interim measure suspending their expulsion to Russia & they were allowed to enter Belgium. The ECtHR held that the Belgium authorities declared the applicants' documents unconvincing without first verifying the authenticity of the documents and did not investigate whether the applicants would be safe upon return. (art 3 ECHR)	<u>Individual Measures:</u> no payment for non-pecuniary damage, but €3000 for costs and expenses (settled on 22 February 2013). The applicants issued a further request for asylum after the ECHR's judgment - presented to the CGRA on 22 Nov 2012. A letter was sent to verify their documentation and their stay and possible acquisition of Indian nationality in the same period. In India between 1993 and 2011. On 2nd Sept the applicant and his wife were granted refugee status on Refugee Convention grounds. <u>General Measures:</u> The judgment was published on the website of the Court of Cassation. Elaboration of an instruction on the basis of the Court's judgment was translated, published and disseminated. Letters/circulars relating to the judgment were sent to CGRA and CCE and was disseminated internally by the CGRA, in particular highlighting the need to take the individual circumstances (geographies) of individuals into account. The Ministry of Justice disseminated a note on the judgment to personnel of the court (CCE) 4 Oct 2014. A research centre: EDEM held a seminar for practitioners (advocates, magistrates ONG etc.) and presented on Singh. The seminar		

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France	Senigo-Longue; Mugenzi; Tanda-Muzinga	19113/09; 52701/09; 2260/10	10/10/2014	AP=DH-DD(2015)485 10/04/2015; AR = DH-DD(2017)1382 27/11/2017; DH-DD(2019)309 18/03/2019.	1222;	Pending	Standard	Ongoing	<p>3 cases which concerned procedures for processing family reunification applications. The ECtHR held that the procedure in France violated Art 8 ECHR. The process for examining family reunification has to contain a number of elements, having regard to the applicant's refugee status on the one hand and the best interests of the child on the other, so that their interests as guaranteed by Article 8 are safeguarded. In the Mugenzi and Tanda-Muzinga cases, the consular officials refused to issue visas for the children on account of difficulties in establishing the child's civil registration status. Family reunification was only allowed for children under 19. The French Embassy in Nairobi ordered a medical examination on Mr Mugenzi's sons to determine their ages. The consular officials concluded there was a discrepancy between their physical age and the age on their birth certificates. These were the only documents Mr Mugenzi had to verify his sons ages and they risked being returned and persecuted in Rwanda if they were not admitted into France. In Tanda-Muzinga's case after some delay to the application he found out that the Minister of Immigration had contested the birth certificates of two of his children. When he appealed he heard nothing from the Appeals Board and made an application to the ECtHR. Following his communication to the ECtHR, the urgent appeals judge held that the criterion of urgency had been met and requested that Mr T-M's application be re-examined. The HCR in Cameroon re-issued the daughter's birth certificate and the consular authorities issued visas one month later! Ms Longue has French nationality since Nov 2010. In May 2007 she submitted a request for family reunification, but she had lost her children's re-issued birth certificates. Her request was refused by the consular authorities in the Cameroon on the grounds that her children's birth certificates were not authentic. Ms Longue appealed to the Appeals Board but received no reply & she submitted an urgent</p>	<p>June 2019 is the latest action plan: DH-DD(2019)309: <u>Individual measures</u>: payment of just satisfaction: Sengio-Longue €5000 15/12/2014, the consular officials granted 2 long-stay visas for the 2 children, who reached the age of majority in 2008 and 2013 had settled status in France & a resident's card; Tanda-Muzinga €5,000 (non-pecuniary damage); €3,000 (costs & expenses)paid: 19/03/2015. In Dec 2010 long-stay visas were granted for wife & 3 children - wife then obtained resident card and refugee status. 2 children have (temp) settled status, youngest child's initial 'circulation document' expired in 2017 & parents did not apply for asylum; Mugenzi €5,000 (non-pecuniary loss), €4,522.90 (costs & expenses) 19/03/2015. Also the eldest child has a Belgian residence card and the second child a visa card valid until 21/06/2020. <u>General measures</u>: Publication & dissemination of the ECtHR judgments: The judgments have been communicated to the Council of State, the Ministry of the Interior and the French Office for the Protection of Refugees and Stateless Persons (OFPRA), it was made widely available to their services, as well as to the administrative courts. through the bulletin of legal watch distributed to all judges (Legal watch, July-August 2014); The judgments are also included in the annual summary of the Court's judgments on France drafted by the Ministry of Europe and Foreign Affairs, which is widely distributed among the interested parties, as well as being available to the public. The judgments were also widely reported in the press. France has also adopted measures to take into account the refugee status of applicants for family reunification & to reduce the time taken to process these</p>	<p>France disputes the Court's finding that there was excessive delay and/or that particular issues in the individual cases amounted to violations of Article 8. The particular issues were down to the particular circumstances of each of the three cases which have been rectified by the measures undertaken. However, the appropriate authorities must process applications for family reunification with due diligence and carry out all verifications etc. within a maximum of 4 months.</p>	<p>As regards other measures, France notes that the criticism from the ECtHR is not against the domestic legal framework, but relates to its application to individual cases. Thus, there does not need to be further reform of the family reunification laws.</p>
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									<p>application to have the consular decision set aside. She went back to the Cameroon to have DNA checks carried out which confirmed that she was the children's mother, but the Conseil d'Etat rejected the application on the basis that the parent-child relationship had not been established. But after the ECtHR communicated the application to the French authorities, visas were issued for the children (July 2010). All 3 applicants relied on Art 8 and alleged that the refusal of consular officials to issue visas for their children for the purpose of family reunification had infringed their right to respect for their family life. Visa applications for family reunification purposes should be processed with due diligence, rapidly and attentively. French authorities should take account of the factors which led to the family's separation and the granting of refugee status. The ECtHR focussed on the quality of the procedure. The national authorities had failed to give due consideration to the applicant's specific circumstances and the family reunification process had not offered the requisite guarantees of flexibility, promptness and effectiveness and had not struck a fair balance between the interests of the applicants and the state interest in controlling immigration.</p>	<p>requests. The law relating to the reunification of family members of refugees was reformed and the final part of the reform re processing family reunification claims & successful integration came into force in January 2019. Applicants with refugee status do not have to fulfil the conditions of housing, resources and length of stay. But spouses and children from a union contracted after the filing of the application for protection are now excluded from family reunification. These fall under the common law procedure of family reunification, which is part of the services of the French Office of Immigration and Integration (hereinafter "the OFII"). Family members of the refugee, beneficiary of subsidiary protection or stateless person can make an application for a long-stay visa to the consular or diplomatic authorities, this should reduce the time take to process the application for family reunification. Information about the revised family reunification procedure has been distributed widely and is available in French, English and Arabic.</p>		
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France	Khan	12267/16	28/05/2019	Awaiting AP/AR	1355;	Pending	New case	Ongoing	<p>The applicant, an unaccompanied foreign minor, had lived for six months in the southern section of the “<i>lande de Calais</i>” site when aged twelve. Since he had not been taken into care by the authorities like most unaccompanied foreign minors, he lived in a hut. On 19 February 2016 a non-governmental organisation applied to the Children’s Judge for the applicant’s provisional placement. By order of the same day, the Children’s Judge, noting that the applicant had no legal representatives in France, appointed a temporary representative. By order of 22 February 2016 he ordered the applicant’s placement with the child welfare department in order to provide him with accommodation and enable him to be reunited with members of his family living in the United Kingdom, within one month. The applicant submitted that neither the <i>département</i> of Pas-de-Calais nor the Prefecture had taken action to protect him. Therefore, after the demolition of his hut during the operations to dismantle the southern section on 2 March 2016, the applicant moved to a “makeshift shelter” in the northern section. During the week of 20 March 2016 he left the “<i>lande de Calais</i>” and illegally entered England. The combination of the precariousness of the child-unfriendly environment in which the applicant had thus lived for several months in the “<i>lande de Calais</i>” shantytown and the non-enforcement of the Children’s Judge’s order designed to protect the applicant had amounted to degrading treatment.</p>	<p>Pending - awaiting Action Plan from France. Also awaiting information on payment. ECtHR has ordered payment of €15000, for non-pecuniary damage, within 3 months of the judgment becoming final. Plus any amount that maybe chargeable as tax. (no amount awarded for costs and expenses although the applicant claimed €1000).</p>		
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France	Mehemi	25017/94	26/09/1997	Not Required	1043; 9 January 2009	CM/ResDH(2009)509/01/2009	N/A	Closed	<p>The case concerns a violation of the right to private and family life of the applicant, an Algerian national, who was the object of final order banning him from entering France following his conviction for drugs offences (violation of Article 8). The Court found a violation of Article 8 of the Convention by reference to fact that the applicant had no links with Algeria but strong bonds with France, and the fact that the outright ban against him would result in his separation from his wife and small children.</p> <p><u>Individual Measures</u> - €50,000 paid within the time limit. He was authorised to return to France. On 25 February 1998, he received a special visa authorising his return and was subject to a compulsory residence order, this last being a necessary condition for applying to have the ban lifted. On 24 March 1998, the Lyons Appeal Court, seised of Mr Mehemi's request to lift the banning order, replaced the outright ban by a ban limited to 10 years. This decision was confirmed by the court of Cassation on 26 May 1999. The ten-year ban expired on 10 July 2001. On 31 October 2001 the compulsory residence order against Mr Mehemi was lifted. He was issued a residence certificate bearing the word "salarie" ("employee").</p> <p><u>General Measures</u>: On 17 November 1999 the Garde des Sceaux (Minister of Justice) sent a circular on "Criminal policy with regard to the imposition and lifting of exclusion orders" to prosecutors at appeal courts and at regional courts and the first presidents of the same courts. The circular recalls the importance of the right to private and family life set out in Article 8 of the European Convention on Human Rights, the European court's case-law in this area and mentions in particular certain passages in the Mehemi judgment of 26 September 1997. In addition, the Court's judgment was published and commented upon in the legal press.</p>		
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France	Mokrani	52206/99	15/10/2003	Not Required	1100;	CM/ResDH(2010)160 30/11/2010	N/A (Leading)	Closed	<p>The case concerns an expulsion order (not executed) issued in 1995 against the applicant, an Algerian national. Although the European Court admits that contracting states might show considerable firmness as regards drug trafficking, it found that if the expulsion order were executed, it would not be proportionate to the aims pursued, given in particular the strength of the applicant's personal ties with France and the absence of established ties in Algeria (violation of Article 8).</p>	<p><i>Individual measures:</i> Just satisfaction for non-pecuniary damage paid. A compulsory residence order was issued. The applicant obtained annulment of the expulsion order and a regular residence permit.</p> <p><i>General measures:</i> The Foreigners' Entrance and Stay and Asylum Right Code provides for reinforced protection of foreigners against a potential expulsion order. Prior to the delivery of an expulsion order, the administrative authorities (the prefect or the Ministry of the Interior) carries out an individual examination of each case so as to assess the impact of the measure on the private and family life of the person concerned. After that the administrative courts examine the lawfulness of expulsion orders and annul those going beyond the need to defend public order.</p>		
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France	Popov	39472/07	19/04/2012	Government Communications DH-DD(2015)1100 ; NGO/NHRI communications: DH-DD(2013)588; Action Plan: DH-DD(2012)947; DH-DD(2017)32710/03/2017.	1150; 1288		Standard. This is a leading case and there are a further 6 repetitive cases (1 closed and 5 under standard supervision). All 6 had final judgement date = 12/10/2016 (but not all about children!)	Ongoing	<p>Kazakhstan nationals - parents & 2 children - applied for asylum in France, repeatedly persecuted because of their Russian origins & connection to the Russian orthodox church. Their applications were refused because of inconsistencies and the French authorities were unconvinced by their story. After they learnt that the 1st applicant's father had been murdered in Kazakhstan, they reapplied for asylum on the basis of fresh evidence but this was also rejected. In June 2005 the authorities refused to issue residence permits and the applicants were ordered to leave France within a month. The family was placed in administrative detention after request for residence permits was rejected again. They were held in detention pending removal in August & September 2007 (children were 3 year old & 6 months) in a centre unsuitable for families. Twice they were taken to the airport, but the deportation flight was cancelled at the last minute. The authorities applied for a further extension to the family's detention on the basis that the delay to their deportation was the fault of the applicants. The detention judge could find no evidence that the applicants had impeded their removal from France and ordered their release from detention, but did not remove the deportation order. The Court of Appeal approved extension of the detention because the Prefect had secured another removal date, but this detention period was never enforced. In 2009, the National Asylum tribunal granted them refugee status on the grounds that the enquiries made by the Ardennes Prefecture to verify their claims had exposed the applicants to the danger of further persecution in Kazakhstan if they were returned. The ECtHR found violations of Articles 3 and 5 relating to the detention of the family in a facility manifestly unsuitable for young children.</p>	<p><u>Individual measures:</u> The Court awarded the applicants just satisfaction in the amount of 10,000 euros in respect of non-pecuniary damage and 3,000 euros in respect of costs and expenses. The sum of 13,000 euros was paid on 5 July 2012.</p> <p><u>General Measures:</u> The judgment was disseminated to the Ministry of Immigration and the <i>Conseil d'Etat</i> & made available to judges and court staff. It was also published & available to the public and discussed in legal journals. The Ministry of the Interior has issued a circular recommending house arrest for families in an irregular situation who are liable to be deported and limiting detention of families only in cases where the family has refused to leave the territory after their case has been carefully examined. The authorities are required to limit the duration of detention to the time strictly necessary for the preparation of the removal. In addition, the placement must be in conditions adapted to children and the centres must be able to receive families. As a result of this circular, the number of placements of families in administrative detention centers decreased from 98 in 2012 to 41 in 2013 and 22 families in 2014, for an average duration of two days. Thus French law reflects the principle that an alien, who is obliged to leave French territory without delay and is accompanied by one or more minors, is subject to alternative measures to administrative detention. Article L. 551-1 of Ceseda authorises the detention of a foreigner accompanied by a minor only under certain conditions: -when the person concerned has not respected the requirements of a previous assignment to residence; -If he has absconded or refused on the occasion of execution of the expulsion order; -If the best</p>		<p>This is the leading case for 6 repetitive cases. This case is still under consideration , although the most up-to-date action plan is dated 20th March 2017. According to the HUDOC-EXEC database, they're awaiting a further revised action plan or report. The last action plan seems to suggest that France has carried out all the individual measures & general measures in response to its obligations under Art 46(1) ECHR.</p>
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										interests of the child limits detention in the hours before departure. In addition, detention centres are being adapted so that they are capable of accommodating families with young children. France accepts that there is no remedy for the children under French law but when detention is challenged by parents, the judge is under a duty to consider the circumstances of the children following the <i>Popov</i> judgment. If the authorities fail to take account of the circumstances of children of the family, the decision to detain the family should be annulled. The action plan gave examples of administrative courts which looked specifically at the situation of the children when considering detention to demonstrate that the changes to the law since <i>Popov</i> were being applied/implemented at the administrative level. These changes should prevent any further violation of Articles 3, 5 and 8 in these circumstances again.		
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France	YP and LP	32476/06	21/02/2011			CM/ResDH(2013)11 05/03/2013	N/A (Leading)	Closed	<p>The applicants, Y.P. and his wife, L.P., are two Belarus nationals and have three children. In Belarus, Y.P. was arrested, detained and beaten by the police for his activities as a member of the Belarus Popular Front, including in February 1999 for acts of “hooliganism”. In October of that year he was detained and beaten by the authorities for having participated in the “Freedom march” in Minsk. In February 2005, on arriving in the French city of Strasbourg, the applicants immediately lodged an application for asylum with the French Office for the Protection of Refugees and Stateless Persons (“OFPRA”), which was refused on the ground that Y.P. had not given a sufficiently detailed account of his political involvement and the alleged persecution. The Refugee Appeals Board, to which the applicants appealed, upheld the refusal of the asylum application. The family then travelled to Norway, Sweden and Denmark. They were removed from Denmark to France, where orders for their deportation were issued in 2007 and 2008. They were unsuccessful in both their application for asylum to OFPRA & appeal National Asylum Tribunal. Relying in particular on Article 3, the applicants alleged that they would be at risk of ill-treatment if they were removed to Belarus. ECtHR agreed - his account was credible and he provided evidence of his political activities which put him at risk if he returned. France had not taken the political unrest when considering his claim & the passage of time had not lessened the danger. His removal to Belarus would be in violation of Art 3.</p>	<p><u>Individual measures:</u> no award for non-pecuniary damage. The applicants received a residence permit for "private and family life". Once its validity expired, they will receive a renewable residence permit of a year. The judgment was published and disseminated via the websites of the Court of Cassation and “Legifrance” as well as on the intranet site of the administrative jurisdiction addressed to magistrates.</p>		
Georgia												
Germany												
Greece	Rahimi	8687/08	05/07/2011	Examined by CM: DH-DD(2019)372 - 5/4/19; CM/Del/Dec(2019)1348/H46 -9; CM/Del/Dec(2017)1288/H46			Enhanced	Ongoing	<p>A number of cases under the leading judgment of RAHIMI. Concern the degrading treatment of asylum seekers and migrants including unaccompanied minors. Conditions of detention are inhuman & degrading - overcrowding, lack of bed or mattress, insufficient ventilation, lack to access to toilets/sanitary</p>	<p><u>Individual measures:</u> Rahimi was granted international protection. <u>General Measures:</u> Examined by CM in June 2017 & 2019 – CM requested that national authorities are: a) To elaborate in cooperation with other stakeholders a plan for registration and processing of</p>	<p>Greece remains under 'extreme migratory pressures'. Significant progress has been made, but the country remains under</p>	<p>Also <i>Bajamaj</i> (case no: 36657/11) and <i>Housein</i> (case no 71825/11) are part of this group.</p>

				-15; CM/ResDH(20 14)272.					<p>facilities, lack of outdoor exercise, unsuitable food or inadequate allowance for food - violations of Article 3. Also some of the cases in the <i>MSS</i> group concern lack of right to effective remedy. <i>SD</i> group of cases relate to immigration detention and Article 5.</p>	<p>asylum applications so they are processed within a reasonable timeframe</p> <p>b) To develop a strategy securing full protection of unacc minors on the basis of an effective guardianship system</p> <p>c) To improve conditions of detention in all detention facilities including providing adequate healthcare services</p> <p>d) To ensure (as a matter of priority that alternatives to the detention if minors are found & where (exceptionally) minors are detained, they are held separately from adults and in conditions adapted to their vulnerable situation.</p> <p>Some <u>reforms</u> have taken place:</p> <ul style="list-style-type: none"> • Asylum procedures – measures to enhance asylum procedures; also 12 regional asylum offices, 11 autonomous asylum units with 681 employees (133 more to be hired in 2019). Training provided by EASO • Information is provided to all third country nationals & asylum seekers with a free interpretation service. • Living conditions of asylum seekers: divided between living conditions of asylum seekers and those of third country nationals (in Reception and Identification Centres – RICS). Accommodation, food clothing and healthcare is provided under 3 basic schemes: at RICS, by NGOs and in houses, hotel rooms etc. leased in the framework housing programme. UNHCR noted that accommodation capacity increased from 1,000 in 2014 to 27,000 accommodation places in apartments and 20,000 places in hosting centres. Financial support is provided to asylum seekers. Asylum seekers have access to healthcare in view of their vulnerable position. Also access to education for minors with a special educational programme to facilitate the all migrant and refugee children in joining mainstream education. Asylum 	<p>extreme migratory pressure and requires a reform of CEAS..</p>	
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Netherlands	Ciliz	29192/95	11/07/2000			CM/ResDH(2007)129 31/10/2007	N/A (Leading)	Closed	<p>The Dutch authorities failed to protect the applicant's right to respect for family life on account of a decision in 1995 not to extend the applicant's residence permit and to expel him to Turkey, his country of origin. Proceedings relating to access to his son were pending at the time. The applicant was expelled before the courts had assessed the strength of his family links with his son & thus prejudiced the outcome of the contact proceedings and denied the applicant of meaningful contact with his son. When he obtained a visa to return in 1999, the passage of time resulted in a <i>de facto</i> determination of the access and contact proceedings.</p>	<p><u>Individual measure:</u> He was granted an automatically renewable residence permit, irrespective of whether he had a working permit, to allow the contact/access proceedings to continue without the risk of him being deported.</p> <p><u>General measures:</u> The judgment was published in various journals and was circulated to the relevant administrative and judicial authorities. All judgments concerning the Netherlands are published by the Ministry of Foreign Affairs in its yearly report to Parliament as well as by the Ministry of Justice through a newsletter addressed to the judiciary. ECHR has direct effect in Dutch law and the government will use their best endeavours to prevent the occurrence of violations similar to that in the present case (but see <i>Rodrigues da Silva</i> below).</p>		
Netherlands	Rodrigues Da Silva and Hoogkamer	50435/99	03/07/2006			CM/ResDH(2010)60	N/A (Repetitive)	Closed	<p>Protection of Family life - disproportionate interference due to refusal to grant residence permit to the Brazilian mother of a Dutch child, following her separation from the child's father who obtained parental authority. (This was a repetitive case - see CM resolution on the Ciliz case)</p>	<p><u>Individual measures:</u> The finding of a violation was held to be just satisfaction for the non-pecuniary damage. The first applicant was granted a residence permit with retroactive effect.</p> <p><u>General Measures:</u> The judgment was published, translated and disseminated.</p>		
Netherlands	Sen	31465/96	21/03/2002			CM/ResDH(2009)51 02/04/2009	N/A (Leading)	Closed	<p>Violation of the right to respect for private and family life - family of Turkish nationals, authorities refused grant of residence permit to third applicant, daughter of first two applicants who were legally residing in the NL. ECtHR held that the Dutch authorities failed to strike a proper balance between the applicant's interests and its own interests in controlling immigration.</p>	<p><u>Individual measures</u> - Ms Sinem Sen would be entitled to a RP if she applied for it, but she never applied for one.</p> <p><u>General measures:</u> the ECtHR judgment was sent to all authorities concerned & published in the Ministry of Justice Journal and NJCM bulletin & in European Human Rights cases. A summary was also included in the annual report from the Minister of Foreign Affairs to Parliament. ECHR has direct effect in Dutch law, case law is taken into account by the Dutch Public Administration (see paras 16-25 of the judgment) & should prevent further violation.</p>		

Netherlands	Tuquabo-Tekle & others	60665/00	01/03/2006			CM/ResDH(2010)108 14/09/2010	N/A (Leading)	Closed	Protection of family life - disproportionate interference in refusing to allow the applicant's daughter, living in Eritrea to join the applicant's family in the Netherlands. The ECtHR found that the respondent state had failed to strike a fair balance between the applicant's interests (family reunion) and its own interests in controlling immigration. Drew attention to the similarity with the case of Sen (CM/Res DH(2009) 51 adopted 02/04/2009.) although the child in this case was older it should not lead to a different assessment.	<i>Individual Measures:</i> The NL embassy in Sudan issue Mrs Tuquabo-Tekle's daughter with a laissez-passer and entry visa for the NL. On 11/02/2010 she arrived in the NL, no further individual measure was necessary. Mrs Tuqabo-Tekle was issued a residence permit on 23 April 2010. <i>General measures:</i> Ministry of Justice adopted a new policy in cases concerning the right to family reunion of minors with a parent legally residing in the NL = 'factual family ties' is used to determine whether a right to family reunion exists & is now interpreted in conformity with ECtHR's interpretation of Art 8. Thus a child with 'factual family ties' with the parent concerned = family life under Article 8 ECHR. Judgment published in the European Human Rights Cases 2006 & in the NL judicial journal and blog.		
Netherlands	Sezen	50252/99	01/07/2006			CM/ResDH(2010)107 15/09/2010	N/A (Leading)	Closed	Violation of applicant's right to family life - refusal of Dutch authorities to extend the residence permit of the first applicant, the husband of the 2nd applicant (art 8). 1st & 2nd applicant were married, 2nd applicant had a permanent RP. 1st app had RP for forming a family unit and for working purposes. HE then acquired a de jure right to remain in NL indefinitely, which would expire if he was not part of the family unit. He was convicted of criminal offences and served 2 years in prison. He did not live with the 2nd applicant & their child for over a year, then resumed cohabitation and had a second child. Applied for an extension of the RP but was refused and a 10 year exclusion order was placed on the applicant, but this part of the order was overturned by the Regional Court. The ECtHR held that the 2nd applicant and children could not be expected to return to Turkey with the 1st applicant. They formed a family unit in NL & splitting them up would constitute a serious interference with their right to family life - NL authorities had failed to strike a fair	<i>Individual measures:</i> no claim for just satisfaction; the exclusion order was lifted on 6/5/99 & in Nov. 2007 he received a renewable RP based on Art 8 ECHR - valid until 19/1/13. No further individual measures considered necessary by CM. <i>General Measures:</i> because of the direct effect of the ECHR, all relevant authorities are expected to align their practice to the present judgment. The judgment has been published in several legal journal in NL, e.g. European Human Rights Cases 2006 and Nederlands Juristenblad.		

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Netherlands	Jeunesse	12738/10	03/10/2014			CM/ResDH(2015)145 22/09/2015	N/A (Leading)	Closed	Disproportionate interference with the right to family life. Refusal of a residence permit for a Surinamese mother due to failure of authorities to take account of, and assess evidence on, the practicality, feasibility and proportionality of the refusal, particularly in the light of the best interests of the children. No fair balance between the personal interests of the applicant and her family in maintaining their family life and public order interests of the Government in controlling immigration	<u>Individual measures</u> - The applicant was issued with a temporary residence permit until 3/10/2019. <u>General measures</u> - The Immigration and Naturalisation Service was reminded of the importance of a thorough assessment if the particular circumstances of each individual case and instructed to make this assessment more visible in the decision-making process. The guidelines for the immigration and Naturalisation Service were consequently adjusted. The judgment's summary and the measures taken will be included in the Government's annual report to parliament. It was also translated and published.		
North Macedonia												
Norway	Nunez	55597/09	28/09/2011			CM/ResDH(2013)117 11/06/2013	N/A (Leading)	Closed	ECtHR held that there would be a violation of Art 8 if the applicant is expelled from Norway. Applicant was expelled with a 2 year re-entry ban on the bases of breach immigration laws. Applicant had 2 daughters and Court held that the close bond between mother and daughters, the decision in the custody proceedings, the disruption and stress the children had already endured & the long period before the immigration authorities made their decision, the ECtHR was not convinced that (given the exceptional circs of the case) sufficient weight was given to the best interests of the child for the purposes of Art 8.	Individual measures - the Norwegian Immigration Appeals Board suspended the removal order for the applicant (Oct 2009) & the Board reversed the expulsion order in November 2011. Application for family reunification with the applicant's children lodged in Oct 2011, but was denied by the immigration Directorate in Jan 2012 on the grounds that the applicant had not documented her identity. In June 2012, the immigration Directorate reversed its former decision & awarded a renewable RP on humanitarian grounds. General measures - Publication on the internet site Lovdata (the principal internet source for legal information in Norway & used by lawyers, civil servants and judges) & summaries written by Norwegian Centre for human rights at the University of Oslo. The Ministry of Justice issued new instructions to the immigration Directorate regarding expulsion cases affecting children to ensure		

										Norwegian practices are in accordance with the Court's jurisprudence. In particular taking into account the child's ties with the parent & disruption and hardship in a child's family life maybe a relevant factor in the assessment. More general principles and considerations were also outlined by the Ministry - these are to be taken into consideration in any case involving children & the state enjoys a certain margin of appreciation.		
Norway	Kaplan and Others	32504/11	24/10/2014			CM/ResDH(2016)68 13/04/2016	N/A (Leading)	Closed	Protection of Private and family life. Expulsion of applicant to Turkey with a 5-year re-entry ban.	<u>Individual measure:</u> Just satisfaction paid - The expulsion decision was reversed and the re-entry ban lifted. A RP was granted to the father. <u>General measures:</u> the judgment was translated, published & disseminated. The instructions issued to the Immigration Directorate regarding expulsion cases affecting children issued after the Nunez judgment are still valid. In the MOJ's assessment this case was based on specific and unique circumstances.		
Poland												
Portugal												
Republic of Moldova												
Romania												
Russian Federation												
San Marino												
Serbia												
Slovak Republic												
Slovenia												
Spain	AC and Others	6528/11	22/07/2014	DH-DD(2015)1307 8-10/12/2015 DH-DD(2018)285. rev 16/05/2018			Enhanced	Ongoing	The applicants in this case are thirty persons of Saharawi origin (in the ECtHR it does not give the DoB or ages of the applicants, so it is not possible to tell if any of the applicants are under 18). They had their requests for international protection dismissed by the Spanish administration in 2011 and 2012, via an accelerated procedure. THE ECtHR considered that they did not have at their disposal an effective remedy, with automatic	On 8 July 2014, the Spanish authorities submitted preliminary information on the individual and general measures. An action report was provided on 23 November 2015, followed by a revised version on 16 May 2018 (see DH-DD(2018)285-rev), which is under assessment. Measures taken so far can be summarised as follows: <u>Individual measures:</u> None of the applicants was expelled while the	Required the Supreme Tribunal to restate that the contentious Administrative Courts should follow the case law/jurisprudence of the Supreme Court. There has been no need to change the law.	

									<p>suspensive effect to complain about their return to Morocco, which resulted from the administrative decisions dismissing their requests for international protection. This exposed them to a risk to their lives or a risk of ill-treatment. It also held that the effectiveness of the existing remedies was called into question due to the length of the proceedings for examination of the applicants' requests for international protection (which had been pending since 2011). Held to be a violation of Article 13, together with articles 2 & 3. Under Article 46 of the Convention, the ECtHR noted that the Article 13 violation found in this case stemmed from the lack of suspensive effect of the judicial proceedings concerning the applicants' requests for international protection and that the examination of these requests was, at the time of its judgment, still pending before the Spanish courts. It therefore indicated that the Respondent State should ensure, legally and materially, the applicants' stay on Spanish territory throughout the examination of their applications and until the decision on their requests for international protection becomes final.</p>	<p>proceedings concerning them were pending and all of them continue to reside on Spanish territory. The proceedings were concluded in respect of 11 applicants. As regards the other 19 applicants, the Supreme Court directed the Ministry of Interior to examine their applications for international protection in accordance with the ordinary procedure, which guarantees appeals with automatic suspensive effect at each of its stages. This ensures that the applicants' can remain on Spanish territory until a final decision is handed down on their applications for international protection, as indicated by the ECtHR. The procedures concerning these applicants are at varying stages of progress.</p> <p><i>General Measures:</i> The authorities indicated that a case-law of the Supreme Court established as of 2013 ensured that Law No. 12/2009 on asylum and subsidiary protection is applied in full compliance with the right to an effective remedy guaranteed by Article 13 of the Convention. The authorities referred to two decisions of this Court of March 2013 that annulled the administrative decisions that had erroneously applied the accelerated procedure in cases where the criteria for the application of this procedure were not met. The Supreme Court specified that the accelerated procedure may only be used by strictly applying the legal criteria and that the ordinary procedure should be the rule. If in application of this case-law, the domestic courts conclude that the accelerated procedure was erroneously used, the case will be referred to the Ministry of Interior to be processed under the ordinary procedure, which guarantees appeals with automatic suspensive effect at each of its stages. The Ministry of Interior is</p>	<p>In the latest Action Plan, the Spanish authorities have reiterated that a similar situation to that of AC is unlikely to occur again, Spanish judges have the resources to stay the extradition measures until a final decision on the international protection application is taken. The jurisprudence of the Supreme Court assures the applicants that the previous decision of the administrative courts has been declared null and void and the decision will be taken as if from the beginning, which should not prejudice the final outcome - it will be judged on its merits. The Kingdom of Spain declared on 16th May 2018 that it had discharged in full its obligation to keep the CM fully informed of the circumstances deriving from the execution of the judgment - thus supervision of this judgment should be closed (see DH-DD(2018)285.Rev).</p>	
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Spain	GVA	35765/14	17/06/2015			DH- DD(2016)152 12/ 02/2016	N/A	Closed (friendly settleme nt)	<p>Argentinian applicant who had been convicted of serious drug offences and was subject to an expulsion order and re-entry ban on account of the conviction (& because the sentence was over 1 year). She contested the order as she was in a relationship with a Spanish man and had a daughter (while in prison) who had Spanish nationality (the father was also in prison). The mother had looked after the child while she was in prison & was now the only member of the family who could take care of the child. She pleaded the family rights of her child, under Art 8, which should have been taken into consideration when the expulsion and re-entry ban order was made. On appeal the expulsion order was upheld and the re-entry ban reduced to 5 years. The Constitutional Court did not have jurisdiction to deal with the issue in the case, but held that the administrative courts should take into account the jurisprudence of the ECtHR, when applying art 57.2 of Spanish Organic Law relating to the rights and liberties of foreigners. When the applicant applied to the ECtHR on the grounds that her Art 8 rights had been violated (as well as those of her daughter), the ECtHR imposed an interim order suspending the expulsion order. The Spanish authorities offered a friendly settlement recognising the violation, quashing the administrative order and offering just satisfaction of €19,000. The Kingdom of Spain offered a unilateral declaration setting out the terms of settlement and asked for the application to be struck out</p>	<p><u>Individual measures:</u> just satisfaction and the decision adopted on 17th March 2015; the administrative order for expulsion and ban in re-entry was revoked on 22nd May 2015.</p> <p><u>General Measures:</u> Spanish legislation does not need amending but the administrative authorities need to take into consideration the right to respect for family life of the child as part of the proportionality decision. The case law and the unilateral declaration of the state should be widely distributed to prevent this situation occurring in the future. The Unilateral Declaration has been published in the Bulletin of the Ministry of Justice, in July 2015.</p>		
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Sweden	FN and Others	28774/09	18/03/2018			CM/ResDH(2013)205 9/10/2013	N/A (Leading)	Closed	<p>The enforcement of the expulsion order against the applicants, who are Uzbek nationals, would give rise to a violation of Article 3 of the Convention. Family of 2 adults and 2 children applied for asylum in Sweden on political grounds (fa had been branded an activist and Muslim separatist by the authorities and imprisoned for his activities. He was in fear of his life because the police treated him in a brutal manner and tortured him. Even after his release, the police wanted to arrest him again. He was subject to a travel ban. He had to go into hiding and a family friend managed to get the family safe passage to Sweden. The family's application for asylum was rejected by the Swedish Migration board. Applicants do not want to return for fear of persecution.</p> <p><u>Individual measures</u> - Just satisfaction of €4,500. On 27 February 2013, the Migration Board granted the applicants permanent residence permits in Sweden.</p> <p><u>General measures</u>: The government considers no general measures to be necessary. The government has distributed a report containing a summary of the judgment in Swedish, and with a copy of the judgment attached, to the Migration Board and the domestic courts directly involved in the case, i.e., the Migration Court in Stockholm and the Migration Court of Appeal. The report has also been distributed to other relevant courts and authorities, inter alia, all migration courts, the Swedish Bar Association, the Parliamentary Ombudsmen and the Chancellor of Justice. The judgment in English and a summary in Swedish are soon to be published in the following location: The government's human rights website at http://www.manskligarattigheter.se. The government considers that all necessary measures in view of the Court's judgment in the present case have been taken, that it has thus complied with its obligations under Article 46 § 1 of the Convention and that the case should consequently be closed.</p>		
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Sweden	JK	59166/12	23/08/2016			CM/ResDH(2017)17 1 07/06/2017	N/A (Leading)	Closed	<p>Family from Iraq, father worked for the Americans in Camp Victory - ran his own construction company. Became targets of al Qaeda who made several attempts on the father's life. They escaped to Syria and their house and father's business were destroyed. When they returned to Baghdad, daughter was killed in a shooting aimed at her father. They had no faith in the state authorities to protect them because of collusion with al-Qaeda. The family feared return to Iraq because of the death threats against the father. The asylum application to the Migration Board was rejected on the basis that the Iraqi govt could provide protection against persecution by non-state actors & no grounds on which to provide the family with residence permits and ordered their deportation. The applicant's appealed to the Migration Court of Appeal, but this was refused. Held to be in violation of Art 3 ECHR if returned to Iraq</p>	<p><i>Individual measures:</i> the just satisfaction awarded was paid. The applicants' expulsion order became statute-barred on 09/08/2016 according to the Aliens Act. On 21/12/2016, the Migration Court of Appeal granted the petition for relief and decided to refer the case back to the Migration Agency for new proceedings. On 28/01/2017, the applicants were granted residence permits and refugee status by the Migration Agency.</p> <p><i>General measures:</i> the judgment was translated, published and disseminated to the relevant authorities. The judgment in English and a summary in Swedish have been published on the Government's website on human rights at http://www.manskligarattigheter.se. The Government has distributed a report containing a summary of the judgment in Swedish, with a copy of the judgment attached, to the Migration Agency and the domestic courts directly involved in the case, i.e. the Migration Court in Malmö and the Migration Court of Appeal. The report has also been distributed to other relevant courts and authorities, inter alia, all migration courts, the Swedish Bar Association, the Parliamentary Ombudsmen and the Chancellor of Justice.</p>		
Switzerland	Polidario	33169/10	30/10/2013			CM/ResDH(2016)32 7 09/11/2016	N/A (Leading)	Closed	<p>Protection of private and family life: Authorities' failure to take appropriate measures to preserve the relationship between a Philippines mother and her child abducted to Switzerland by the father, due to their refusal to grant the mother a residence permit enabling her to have contact with her child and later to exercise her access rights. (Article 8</p>	<p>On 25/10/2012 the applicant was granted a renewable residence permit. The applicant could have applied for the reopening of her administrative proceedings, but did not avail herself of this opportunity. The judgment was widely published and disseminated, including to the authorities directly concerned.</p>		

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