



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

FIFTH SECTION

CASE OF T.S. AND M.S. v. GREECE

(Application no. 15008/19)

JUDGMENT

STRASBOURG

3 October 2024

This judgment is final but it may be subject to editorial revision.

In the case of T.S. and M.S. v. Greece,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Stéphanie Mourou-Vikström, *President*,

Lado Chanturia,

Kateřina Šimáčková, *judges*,

and Sophie Piquet, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 15008/19) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 20 March 2019 by two Afghan nationals, T.S. and M.S., born in 2002 and 2003 respectively and living in Athens (“the applicants”) who were represented by Ms A. Theodoropoulou, a lawyer practising in Athens;

the decision to give notice of the application to the Greek Government (“the Government”), represented by their Agent Ms N. Marioli and her delegates, Ms A. Dimitrakopoulou Senior Advisor at the State Legal Council and Ms Z. Chatzipavlou Legal Representative at the State Legal Council;

the decision not to have the applicants’ names disclosed;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court;

the parties’ observations;

Having deliberated in private on 12 September 2024,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The applicants are two sisters from Afghanistan who were unaccompanied minors (16 and 17 years old) at the time of lodging their application with the Court.

2. They entered the island of Lesbos irregularly in early January 2019. They did not appear in person before the Reception and Identification Centre (RIC) of Lesbos and left for Athens.

3. On 10 January 2019 the applicants were arrested in the port area of Patras while attempting to leave the country.

4. On 23 January 2019 an accommodation request was submitted on behalf of the applicants to the National Centre of Social Solidarity (EKKA).

5. On 19 February 2019 they applied for international protection.

6. On 13 March 2019 the applicants were placed in protective custody in detention facilities until 23 March 2019 when both applicants were transferred to an accommodation shelter for minors.

7. On 20 March 2019 they lodged an interim measure request with the Court which was granted.

8. The applicants have been recognised as refugees.

9. The applicants relied on Article 3 of the Convention in respect of their living conditions since January 2019, their conditions of detention and the failure to appoint a guardian, Article 5 § 1 of the Convention regarding their deprivation of liberty and Article 5 § 4 with regard to an effective procedure by which they could challenge the lawfulness of their detention. Lastly, they complained under Article 3 and 13 of the Convention about deficiencies in the asylum procedure.

I. AS REGARDS THE APPLICANTS' LIVING CONDITIONS AS FROM THEIR ENTRY UNTIL 23 JANUARY 2019

A. The Government's account of events

10. The Government submitted that the applicants never appeared in person to register at the RIC in Lesvos but went on to Athens.

11. The applicants were first identified by the authorities on 10 January 2019 when they were arrested in the port area of Patras while attempting to leave the country, holding false travel documents. The applicants stated that they were of age, without any reference to their living conditions or intention of applying for asylum.

12. On the same day they were taken to the Patras criminal court. At the hearing they did not invoke their age – both were minors. A suspended prison sentence was handed down.

13. The applicants had been served with factsheets for detained foreign nationals in the Arab language they understood. They had also been informed of their rights and the reasons for their detention in English.

14. Deportation decisions without detention were issued, setting a time-limit for voluntary departure.

B. The applicants' account of events

15. The applicants submitted that the authorities were responsible for detecting and verifying the presence of unaccompanied minors within the national territory and acting accordingly. As minors they should not have been expected to look after themselves.

16. They added that they had not hidden from the authorities and could not have been aware of the reception system. They followed others and proceeded to do what they were instructed to do.

17. Before reaching the port of Patras they had spent a few days in the centre of Athens in common sight. They had attempted to attend the Piraeus

Regional Asylum Office (RAO), but they had not been admitted as they did not have an appointment.

18. The birth dates on their documents had been altered so that they would be allowed to board a ship for Italy as adults, but the fact that they were minors was evident from their appearance.

19. The applicants denied having received a factsheet. In any case, it would not have been relevant since they were not of Arab origin, a fact that would have been established if an interpreter had been present. They added that they did not understand enough English. The applicants acknowledged that a person speaking their native language was present in the courtroom, but they did not know in what capacity he acted.

20. They noted that the administrative procedure was concluded swiftly and during the proceedings they remained without legal support or interpretation, overwhelmed with fear.

II. AS REGARDS THE APPLICANTS' LIVING CONDITIONS AS FROM 23 JANUARY 2019 UNTIL THEIR PLACEMENT IN PROTECTIVE CUSTODY

A. The applicants' account of events

21. On 23 January 2019 an accommodation request was submitted on behalf of the applicants by an NGO to the EKKA.

22. The applicants stated that, contrary to the Government's statements, they had neither been temporarily hosted by an NGO nor accommodated in any hosting structure before their detention. They stressed that they had been accommodated with an adult because the authorities had not provided them with shelter.

23. They added that on 4 February 2019 the social worker had reminded the authorities that the applicants' provisional accommodation would be terminated but they had not received any reply.

24. They further argued that no guardian was designated according to national law and they were thus deprived of appropriate representation pursuant to their best interests.

B. The Government's account of events

25. The Government noted that, on submission of the accommodation request, the NGO had informed the EKKA that the applicants had been staying with people from their own country for a short while. The authorities informed the NGO that no suitable accommodation could be found and efforts were made to ensure family unity. The failure to find a hospitality structure was attributed to the large number of housing requests from unaccompanied minors.

26. On 24 January 2019 the applicants declared their intention to apply for international protection before the Piraeus Regional Asylum Office (RAO). On 19 February 2019 their applications were registered without the presence of a guardian according to domestic law. At the time of registration, the applicants stated that they had been hosted in a hospitality structure for about a month. The Asylum Office informed the Piraeus Public Prosecutor for minors so that a guardian could be appointed.

27. The Government noted that the housing referral, submitted by the social worker, stated that the applicants had been staying with a gentleman from Iran without reporting any matters of concern about their living conditions.

28. Between 23 January and 13 March 2019, the applicants were provided with provisional accommodation and support from NGOs, access to public health structures and educational activities.

29. As regards guardianship of unaccompanied minors, a new regulatory framework was put in place (law 4554/2018) and the relevant provisions would come into effect as of 1 September 2019.

III. AS REGARDS THE APPLICANTS' CONDITIONS OF DETENTION IN THE TAVROS PRE-REMOVAL DETENTION CENTRE (PRDC)

A. The applicants' account of events

30. The applicants relied on the CPT findings regarding the detention centre in question.

31. They noted that the centre consisted of cells and that the applicants had been placed with adults. They pointed out that there was no actual yard and detainees had access to natural light and air only during regulated hours on a balcony. Visits took place through glass while a uniformed guard was present.

32. The applicants complained of insufficient hygiene and sanitary facilities and pointed out that the Government indicated neither the number of detainees in the applicants' cell nor its surface.

33. The applicants submitted that they were in poor psychological condition as they were detained in "unhealthy conditions" while the second applicant had mentioned that she would harm herself.

B. The Government's account of events

34. The applicants had been placed in the women's ward of Tavros PRDC which had a capacity of 150 persons. During the period in question the average number of women was 17 detainees. The cells had access to natural light and fresh air. Detainees were provided with personal hygiene products, *inter alia*, from organisations as well as with health care services. They also

had access to hygiene and sanitary facilities, a daily yard and leisure activities. Mobile telephones were taken from them upon admission, for security reasons.

35. The Tavros PRDC is a special detention facility intended for the administrative detention of third-country nationals. During the period in question the applicants were not confronted with overpopulation and, although they were not held in a separate area for minors, there was limited intermingling with adult women.

IV. AS REGARDS THE APPLICANTS' PLACEMENT IN PROTECTIVE CUSTODY

A. The applicants' account of events

36. The applicants submitted that they were treated as detained adults under the same restrictions and conditions. Irrespective of the classification of the measure as protective custody, it had been *de facto* and in substance detention.

37. The authorities had been made aware that the applicants were or were about to become homeless and that they were housed with strangers, but remained passive.

38. The prosecutorial authorities submitted that on 20 March 2019 they had been made aware of the applicants' social history by an undated fax and therefore could not clarify its relevancy in time. The applicants argued that the undated document had been transmitted on 15 March 2019 and included their identity information.

39. They noted that although an available place had been found on 20 March 2019 and, thus, the alleged legal basis had ceased to exist, they remained on the detention premises until 23 March 2019 instead of being immediately transferred.

40. They contested the authorities' inability to transfer the applicants to a hospital on grounds of regulations and safety as misleading, arguing that in accommodation facilities minors are also allowed to move around freely.

41. The carceral environment of the PRDC, the 24-hour guard, the deprivation of free movement, the supervision and punitive regime were precisely the elements that turned protective custody from a protective measure into unlawful deprivation of liberty. It is the manner and execution of the measure, regardless of its classification under national law, that defined an unlawful deprivation of liberty under Article 5 of the Convention. They argued that protective custody had not taken place in accordance with national law or the Convention as it cannot be implemented within police premises.

42. They added that detention was never in the best interests of a child as it has undeniable and long-term harmful effects for minors.

B. The Government's account of events

43. In the afternoon of 13 March 2019, the applicants, accompanied by a social worker, went to Exarchia police station and stated that they were unaccompanied minors unable to find food and shelter. The police authorities placed them in protective custody, giving notice to the Athens Prosecutor for minors who issued an order that suitable accommodation be found for them and submitted a request to the EKKA in this regard.

44. They noted that the applicants had asked to be placed in a children's hospital for their protective custody, while awaiting a reply about their placement in a shelter, but this was impossible since these are not open to children aged over 16 years, according to the regulations, and in addition there were no health issues justifying admission to hospital. They also added that the applicants would not be safe there as hospitals do not provide escorts and guards and minors may go in and out.

45. After the Prosecutor had been informed that the applicants could not immediately be placed in an accommodation structure, she orally instructed that they remain in protective custody until they could be provided with accommodation. In the early hours of 14 March 2019, they were admitted to the detention facilities of Tavros PRDC.

46. On 20 March 2019 an accommodation shelter for minors was found for both applicants and they were transferred there on 23 March 2019.

47. The Government pointed out that the applicants' placement in protective custody does not qualify as either arrest or detention, they were not treated as detainees and their placement took place in accordance with the domestic law by order of the prosecutorial authority to prevent their exposure to danger had they remained homeless. Placing the applicants in protective custody on police premises for a few hours and subsequently in the PRDC was the last resort and in their best interests.

48. The authorities acted in good faith and the applicants remained in protective custody only for the length of time needed to find a suitable shelter for them.

**V. AS REGARDS THE EFFECTIVE REMEDY TO CHALLENGE THE
LAWFULNESS OF THEIR DETENTION**

A. The applicants' account of events

49. The applicants submitted that, contrary to the Government's statements, they could not have applied to the Police Director to challenge their placement in protective custody. Since they were subject to prosecutorial authority, a police director could not annul or assess a prosecutorial decision, including the premises selected by the prosecutor for

the measure's implementation. The measure can only be lifted by the same authority, and it cannot be reviewed.

50. As to the Government's allegations that other potential premises were available for the measure's implementation, the authorities acknowledged that detention in a PRDC was not a measure of last resort, and the prosecutor could have chosen one of those premises instead.

B. The Government's account of events

51. The Government argued that protective custody was not an arrest and was not subject to appeal, which in any case would not be compatible with the concept of custody. As it does not qualify as detention either, no detention decision had been issued.

52. In the Government's view the applicants did not complain of their placement in protective custody but rather of the fact that it took place at the PRDC instead of a children's hospital. However, they reported this fact to the prosecutor disputing the lawfulness of their custody in the facility. The prosecutor proceeded to all lawful and possible actions for their protection and prompt termination of their protective custody. The dismissal of their request does not amount to a lack of an effective remedy to review the lawfulness of the terms of their protective custody.

53. The Government further submitted that, since the applicants were placed on police premises, they could have applied to the director of the police service to request their transfer to a separate facility suitable to their specific needs.

VI. REPORTS CONCERNING THE SITUATION IN THE TAVROS PRE-REMOVAL DETENTION CENTRE (PRDC)

A. Report to the Greek Government on the visits to Greece carried out by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) from 13 to 18 April and 19 to 25 July 2016.

54. According to the CPT's report, published on 26 September 2017, the CPT was again critical of the care and poor living conditions offered to unaccompanied or separated children (UASC) held *inter alia* at Petrou Ralli Special holding facility, which operates like a large police detention facility, and is even less well equipped to look after them. Placing UASC, many of whom have undergone traumatic journeys and experiences, in these detention facilities for several weeks or months is difficult to comprehend. The CPT recommended that the Greek authorities immediately stop using Petrou Ralli (P.Ralli) for holding UASC. It is noted that the pre-removal centre of Tavros is also known as pre-removal centre of P.Ralli.

55. At Petrou Ralli Special holding facility for irregular migrants, 31 UASC were being detained (most of them administratively) in one of the wings on the third floor. There had been no positive developments in the living conditions since the CPT's visits in 2013 and 2015. The material conditions within the wing on the third floor of P. Ralli holding facility were still extremely poor, with limited access to natural light and unhygienic sanitation. Children were not provided with bed linen or sufficient personal hygiene products; organised activities or adequate support. There had been no specially trained staff and the police officers in charge of guarding them appeared to have adopted an indifferent attitude to the specific needs of the UASC.

56. In the CPT's view, placing UASC for several days or even weeks in police custody for "protection" purposes without any assistance and psycho-social support instead of providing them with accommodation in an appropriate shelter is unacceptable. The children's welfare should come first which, by definition, should exclude accommodating them in police or border guard stations. In the light of the above remarks, the CPT recommended that the Greek authorities end the detention of UASC in police or border guard stations.

57. The CPT considers that the accommodation of children accompanying their parent(s) together with other adults in a police or border guard station can have a negative psychological effect on the child's development and well-being, particularly when the child is young. The placement of children with their parents in a police or border guard station should only occur as a last resort (i.e. in extremis as a place of safety) and should be as short as possible (i.e. no longer than a few hours). Further, the conditions of detention should be as non-carceral as possible with access to outdoor areas and playgrounds.

58. As regards adults in immigration detention, a number of credible allegations of physical ill-treatment of foreign national detainees by police officers were received *inter alia* at P. Ralli Special holding facility. Further, the conditions of detention were totally inadequate for holding irregular migrants for short periods of time, let alone for weeks or months. At P. Ralli, action is required to address the state of the filthy, stuffy and infested cells and to improve the poor provision of health-care services. Further, detainees were not offered at least one hour of outdoor exercise every day. There is also a need to ensure all detainees who do not speak Greek are informed about their situation in a language they understand.

59. The communal sanitary annexes were unhygienic and in a poor state of repair and detainees complained that they did not receive sufficient hygiene products. Further, the delegation found that outdoor exercise was not offered daily to all detainees, at times, the amount of time offered hardly exceeded 15 minutes.

60. In addition, there were no improvements as regards health-care services at the facility and most of the issues raised by the CPT in the context of its 2015 visit remained problematic: these include the absence of health-care staff during evenings, nights and weekends; the absence of a psychiatrist and other specialists, including a dentist; the lack of medical screening on arrival; the lack of systematic recording of all medical consultations; the filtering of requests to see a doctor by police officers; the non-respect of medical confidentiality; the unnecessary isolation of foreign nationals who were HIV positive or who had Hepatitis; and the lack of self-harm and suicide prevention measures.

B. Mission assessment carried out on 2-4 November 2021 by the Committee on Civil Liberties, Justice and Home Affairs (LIBE) in Greece

61. According to the mission assessment, issued on 28 October 2022, following a visit carried out by the Committee on Civil Liberties, Justice and Home Affairs (LIBE) in Greece on 2 - 4 November 2021, *inter alia* to the pre-removal centre at P.Ralli, the centre accommodates only men detainees that have been registered as adults. The authorities stated that the accommodation capacity exceeds 300 persons and at the time of the visit there were 70 persons. They highlighted that the infrastructure had been recently ameliorated with EU funding, but remains elementary. Detainees are sleeping in cells with 6 beds, without privacy and share a small bathroom. They are allowed to leave the cells only to move in the corridor or to a small yard surrounded by barbed wire. It was also stated that no activities are provided. In addition, the medical service often reports complaints about medical issues and the psychologist stated that some detainees displayed suicidal behaviour.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. As regards the applicants' living conditions as from their entry until 23 January 2019

62. The Government noted that, until the submission of the applicants' housing request on 23 January 2019, the applicants had not provided the authorities with the opportunity to initiate the procedure for their reception as unaccompanied minors and asylum-seekers (see paragraphs 10-11 above). Therefore, the authorities cannot be held responsible for their reception conditions. They further argued that the applicants' allegations regarding their living conditions during the above period are unsubstantiated.

63. The applicants argued that as unaccompanied minors they should not be held accountable for not undergoing identification and reception procedures in Lesbos. They also contested that they had been informed of their rights in a language they understood and that they had been afforded the opportunity to request asylum and correct their identity information before the port authorities.

64. Having regard to the parties' submissions and all the material in its possession, in particular that the authorities had not been made aware that the applicants were minors until 23 January 2019 (see paragraphs 10-11 above), this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. As regards the applicants' living conditions as from 23 January 2019 until their placement in protective custody

65. The Government invited the Court to dismiss the complaints in respect of the applicants' living conditions until 13 March 2019 as inadmissible for failure to introduce an action for damages based on Article 105 of the Introductory Law to the Civil Code, since as of this date they were placed in protective custody and their conditions differed compared to those of the previous period of early January 2019.

66. The applicants stressed that the remedy in question was neither effective nor accessible as they did not have *locus standi* before the national courts. Since the prosecutor was their temporal guardian, the latter authority should have exercised the remedy. They further pointed out that, following their placement in protective custody, their reception conditions had not changed.

67. The Court has dismissed similar objections regarding action for damages under Article 105 of the Introductory Law to the Civil Code, considering it does not offer reasonable prospect of success and an appropriate redress (see *O.R. v. Greece*, no. 24650/19, §§ 45-49, 23 January 2024, *A.F. v. Greece*, no. 53709/11, §§ 45-63, 13 June 2013, *H.A. and Others v. Greece*, nos. 4892/18 and 4920/18, §§ 28-29, 13 June 2023). It further observes that the Government did not submit domestic decisions indicating that, in situations similar to that of the applicants, persons have received compensation on grounds of unsuitable living conditions. Therefore, the Government's objection must be dismissed.

68. The Government submitted that the authorities had not been passive in their search for a hospitality structure. They further noted that the applicants were not destitute nor were their living conditions so severe as to constitute a violation of Article 3 of the Convention.

69. The applicants contested the Government's allegations and stressed that the authorities had been informed that their provisional accommodation would be terminated but had not reacted.

70. The general principles concerning the living conditions of unaccompanied minors and asylum-seekers have been summarised in *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 259, 263, 21 January 2011, *Rahimi v. Greece*, no. 8687/08, §§ 58, 66, 87, and 88-92, 5 April 2011, *O.R. v. Greece*, §§ 56-60 (cited above), *H.A. and Others v. Greece*, no. 19951/16, § 204, 28 February 2019, *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, no. 14165/16, §§ 55-57, 13 June 2019, *W.S. v. Greece*, no. 65275/19, §§ 25-30, 23 May 2024.

71. The provisions of national and international law and practice applicable to minors regarding, *inter alia*, the measures to be taken in their best interests have been described in *Rahimi v. Greece*, §§ 25, 28-29, 33 and *O.R. v. Greece*, §§ 25-27 (cited above).

72. Moreover, it can be seen from the Court's case-law that, as part of their positive obligations under Article 3 of the Convention, the States Parties are required to protect and take care of unaccompanied foreign minors (*Khan v. France*, no. 12267/16, § 44, 28 February 2019). Effective protection shall be provided, particularly to children and other vulnerable members of society, including reasonable measures to prevent ill-treatment of which the authorities have or ought to have knowledge (*Khan v. France*, §§ 73-74, cited above).

73. In the present case, the authorities had been duly informed of the applicants' need for shelter (see paragraph 4 above) and they were further informed of the fact that their provisional accommodation would be terminated (see paragraphs 23 and 37 above) but had not taken prompt action (see paragraph 4 above). The number of accommodation requests cannot absolve the authorities from their positive obligations.

74. There has accordingly been a violation of Article 3 of the Convention.

C. As regards the applicants' conditions of detention following placement in protective custody in the Tavros pre-removal detention centre (PRDC)

75. The applicants complained of poor conditions incompatible with their vulnerable status and age.

76. The Government submitted that, even if the conditions at the PRDC of Tavros could not be considered ideal, they were not so severe as to qualify as degrading treatment under Article 3 of the Convention, particularly taking into account the length of detention of nine days.

77. The general principles concerning the conditions of detention of unaccompanied minors have been summarised in *H.A. and Others v. Greece*, §§ 167-170, *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, §§ 48-50 (cited above). The Court has concluded to a violation of Article 3 in cases of detention of unaccompanied minors for several days in *A.B. and Others v. France*, no. 11593/12,

§§ 109-115, 12 July 2016, *R.M. and Others v. France*, no. 33201/11, §§ 68-76, 12 July 2016, *A.M. and Others v. France*, no. 24587/12, §§ 50-53, 12 July 2016, *R.K. and Others v. France*, no. 68264/14, §§ 67-72, 12 July 2016, and *R.C. and V.C. v. France*, no. 76491/14, §§ 35-40, 12 July 2016, *W.S. v. Greece*, §§ 25-30 (cited above).

78. Having regard to the combined factors of the applicants' age, the length of detention and the unsuitability of the detention regime (*inter alia*, they were detained with adults, see paragraph 35 above), the Court finds that the authorities subjected the applicants to treatment which exceeded the threshold of severity required to engage Article 3 of the Convention.

79. There has accordingly been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

80. The applicants stated that, when placing them in detention, the authorities did not consider their personal circumstances and particular vulnerabilities. They noted that it was the way and execution of the measure that resulted in the unlawful deprivation of their liberty. They also asserted that, although an available place had been found on 20 March 2019, they remained on the detention premises until 23 March 2019 instead of being immediately transferred.

81. The Government submitted that even if protective custody should be deemed to qualify as a measure of deprivation of liberty, it was lawful within the meaning of Article 5 § 1 of the Convention.

82. The general principles concerning the regime of protective custody of unaccompanied minors have been summarised in *H.A. and Others v. Greece*, §§ 198-208, *Rahimi v. Greece*, §§ 108-110, and *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia*, no. 14165/16, § 69 (cited above).

83. The Court notes that the applicants' placement in detention facilities resulted in deprivation of their liberty which fell under Article 5 § 1 (f) of the Convention (*H.A. and Others v. Greece*, §§ 192-200, cited above).

84. The Court notes that the authorities placed the applicants in protective custody in the detention facility until an accommodation structure was found. According to domestic law, persons subject to protective custody are those who, due to their age or mental or psychological condition, are a danger to public order or may expose themselves to danger. The Court refers to its case-law in *H.A. and Others v. Greece*, § 202, noting that domestic law does not provide for a time-limit to the detention in question, entailing the risk that unaccompanied minors might be detained for a long time. Having regard to the legal framework and the conditions of detention in the present case (see paragraph 78 above) the Court observes that the detention was not lawful.

85. There has accordingly been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

86. The applicants submitted that there was no available remedy to challenge the measure of protective custody.

87. The Government submitted that there has been no violation of Article 5 § 4.

88. The relevant context regarding an effective procedure by which they could challenge the lawfulness of their detention has been described in *H.A. and Others v. Greece*, §§ 210-213 (cited above).

89. The Court observes that as no decision had been issued (see paragraph 51 above), it would not have been possible for the applicants to challenge their detention. As they were under prosecutorial authority, a report to the director of the facility would not have been effective.

90. There has accordingly been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

91. The Government submitted that the complaints had been prematurely introduced as the examination of the applicants' asylum application was pending at the time and therefore domestic remedies had not been exhausted.

92. In their written observations, the applicants stated that they had been informed that, at their request, they would be interviewed sooner than initially scheduled. In view of the above development, they had withdrawn, at the time, their complaints under Articles 3 and 13 of the Convention and they had not addressed the Government's objection.

93. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

94. The interim measure previously indicated in this application therefore ceases to have any basis.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. Each of the applicants claimed 8,000 euros (EUR) in respect of non-pecuniary damage for a violation of Articles 3 and 5 §§ 1 and 4 of the Convention.

96. The Government contested these claims.

97. The Court considers it reasonable to award each of the applicants EUR 7,400 in respect of non-pecuniary damage, plus any tax that may be chargeable to them.

98. Since no claims have been made for costs and expenses the Court does not award any sum in this regard.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible as regards the complaints under Article 3 in respect of the living conditions of the applicants for the period between 23 January 2019 and 13 March 2019 and the conditions of detention during protective custody under Article 5 §§ 1 and 4, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay each of the applicants, within three months, EUR 7,400 (seven thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 3 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sophie Piquet
Acting Deputy Registrar

Stéphanie Mourou-Vikström
President