



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

FIFTH SECTION

CASE OF F.S. AND A.S. v. HUNGARY

(Application no. 50872/18)

JUDGMENT

STRASBOURG

19 June 2025

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

In the case of F.S. and A.S. v. Hungary,

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

Stéphanie Mourou-Vikström, *President*,

Gilberto Felici,

Kateřina Šimáčková, *judges*,

and Sophie Piquet, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 50872/18) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 22 October 2018 by two Afghan nationals, F.S. and A.S. (“the applicants”), who were born in 2003 and 2011 respectively, live in Gressvik, Norway and were represented by Ms B. Pohárnok, a lawyer practising in Budapest;

the decision to give notice of the application to the Hungarian Government (“the Government”), represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice;

the decision not to have the applicants’ names disclosed;

the parties’ observations;

Having deliberated in private on 28 May 2025,

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

SUBJECT MATTER OF THE CASE

1. The applicants are brothers who fled Afghanistan, after they had lost their parents in a bombing. They travelled through Pakistan, Iran, Turkey, Bulgaria, and Serbia. On 24 October 2017 they entered the Hungarian transit zone in Röszke and applied for asylum.

2. Upon registration, the applicants were asked about their age. They submitted that they did not know the exact date of their birth, but they declared to be fourteen and seven years old respectively. As they did not have any documents to prove their age, the asylum authority subjected them immediately to a medical examination to determine their age. It included questions about the applicants’ personal circumstances, medical history, and an assessment of their physical appearance, examining their primary and secondary sexual characteristics and teeth. The first applicant was assessed to be over eighteen years old, while the second applicant was considered to be younger than fourteen.

3. On the same day the asylum authority ordered that the applicants be accommodated in the Röszke transit zone pending the asylum proceedings.

4. The first applicant agreed to become the legal representative of the second applicant. On 25 October 2017 the applicants instructed a lawyer to represent them.

5. On the same day the asylum authority suspended the asylum proceedings to decide which country is responsible for the examination of the applicants' asylum claims, because a search in the EURODAC system revealed that the first applicant, registered as an unaccompanied minor, had applied for asylum in Bulgaria on 23 August 2017.

6. On 26 October 2017 the first applicant requested a fresh medical examination claiming to be under eighteen years old. The applicants' legal representative asked that the asylum authority appoint a medical expert to establish his age.

7. On 30 October 2017 the asylum authority appointed a medical expert who examined the first applicant on 17 November 2017. This included an assessment of physical appearance, development and secondary sexual characteristics and dental examination. According to the expert opinion, the first applicant's age was between eighteen and nineteen years.

8. Fearful of being transferred to Bulgaria, the applicants began a hunger strike that lasted for three days in early January 2018. After representatives of the asylum authority spoke to the first applicant, the applicants started to eat again.

9. On 3 January 2018 the asylum authority decided that the Republic of Bulgaria was responsible for examining the applicants' asylum application.

10. On 7 February 2018 the Szeged Administrative and Labour Court quashed the asylum authority's decision and remitted the case to the authority, finding that Hungary was responsible for the examination of the applicants' asylum requests. The court also noted that the applicants were members of a vulnerable group.

11. On 23 April 2018 the applicants were granted subsidiary protection and they were subsequently transferred to an open reception facility. They left Hungary four days later. According to information received on 10 September 2021, the applicants were residing in Norway.

12. During their stay in the transit zone, the applicants were accommodated in a five-person container where they lived by themselves. They were not allowed to leave their section except when escorted by guards or police officers for medical or other appointments. Besides the general conditions which have been described in *R.R. and Others v. Hungary* (no. 36037/17, §§ 10-12, 14-17 and 30-31, 2 March 2021) they also complained about the lack of any psycho-social support provided to them, despite the fact that the authorities were aware of their vulnerability. Both applicants were taken to the psychiatric department of the Szeged hospital when they had refused to eat (see paragraph 8 above). In the psychiatric examinations of the first applicant conducted on 5 and 8 January 2018, no psychiatric illness was found but it was noted that his behaviour was characterised by stress reactions to his current life situation as well as by manipulative tendencies. The second applicant was given medication for anxiety, and it was recommended that he be kept under supervision and

receive psychological support from a social worker or psychologist. There was no further report from a psychiatrist in the case file, but medical records from the transit zone showed that both applicants had frequently consulted the psychologist in the transit zone and that the first applicant had also eventually been prescribed medication for anxiety.

13. In their application, they complained under Article 5 §§ 1 and 4 of the Convention about their detention in the transit zone. Moreover, relying on Articles 3 and 8 of the Convention, taken alone and in conjunction with Article 13, they complained about the conditions in the transit zone amounting to a violation of their private and family life and the lack of an effective remedy. Under Article 8, read alone and in conjunction with Article 13, they complained about the process of their age assessment and the lack of effective remedy.

THE COURT’S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

14. The Government referred to the fact that in the case of *Ilias and Ahmed v. Hungary* ([GC], no. 47287/15, §§ 186-194, 21 November 2019) the Court had rejected the applicants’ complaint that they had been placed in inhuman or degrading conditions in the Röszke transit zone. They furthermore submitted that the second applicant had been treated by the authority as a minor in need of special treatment. The applicants disagreed in general terms, highlighting in particular the mental health issues of the applicants.

15. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds (see *R.R. and Others v. Hungary*, no. 36037/17, §§ 39-40, 2 March 2021). It must therefore be declared admissible.

16. The general principles concerning the confinement and living conditions of asylum-seekers have been summarised in *Khlaifia and Others v. Italy* ([GC], no. 16483/12, §§ 158-69, 15 December 2016) and with respect to the confinement of minors in *S.F. and Others v. Bulgaria*, (no. 8138/16, §§ 78-83, 7 December 2017), *M.H. and Others v. Croatia*, (nos. 15670/18 and 43115/18, §§ 183-186, 18 November 2021), and *R.R. and Others* (cited above, § 49).

17. In *R.R. and Others* (cited above, §§ 52, 60-64) the Court has already examined the physical conditions in the Röszke transit zone, the suitability of the facilities for adults and children, and the provision of medical services at the material time. It concluded that those conditions might not attain the threshold of severity required to engage Article 3 where the confinement was of a short duration. However, in the case of a longer period, repetition and accumulation of such conditions would necessarily have harmful

consequences for those exposed to them (*ibid.*, § 64). The Court has repeatedly held in this connection that the passage of time is of primary significance for the application of Article 3 of the Convention (*ibid.*, § 64 and see also *M.H. and Others*, cited above, § 199).

18. As regards the first applicant, the Court notes that he was a vulnerable individual (see paragraph 10 above) who persistently complained about the psychological effects of his confinement in the transit zone. However, in view of the findings of the psychiatrists, the mental health support admittedly provided to him (see paragraph 12 above) and all other information in its possession, the Court cannot conclude that the effect of the conditions in the transit zone was such as to attain the threshold of severity required to engage Article 3 of the Convention. This part of the application is therefore manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected under Article 35 § 4 of the Convention.

19. As regards the second applicant who was considered by the authorities to be under the age of fourteen at the relevant time, the present case is similar to that of *R.R. and Others*. The Court found a violation of Article 3 in that case, owing to the conditions to which the applicant children were subjected during their almost four-month stay in the Röske transit zone (see *R.R. and Others*, cited above, §§ 58-60 and 63-65). In the present case, where the second applicant spent six months in the Röske transit zone, the Court sees no reasons to find otherwise, and concludes that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 4 OF THE CONVENTION

20. The Government submitted that the applicants had not been deprived of their liberty in the transit zone, but they had entered and stayed there voluntarily. The applicants disagreed.

21. The Court notes that the applicants' complaint that they had been confined to the transit zone in violation of Article 5 §§ 1 and 4 of the Convention is similar to the one examined in the case *R.R. and Others*. In that case the Court found that the applicants' stay of almost four months in the transit zone amounted to a *de facto* deprivation of liberty (cited above, §§ 74-83). The Court, having regard to all the relevant circumstances, does not consider that the present case warrants a different conclusion. Article 5 is therefore applicable (see also *H.M. and Others v. Hungary*, no. 38967/17, § 30, 2 June 2022, and compare *O.Q. v. Hungary* [Committee], no. 53528/19, § 15, 5 October 2023). This part of the application, which is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds, must therefore be declared admissible.

22. Having examined all the material before it, the Court concludes that the above complaints disclose a violation of Article 5 §§ 1 and 4 of the

Convention in the light of its findings in *R.R. and Others* (cited above, §§ 87-92 and 97-99).

III. OTHER COMPLAINTS

23. The applicants further complained that the incorrect and intrusive age assessment procedure violated their right to private life under Article 8 of the Convention and that they had no effective remedy in this regard in breach of Article 13. They submitted that they could only challenge the expert opinion as part of an appeal against the substantive decision on their asylum applications, but this did not provide an effective remedy for two reasons. Firstly, since they had received a decision granting them subsidiary protection, they did not wish to appeal against the decision. Secondly, as the expert opinion which was the basis for their detention could only be appealed at the end of the asylum procedure, this appeal would have had no impact on the procedure of age assessment.

24. The Court notes that the applicants complained about the manner in which the authorities attempted to determine their age, referring to the procedure's substandard, incorrect and intrusive nature, and the fact that they had no effective remedy at their disposal. However, the applicants, who could apparently not avail themselves of any means of directly challenging the manner and outcome of the age assessment, should have lodged their application with the Court within six months from the impugned medical examinations, had they considered that no effective remedy was available to them (see, *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009). The medical examinations took place on 24 October 2017 and 17 November 2017 and the application was lodged on 22 October 2018. The Court accordingly considers that this complaint was lodged out of time. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

25. The applicants also complained under Article 8 alone and under Article 13 read in conjunction with Articles 3 and 8 of the Convention about the conditions of their detention and the lack of an effective remedy. Having regard to the facts of the case, the submissions of the parties, and its findings above concerning an alleged violation under Article 3 of the Convention, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

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26. The applicants claimed 13,000 euros (EUR) each in respect of non-pecuniary damage and EUR 5,550 jointly in respect of costs and expenses incurred before the Court.

27. The Government considered these claims excessive.

28. The Court awards the first applicant EUR 3,000 and the second applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicants.

29. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,500, jointly, for costs and expenses for the proceedings before the Court, plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 3 of the Convention, in so far as they concern the second applicant, as well as the complaints under Article 5 §§ 1 and 4 of the Convention, relating to both applicants, admissible;
2. *Declares* the complaints under Article 3, in so far as they concern the first applicant, and the complaints under Articles 8 and 13, in so far as they concern the applicants' age assessment, inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention as regards the second applicant;
4. *Holds* that there has been a violation of Article 5 §§ 1 and 4 of the Convention as regards both applicants;
5. *Holds* that there is no need to examine the complaints under Article 8 alone and Article 13 read in conjunction with Articles 3 and 8 of the Convention in so far as they concern the conditions in the transit zone;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros) to the first applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 4,000 (four thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 1,500 (one thousand five hundred euros), jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 19 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sophie Piquet
Acting Deputy Registrar

Stéphanie Mourou-Vikström
President