



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

Communicated on 29 June 2017

## FOURTH SECTION

Application no. 22934/17  
Ahmed HERSI MUHYADIN and others  
against Hungary  
lodged on 24 March 2017

### SUBJECT MATTER OF THE CASE

The application concerns the possible transfer of the five minor applicants between the ages of 14 and 18 to the guarded transit zone situated on the border between Hungary and Serbia.

By force of Government Decree no. 36/2017 (6 March) the Hungarian Government announced a “state of emergency due to mass migration” until 7 September 2017. Several sections of Act no. LXXX of 2007 on Asylum have been modified. The amended law entered into force on 28 March 2017. According to section 1 of the amending act during the “state of emergency due to mass migration”, unaccompanied minors between the ages of 14 and 18 are to be treated as adult migrants and thus they will be transferred to guarded transit zones. Unaccompanied minors under the age of 14 will be allowed to stay in the child protection system outside these zones.

According to section 7 of the amending act, during the “state of emergency due to mass migration”, all asylum-seekers will be placed in the transit zone until the asylum proceedings are terminated or until they are transferred to another EU member state under the Dublin Regulation. They are allowed to leave the transit zone only in the direction of Serbia. Furthermore, based on section 9 of the same act, the new provisions shall be applied retrospectively, even with regard to asylum-seekers whose cases were already pending at the entry into force of the new regulation. As a consequence, the transfer of the applicants to the transit zone is likely to take place.

They claim that given their vulnerable status (minors), the prevailing conditions and the risk of *chain-refoulement* (to Serbia and then the former Yugoslav Republic of Macedonia, eventually driving them to Greece), their confinement in the transit zone for an unknown period of time would amount to inhuman treatment in breach of Article 3 read alone and in conjunction with Article 13 of the Convention. Furthermore, their possible deprivation of liberty in the transit zone would be unlawful and could not be

remedied by appropriate judicial review, in breach of Article 5 §§ 1 and 4 of the Convention.

Based on the above, on 24 March 2017 the applicants submitted a request for an interim measure under Rule 39 of the Rules of Court. On 27 March 2017 their request was granted.

### QUESTIONS TO THE PARTIES

1. Would the detention of the applicants, minors, in particular the material conditions at the transit facility in its present state amount to inhuman treatment (see, *mutatis mutandis*, *Popov v. France*, nos. 39472/07 and 39474/07, § 102, 19 January 2012)?

2. Before deciding on their expulsion to Serbia, would the authorities consider the applicants' claim that they would be exposed to a risk of chain-*refoulement* amounting to inhuman or degrading treatment?

3. Would the applicants have at their disposal an effective domestic remedy for their Convention complaints under Article 3 (see Question 1 above), as required by Article 13 of the Convention, to complain about the material conditions of their detention in the transit zone?

4. Would the applicants be deprived of their liberty in breach of Article 5 § 1 of the Convention in the transit zone (see, *mutatis mutandis*, *Amuur v. France*, 25 June 1996, § 38-49, *Reports of Judgments and Decisions* 1996-III)?

5. Would the applicants have at their disposal an effective procedure by which they could challenge the lawfulness of their detention, if any (see Question 4 above), as required by Article 5 § 4 of the Convention?

## **APPENDIX**

- 1.** Ahmed HERSI MUHYADIN born on 05/01/2001 is a Somali national who was born in 2001 and is represented by Ms Barbara Pohárnok.
- 2.** Ali AL-ABDULLAH born on 10/01/2001 is a Syrian national who was born in 2001 and is represented by Ms Barbara Pohárnok.
- 3.** Kirilas EID born on 25/01/2001 is an Egyptian national who was born in 2001 and is represented by Ms Barbara Pohárnok.
- 4.** Jabarkhil GARAMAN born on 01/01/2000 is an Afghan national who was born in 2000 and is represented by Ms Barbara Pohárnok
- 5.** Abdoul JALLOW born on 03/05/2000 is a Gambian national who was born in 2000 and is represented by Ms Barbara Pohárnok.
- 6.** Mustafa LATIF MAMANT born on 01/08/1999 is an Iraqi national who was born in 1999 and is represented by Ms Barbara Pohárnok
- 7.** Ahmad SHAKEEL born on 10/12/1999 is a Pakistani national who was born in 1999 and is represented by Ms Barbara Pohárnok.
- 8.** Ali USAMA born on 03/09/1999 is a Pakistani national who was born in 1999 and is represented by Ms Barbara Pohárnok.