



STATELESSNESS

Case Law Database

[ECTHR - A.J. v. Greece](#)

The applicant is a stateless Palestinian and unaccompanied minor who was granted asylum in Greece in 2016 together with his father and siblings. Due to neglect by the father, the applicant and his siblings were placed in care and the prosecutor decided it was in their best interests to return to the Occupied Palestinian Territory to reunite them with their mother. The application concerns the decision to return him to the Occupied Palestinian Territory, which the children were opposed to, the reception conditions in Greece, and the failure to appoint a guardian. The Court decided to strike the application as inadmissible as the applicant was no longer at risk of being returned to the Occupied Palestinian Territory when the decision was revoked by the authorities.

Case status: Decided

Case number: Application no. 34298/18

Citation: European Court of Human Rights, A.J. v. Greece (application no. 34298/18), 26 April 2022

Date of decision: 26/04/2022

State: Greece

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: English

Applicant's country of birth: Palestine

Applicant's country of residence: Greece

Legal instruments: Convention on the Rights of the Child (CRC), European Convention on Human Rights (ECHR)

Key aspects: Childhood statelessness, Exclusion grounds, Respect for private and family life, Statelessness and asylum

Relevant Legislative Provisions:

ECHR Articles 3, 8 and 13

Greek Law no. 4375/2016 transposing Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting

and withdrawing international protection (recast), as applicable at the time, Articles 34, 36, 45, 52

Greek Civil Code, Articles 1532, 1589, 1592

Greek Presidential decree no. 141/2013, Article 23

Greek Law no. 4540/2018. Article 21

Facts

The applicant, born in the Occupied Palestinian Territory of Tulkarm, arrived in Greece in August 2016 with his father and three siblings while the applicant's mother stayed behind with the family's fifth child. His father subsequently applied for asylum for himself and his four children. The Asylum Service agreed that the applicant's family were stateless Palestinians and *ipso facto* refugees, and on 14 September 2016, they were all granted residence permits.

In view of the health problems faced by the applicant's father, it was considered necessary that the family be supervised by the social services of the host facility. It was observed that he drank excessively, neglected his children, and became violent towards them, leading the children to be taken away from their father in May 2017. The father eventually passed away in April 2018.

In December 2017, the applicant was placed in a facility in Pylaia, while the rest of his siblings were placed in separate facilities in Athens. Letters were sent to the prosecutor, highlighting the applicants poor psychological state, and stressing the importance of reuniting him with his siblings.

The prosecutor, once in contact with the applicant's mother, decided that family reunification of the applicant and his siblings with his mother and aunt in the Occupied Palestinian Territory was in the best interests of the children. It was established that the applicant's mother wanted to and was able to care for her children. It was also confirmed that the applicant's mother and aunt lived in Tulkarem, which was a safe city, and that the mother was legally a resident in the Occupied Palestinian Territory.

The managers of the relevant reception facilities were asked to inform the children of the decision. Neither the staff members of the facility, nor the applicant himself, had been contacted about the developments. The social worker of the facility where

the applicant was being accommodated informed the prosecutor that they had been indirectly informed of the return decision without any prior notification. The decision had been so sudden that the applicant and the staff members of the facility could not properly handle the news and prepare the applicant in such short notice about a return to the Occupied Palestinian Territory.

The siblings had communicated with each other and decided to refuse to return.

After the prosecutor was informed of the siblings' wish to not be reunited with their mother and their preference to stay in Greece, she withdrew her order regarding the children's travel and requested that a reception facility be found to accommodate the siblings together.

The applicant and his siblings are all staying in reception facilities in Athens to facilitate their communication, where the prosecutor continues to monitor the situation of all four children. The prosecutor asked the Asylum Service to take the necessary steps so that the applicant and his siblings could regain their refugee status and on January 21, 2019, the applicant and his siblings were regranted refugee status.

Legal arguments by the applicant

The applicant complained that his return to the Occupied Palestinian Territory would give rise to a violation of Article 3 of the Convention, taken alone and in conjunction with Article 13.

He additionally complained that Greek authorities had failed to provide him with the proper psychological and psychosocial support, despite numerous doctors' recommendations. He had been placed in hospital many times and at every stage the doctors in charge had recommended that he be treated for his past experiences; however, no such treatment had taken place. Additionally, he complained that he had had no effective domestic remedy for his complaint in that regard.

The applicant argued that the failure to appoint a legal guardian for him, combined with the deficient procedure followed by domestic authorities concerning his return to the Occupied Palestinian Territory, had resulted in a violation of Article 8. Despite his vulnerability as an unaccompanied minor, court proceedings had never been initiated to have a guardian appointed.

Lastly, the applicant complained that his placement in a reception facility away from his siblings had violated his rights under Article 8. He submitted that from December

2017, he had been living away from his siblings, who had been in different facilities 504 km away in Athens.

Legal arguments by the opposing party

The Government submitted that the applicant no longer had victim status, as he had been regranted refugee status and was no longer at risk of being returned to the Occupied Palestinian Territory. They argued that he had not exhausted domestic remedies and, as it did not appear from the evidence in the case file that the domestic authorities had acted illegally or without the applicant's best interests being taken into consideration, the relevant complaints should be rejected as manifestly ill-founded.

The Government also responded that the domestic authorities from the outset had assessed and monitored the applicant's mental health. Based on the reports, a continuous effort had been made to accommodate the applicant in suitable facilities and provide him with necessary support. For the purposes of ensuring his mental and psychological health, it had been considered vital that he be reunited with his mother, and the temporary guardian had exercised her powers to achieve this aim.

They submitted that the prosecutor had acted as the applicant's temporary guardian with a view to ensuring his mental and psychosocial health. On the basis of her assessment, it had been considered vital that the applicant be reunited with his mother, so she had designated a representative to handle the applicant's case before the competent asylum and consular services in order to achieve that aim. Moreover, as shown by his application to the Court, the applicant had found other lawyers to represent him and defend his legal interests. It had been entirely possible for him to receive information concerning his rights and even apply for the appointment of a guardian. The applicant's complaint should therefore be rejected, as he had never submitted a request for a guardian to the domestic courts, even though he had legal representation.

Lastly, the Government maintained that the applicant could not be hosted at the same facility as his siblings as they were of different ages and/or sex. In any event, the four siblings now lived in Athens and were in regular contact.

Decision & Reasoning

The Court concludes that the applicant is not at risk of being returned to the Occupied Palestinian Territory either at present or in the foreseeable future. The applicant was regranted refugee status following the revocation of his refugee status and the subsequent cancellation of his return trip to the Occupied Palestinian Territory and the Court has no reason to doubt the validity of the refugee status granted or its binding effect. Consequently, he is no longer at risk of being returned to the Occupied Palestinian Territory and the Court considers that it is not justified to continue the examination of this part of the application.

From the information provided to the Court, it is apparent that the applicant's mental health was monitored on a regular basis. His medical treatment does not pose any problem under the Court's case-law under either Article 3 or Article 8 of the Convention. This complaint is manifestly ill-founded and must be rejected. As the Court has declared the complaint ill-founded, his complaint under Article 13 of the Convention cannot be considered "arguable." It follows that this complaint is manifestly ill-founded and must be rejected.

While the Court recognizes the importance of the principle of the child's best interest and of the child's right to be heard in all decisions that concern him, it notes that this complaint relates to the procedure followed in respect to the now obsolete decision to return the applicant to the Occupied Palestinian Territory. In view of its conclusion that it is not justified to continue the examination of the complaint concerning the applicant's return, and in the absence of any enduring uncertainty, the Court concludes that there is no need to examine separately the applicant's complaint under Article 8, taken alone and in conjunction with Article 13 of the Convention.

The Court accepts that not all the siblings could be accommodated in the same facility because the establishments were organized according to the age and gender of the children. In regard to the placement of the children in facilities in different cities, the applicant was only completely separated from his siblings for a short period and there appears to have been regular contacts between the siblings. Additionally, the authorities ultimately took the necessary steps after to reunite the children. This complaint is manifestly ill-founded and must be rejected.

Decision documents

[Judgment](#)

Outcome

The Court unanimously decides to strike the application in respect to the applicant's complaint under article 3, taken alone and in conjunction with Article 13, concerning his return to the Occupied Palestinian Territory, holds that there is no need to examine separately the complaint under Article 8 of the Convention concerning the guardianship and the procedure followed in respect of the applicant's representation and revocation of his refugee status, either alone or taken in conjunction with Article 13, and declares the remainder of the application inadmissible.

Third party interventions

The organization Defence for Children highlighted the multiple vulnerabilities faced by refugee children due to their youth and their background. Relying on the Court's case-law under Article 8, they argued that a lack of medical care in respect of mental problems, despite doctors' recommendations, was very harmful, particularly for a child. In this context, they argued that Article 8 of the Convention should be read in the light of the relevant provisions of the Convention on the Rights of the Child, namely the right to the best possible healthcare (Article 24), the right to extra protection for victims of all sorts of violence or neglect in order for them to be reintegrated in society (Article 39) and the right to specific protection for refugee children and asylum seeking children (Article 22).

Defence for Children submitted that the specific vulnerabilities of unaccompanied child refugees were also relevant when assessing whether the separation between siblings constituted a violation of Article 8 of the Convention. The present case raised the issue of the right to family life of asylum seeking and refugee siblings living separately in a receiving country. In the light of the specific vulnerabilities that children present, the enduring separation of siblings without a parent who took care of them could well constitute a violation of Article 8.