Detention of UAC & strategic litigation

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Detention of children asylum seekers (art. 46 (10) (b) L.4375/2016)

Separated and unaccompanied minors who applied for international protection **while in detention** according to the relevant provisions of Law 3386/2005 and Law 3907/2011, may remain in detention, **as a last resort solution**, only to **ensure that they are safely referred to appropriate accommodation facilities for minors**

Detention of children asylum seekers - time limits, place of detention

Exclusively imposed for the necessary time for the safe referral to appropriate accommodation facilities and **cannot exceed twenty-five (25) days**;

Detention may be prolonged for a further twenty (20) days (when due to exceptional circumstances and despite the reasonable efforts by competent authorities, it is not possible to provide for their safe referral to appropriate accommodation facilities)

Separated and unaccompanied minors shall be detained **separately from adult detainees**.

They shall be given the possibility to occupy themselves with activities, including games and recreational activities appropriate for their age.

Detention in view of return

Minors third country nationals staying irregularly on the Greek territory, and do not fall under the exception clause of Art. 41 of the same law, may be subject to return procedures (Art.21 of Law 3907/2011).

Unaccompanied minors and families with minors shall only be detained as a measure of last resort, when no other adequate and less coercive measure can be used for the same purpose and for the shortest appropriate period of time.

Minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have, depending on their length of stay, access to education. (art. 32 of Law 3907/2011)

The child's best interests and family life shall be taken into consideration. (Art. 20 Law 3907/2011).

Minors under Protective Custody

Minors can be found in police detention facilities under **protective custody (detention) until their referral to appropriate accommodation facilities or until they are reunited with the persons exercising parental care** (Art.118 of Presidential Decree 141/1991). No time-limits are provided by law for the placement of minors in police detention facilities under protective custody

Monitoring detention of children by UNHCR

UNHCR Greece has elaborated a **handbook** describing the legal framework and practices regarding detention as well as the policy for monitoring detention activities, based on the UN High Commissioner for Refugees (UNHCR), the Association for the Prevention of Torture (APT) and the International Detention Coalition (IDC), Monitoring Immigration Detention

Detention monitoring tool
Detention of UASC

	Referral to EKKA and Public Prosecutor					
	103. Are there UASC detained that haven't been referred to the National Center for Social Solidarity (EKKA)?	☐YES	☐NO			
	104. Are there UASC detained that Public prosecutor has not been informed?	☐YES	☐NO			
	Detention of UASC asylum seekers					
	105. Are there UASC in detention that have lodged an asylum claim? If yes:	☐YES	☐NO			
46 (10) (b) L. 4375/2016	a. Is a specific detention order based on art. 46 (10) (b) normally issued?	☐YES	☐NO			
46 (3) L. 4375/2016	b. Is the detention order normally issued following a relevant recommendation of the asylum service?	☐YES	☐NO			
46 (10) (b) L. 4375/2016	c. Is this normally decided as a measure of last resort? Are any alternatives to detention normally considered?	☐YES	☐NO			
46 (10) (b) L. 4375/2016	106. Are there UASC asylum seekers detained for more than 45 days (25 +20 days)?	☐YES	☐NO	Of specific nationalities?		
118 (2) (a) P.D. 141/1991	107. If yes, does this normally happen upon an order for protective custody of the PP?	☐YES	☐NO			

[1] UNHCR should cross check that all UASC detained have been referred to EKKA.

	Detention of UASC in view of return				
Art. 21&30 L. 3907/2011	108. Are there UASC detained based on a detention order in view of return?	☐YES	☐NO		
	109. Are the return procedures implemented?	☐YES	☐NO		
30 (1), 32 L. 3907/2011	110. Do the decisions justify why no alternatives to detention were used?	☐YES	☐NO		
Art. 20, 25 L. 3907/2011, 19 P.D. 220/2007	111. Before deciding to issue a return decision with regard to an unaccompanied minor, have the best interests of the child been taken into consideration?	☐YES	☐NO	BIA/BID?	
	112. Has support been provided by child protection actors other than the authorities enforcing return?	☐YES	☐NO		
	a. If yes, what kind of support has been provided (legal/ psychosocial/ other)?				
	113. Before deporting/returning an unaccompanied minor, do the competent authorities ascertain that he/she will be returned to a member of his/her family, a nominated guardian or appropriate reception facilities in the State of return?	☐YES	☐NO		
	114. What is the average/maximum duration of detention of minors observed?				

	Detention of UASC under protective custody status				
118 (2) (a) P.D. 141/1991	115. Are there any children under protective custody?	☐YES	☐NO		
	116. Is this normally done following a written order of the Public Prosecutor? 117. What is the average/maximum duration of protective custody observed during the visit?				
	Further administrative treatment				
	118. What kind of administrative decisions do the UASC/guardians receive upon transfer to reception facilities?				
	a. In case he is an asylum seeker	status			
	b. In case he is not an asylum seeker	status			

	Detention conditions and standards				
	119. Are there children that have been separated from their families?	☐YES	☐NO		
	120. Are there children detained along with adult detainees?	☐YES	☐NO		
	121. Have they been given the possibility to occupy themselves with activities, including games and recreational activities appropriate for their age?	☐YES	☐NO		

	Possible detention of UASC as adults				
Ministerial decision No. 1982/2016 as well as art. 6 of Ministerial Decision No 92490/29.10.2013	122. Are there persons in detention who declare that they are children and due to serious deficiencies in the practical implementation of formal age assessment procedures by police authorities, are registered and detained as adults?	☐YES	☐NO		
	123. If yes, have the police authorities subjected the UASC to age assessment, although a decision following formal procedures of age assessment had been already issued by the competent authorities (RIS and AS)?	☐YES	☐NO		
	124. Is there any standard procedure implemented by the police authorities regarding age assessment?	☐YES	☐NO		
	a. If yes, is age assessment initiated by the police authorities only in the case of serious doubts regarding the age of the detainee?	☐YES	☐NO		
	125. Are there any specialized professional staff (psychologists, social workers etc.) or guardians who ensure that all decisions are taken in the child's best interests?	☐YES	☐NO		

[1] The term "formal age assessment procedures" in this tool refers to the procedures applied in the Greek legal framework, namely Ministerial decision No. 1982/2016 (procedure initiated by the Asylum Service) as well as art. 6 of Ministerial Decision No 92490/29.10.2013 (procedure applied by the Reception and Identification Service).

[2] If no, UNHCR could follow up with the authorities, so the persons could be subject to formal age determination procedures.

	Detention conditions vulnerable cases and children				
	126. Are UASC detained in separate space?	☐YES	☐NO		
32 (2) L. 3907/2011	127. Is separate family accommodation guaranteeing adequate privacy and safety for children provided?	☐YES	☐NO		
32 (3) L. 3907/2011	128. Do minors in detention have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age?	☐YES	☐NO		
32 (3) L. 3907/2011	129. Do children in detention have access to education?	☐YES	☐NO		
32 (4) L. 3907/2011	130. Are personnel and facilities suitable for taking into account the needs of vulnerable individuals?	☐YES	☐NO		

H.A. and Others v. Greece

On 28/2/2019 ECtHR delivered the **judgement H.A. and Others v. Greece.**

The case concerns alleged violations of the European Convention on Human Rights (ECHR) by Greece for the detention (for periods from 21 to 35 days) in police stations in northern Greece (Axioupoli, Idomeini, Kilkis, Polykastro, Orestiada, Fylakio) of nine asylum-seeking unaccompanied and separated children (six Syrian nationals, two Iraqi nationals and one Moroccan national) and in relation to sub-standard reception conditions in the Diavata refugee camp. The material time relates to March 2016 just before the publication of the EU-Turkey Statement in March 2016.

UNHCR submitted written observations to the ECtHR in respect of the case on 30 March 2017.

Main conclusions of the ECtHR in its judgment:

- **Violation of Art. 3 ECHR** (prohibition of torture) on account of the applicants' detention in the various police stations in Northern Greece;
- **No violation of Art. 3 ECHR on account of the reception conditions in the Diavata camp**;
- **Violation of Article 13 ECHR** (right to an effective remedy) combined with Art. 3 ECHR on account of the lack of an effective remedy to request the applicants' transfer to the Diavata camp or to challenge the detention conditions;
- **Non-applicability of Art. 5(1)(d)** ECHR and violation of Article 5(1)(f) (right to liberty and security) on account of the illegal detention of the applicants;
- **Violation of Article 5(4)** (right to a speedy decision on the lawfulness of a detention measure)

- **It is the first ECtHR judgement to assess under Articles 3, 13, 5(1) and 5(4) ECHR specifically the legality of the practice of "protective custody" of minors (article 118 of p.d. n. 141/1991), implemented in police stations.** The court found that the implementation of the above practice to UASC in the context of immigration law should be regarded as **a deprivation of liberty** and thus the procedural guarantees provided for detention should also be applied when placing minors under protective custody.
- ECtHR reaffirmed that the only relevant ground of detention in the immigration context remains Article 5(1)(f) and that such ground involves the **need to demonstrate the necessity of the detention as a last resort and for the shortest possible duration for unaccompanied migrant children.**
- The above judgement focuses particularly on the obligation of the Greek authorities to examine whether alternatives to detention have been explored and thus if detention is imposed as a measure of last resort.