



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

**DECISION ON ADMISSIBILITY AND  
ON IMMEDIATE MEASURES**

**23 May 2019**

**International Commission of Jurists (ICJ) and European Council for Refugees  
and Exiles (ECRE) v. Greece**

Complaint No. 173/2018

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 306<sup>th</sup> session attended by:

Giuseppe PALMISANO, President  
Karin LUKAS, Vice-President  
François VANDAMME, Vice-President  
Eliane CHEMLA, General Rapporteur  
Petros STANGOS  
József HAJDU  
Raul CANOSA USERA  
Barbara KRESAL  
Kristine DUPATE  
Aoife NOLAN  
Karin Møhl LARSEN  
Yusuf BALCI  
Ekaterina TORKUNOVA  
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint dated 23 November 2018, registered on 30 November 2018 as No. 173/2018, lodged by the International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) against Greece and signed by Catherine Woollard, Secretary General of ECRE, Rosin Pillay, Europe and Central Asia Programme Director of ICJ, requesting the Committee to find that Greece has failed to fulfil its obligations under the European Social Charter with regard to the rights of migrant minors to appropriate protection in breach of Articles 7§10, 11 §§ 1 and 3, 13, 16, 17 and 31 §§1 and 2 of the Revised European Social Charter ("the Charter");

Having regard to the observations of the Government of Greece ("the Government") on the admissibility of the complaint, registered on 31 January 2019;

Having regard to the Response from the International Commission of Jurists (hereinafter ICJ) and European Council for Refugees and Exiles (hereinafter ECRE) to the Government's observations, registered on 28 February 2019;

Having regard to the Charter and, in particular to Articles 7§10, 11 §§ 1 and 3, 13, 16, 17 and 31 §§1 and 2, which read as follows:

**Article 7 – The right of children and young persons to protection**

Part I: "Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed."

Part II: "With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

...

10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work. "

**Article 11 – The right to protection of health**

Part I: "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable."

Part II: "With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;

...

3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents."

(...)

**Article 13– The right to social and medical assistance**

Part I: "Anyone without adequate resources has the right to social and medical assistance."

Part II: "With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.”

#### **Article 16 – The right of the family to social, legal and economic protection**

Part I: “The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.”

Part II: “With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.”

#### **Article 17 – The right of children and young persons to social, legal and economic protection**

Part I: “Children and young persons have the right to appropriate social, legal and economic protection.”

Part II: “With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
  - b. to protect children and young persons against negligence, violence or exploitation;
  - c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family’s support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.”

#### **Article 31 – The right to housing**

Part I: “Everyone has the right to housing.”

Part II: “With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;”

Having regard to the Charter and to the Rules of the Committee (“the Rules”), in particular to Rule 36, which reads as follows:

**Rule 36 – Immediate measures**

1. Since the adoption of the decision on the admissibility of a collective complaint or at any subsequent time during the proceedings before or after the adoption of the decision on the merits the Committee may, at the request of a party, or on its own initiative, indicate to the parties any immediate measure the adoption of which seems necessary with a view to avoiding the risk of a serious irreparable injury and to ensuring the effective respect for the rights recognised in the European Social Charter.
2. In case of a request of immediate measures made by a complainant organisation, the request shall specify the reasons therefore, the possible consequences if it is not granted, and the measures requested. A copy of the request shall forthwith be transmitted to the respondent State. The President shall fix a date for the respondent State to make written submissions on the request of immediate measures.
3. The Committee’s decision on immediate measures shall be accompanied by reasons and be signed by the President, the Rapporteur and the Executive Secretary. It shall be notified to the parties. The Committee may request information from the respondent State on the implementation of the indicated measures.”

Having regard to the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules adopted by the Committee on 29 March 2004 at its 201st session and last revised on 26 January 2018 at its 297<sup>th</sup> session (“the Rules”);

Having deliberated on 23 May 2019;

Delivers the following decision, adopted on the above-mentioned date:

1. The International Commission of Jurists (ICJ) and the European Council for Refugees and Exiles (ECRE) allege that serious systemic flaws in Greek law, policy and practice, which deprive unaccompanied children in Greece (both on the mainland and islands) and accompanied migrant children on the Greek islands of rights to housing, health, social and medical assistance, education, and social, legal and economic protection, are contrary to the obligations of Greece under the European Social Charter. Specifically, the complainant organisations allege that said flaws result in a violation of Articles 7§10 (right of children and young persons to protection), 11§§1 and 3 (right to protection of health), 13 (right to social and medical assistance), 16 (right to appropriate social, legal and economic protection for the family), 17 (right of children and young persons to appropriate social, legal and economic protection) and 31§§1 and 2 (right to housing) of the European Social Charter.
2. The complainant organisations further submit that, pending the resolution of this complaint, Greece should take urgent measures in accordance with Rule 36 on

“Immediate measures” of the Rules of the European Committee of Social Rights. The ICJ and ECRE submit that it is necessary to adopt said immediate measures in order to avoid the risk of serious irreparable injury and to ensure effective respect for the rights recognised by the European Social Charter. They assert that for migrant children – who are in a particularly vulnerable situation – to remain in the conditions described in this complaint for even a short period of time would result in irreparable harm and injury, and would have a detrimental and non-reversible impact on their development.

3. According to the ICJ and ECRE, the migrant children whose rights are the subject of this complaint should immediately be:

- removed from overcrowded Reception and Identification Centres (RIC) on the Greek Islands and have access to appropriate accommodation facilities and care;
- provided with adequate housing of sufficient quality (that is secure, not overcrowded, with sufficient sanitation);
- provided with sufficient food and water;
- provided with adequate medical assistance, including mental health/psychological care and a healthy living environment;
- provided with access to free primary and secondary education;

Unaccompanied children should be:

- provided with a guardian who effectively protects their interests;
- provided with an assessment of the child’s best interests and their vulnerability before any decision or measure is taken concerning them;
- removed from detention in police stations, pre-removal centres and RICs where they are detained for the purposes of their “protective custody” and ensure their immediate access to age-appropriate shelters;

4. The Greek Government deems the applicant organisations’ request for the adoption of immediate measures unfounded. The Government considers that, in fact, steps have been immediately taken and efforts are continuously being made, in cooperation with all relevant actors at the international, EU, bilateral and national levels, to tackle the challenges presented by the unprecedented refugee crisis of recent years. The Government asserts that legislative and policy measures required for the protection of migrant children’s rights are in place, emphasising in particular the recent legislation concerning the guardianship of unaccompanied and separated children. It states however that this is an ongoing process of implementation which has not yet been finalised.

## **THE LAW**

*As to the admissibility of the complaint*

5. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Greece on 18 June 1998 and entered into force for this State on 18 August 1998, the complaint has been submitted in writing and concerns Articles 7§10, 11 §§ 1 and 3, 13, 16, 17 and 31 §§1 and 2 of the Charter, provisions accepted by Greece when it ratified the Charter on 18 March 2016. Greece is bound by these provisions since the entry into force of the treaty in its respect on 1 May 2016.

6. Moreover, the grounds for the complaint are stated.

7. The Committee notes that, in accordance with Articles 1 b) and 3 of the Protocol, the International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) are international non-governmental organisations with participative status with the Council of Europe. They are included on the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints before the Committee.

8. The Committee has already considered that the ICJ has particular competence for the purposes of the collective complaints procedure within the meaning of Article 3 of the Protocol (ICJ v. Portugal, Complaint No. 1/1998, decision on admissibility of 10 March 1999, ICJ v. the Czech Republic, Complaint No. 148/2017, decision on admissibility of 13 September 2017). The Committee reconfirms this finding since no change has taken place in terms of the ICJ's competence since that earlier decision.

9. The Committee also notes that ECRE's mission is to promote the establishment of fair and humane European asylum policies and practices in accordance with international human rights law. ECRE engages in legal research and training on the application and interpretation of EU asylum law, the EU Charter of Fundamental Rights ("CFR") and relevant international human rights instruments, including the 1951 Refugee Convention and the European Convention on Human Rights. On this basis, the Committee considers that ECRE has particular competence for the purposes of the collective complaints procedure within the meaning of Article 3 of the Protocol.

10. The complaint lodged on behalf of the ICJ and ECRE is signed respectively by Roisin Pillay, the ICJ's European Director of Programmes, and Catherine Woollard, ECRE's Secretary General, authorised to sign documents on those entities' behalf and specifically to sign complaints to international human rights mechanisms.

11. The Committee considers therefore that the complaint complies with Rule 23 of its Rules.

*As to the request for immediate measures*

12. The Committee underlines the exceptional character of immediate measures. The adoption of said measures must appear “necessary with a view to avoiding the risk of a serious and irreparable injury and to ensuring the effective respect for the rights recognised in the European Social Charter” (Rule 36§1), insofar as “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact” (International Commission of Jurists v. Portugal, Complaint No. 1/1999, decision on the merits of 9 September 1999, § 32).

13. Any request for immediate measures must establish a tangible situation in which the persons concerned by the complaint find themselves at risk of serious irreparable injury or harm (Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on immediate measures of 25 October 2013 § 2; Association for the Protection of all Children (APPROACH) Ltd v. Belgium, Complaint No. 98/2013, decision on immediate measures of 2 December 2013, § 2).

14. The Committee notes that, according to the complainant organisations, due to lack of accommodation coupled with placement in overcrowded facilities and/or in detention, migrant children are deprived of a protective framework in Greece and, as a result, are subject to conditions which are substandard and harmful. Basic care provision, namely shelter, food, water, electricity, heating and health-care are all reported by international and national human rights bodies and civil society organisations to be insufficient. The absence of such facilities has a serious knock-on effect on hygiene, sanitation and substantive physical and mental health care and treatment, including clinical or preventative care. Instances of children suffering from repeated bouts of the same medical or mental health problem demonstrates that living conditions are a clear aggravator and, most likely, the root cause of the particular illness. The inadequacy of services is compounded by a reduction in the numbers of medical professionals working with migrant children meaning that children are having to wait for lengthy periods of time or, worse, are simply not getting medical treatment for their symptoms. The reported consequences have been children self-harming and even attempting suicide. Furthermore, urgent child protection concerns arise in such unsuitable and overpopulated living arrangements where mixed sex and unrelated adults are also residing. Reports of sexual abuse, violent assaults, harassment and humiliation in camps on the Greek islands demonstrate the impact of living conditions on children’s security and safety.

15. The Government deems the organisations’ request for the adoption of immediate measures unfounded but fails to dispel the serious concerns about the gravity and urgency of the situation that arises from the complaint.

16. In light of Rule 36, the Committee considers that the migrant minors whose rights are the subject of the complaint, evidently are at risk of serious irreparable harm to their lives.

17. Under these conditions, the Committee considers it necessary to indicate immediate measures.

18. For these reasons, the Committee, on the basis of the report presented by Aoife NOLAN, and without prejudice to its decision on the merits of the complaint,

**DECLARES, UNANIMOUSLY, THE COMPLAINT ADMISSIBLE.**

Pursuant to Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter, and to publish it on the Council of Europe's Internet site.

Invites the Government to make written submissions on the merits of the complaint by 31 July 2019.

Invites the ICJ and ECRE to submit a response to the Government's submissions by a deadline which it shall determine.

Invites the Parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter to notify by 31 July 2019 any observations they may wish to submit.

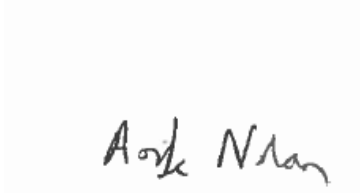
**DECIDES BY 13 VOTES AGAINST 1, THAT IT IS NECESSARY TO INDICATE TO THE GOVERNMENT IMMEDIATE MEASURES WHICH SHOULD BE ADOPTED AS FOLLOWS:**

- Adopt all possible measures with a view to avoiding serious, irreparable injury to the integrity of migrant minors at immediate risk of life, physical and moral integrity, in particular:
- to ensure the appointment of a guardian at the time that a separated or unaccompanied child in need of international protection is identified as well as the effective functioning of the guardianship system;
- to ensure the use of alternatives to detention of migrant children, and to ensure in particular that unaccompanied children in police stations, pre-removal centres and Reception and Identification Centres are provided with immediate access to age-appropriate shelters;
- to ensure access to food, water, education, and appropriate shelter;
- to ensure access to health care and medical assistance, in particular by ensuring the presence of an adequate number of medical professionals to meet the needs of the children whose rights are the subject of this complaint;



and

- Ensure that all the relevant public authorities are made aware of this decision.

A handwritten signature in black ink that reads "Aoife Nolan".

Aoife NOLAN  
Rapporteur

A handwritten signature in blue ink that reads "Giuseppe Palmisano".

Giuseppe PALMISANO  
President

A handwritten signature in blue ink that reads "Henrik Kristensen".

Henrik KRISTENSEN  
Deputy Executive Secretary