

H. A. and Others v. Greece

Application no. 19951/16

WRITTEN SUBMISSIONS ON BEHALF OF THE AIRE CENTRE (ADVICE ON INDIVIDUAL RIGHTS IN EUROPE), THE DUTCH COUNCIL FOR REFUGEES (DCR), THE EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE) AND THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)

INTERVENERS

pursuant to the Registrar's notification dated 28 February 2017 that the Court had granted permission under Rule 44 § 3 of the Rules of the European Court of Human Rights

6 April 2017

Summary

- I. Children's inherent vulnerability has led international human rights law, including the European Convention on Human Rights ('ECHR'), to accord special status to the child. Under Article 3 of the UN Convention on the Rights of the Child ('CRC') the child's best interests must not only inform all measures and decisions to which they may be subject, but also be a primary consideration when any such measures are being considered. Article 53 of the ECHR stipulates that the Convention rights must be construed in accordance with other international human rights obligations of States Parties, including the CRC. This is particularly important in relation to any deprivation of liberty where the primary consideration must be given to an individual child's circumstances, in light of his or her best interests. A comprehensive assessment of the best interests of the child will presumptively exclude any resort to detention for children, when the detaining measures are being contemplated not in the context of furthering the child's best interests but in the context of immigration control.
- II. The administrative detention of migrant children for immigration control purposes cannot fall within the scope of permissible detention under Article 5(1)(d) ECHR, which is intrinsically linked with the child's educational supervision and protection needs. The administrative detention of migrant children will be arbitrary under Article 5(1)(f) ECHR where the child's interests have not been a primary consideration in ordering the detention.
- III. Before any administrative measure is taken concerning unaccompanied children, the State must appoint a guardian and provide the unaccompanied children with access to appropriate information in a language they understand. If the State fails to appoint a competent guardian for an unaccompanied child and/ or access to information is not adequately guaranteed, the State has failed to meet the procedural safeguards designed to assess, and determine the child's best interests. Any detention without these safeguards being observed will not respect the best interests of the child, and the detention is tainted with arbitrariness, in violation of the right to liberty under Article 5(1) of the ECHR.
- IV. Non-effective or misleading communication or *a fortiori* the absence of any communication of the reasons why an individual child is being detained constitutes a violation of Articles 5(2) and (4) even if the detention itself is not arbitrary.
- V. The interveners submit that, under Article 53 ECHR, as regards EU Member States, Article 5(1) ECHR must be interpreted in a manner consistent with EU law obligations binding on States as a matter of national law. EU Member States are obliged to provide conditions, procedures and information to children in order for them to have effective access to their rights under the Charter of Fundamental Rights of the EU (CFR), which includes Article 24 and guarantees their best interests as a primary consideration. The fundamental rights under the CFR must be secured for unaccompanied migrant children through, *inter alia*, the appointment of a guardian, the provision of understandable information on accessing the asylum procedure and information on their family rights under the Dublin Regulation. Where such safeguards are not present, nullified or impaired by unacceptable conditions of detention, the child's rights under primary and secondary EU law are not observed.

I. International law and standards on detention of migrant children

[1. Introduction: the status of children as vulnerable persons under the ECHR and International law](#)

1. This Court has consistently held that children, due to their age and personal situation, are amongst the most vulnerable persons in society.¹ Where children are also seeking asylum their extreme vulnerability is compounded² given that asylum seekers themselves form part of a vulnerable group.³ Respect for the double vulnerability of child asylum seekers, *qua* child and *qua* asylum seeker, must be a primary consideration and

¹ *Rahimi v. Greece* (No. 8687/080), 5 July 2011, para. 87.

² *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (No. 13178/03), 12 October 2006, para. 55; *Popov v. France* (Nos. 39472/07 and 39474/07), 19 April 2012, para. 91; *Tarakhel v. Switzerland [GC]* (No. 29217/12), 4 November 2014, para. 99.

³ *M.S.S. v. Belgium and Greece [GC]* (No. 30696/09), 21 January 2011, para. 232.

not their irregular status.⁴ This is particularly so since the effects of detention on children and the conditions in which they are held can amount to a breach of Article 3 ECHR even where there might be no breach for similarly situated adults.⁵

2. This Court has frequently referred to the special consideration that has to be given to members of vulnerable groups with respect to decisions on deprivation of liberty and has noted that any “margin of appreciation” that might apply in relation to the rights of such individuals is necessarily much narrower than in relation to other people.⁶

3. Specific safeguards and guarantees for the protection and care of children are contained as State obligations in international treaties. The UN CRC,⁷ the International Covenant on Civil and Political Rights (‘ICCPR’)⁸ and the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’)⁹ all acknowledge the specific vulnerability and status of a child and the extreme vulnerability of unaccompanied children. The competent organs for the interpretation of these instruments have consistently held that children should not be deprived of their liberty, except as a measure of last resort, for the shortest appropriate period of time and taking into account their best interests as a primary consideration.¹⁰ The clear overlap between the specific vulnerability of the child and his or her best interests is evident from the General Comment No.14 of the UN Committee on the Rights of the Child, which states that the determination of the best interests of the child must take into account the different kinds and degrees of vulnerability of each child and should have due regard to other human rights under international law, including the 1951 Geneva Convention.¹¹ This Court has previously held that the ECHR does not exist in a vacuum and States remain bound by the obligations under the CRC when implementing the Convention.¹²

2. The principle of the best interests of the child

4. The principle that the best interests of the child shall be a primary consideration in all actions concerning children is a fundamental principle, substantive right and a rule of procedure under international law on the rights of the child.¹³ It is established in Article 3(1) CRC and applies to public or private social welfare institutions, courts of law, administrative authorities or legislative bodies who must assess and be guided by the principle in all their acts and omissions.¹⁴

5. This Court has frequently recognised, in its jurisprudence, the principle of the primacy of the best interests of the child.¹⁵ The Court in *Rahimi v. Greece* confirmed that in all actions relating to children an assessment of the child’s best interests must be undertaken separately and prior to a decision that will affect that child’s life. The principle of the best interests of the child requires that any decision making process involving children includes an evaluation of the possible impact of the decision on the child’s best interests, particularly in the enjoyment of affected rights, and the decision must expressly refer to such assessment.¹⁶

⁴ Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (No. 13178/03), 12 October 2006, para. 55.

⁵ Muskhadzhiyeva and Others v. Belgium (No. 41442/07), 19 January 2010; Mubilanzila Mayeka and Kaniki Mitunga (No. 13178/03).

⁶ Kiyutin v. Russia (No. 2700/1010), 10 March 2011; Gorelov v. Russia (No. 49072/11), 9 January 2014.

⁷ The United Nations. (1989). Convention on the Rights of the Child. Treaty Series, 1577, 3. Articles 2(1), 22(1) and 39 CRC (**Annex 1**).

⁸ International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, Article 24 (**Annex 2**).

⁹ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, Article 10 (**Annex 3**).

¹⁰ UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC /C/GC/14 (**Annex 4**); UN Committee on the Rights of the Child (UN CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, para. 61 (**Annex 5**); UN Human Rights Committee (HRC), D. and E. and their two children v. Australia, 9 August 2006, CCPR/C/87/D/1050/2002, para. 7.2 (**Annex 6**); UN HRC, Concluding observations on the third periodic report of the Czech Republic, 22 August 2013, CCPR/C/CZE/CO/3, para. 17. (**Annex 7**).

¹¹ UN CRC, General comment No. 14, paras 75-76.

¹² Pini and Ors v Romania (No. 7028/01), 22 June 2004, para .138.

¹³ *Rahimi v. Greece* (No.8687/080), 5 July 2011, para. 108; Moreover, with regards to Article 8 ECHR, see *Neulinger and Shuruk v. Switzerland* [GC] (No. 41615/07), 6 July 2010; *Gnahoré v. France* (No. 40031/98), 19 September 2000.

¹⁴ UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC /C/GC/14, p 7-9.

¹⁵ *Neulinger and Shuruk v. Switzerland* [GC] (No. 41615/07), 6 July 2010, para. 135.

¹⁶ UN CRC, General comment No. 14, paras 6(c) and 14(b).

In the migration context, it requires a special regime in respect of asylum procedures distinct from that applicable to adults whereby an assessment of all elements of a child's interests in a specific situation is undertaken.¹⁷

6. The best interests principle is aimed at ensuring the child's full, equal and effective enjoyment of human rights, including non-discrimination, family reunification, the right to be heard,¹⁸ protection from abuse, access to asylum, the receipt of appropriate protection and a standard of living adequate for the child's development.¹⁹ It imposes an obligation to identify and evaluate in the specific factual context the relevant elements of a best interest's assessment and to follow a procedure, which ensures legal guarantees and the proper application of the right.²⁰ For unaccompanied and separated children, it relies, as an initial step, on **children's prioritised identification** and their **prompt registration** in a specific child sensitive procedure.²¹ It additionally depends on the **appointment of a competent guardian or adviser as soon as the unaccompanied or separated child is identified**²² and at the very latest prior to administrative or judicial proceedings.²³ The principle further hinges on the child's free of charge access to a qualified legal representative.²⁴

7. The UN Committee on the Rights of the Child has stated that, in the case of a displaced child, the "best interest" principle must be respected during all stages of displacement. At any of these stages, a "best interests" determination must be documented in preparation of any decision fundamentally affecting the unaccompanied or separated child's situation. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including his or her nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs.²⁵

8. Taking note of the primary importance of the best interests of the child,²⁶ the interveners recall that consideration of the maintenance of family unity must be a prominent aspect of a child's best interest's assessment²⁷ and that an inappropriate deprivation of liberty without adequate procedural safeguards can hamper the effectiveness of the prominence to be given to family unity. This Court has held that, **in respect of unaccompanied minors**, Contracting Parties are under an **obligation to facilitate their family reunification**.²⁸ Such reasoning follows logically from the importance of securing family unity for persons having fled persecution,²⁹ thereby aiding them to lead a normal life.³⁰ This is especially so in light of the child's specific vulnerability and the need for special measures to be undertaken in order to ensure their protection.³¹ The importance of expeditious tracing of family members and family reunification has been

¹⁷ UN CRC, General comment No. 14, para 54.

¹⁸ UN CRC, General comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12 (**Annex 8**).

¹⁹ Articles 2, 5, 10, 12, 19, 22 and 27 Convention on the Rights of the Child; UN CRC General comment No. 14, paras. 4, 51, 82; UN CRC, General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5, para. 12 (**Annex 9**).

²⁰ UN CRC General comment No. 14, para. 46; N.Ts .v. Georgia (No. 71776/12), 2 February 2016.

²¹ UN CRC General comment No. 6, para. 31. See further UNHCR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, February 1997, para 5 (**Annex 10**).

²² *Ibid.*, paras. 21 and 33.

²³ The guardian should be consulted and informed regarding all actions taken in relation to the child, UN CRC General comment No. 6, paras. 33, 72; UNCRC, General comment No. 14, para. 96; PACE, Unaccompanied children in Europe: issues of arrival, stay and return, Resolution 1810 (2011), para. 5.7 (**Annex 11**).

²⁴ UN CRC General comment No. 6, paras. 36, 69.

²⁵ *Ibid.*, paras. 19-20.

²⁶ Neulinger and Shuruk v. Switzerland [GC] (No. 41615/07), 6 July 2010, para.135.

²⁷ A.B. and Others v. France (No. 11593/12), 12 July 2016, para. 152. See also, Articles 9 and 10 of the CRC and UN CRC, General comment No. 14, para. 66 "When the child's relations with his or her parents are interrupted by migration (of the parents without the child, or of the child without his or her parents), preservation of the family unit should be taken into account when assessing the best interests of the child in decisions on family reunification."

²⁸ Mubilanzila Mayeka et Kaniki Mitunga v. Belgium, (No 13178/03), 12 October 2006 para. 85; Johansen v. Norway (No. 17383/90), 7 August 1996, para. 78.

²⁹ Tanda-Muzinga v. France (No. 2260/10), 10 July 2014, para. 75AT and another (Article 8 ECHR – Child Refugee – Family Reunification) Eritrea [2016]UKUT 00227 (IAC), para 38.

³⁰ Pajic v. Croatia (No. 68453/13), 23 February 2016, para. 80.

³¹ Tarakhel v. Switzerland [GC] (No. 29217/12), 4 November 2014, para. 99.

underlined by the Committee on the Rights of the Child³² and the UNHCR, which recommends the child's reunification with a parent at an early stage **before status determination**.³³

9. The consideration of the appropriate means to secure **the preservation of the family unit is a component of the best interests of the child assessment**. To this end, States are under a **duty to act proactively to trace family members of unaccompanied children and facilitate their reunification where it is in the interests of the child to do so**.³⁴ Since the best interests assessment must come before any administrative or judicial proceedings, including detention proceedings, **the imposition of detention without taking the appropriate steps towards children's right to be reunited with their family is in breach of the State's obligations under the CRC as well as the procedural guarantees under Article 5(1) and 8 of the ECHR**.

3. Detention of children under Article 5(1) ECHR

10. The interveners' recall that the purpose of Article 5 is to safeguard the individual's right to liberty. It ensures that no-one is deprived of his or her liberty in an arbitrary fashion.³⁵ Concerning children, the child's best interests must be taken into account as a primary consideration. Before a decision on the detention of children is considered or taken there must be an assessment of the necessity and proportionality of the detention in the circumstances of the individual case. Detention should only be imposed as a measure of last resort after other less coercive measures have been examined.³⁶

11. In order to comply with the spirit and the letter of the ECHR,³⁷ individuals may not be deprived of their liberty unless this falls within at least one of the exhaustive grounds enumerated in sub-paragraphs (a) to (f) of Article 5(1).³⁸ These are exceptions to the presumptive right to liberty which must be interpreted narrowly.³⁹ Any deprivation of liberty must be imposed in good faith for one of the purposes set out in Article 5(1) (a)-(f), and the Court has held that, that the words "prescribed by law" mean that where the deprivation of liberty is not based on a clear and accessible legal basis or no formal decision has been taken by the authorities, the individual's detention will not meet the requirement of lawfulness under Article 5(1).⁴⁰

12. The interveners reiterate that the lawfulness of detention is predicated upon a connection between the grounds of deprivation of liberty relied on and the place and conditions of detention. States have a **positive obligation** under Article 5(1) to take appropriate measures to protect the liberty of persons, especially vulnerable persons.⁴¹

³² UN CRC Articles 22(2), 9(3) and 10(2); UN CRC General Comment No. 6, para 31.

³³ UNHCR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, para. 5 and 7.

³⁴ Under the procedural limb of Article 8 the Court requires that where there are applications for family reunification involving children, State parties must act in a positive, humane and expeditious manner. See, *Mugenzi v. France* (No. 52701/09), 10 July 2014 and *Senigo Longue and Others v. France* (No. 19113/09), 10 July 2014.

³⁵ *Ilias and Ahmed v. Hungary* (No. 47287/15), 14 March 2017, para 61; *Bouamar v. Belgium* (No. 9106/80), 29 February 1988, para. 47; *Steel and Others v. the United Kingdom* (No. 24838/94), 23 September 1998, para. 54; *Witold Litwa v. Poland* (No. 26629/95), 4 April 2000, para. 78; *Saadi v. the United Kingdom* [GC] (No. 13229/03), 29 January 2008, para. 66; *Khudoyorov v. Russia* (No. 6847/02), 8 November 2005, para. 137.

³⁶ *O.M. v Hungary* (No. 9912/15), 5 July 2016, para. 42; *Rahimi v Greece* (No. 8687/08), 5 April 2011, paras 108-110.

³⁷ *Anuur v. France* (No. 19776/920), 25 June 1996, para.50 *Chahal v. United Kingdom* [GC] (No. 22414/93), 15 November 1996, para. 118; *Saadi v. the United Kingdom* [GC] (No. 13229/03), 29 January 2008, para.74; *Al Husin v. Bosnia and Herzegovina* (No. 3727/08), 7 February 2012, para. 65; *Abdi v. the United Kingdom* (No. 27770/08), 9 April 2013, para. 68; *Azimov v. Russia* (No. 67474/11), 18 April 2013, para. 161; *Suso Musa v. Malta* (No. 42337/12), 23 July 2013, para. 89; *Akram Karimov v. Russia* (62892/12), 28 May 2014, para. 143.

³⁸ See, e.g., *Saadi v. the United Kingdom* [GC] (No. 13229/03), 29 January 2008, para. 43; *Lokpo and Touré v. Hungary* (No. 10816/10), 20 September 2011, para. 16; *Nabil and others v. Hungary* (No. 62116/12), 22 September 2015, para. 26.

³⁹ See, e.g., *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (No. 13178/03), 12 October 2006, para. 96; *O.M. v. Hungary* (No. 9912/15), 5 July 2016, para. 40; *Khlaifia and others v. Italy* [GC] (No. 16483/12), 15 December 2016, para. 88.

⁴⁰ *Ilias and Ahmed v. Hungary* (No. 47287/15), 14 March 2017, para 68; *Khlaifia and Others v. Italy* [GC] (No. 16483/12), 15 December 2016, paras. 106-107.

⁴¹ *Stanev v Bulgaria* [GC] (No. 36760/06), 12 January 2012, para 120.

Detention under Article 5(1)(d)

13. Although all the provisions of Article 5(1)(a), (b), (c), (e) and (f) are theoretically applicable to both children and adults, **Article 5(1)(d) is a specific provision which permits the detention of children in circumstances where adults could not be deprived of their liberty. It has a protective child welfare purpose.** It was designed to cover those situations where children needed to be held in “secure educational accommodation” outside the criminal justice system, or detained – briefly - expressly to facilitate preparations being made for their placement in a social welfare institution (whether secure or open). Detention under 5(1)(d) can only be imposed by lawful order for the purpose of educational supervision or for the purpose of bringing a child before the authority competent to place the child in such a welfare institution.⁴² It is therefore unsurprising that Article 5(1)(d) of the Convention has not, to date, been relied on in the context of ordinary immigration detention or the detention of asylum seeking children.

14. In respect of the first limb of 5(1)(d) this Court has held that, where a contracting State has chosen to implement a system of educational surveillance which gives rise to a deprivation of liberty, even ‘temporary detention centres’ must a) be designed to provide educational supervision and b) actually be for the purpose of educational supervision.⁴³ The Court has held that it is incumbent on the State to provide an **appropriate infrastructure, adapted to the security and pedagogical objectives.**⁴⁴ In addition the purposes of such detention must be to **provide the individual with an education** which is normally expected to conform broadly to an ordinary schooling program. Where the individual is within local authority care, the State is obliged to exercise parental rights for the benefit and protection of the person concerned.⁴⁵ In *D.G. v. Ireland* this Court found that the applicant’s detention in a penal institution, where he was subjected to a disciplinary regime and was not obliged to take part in educational or recreational activities, fell outside the scope of educational supervision and, therefore, the requirements of Article 5(1)(d). Additionally, the Court has held that Article 5(1)(d) allows for an interim form of custody as a preliminary to a regime of supervised education. However, and analogous to the requirements of due diligence under Article 5(1)(f),⁴⁶ the actual application of an appropriate and sufficiently resourced educational regime must speedily follow suit.⁴⁷ **Therefore, not only must the placement in a detention centre be brief and temporary itself, but it must be linked to the proposed supervised education, which must follow promptly. This requires that a place, complying with the standards described above, is actually available for the individual.** Any interim deprivation of liberty which does not comply with these requirements will consequently go beyond the detention permitted under 5(1)(d).⁴⁸

15. The interveners note that the second limb of Article 5(1)(d) has not been substantively deliberated upon by the Court. However, it stems from *Bouamar v. Belgium*, where the Court linked the legal authority’s competence with the educational and protective needs of the child as set out in the first limb of 5(1)(d),⁴⁹ **that a competent legal authority must be in a position to ensure the special needs, welfare and well-being of the child.**

16. The above reasoning is in line with the logic of the *travaux préparatoires* of Article 5(1) which, as reflected in Article 32 of the Vienna Convention on the Law of Treaties, are a supplementary means of interpretation of the Convention.⁵⁰ The Court will note that the inclusion of the second limb of 5(1)(d) in the *travaux préparatoires* was principally for protective purposes outside the criminal justice system, and specifically to authorise the removal of children, from harmful surroundings before being brought before a

⁴² Blohkin v. Russia [GC] (No. 47152/06), 23 March 2016; Ichin and Others v. Ukraine (No. 28189/04,28192/04),21 December 2010,para.39.

⁴³ Blohkin v. Russia [GC] (No. 47152/06), 23 March 2016, para 153.

⁴⁴ D.L. v Bulgaria (No. 7472/14), 19 May 2016, para 64; Bouamar v. Belgium (No. 9106/80), 29 February 1988, para. 50, D.G. v. Ireland (No. 39474/98), 16 May 2002, para. 79, Blohkin v. Russia [GC] (No. 47152/06), 23 March 2016, para. 167

⁴⁵ Blohkin v. Russia [GC] (No. 47152/06), 23 March 2016, para. 170.

⁴⁶ Chahal v. United Kingdom [GC] (No. 22414/93),15 November 1996,para. 113; Mikolenko v. Estonia (No 10664/05),8 October 2009,para. 68.

⁴⁷ Bouamar v. Belgium (No. 9106/80), 29 February 1988, paras. 50 and 52; D.G. v. Ireland (No. 39474/98), 16 May 2002, para. 78.

⁴⁸ D.G. v. Ireland (No. 39474/98), 16 May 2002, paras.83-85.

⁴⁹ Bouamar v. Belgium (No. 9106/80), para 26, describing the Juvenile Court as a body providing judicial protection, coupled with para 46. See further Ichin and Others v. Ukraine (No. 28189/04 and 28192/04), 21 December 2010, para 38 -39.

⁵⁰ Witold Litwa v. Poland (No. 26629/95), 4 April 2000, para. 57.

court for the determination of an appropriate welfare solution.⁵¹ The second limb of 5(1)(d) only applies to detention, which is preparatory to a measure having a protective welfare purpose, which obtains irrespective of whether a child has committed an offence or not.⁵² Moreover, the specific purpose and achievability of educational supervision within a ‘speedy’ time frame under the first limb of 5(1)(d) applies *mutatis mutandis* to the second limb of the same Article so that the aim of bringing the applicant before a competent legal authority must be demonstrably achievable and promptly done.⁵³ Any detention of children that does not conform to the above criteria will not fall within the scope of Article 5(1)(d).

Detention under Article 5(1)(f)

17. This Court is entitled to examine any complaint brought before it under whichever provision of the Convention it considers appropriate,⁵⁴ irrespective of which Convention provisions may be invoked by the applicant. This Court has held that a child’s detention may fall within the grounds of Article 5(1)(f) in order to prevent “an unauthorised entry into the country” with a view to enforcing immigration control.⁵⁵ However, the Court has also held that whereas detention may come within the scope of 5(1)(f), its lawfulness does not necessarily follow.⁵⁶ Indeed detention under this limb must be compatible with the overall purpose of Article 5, namely, to safeguard liberty and ensure that no-one is deprived of his or her liberty in an arbitrary fashion.⁵⁷

18. In *Rahimi v. Greece*, this Court held that it was incumbent upon the Greek State to protect and care for the child by taking appropriate measures in light of its positive obligations under Article 3 ECHR, due to the child’s extreme vulnerability, characterised in this case by his age, his arrival to an unfamiliar country, and his status as an unaccompanied child and thus solely reliant on himself.⁵⁸ Whilst this finding was specific to Article 3 ECHR, the interveners submit that similar principles apply, *mutatis mutandis*, to the assessment of whether detention is arbitrary under Article 5(1)(f) ECHR, especially given the accepted requirement to assess the individual child’s circumstances and the recognised deleterious effect of detention on a child’s physical and mental health.

4. Detention of children under other international human rights and refugee law instruments.

19. In discharging their obligations under the ECHR, States must continue to fully respect their obligations under other international agreements, as implied by the terms of Article 53. This Court has affirmed that States remain bound by their obligations under Articles 3 and 37 CRC⁵⁹ in the implementation of their obligations under the European Convention on Human Rights.⁶⁰ The Court has determined that both Articles require that State authorities consider alternatives to detention before resorting to detention in order to satisfy its lawfulness under Article 5(1) ECHR.⁶¹

20. Article 31 of the Refugee Convention prohibits States from imposing penalties on asylum-seekers. In this context, the interveners recall the role of the UNHCR in the supervision of the application of the

⁵¹ Council of Europe (CoE), European Court of Human Rights, Preparatory Work on Article 5 of the European Convention on Human Rights, 8 August 1956.

⁵² D.L. v Bulgaria (No. 7472/14), 19 May 2016, para. 71.

⁵³ By analogy Article 5(1)(f) requires that there is a reasonable prospect of removal for the detention to be justified under this limb. See, *Amie v. Bulgaria* (No. 58149/08), 12 February 2013, para. 77.

⁵⁴ *Guerra and Others v Italy*, (116/1996/735/932), 19 February 1998.

⁵⁵ *Nabil and others v. Hungary* (No. 62116/12), 22 September 2015, para. 18.

⁵⁶ *Rahimi v. Greece* (No.8687/080), 5 July 2011, para. 102.

⁵⁷ *Saadi v. the United Kingdom [GC]* (no. 13229/03), 29 January 2008, para. 66; *Khudoyorov v. Russia* (No. 6847/02), 8 November 2005, para. 137.

⁵⁸ *Rahimi v. Greece* (No.8687/080), 5 July 2011, para. 87.

⁵⁹ The Article states that no child should be deprived of their liberty unlawfully or arbitrarily and that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

⁶⁰ *Rahimi v. Greece* (No.8687/080), 5 July 2011, paras. 108-109; *Popov v. France* (Nos. 39472/07 and 39474/07), 19 April 2012, para. 91.

⁶¹ *Ibid.*

Refugee Convention. The UNHCR have provided various guidelines⁶² outlining that asylum seeking children should not be detained.⁶³ Indeed, the UNHCR has recently clarified its position on children's detention and affirmed that "*children should not be detained* for immigration related purposes, irrespective of their legal/migratory status or that of their parent", since "*detention is never in their best interests*".⁶⁴ Thus, appropriate care arrangements "remain the best measure",⁶⁵ in accordance with the CRC.⁶⁶

21. In light of UNHCR's role as guardian of the Refugee Convention, UNHCR's authoritative position should inform the Court's interpretation of the scope and content of the Contracting Parties' obligation under Article 5 ECHR in the context of determining the lawfulness of detaining asylum-seekers, and any inconsistency of national laws and practices with these standards should be an indicator of unlawfulness and arbitrariness.

22. The interveners recall that, under other international instruments, in order for detention not to be arbitrary, it must be reasonable, necessary and proportionate in the circumstances of the individual case.⁶⁷ Under Article 9(1) ICCPR the Human Rights Committee has concluded that where a child is detained contrary to their best interests the detention may be arbitrary.⁶⁸ Moreover, the Committee on the Rights of the Child has stated that unaccompanied or separated children should not, as a general rule, be detained.⁶⁹

23. Where children are in fact detained, then the *UNHCR Guidelines* as well as other international law and standards⁷⁰ require that it should be in places and conditions appropriate to their age, that it is a measure of last resort and for the shortest appropriate period of time.⁷¹

5. Access to and substance of procedural rights for children

24. An integral part of protecting an individual's right to liberty under Article 5(1) is that anyone who is arrested or detained⁷² should be informed of the reasons for their deprivation of liberty.⁷³ In order for detention to comply with Article 5, individuals must be told, in simple, non-technical language that they can understand, the legal, factual grounds, the reasons for their detention, and the process available for reviewing or challenging the decision to detain. For the information to be accessible, it must be presented in a form that takes account of the individual's level of education, and legal advice may be required for the individual to fully understand his or her circumstances.⁷⁴ **In the context of detention orders, decisions or**

⁶² UNHCR Guidelines on Detention Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, para. 9.2 (**Annex 13**); UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, February 1997, p.2, para. 7.6.

⁶³ UNHCR Guidelines on Detention, para 9.2; UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, p. 2 and para. 51.

⁶⁴ UNHCR's position regarding the detention of refugee and migrant children in the migration context, Jan 2017 p. 2. In UNHCR's view, "[R]eferences to the application of Art.37(b), "exceptional circumstances / measure of last resort", are not appropriate for cases of detention of any child for immigration related purposes. It is understood from the commentaries of the CRC (see below), that while Art. 37 (b) may apply in other contexts (such as in cases of children in conflict with the law – see CRC/C/GC/10 from 2007), its application to detention in the immigration context would be in conflict with the principle of best interests of the child" (**Annex 14**).

⁶⁵ UNHCR's position regarding the detention of refugee and migrant children in the migration context, p. 1.

⁶⁶ See further UNHCR, Beyond Detention A Global Strategy to support governments to end the detention of asylum-seekers and refugees, 2014, p.7 calling for the end of detention of children (**Annex 15**).

⁶⁷ Article 9 ICCPR; Saed Shams and Others v. Australia, Communication No.1255/2004, 11 September 2007 (**Annex 16**); Samba Jalloh v. the Netherlands, CCPR, Communication No. 794/1998, 5 April 2002 (**Annex 17**).

⁶⁸ UN HRC, Ali Aqsar Bakhtiyari and Roqaiha Bakhtiyari v. Australia, 6 November 2003, CCPR/C/79/D/1069/2002, 6 November 2003, para. 9.3 (**Annex 18**).

⁶⁹ CRC, General Comment No. 6, para. 61; See also, Concluding Observations on Australia, CRC, UN Doc. CRC/C/15/Add.268, 20 October 2005 (**Annex 19**). Similarly the Parliamentary Assembly of the Council of Europe has re-affirmed in its Resolution 1707 (2010) on Detention of asylum seekers and irregular migrants in Europe that "vulnerable people should not, as a rule, be placed in detention and specifically unaccompanied minors should never be detained," Parliamentary Assembly of the Council of Europe Resolution 1707 (2010) on Detention of asylum seekers and irregular migrants in Europe, para 9.1.9 (**Annex 20**).

⁷⁰ UN Convention on the Rights of the Child, Article 37(c).

⁷¹ CRC, General Comment No. 6, para. 61. Committee of Ministers of the Council of Europe, Guidelines on child friendly justice (2009), para 19 (**Annex 23**).

⁷² Shamayev and Others v. Georgia and Russia (No.36378/02), 12 April 2005, paras. 413 and 414.

⁷³ Abdolkhani and Karimnia v. Turkey (No. 30471/08), 22 September 2009, para. 136.

⁷⁴ Vakhitov and Others v. Russia (Nos. 18232/11, 42945/11, 31596/14), 31 January 2017, para 60; Nasrulloev v. Russia (No. 656/06), 11 October 2007, para. 77; Chahal v. United Kingdom [GC] (No. 22414/93), 15 November 1996, para. 118; Saadi v. the United Kingdom [GC]

rulings addressed to migrant children there is an obligation on the State to ensure that the child fully comprehends the reasons for detention, which will necessarily require the appointment of a competent guardian, assistance from a legal representative and translation.⁷⁵ This obligation is predicated on two grounds: children’s unfamiliarity with the legal system and language barriers, and their status as vulnerable persons due to their age and lack of independence.⁷⁶

25. The Court will recall from its recent jurisprudence that the possibility of informing detainees of the legal grounds for their detention is rendered practically impossible where no clear and accessible legal basis under Article 5(1) is found in national law for the individual’s detention.⁷⁷ Information concerning the individual’s prospect of removal does not satisfy the requirements of informing the individual of the legal basis of his or her detention.⁷⁸ The absence of the legal grounds for detention and their communication to the applicant according to their particular profile, both individually and combined, is incompatible with the protection from arbitrariness within the meaning of Article 5(1). By the same token the right to challenge the lawfulness of detention judicially under Article 5(4), which includes effective access to an independent court or tribunal and that the individual or their representative has the opportunity to be heard before the court,⁷⁹ is largely negated where no decision based on a sufficiently precise and ascertainable national law is communicated to the individual.⁸⁰

II. Obligations under EU law

1. Relevance of EU law under Article 53 ECHR

26. The interveners have already referred to Article 53 ECHR above in the context of the UNCRC and the Refugee Convention. This provision makes clear that the provisions of the ECHR must not be applied in such a way as to diminish human rights protection, “which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.” Where Contracting Parties to the ECHR are also bound by EU law, the Court must ensure that the Convention rights are interpreted and applied in a manner which does not diminish the rights guaranteed under the applicable EU law.

27. In addition, the Convention requires that all measures carried out by the Contracting Parties that affect an individual’s protected right must be “in accordance with the law”. This Court has consistently held that the ordering and carrying out of detention must adhere to the criteria and process of national law.⁸¹ Where situations are regulated by EU law, Contracting Parties must also comply with that law. For the purposes of Article 5 ECHR, “in accordance” with the procedure and content of the law will therefore relate to the respondent State’s legal obligations under EU law insofar as they relate to the minimum standards set out in the Convention.

2. EU fundamental rights

28. The EU Charter of Fundamental Rights (CFR)⁸² is a primary EU law to which the provisions of the Common European Asylum System (CEAS)⁸³ must conform. The principle of the best interests of the child

(No. 13229/03), 29 January 2008, para. 74; Abdolkhani and Karimnia v. Turkey (No. 30471/08), 22 September 2009, paras.131-135; Amuur v. France (No. 19776/920), 25 June 1996, para. 42; Soldatenko v. Ukraine (No. 2440/07), 23 October 2008.

⁷⁵ Rahimi v. Greece (No. 8687/080), 5 July 2011, paras. 120-121; Article 40 CRC; UN CRC, General comment No. 12, para. 60 and UN CRC General comment No. 6, para. 25.; CPT Immigration Detention Factsheet, March 2017, p 9; UNHCR, Guidelines on the applicable criteria and standards relating to the detention of asylum seekers and alternatives to detention, 2012, Guideline 9 on the appointment of the independent and qualified guardian and legal adviser.

⁷⁶ Tarakhel v. Switzerland [GC] (No. 29217/12), 4 November 2014, para. 99.

⁷⁷ Khlaifia and others v. Italy [GC] (No. 16483/12), 15 December 2016, paras. 117-122; Ilias and Ahmed v. Hungary (No. 47287/15), 14 March 2017, para 68.

⁷⁸ Khlaifia and others v. Italy [GC] (No. 16483/12), 15 December 2016, para. 118.

⁷⁹ Al-Nashif v. Bulgaria (No 50963/99), 20 June 2002, para. 92; De Wilde, Ooms and Versyp v. Belgium (Nos. 2832/66; 2835/66; 2899/66), 18 November 1970, para. 73; Winterwerp v. the Netherlands (No. 6301/73), 27 November 1981.

⁸⁰ Ilias and Ahmed v. Hungary (No. 47287/15), 14 March 2017, paras. 75-76.

⁸¹ Nabil and others v. Hungary (No. 62116/12), 22 September 2015, para. 30: “detention must conform to the substantive and procedural rules of national law”; O.M. v Hungary (No. 9912/15), 5 July 2016, para. 41.

⁸² European Union, Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, C 303/1 (**Annex 24**).

is enshrined in Article 24 CFR as well as all secondary legislative instruments which make up the CEAS. The EU asylum *acquis* implemented in light of the Charter and the Court of Justice of the European Union (CJEU) jurisprudence requires that the best interests of the child underpin all decisions taken with regard to children, that Member States ensure the child's protection and care as necessary for their well-being.⁸⁴ The CJEU has also held that children must have access to legal procedures and conditions which enable them to express their views freely.⁸⁵

29. Additionally, the CFR provides for the right to asylum in Article 18, a subjective and enforceable right of individuals who are entitled to be granted international protection under EU law. Since asylum is a shared competence between the Union and its Member States, the protection of Article 18 CFR applies in all areas of activity of the Union and its Member States that fall within the scope of application of EU law. EU law further encompasses the prohibition of inhumane treatment,⁸⁶ the prohibition of *refoulement*,⁸⁷ the right to family life,⁸⁸ the right to effective legal protection,⁸⁹ the right to an effective remedy⁹⁰ and the right to be heard, which guarantees every person "the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely."⁹¹

3. The EU asylum *acquis* – procedural rights, guardianship and detention of children

30. The EU asylum *acquis* envisages effective access to all who may wish to apply for asylum to the appropriate procedures contained in the recast Asylum Procedures Directive (recast APD). Children are further entitled to specific identification and tailored procedural and reception guarantees in accordance with their special needs.⁹² **The implementation of the right to asylum and the best interests of the child will necessarily depend on Member States providing adequate support and creating the conditions required for the child's effective access to the procedure.**⁹³ For unaccompanied children the conditions required are the prior appointment of a competent guardian, appropriate understandable information in light of the child's specific circumstances to enable them to make an asylum claim and free legal assistance and information.⁹⁴

31. The EU asylum *acquis* specifies that the appointment of a competent guardian for the child must take place as soon as possible.⁹⁵ The general principle of effectiveness, which requires rights under EU law to be effectively protected and prohibits national rules and procedures, which render the exercise of EU rights impossible in practice,⁹⁶ means that **the child's representative must be appointed before any administrative proceedings, including proceedings regarding detention, are undertaken.** The appointment of the representative only after detention would render the child's procedural rights ineffective.

⁸³ The EU asylum *acquis* is comprised of a number of legal instruments and their interpretation by the CJEU. Of those instruments, the most pertinent for this intervention is the Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [2003] OJ L 50 (Dublin II Regulation) (**Annex 25**) and its recast Regulation (EU) No 604/2013 (**Annex 26**). Additionally relevant is Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [2003] OJ L 326/13 (Asylum Procedures Directive) (**Annex 27**) and its recast Directive 2013/32/EU (**Annex 28**) and Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers [2003] OJ L 31/18 (Reception Conditions Directive) (**Annex 29**) and its recast Directive 2013/33/EU (**Annex 30**).

⁸⁴ CJEU, C-648/11, MA, BT and DA v Secretary of State of the Home Department, 6 June 2013.

⁸⁵ C-491/10, Joseba Andoni Aguirre Zarraga v Simone Pelz, 22 December 2010, paras 65-66. See further Article 12 of the UN CRC

⁸⁶ CFR, Article 4; Case C-404/15, Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen, paras 85-87.

⁸⁷ CFR, Article 19, Case C-411/10 and C-493/10, N. S. v Secretary of State for the Home Department and M. E. and Others v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform, para 7.

⁸⁸ CFR, Article 7, C-400/10 PPU, J. McB. v L. E., 5 October 2010, para 53.

⁸⁹ Case C-62/00 Marks and Spencer plc v. Commission of Customs & Excise [2002] ECR I-6348, para. 27.

⁹⁰ CFR, Article 47, Case C-279/09 DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland [2010] ECR I-13849; Case C-418/11 Texdata Software GmbH [2013], para. 84.

⁹¹ Case C-277/11 M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General [2012] ECLI:EU:C:2012:744, para. 87.

⁹² Articles 11, 17, 18, 21-24 Recast Reception Conditions Directive; Articles 7, 15, 25 and 31(7)(b) Recast Asylum Procedures Directive.

⁹³ Recital 29 Recast Asylum Procedures Directive.

⁹⁴ Recast Asylum Procedures Directive, Article 25(1)(a) and (4); Thematic Report on migrant and refugee children prepared by the Special Representative of the Secretary General on migration and refugees, SG/Inf(2017)13, 10 March 2017 (**Annex 31**).

⁹⁵ Recast Reception Conditions Directive, Article 24(1) and (4).

⁹⁶ Case C-33/76 Rewe-Zentralfinanz eG et Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland [1976], ECR I-1989, para. 5; Case C-13/01 Safalero Srl v. Prefetto di Genova [2003] ECR I-08679, para. 49.

32. The effective protection of children's well-being under Article 24 of the Charter, their right to asylum and their right to be heard, will additionally depend on children being furnished with information relevant to securing their right to family life under Article 7 of the Charter, and in particular on their rights as asylum seekers under the Dublin Regulation to be united with their family members.⁹⁷ **Since the best interests of the child and the respect for family life are primary considerations when applying the Regulation and the positive obligations on States to expeditiously inquire, investigate and gather evidence of family links run through the veins of the Regulation, the interveners submit that Member States of the European Union are obliged to provide the child with the appropriate conditions, such as information on their rights under the Dublin Regulation, in order to assure the effectiveness of the Regulation as well as the child's access to the procedure.**⁹⁸ Failure to comply with the above-mentioned procedural safeguards before a decision is taken on detention renders the detention of the child 'unlawful' both for the purposes of EU law and Article 5(1).

33. The recast Reception Conditions Directive (RCD) permits the detention of asylum seekers only on the six grounds listed, the assessment of which must adhere to the requirements of necessity and proportionality.⁹⁹ It is thus more restrictive than the scope of the right to detain that was articulated by the Court in *Saadi v UK*. The recast RCD states that such detention must be a measure of last resort and only applied after an assessment of the effectiveness of less coercive alternative measures.¹⁰⁰ Detention must be **ordered in writing stating the reasons in fact and in law on which it is based.**¹⁰¹ Moreover, asylum applicants cannot be held in detention for the sole reason that they are seeking asylum.¹⁰² Under Article 31 of the Refugee Convention¹⁰³ and in the light of the general EU law principle on the right to good administration¹⁰⁴, Member States should not impose penalties – including detention – on asylum seekers.

34. Article 11 of the RCD specifies that unaccompanied children should only be detained in exceptional circumstances, with all efforts made to release the child as soon as possible. There must be regular monitoring, and tailored support provided to meet their needs, indeed the conditions must be suitable and tailored to children with appropriate recreational activities and the possibility to engage in leisure activities. Member States must provide free legal assistance and representation to those detained in judicial review proceedings.¹⁰⁵ **The interveners submit that in order for the treatment of children in the asylum process to be in accordance with law and therefore with Article 5(1), in EU Member States, it must conform with the RCD (read together with other provisions of the Charter and the CEAS) as regards the resort to detention, and the conditions that must apply where children are, exceptionally, detained when no less coercive measures are available.**

⁹⁷ Article 6(3)(4) and Article 8 Dublin Regulation III.

⁹⁸ Articles 6(4), 8(2) and 17 of the Dublin Regulation III *The Queen on the application of MK, IK and HK Applicants v Secretary of State for the Home Department*, JR/2471/2016, 29 April 2016, para 38 (**Annex 32**).

⁹⁹ Case C-528/15 *Al Chodor*, 15 March 2017, paras 39-40.

¹⁰⁰ Recast Reception Conditions Directive, Article 8(2).

¹⁰¹ Recast Reception Conditions Directive, Article 9(2). Dutch courts have cited Case C-146/14, *Mahdi*, 5 June 2014 to argue that, analogous to the Article 15(2) of the Return Directive, a written detailed justification of the legal and factual reasons as to why the asylum seeker is being detained must be provided by the State for the detention to be lawful. Dutch Council of State, 201502024/1/V3, 10 April 2015; 201504413/1/V3, 12 June 2015.

¹⁰² Recast Reception Conditions Directive, Recital 15 and Article 8.

¹⁰³ Article 78 Treaty on the Functioning of the European Union, Official Journal C 326 , 26/10/2012 P. 0001 – 0390 (**Annex 33**).

¹⁰⁴ Cases C-141/12 and C-372/12, *YS and M and S v Minister voor Immigratie, Integratie en Asiel*, para 68.

¹⁰⁵ Recast Reception Conditions Directive, Article 9(6).

EUROPEAN COURT ON HUMAN RIGHTS

H. A. and Others

Applicant

*-and-**Greece*

Respondent

SUBMISSIONS FOR THE INTERVENORS

THE AIRE CENTRE (ADVICE ON INDIVIDUAL RIGHTS IN EUROPE), THE DUTCH COUNCIL FOR REFUGEES (DCR), THE EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE) AND THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)

Notes:

(1) The order of the annexes corresponds with the order of appearance in the text and endnotes of the Intervention.

Annex	Document
1.	The United Nations (1989) Convention on the Rights of the Child. Treaty Series, 1577: http://bit.ly/2nEnMCs
2.	International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999: http://bit.ly/1wxg8Ku
3.	International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993: http://bit.ly/2o4EKwL
4.	UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC /C/GC/14: http://bit.ly/1uMTcWZ
5.	UN Committee on the Rights of the Child (UN CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6: http://bit.ly/1KeZoPH
6.	UN Human Rights Committee (UN HRC), D and E, and their two children v. Australia, 9 August 2006, CCPR/C/87/D/1050/2002: http://bit.ly/2aOh85g
7.	UN HRC, Concluding observations on the third periodic report of the Czech Republic, 22 August 2013, CCPR/C/CZE/CO/3: http://bit.ly/2aQW0NX
8.	UN CRC, General comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12: http://bit.ly/2o4DEB9
9.	UN CRC, General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5: http://bit.ly/2nSfszD
10.	UNHCR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, February 1997: http://bit.ly/1PsB0xG
11.	PACE, Unaccompanied children in Europe: issues of arrival, stay and return, Resolution 1810 (2011): http://bit.ly/2aYgeGU
12.	Council of Europe (CoE), European Court of Human Rights, Preparatory Work on Article 5 of the European Convention on Human Rights, 17 August 1956: http://bit.ly/2owwyq9
13.	UNHCR Guidelines on Detention Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012: http://bit.ly/2oDXUY8
14.	UNHCR's position regarding the detention of refugee and migrant children in the migration context, January 2017: http://bit.ly/2mw6Eh7
15.	UNHCR, Beyond Detention A Global Strategy to support governments to end the

	detention of asylum-seekers and refugees, 2014: http://bit.ly/1uzIRyN
16.	Saed Shams and Others v. Australia, Communication No.1255/2004, 11 September 2007: http://bit.ly/2owDljo
17.	Samba Jalloh v. the Netherlands, CCPR, Communication No. 794/1998, 5 April 2002: http://bit.ly/2owAA1U
18.	Ali Aqsar Bakhtiyari and Roqaiha Bakhtiyari v. Australia, 6 November 2003, CCPR/C/79/D/1069/2002: http://bit.ly/2bbIUKo
19.	Concluding Observations on Australia, CRC, UN Doc. CRC/C/15/Add.268, 20 October 2005: http://bit.ly/2nSrjy1
20.	Parliamentary Assembly of the Council of Europe, Resolution 1707 (2010) on Detention of asylum seekers and irregular migrants in Europe: http://bit.ly/2aQWe7G
21.	Council of Europe: Committee of Ministers, Guidelines on human rights protection in the context of accelerated asylum procedures, 1 July 2009, principle XI.2: http://bit.ly/2n6FHW3
22.	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf(2017)3, Immigration Detention Factsheet, March 2017: http://bit.ly/2nFgYUP
23.	Committee of Ministers of the Council of Europe, Guidelines on child friendly justice (2009): http://bit.ly/2nWzMBP
24.	European Union, Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, C 303/1: http://bit.ly/2oE2wNZ
25.	Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [2003] OJ L 50 (Dublin II Regulation): http://bit.ly/2n6taC4
26.	Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [2013] OJ L 180: http://bit.ly/2ox4cMb
27.	Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [2003] OJ L 326/13 (Asylum Procedures Directive): http://bit.ly/2o4OJ5m
28.	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 [2013] OJ L 180: http://bit.ly/2oU5GfH
29.	Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers [2003] OJ L 31/18 (Reception Conditions Directive): http://bit.ly/2oU5RYp
30.	Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180: http://bit.ly/2nSnFEd
31.	Thematic Report on migrant and refugee children prepared by the Special Representative of the Secretary General on migration and refugees, SG/Inf(2017)13, 10 March 2017: http://bit.ly/2nEhXVy
32.	The Queen on the application of MK, IK and HK Applicants v Secretary of State for the Home Department, JR/2471/2016, 29 April 2016: http://bit.ly/2o6pXkZ
33.	Treaty on the Functioning of the European Union, Official Journal C 326 , 26/10/2012 P. 0001 – 0390: http://bit.ly/2b00kbU