



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

## THIRD SECTION

### DECISION

Application no. 50898/20

A.A.

against Serbia

The European Court of Human Rights (Third Section), sitting on 2 September and 14 October 2025 as a Chamber composed of:

Ioannis Ktistakis, *President*,

Peeter Roosma,

Darian Pavli,

Úna Ní Raifeartaigh,

Mateja Đurović,

Canòlic Mingorance Cairat,

Vasilka Sancin, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to the above application lodged on 14 November 2020,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

### THE FACTS

1. The applicant, A.A., is an Afghan national who indicated that he had been born in 2002. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 4 of the Rules of Court) and granted leave to Mr N. Kovačević to represent the applicant before the Court (Rule 36 §§ 2 and 4 (a)).

2. The Serbian Government ("the Government") were represented by their Agent, Ms Z. Jadrijević Mladar.

#### **The circumstances of the case**

3. The case concerns the measures adopted by the Serbian authorities during the COVID-19 pandemic concerning temporary restrictions on the

freedom of movement of asylum-seekers and irregular migrants accommodated in asylum and reception centres.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

*1. Background to the case*

5. In the wake of the COVID-19 pandemic, on 15 March 2020 the Serbian authorities declared a state of emergency and introduced a set of extraordinary measures in order to prevent the spread of the coronavirus.

6. In that context, the executive authorities, through a series of by-laws and administrative decisions, imposed a temporary restriction on the freedom of movement, between 15 March and 14 May 2020, of asylum-seekers and irregular migrants accommodated in asylum and reception centres, save with permission from the Commissariat for Refugees and Migration of Serbia for a specific period of time and in exceptional circumstances (such as a medical visit; see paragraphs 25, 26 and 27 below). Nationwide measures were also introduced (see paragraph 24 below).

7. The state of emergency was lifted on 6 May 2020.

*2. The applicant's situation*

8. The applicant lived in Kabul until January 2018, where, according to the information in the case file, he had completed at least ten years of formal education and had worked in a tailor shop specialising in military uniforms. At the time of his departure from Afghanistan, he was allegedly a minor.

9. In July or August 2018 the applicant arrived in Serbia (both dates are indicated in the case file). In August 2018 he was placed in Krnjača Asylum Centre.

10. On 10 April 2019 the applicant requested asylum. On 10 July 2019 he was interviewed by the Asylum Office. During the interview, he was asked, *inter alia*, to clarify the discrepancy between the last name indicated in the certificate confirming his intention to seek asylum and the last name provided in his formal asylum application (it should be noted that a copy of the above-mentioned certificate is not included in the case file). In response, the applicant attributed the inconsistency to communication difficulties with the police officers at the time of initial registration. He affirmed that his correct last name was A., as stated in the asylum application. Additionally, he submitted that prior to his departure from Afghanistan, he had been issued with a passport under the name A.A.

11. On 31 July 2019 the applicant was issued with an identity card for asylum-seekers valid for six months, until 31 January 2020.

12. On 30 September 2019 the Asylum Office refused the applicant's asylum application as unsubstantiated and ordered him to leave Serbia within fifteen days from the date on which the decision became final, if he had no

other legal basis for residence, and to return his asylum-seeker identity card. That decision was subject to appeal, within fifteen days from the date of its delivery (see paragraph 22 below).

13. There is no information in the case file on any subsequent proceedings in this connection, on the applicant's legal status following the decision to refuse his asylum application or on the date of his departure from Serbia.

*3. Notification by Serbia for the purpose of a derogation under Article 15 of the Convention*

14. On 6 April 2020 the Ministry of Foreign Affairs of Serbia informed the Secretary General of the Council of Europe that Serbia intended to avail itself of the right of derogation under Article 15 of the Convention. On 9 October 2020 the Secretary General was informed of the various measures adopted for the prevention of the spread of COVID-19 and of the fact that the state of emergency had been lifted.

*4. The Court's request for further information from the applicant*

15. On 4 October 2024 the Court asked the applicant's representative to confirm whether he was still in contact with the applicant. On 23 October 2024 the representative informed the Court that the applicant was residing in Germany and had been issued with an identity document there on 28 June 2024. The document in question was issued for an individual named A.H., who was born in 2003.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### **A. Constitution of the Republic of Serbia 2006 (*Ustav Republike Srbije*; published in the Official Gazette of the Republic of Serbia – OG RS – nos. 98/2006 and 115/2021)**

16. Article 27 of the Constitution guarantees the right to liberty and security of person. Deprivation of liberty is allowed only on the grounds of and in accordance with a procedure prescribed by law. Article 39 of the Constitution guarantees the right to free movement and residence in the Republic of Serbia. Those rights may be restricted by law if necessary for, *inter alia*, the prevention of the spread of infectious diseases.

17. Article 170 provides that a constitutional appeal may be lodged against individual decisions or actions of State bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or have not been prescribed.

18. In the event of a public emergency threatening the life of the nation, the National Assembly can declare a state of emergency (Article 200 of the Constitution).

19. During the state of emergency, the National Assembly may prescribe measures which derogate from human and minority rights guaranteed by the Constitution to the extent required by the circumstances. The derogation measures must not discriminate on the grounds of race, sex, language, religion or national or social origin (Articles 200 and 201).

**B. Asylum and Temporary Protection Act 2018 (“Asylum Act”; *Zakon o azilu i privremenoj zaštiti*, published in OG RS no. 24/2018)**

20. The Asylum Act sets out, *inter alia*, the rights and duties of asylum-seekers, and the conditions and process for the recognition and termination of the right to asylum.

21. Article 86 provides that a foreigner whose asylum application has been rejected or dismissed, or whose application procedure has been discontinued by a decision of the competent authority, and who does not have another legal ground for residence in the Republic of Serbia, is obliged to leave its territory within the deadline specified in that decision. Until a final decision is made on the asylum request, asylum-seekers are accommodated in asylum and reception centres (Article 51).

22. Articles 95 and 96 provide that a first-instance decision on asylum may be challenged before the second-instance body, the Asylum Commission, and in judicial review proceedings.

**C. The State of Emergency Decree (*Uredba o merama za vreme vanrednog stanja*; published in OG RS nos. 16/2020, 36/2020, 38/2020, 39/2020, 43/2020, 47/2020, 49/2020, 53/2020, 56/2020, 57/2020, 58/2020, 60/2020 and 126/2020)**

23. The State of Emergency Decree prescribed measures derogating from human and minority rights guaranteed by the Constitution during the state of emergency. It was in force from 15 March until 6 May 2020.

24. The decree introduced various measures aimed at the prevention of the spread of COVID-19, including a prohibition on public events and gatherings of more than two persons in one place, and night-time and weekend lockdowns, save in exceptional circumstances and with authorisation from the competent authorities. Other measures targeted specific groups, such as elderly persons (Article 1 of the decree).

25. Article 3 of the decree provided that in order to prevent the uncontrolled movement of persons who could be carriers of the coronavirus and their arbitrary departure from asylum and reception centres, the movement of asylum-seekers and irregular migrants accommodated in those

centres in Serbia was temporarily restricted. Moreover, measures were put in place for enhanced supervision and security of those facilities. In exceptional and justified cases, such as a medical visit or another valid reason, asylum-seekers and irregular migrants could leave the asylum and reception centres for a specific period of time with special authorisation from the Commissariat for Refugees and Migration (Article 3 § 3).

**D. Decision on the temporary restriction of movement of asylum-seekers and irregular migrants (Odluka o provremenom ograničavanju kretanja tražilaca azila i iregularnih migranata smeštenih u centrima za azil i prihvatnim centrima u Republici Srbiji; published in OG RS no. 32/2020)**

26. The Decision on the temporary restriction of movement of asylum-seekers and irregular migrants (hereinafter: “the Decision on Temporary Restriction of Movement”) was in force between 16 March and 6 May 2020. It prescribed the same measure concerning asylum-seekers and irregular migrants already provided for by the State of Emergency Decree (see paragraph 25 above). The relevant provisions read as follows:

“1. In order to prevent the spread of infectious diseases on the territory of the Republic of Serbia, the uncontrolled movement of potential carriers of the coronavirus and arbitrary departure from asylum and reception centres, the movement of asylum-seekers and irregular migrants accommodated in asylum and reception centres shall be temporarily restricted and enhanced security of such facilities shall be put in place.

2. Asylum-seekers and migrants shall be allowed to leave the facilities in exceptional and justified cases (such as a medical visit or other valid reason) with special permission from the Commissariat for Refugees and Migration of the Republic of Serbia, which shall be time-limited in accordance with the reason for which it was issued ...”

**E. Order on the restriction of access to reception and asylum centres (Naredba o ograničenju kretanja na prilazima otvorenom prostoru i objektima prihvatnih centara za migrante i centara za azil; published in OG RS no. 66/2020)**

27. The Order on the restriction of access to reception and asylum centres (hereinafter: “the Restriction of Access Order”) was introduced on 6 May 2020 by the Minister of Health (see paragraph 28 below). It was in force from 7 until 14 May 2020. It prescribed an identical restriction of movement for asylum-seekers and migrants to that which had been previously prescribed by the State of Emergency Decree and the Decision on Temporary Restriction of Movement (see paragraphs 25 and 26 above). It further prohibited access to reception and asylum centres in order to prevent the spread of the coronavirus.

**F. The Protection Against Infectious Diseases Act (*Zakon o zaštiti stanovništva od zaraznih bolesti*; published in OG RS, nos. 15/2016, 68/2020 and 136/2020)**

28. Article 6 of the Protection Against Infectious Diseases Act provides that in the event of a public danger caused by an infectious disease, the government, upon a proposal by the Minister of Health, may declare such a disease an infectious disease whose prevention and control is in the interests of the Republic of Serbia, and may introduce appropriate measures to that end. The Minister of Health is authorised to order, *inter alia*, the restriction of movement in the areas affected by the emergency situation (Article 52 of the Act).

**G. The Criminal Code (*Krivični zakonik*; published in OG RS nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019)**

29. Article 248 of the Criminal Code provides for the criminal offence of failure to comply with health regulations during an epidemic, which is punishable by a fine or imprisonment for up to three years. Anyone who fails to comply with the health regulations and as a result causes the spread of infectious diseases is to be punished by imprisonment for a term of up to three years (Article 249).

**H. The practice of the Constitutional Court**

30. On 20 April 2020 A 11 – Initiative for Economic and Social Rights, a non-governmental organisation based in Belgrade, submitted an initiative to the Constitutional Court for an assessment of the constitutionality and legality of Article 3 of the State of Emergency Decree (see paragraph 25 above) and its compliance with the constitutional right to liberty and security of person, prohibition of discrimination and judicial protection of human and minority rights. On 17 September 2020 the Constitutional Court decided on that and several other initiatives which challenged various other measures introduced by the State of Emergency Decree (see paragraph 24 above), and a decree concerning non-compliance with the nation-wide restriction measures, which is not relevant for the present case. In so far as Article 3 of the State of Emergency Decree was concerned, the Constitutional Court decided to terminate the proceedings of the assessment of the constitutionality in view of the fact that the Decree was no longer in force and, also, finding that the arguments presented in the initiative were unfounded. The Constitutional Court held, in particular, that the restriction of movement of asylum-seekers and irregular migrants had not amounted to deprivation of liberty, either in its purpose or in its content.

31. On 9 May 2020 A 11 – Initiative for Economic and Social Rights submitted an initiative for the assessment of the constitutionality and legality of the Restriction of Access Order (see paragraph 27 above) and its compliance with the constitutional right to liberty and security of person and judicial protection of human and minority rights. On 30 December 2020 the Constitutional Court dismissed the initiative as unfounded, referring to the reasons given in its decision of 17 September 2020 (see paragraph 30 above).

## COMPLAINTS

32. The applicant complained that the restriction measure imposed on asylum-seekers and migrants with which he had been required to comply had amounted to deprivation of liberty contrary to Article 5 of the Convention. He further stated that the prohibition on leaving the asylum centre had already been introduced by an informal decision of Krnjača Asylum Centre on 1 March 2020 before the state of emergency was declared. Relying on Article 14 in conjunction with Article 5 of the Convention, the applicant also submitted that the restriction complained of had been imposed on the basis of discriminatory criteria, as it had only affected asylum-seekers and migrants accommodated in asylum and reception centres, and not those in private accommodation or the general population.

33. Without relying on any provision of the Convention the applicant also raised complaints concerning the restriction of movement introduced by the authorities. He submitted, in particular, that he had not been allowed to leave Krnjača Asylum Centre or make direct social contact with the outside world on the basis of measures which were neither legitimate nor necessary in a democratic society.

## THE LAW

34. Relying on Articles 5 and 14 of the Convention the applicant complained that the restriction measure in question had amounted to deprivation of liberty and that it had been imposed on the basis of discriminatory criteria.

35. The relevant parts of Article 5 of the Convention provide:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases ...

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

36. Article 14 of the Convention provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

37. Furthermore, in view of the factual basis and the legal arguments put forward by the applicant, the Court also gave notice to the parties of the application under Article 2 of Protocol No. 4 to the Convention, although the applicant had not explicitly invoked that provision. It considers it appropriate to examine the complaint concerning the restriction of movement under that provision (see paragraph 33 above; see also *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

38. Article 2 of Protocol No. 4 reads as follows:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

39. The Government raised several objections as to the admissibility of the applicant’s complaints. Firstly, they challenged the authenticity of the applicant’s identity because the name and date of birth indicated on the copy of the ID card submitted by his representative differed from those indicated in the application form (see paragraphs 1 and 15 above). Accordingly, the Government asked the Court to reject the application as incompatible *ratione personae* with the provisions of the Convention and the Protocols thereto.

40. The Government also argued that the applicant had misrepresented the relevant facts concerning his stay in Krnjača Asylum Centre and invited the Court to reject his application as an abuse of the right of individual application. In particular, the applicant had never requested permission to leave the centre during the period of restriction of movement and had not complained about the conditions in the centre either to the Commissariat for Refugees and Migration, a possibility provided for in the house rules of the

asylum and reception centres, or to the Ombudsman. The Government further submitted that the applicant had not used any other domestic remedy for his complaints, notably a constitutional appeal.

41. The applicant submitted that at the time when he had arrived in Serbia his family had no identity documents, so he had used a surname based on the origin of his ancestors. After his family had obtained identity documents, they had all used a surname based on his father's first name which was the one he had given to the German authorities. As regards the requirement to exhaust domestic remedies, the applicant referred to the findings of the Constitutional Court in two decisions on the assessment of the constitutionality and legality of the contested measures (see paragraphs 30 and 31 above), and argued that a constitutional appeal could not be considered as an effective domestic remedy for his complaints.

42. The Court considers that it is not necessary to examine all the objections raised by the Government as the application is in any event inadmissible on the following grounds.

43. The Court reiterates that, in order to be able to lodge an application under Article 34 of the Convention, a person, non-governmental organisation or group of individuals must be able to claim to be the victim of a violation of the rights set forth in the Convention. In order for applicants to be able to claim victim status, they must produce reasonable and convincing evidence of the likelihood that a violation affecting them personally will occur; mere suspicion or conjecture is insufficient in this respect (see *Zambrano v. France* (dec.), no. 41994/21, § 42, 21 September 2021).

44. In view of the information available, the Court cannot but conclude that the applicant's explanation concerning his identity lacks credibility (see paragraphs 10 and 15 above). No justification was provided as regards his actual date of birth (see paragraphs 1, 15 and 39 above; and compare *Mastilović and Others v. Montenegro*, no. 28754/10, §§ 35-36, 24 February 2022; *Drijfhout v. the Netherlands* (dec.), no. 51721/09, §§ 21-28, 22 February 2011; and "*Blondje*" v. the Netherlands (dec.), no. 7245/09, ECHR 2009).

45. Moreover, the Court observes that apart from general and *in abstracto* remarks concerning the situation in Krnjača Asylum Centre during the implementation of the contested measure, the applicant did not provide any information about his personal situation at the material time. He presented no arguments to show how exactly the measures in question affected, or were likely to affect, him directly, or targeted him because of his possible individual characteristics (see *Zambrano*, cited above, § 43). The applicant complained about the general situation in the asylum centre on account of the measures in question without mentioning where and when he had intended to travel but had been unable to do so because of the contested measures. There is no evidence in the case file that that he requested and was refused permission by the Commissariat for Refugees and Migration to leave Krnjača

Asylum Centre. It is evident from the documents submitted by the Government that other asylum-seekers and migrants who were accommodated there had availed themselves of that opportunity.

46. Apart from the assertion that the applicant was an asylum-seeker at the relevant time and intended to remain in Serbia, the submissions made by his legal representative did not contain any information regarding the applicant's asylum proceedings subsequent to 30 September 2019, the date on which his asylum request was refused. The legal basis for the applicant's continued accommodation at the Krnjača Asylum Centre following that date remained unclear. Similarly, the date of the applicant's departure from the Republic of Serbia has not been established (see paragraphs 12 and 13 above).

47. Overall, the absence of individual particulars makes it impossible for the Court to conduct an individual assessment of the applicant's situation (see also, for illustrative purposes, *Magdić v. Croatia* (dec.) [Committee], no. 17578/20, § 11, 5 July 2022).

48. In view of all the above, the Court considers that the applicant cannot be regarded as a victim for the purposes of Article 34 of the Convention.

49. It follows that the application is incompatible *ratione personae* with the provisions of the Convention and the Protocols thereto within the meaning of Article 35 § 3 (a) and that it must be rejected pursuant to Article 35 § 4.

50. Lastly, the Court notes that it was Serbia's intention to derogate, under Article 15, from its obligations under the Convention without explicitly mentioning which Articles were to form the subject of a derogation (see paragraph 14 above). In any event, the Court's conclusion in relation to the applicant's complaints obviates any need to consider the validity of the derogation filed by Serbia with the Council of Europe (see, *mutatis mutandis*, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 161, ECHR 2009, and *Terheş v. Romania* (dec.), no. 49933/20, § 46, 13 April 2021).

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 20 November 2025.

Olga Chernishova  
Deputy Registrar

Ioannis Ktistakis  
President