



The absence of a maximum period of detention for persons subject to a court deportation order in Greece is in breach of the right to liberty and security

In today's Chamber judgment in the case **Mathloom v. Greece** (application no. 48883/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 1 (f) and 5 § 4 (right to liberty and security) of the European Convention on Human Rights.

The case concerned an Iraqi national who was kept in detention for over two years and three months with a view to his deportation, although an order had been made for his conditional release.

The Court found, in particular, that the Greek legislation governing the detention of persons whose expulsion had been ordered by the courts did not lay down a maximum period and therefore did not satisfy the foreseeability requirement under Article 5 § 1.

Principal facts

The applicant, Kareem Mathloom, is an Iraqi national who was born in 1945 and lives in Athens. He was sentenced to 15 years and six months' imprisonment for sexual abuse and an order was made for his deportation from Greece on completion of his sentence.

In January 2005 the Indictment Division of the Tripoli Criminal Court ("the Indictment Division") made an order, under the provisions of the Criminal Code, for the conditional release of the applicant, who had served three fifths of his sentence. However, he was kept in detention with a view to his deportation. In February 2005 he was transferred to the Helliniko aliens' detention centre, where he remained for almost 15 months. The applicant lodged an appeal against the extension of his detention and his deportation, which was dismissed as being unfounded.

It was not possible to deport the applicant because he did not have any travel papers. The Iraqi consular authorities had refused to issue him with papers as they were unable to establish that he was an Iraqi national.

In April 2006 Mr Mathloom was transferred to the Amygdaleza detention centre, where he was held for five months. In November 2006 the Indictment Division allowed an application by him to have his detention replaced by house arrest. On 27 April 2007 he was released on bail.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 5 §§ 1 and 4 (right to liberty and security), the applicant complained about his conditions of detention and of the fact that he had been detained with a view to his deportation although an order had been made for his conditional release. He further complained that he had not had an effective remedy by which to challenge the lawfulness of his detention.

The application was lodged with the European Court of Human Rights on 27 October 2007.

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,
Peer **Lorenzen** (Denmark),
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 3

As the applicant's detention had not been a continuing situation – it had been altered significantly as a result of his transfer from Amygdaleza to Korydallos – the Court rejected the part of his complaint relating to the period before September 2006 as being out of time.

Furthermore, the national authorities had not had an opportunity to consider the complaint relating to the applicant's conditions of detention in Korydallos Prison, as Mr Mathloom, despite being assisted by a lawyer throughout the proceedings, had not made use of the remedies available to him (an application to the public prosecutor or the prison board). The Court therefore rejected this part of the application for non-exhaustion of domestic remedies.

Article 5 §§ 1 and 4

Mr Mathloom's case came within the scope of Article 5 § 1 (f), since his continued detention had not been linked to the execution of his sentence, which had been suspended, but to his expulsion, pending which he had been detained for over two years and three months.

While it was true that the applicant could have applied earlier to have his detention replaced by house arrest, the fact remained that the authorities, who had been warned several times that the applicant's deportation was not possible, had not acted with the requisite diligence. As to the opinion of the public prosecutor at the Court of Cassation regarding court deportation orders, according to which the maximum period of detention with a view to deportation was one month, the Court pointed out that the opinion of a senior prosecutor did not have the status of "law" within the meaning of its the case-law.

The Court therefore concluded that the Greek legislation governing the detention of persons whose expulsion had been ordered by the courts did not satisfy the

foreseeability requirement under Article 5 § 1. It considered that Mr Mathloom's detention had exceeded a reasonable time in relation to the aim pursued, in breach of Article 5 § 1 (f).

Furthermore, the Indictment Division, to which the applicant had applied seeking a review of the lawfulness of his detention, had taken five months and 12twelve days to issue an order. The Court considered this period to be excessive and in breach of Article 5 § 4.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Greece was to pay the applicant 16,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in French.

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.