

January 2011

M.S.S. v. Belgium and Greece [GC] - 30696/09

Judgment 21.1.2011 [GC]

Article 3

Degrading treatment

Expulsion

Conditions of detention and subsistence of asylum-seeker expelled under the Dublin Regulation: *violation*

Article 13

Effective remedy

Deficiencies in the asylum procedure in Greece and risk of expulsion without any serious examination of merits of asylum application or access to effective remedy: *violation*

Facts – The applicant, an Afghan national, entered the European Union via Greece. In February 2009 he arrived in Belgium, where he applied for asylum. In accordance with the Dublin Regulation, the Aliens Office asked the Greek authorities to take responsibility for the asylum application. Late in May 2009 the Aliens Office ordered the applicant to leave the country for Greece. The applicant lodged an application under the extremely urgent procedure to have the execution of that order stayed, but his application was rejected. On 4 June 2009 the Greek authorities sent a standard document confirming that it was their responsibility to examine the asylum application and stating that the applicant would be able to apply for asylum on arrival in the country. He was sent back to Greece on 15 June 2009. On his arrival there he was immediately placed in detention for four days in a building next to the airport, where the conditions of detention were allegedly appalling. On 18 June 2009 he was released and issued with an asylum-seeker's card and notice to report to the police headquarters to register the address where he could be reached with news about his asylum application. The applicant did not report to the police headquarters. Having no means of subsistence, he lived in the street. Later, as he was attempting to leave Greece, he was arrested and placed in detention for a week in the building next to the airport, where he was allegedly beaten by the police. After his release, he continued to live in the street. When his asylum-seeker's card was renewed in December 2009, steps were taken to find him accommodation, but apparently to no avail.

Law – Article 3

(a) *Conditions of detention in Greece* – The difficulties caused by the increasing numbers of migrants and asylum-seekers from States around the external borders of the European Union did not absolve the States of their obligations in respect of Article 3. According to their agreement of 4 June 2009 to take charge

of the applicant, the Greek authorities had been aware of the applicant's identity and his status as a potential asylum-seeker. In spite of that, he had immediately been placed in detention without explanation, a widespread practice according to various reports produced by international and non-governmental organisations. He had suffered poor conditions of detention, and brutality and insults at the hands of the police officers in the detention centre, even though such conditions had already been found to amount to degrading treatment because the victims were asylum-seekers. Brief as they were, the periods the applicant had spent in detention could not be considered insignificant. Taken together, the feeling of arbitrariness and the feeling of inferiority and anxiety often associated with it, as well as the profound effect such conditions of detention indubitably had on a person's dignity, constituted degrading treatment. In addition, the applicant's distress had been accentuated by the vulnerability inherent in his situation as an asylum-seeker.

Conclusion: violation (unanimously).

(b) *Living conditions in Greece* – In spite of the obligations incumbent on the Greek authorities under their own legislation and the European Union's Reception Directive, the applicant had lived for months in the most abject poverty, with no food and nowhere to live or to wash. He also lived in constant fear of being attacked and robbed, with no prospect of his situation improving. This explained why he had attempted to leave Greece on more than one occasion. His account of his living conditions was corroborated by the reports of various international organisations and bodies. At no time had the applicant been duly informed of the possibilities of accommodation that were available to him. The authorities could not have been unaware that the applicant was homeless and should not have expected him to take the initiative of reporting to police headquarters to provide for his basic needs. That situation had lasted since his transfer in June 2009, although the authorities could have considerably abbreviated his suffering by promptly examining his asylum application. They had thus failed to take due account of the applicant's vulnerability as an asylum-seeker and must be held responsible – because of their inaction and their failure to process his asylum application – for the conditions he had had to endure for many months. The applicant's living conditions, combined with the prolonged uncertainty he lived in and the total lack of any prospect of his situation improving, had attained the minimum level of severity required by Article 3 of the Convention.

Conclusion: violation (sixteen votes to one).

(c) *The applicant's transfer from Belgium to Greece* – Considering that, while the applicant's asylum request was still pending, reports produced by international organisations and bodies all gave similar accounts of the practical difficulties raised by the application of the Dublin system in Greece, and the United Nations High Commissioner for Refugees had warned the Belgian Government about the situation there, the Belgian authorities must have been aware of the deficiencies in the asylum procedure in Greece when the expulsion order against him had been issued, and he should not have been expected to bear the entire burden of proof as regards the risks he faced by being exposed to that procedure. Belgium had initially ordered the expulsion solely on the basis of a tacit agreement by the Greek authorities, and had proceeded to enforce the measure without the Greek authorities having given any individual guarantee whatsoever, when they could easily have refused the transfer. The Belgian authorities should not simply have assumed that the applicant would be treated in conformity with the Convention standards; they should have verified how the Greek authorities applied their asylum legislation in practice; but they had not done so.

Conclusion: violation (sixteen votes to one).

(d) *The decision of the Belgian authorities to expose the applicant to the conditions of detention and the living conditions that prevailed in Greece* – The Court had already found the applicant's conditions of detention and living conditions in Greece to be degrading. The conditions concerned had been well documented and easily verifiable in numerous sources prior to the applicant's transfer. That being so, by removing the applicant to Greece, the Belgian authorities had knowingly exposed him to detention and living conditions that amounted to degrading treatment.

Conclusion: violation (fifteen votes to two).

Article 13 taken together with Article 3

(a) *In respect of Greece* – The situation in Afghanistan posed a widespread problem of insecurity, and the applicant was particularly exposed to reprisals by anti-government forces because he had worked as an interpreter for the international air force personnel stationed there.

The three-day deadline the applicant had been given to report to the police headquarters had been too short considering how difficult it was to gain access to the building. Also, like many other asylum-seekers, the applicant had believed that the only purpose of that formality was to declare his address in Greece, which he could not have done as he was homeless. Nor was it mentioned anywhere in the notification document that he could declare that he had no fixed abode, so that news could be sent to him by other means. It had been the responsibility of the Greek Government to find a reliable means of communicating with the applicant so that he could effectively follow the procedure.

Furthermore, the authorities had still not examined the applicant's asylum request. Nor had they taken any steps to communicate with him, or any decision about him. This had deprived him of any real and adequate opportunity to state his case. It was also a matter of some concern that there was a real risk that the applicant would be sent back to Afghanistan without any decision having been taken on the merits of his case, considering that he had already narrowly escaped expulsion twice.

As regards the possibility of the applicant applying to the Greek Supreme Administrative Court for judicial review of a potential rejection of his asylum request, the authorities had failed to take any steps to communicate with him. That, combined with the poor functioning of the notification procedure in respect of persons with no known address made it very uncertain whether he would learn the outcome of his asylum application in time to react within the prescribed time-limit. In addition, although the applicant clearly could not afford a lawyer, he had received no information on access to advice through the legal-aid scheme, which was itself rendered ineffective in practice by the shortage of lawyers on the list. Lastly, appeals to the Supreme Administrative Court generally took so long that they were no remedy for the lack of guarantees that asylum applications would be examined on their merits

There had therefore been a violation of Article 13 taken in conjunction with Article 3 because of the deficiencies in the Greek authorities' examination of the applicant's asylum application and the risk he faced of being removed directly or indirectly back to his country of origin without any serious examination of the merits of his application and without having had access to an effective remedy.

Conclusion: violation (unanimously).

(b) *In respect of Belgium* – The Court found that the extremely urgent procedure did not meet the requirements of the Court’s case-law whereby any complaint that expulsion to another country would expose an individual to treatment prohibited by Article 3 must be closely and rigorously scrutinised, and the competent body must be able to examine the substance of the complaint and afford proper redress. As the Aliens Appeals Board’s examination of cases was mostly limited to verifying whether the persons concerned had produced concrete proof of the irreparable damage that might result from the alleged potential violation of Article 3, the applicant’s appeal would have had no chance of success.

Conclusion: violation (unanimously).

Article 46: Without prejudice to the general measures required to prevent other similar violations in the future, Greece was to proceed, without delay, with an examination of the merits of the applicant’s asylum request in keeping with the requirements of the Convention and, pending the outcome of that examination, to refrain from deporting the applicant.

Article 41: Greece and Belgium were to pay the applicant, respectively, EUR 1,000 and EUR 24,900 in respect of non-pecuniary damage.

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