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Chamber judgment
Not final¹

A. A. v. Greece (application no. 12186/08)

**ASYLUM-SEEKER HELD ILLEGALLY IN SQUALID CONDITIONS IN GREEK
DETENTION CENTRE**

Unanimously

Violation of Article 3 (prohibition of inhuman or degrading treatment)
Violation of Article 5 §§ 1 and 4 (right to liberty and security)
of the European Convention on Human Rights

Principal facts

The applicant, A.A., is a Palestinian national who was born in 1978 and lives in Chania (Crete, Greece). After fleeing the refugee camp where he had been living in Lebanon, he entered Greek territorial waters, where he was arrested by the maritime police while his boat was sinking.

The Samos police authorities took him into custody and on 9 May 2007 the public prosecutor ordered the applicant's return to his country of origin. According to A.A., during his arrest he was kicked nine times in the ribs by an officer wearing military boots.

The applicant also complained about the squalid conditions in which he was held at the Samos detention centre: dirt-encrusted floor on which the detainees would eat and, in most cases, sleep; piles of rubbish in the corridors; insufficient food prepared in unhygienic conditions; lice and skin diseases; windows barred by wooden planks; combined toilet and shower with no hot water; access to a small courtyard only at the whim of the guards; impossibility of making telephone calls; and, overcrowding (the centre catered for 100 but housed 140-190).

In addition, the lawyer who visited the centre a few hours a week could see only a limited number of detainees and give but little advice. As to the social worker and doctor, they could

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 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 the day the request is rejected.

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.

not communicate with the detainees given the lack of interpretation, the overcrowding and other conditions in the centre. The transfer of A. A. to hospital – which would not otherwise have been possible given the lack of personnel – was apparently arranged in July 2007 through the efforts of a non-governmental organisation (NGO). The medical certificate issued by the hospital on that occasion indicated that A. A. had haemoptysis, weakness, headaches and skin problems.

On 12 June 2007 A. A.'s application for political asylum was registered after two unsuccessful attempts, the first of which he had made on the day of his arrest. On 30 July a stay of execution of his removal was ordered pending the adoption of a final decision on his asylum application. He was ultimately released on 6 August 2007 having reached the statutory three-month time-limit for detention. In December 2008 his asylum application was dismissed on the ground that he had not provided evidence to prove a risk of proceedings against him in his country for reasons of religion, nationality or political opinions. The applicant's appeal against that decision is still pending.

Complaints, procedure and composition of the Court

Relying on Article 3, the applicant alleged that he had been ill-treated by the maritime police during his arrest and also complained about the conditions in which he was held at the Samos detention centre. He further complained, under Article 5 that he had not been informed of the possibility of appealing and had not had the assistance of a lawyer or of an interpreter. Under the same article, he also complained that he had been detained unlawfully; because the removal procedure had been suspended during the examination of his asylum application, his detention should also have been suspended.

The application was lodged with the European Court of Human Rights on 5 February 2008.

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

Nina **Vajić** (Croatia), **President**,
Christos **Rozakis** (Greece),
Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus), **Judges**,

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

Decision of the Court

Article 3

According to the Greek Government, the applicant had not exhausted domestic remedies because foreign asylum-seekers in detention centres had to submit their complaints to the chief of police. The Court reiterated that the exhaustion of domestic remedies meant using the judicial resources made available by domestic legislation; provided that they were effective and adequate in practice. It noted that detainees were not informed of the procedure or criteria concerning complaints to the chief of police. It had not been established whether there was an obligation to respond to a complaint and, if so, within what

time-limit. The Court noted that, in 2008, the Committee for the Prevention of Torture² had reported that in Greece there was no independent mechanism for the supervision of detention facilities or for investigating complaints against police officers. The Court observed in particular that the applicant had not specifically complained about his individual situation; he claimed to be a victim of the conditions in the centre that affected all detainees. As the Greek courts were not authorised to examine the living conditions in detention centres for illegal immigrants, or to order the release of a detainee, the Court decided to dismiss the Greek Government's objection and declared admissible the complaint under Article 3.

The Court reiterated that the right of States to place asylum-seekers in detention, by virtue of their "undeniable (...) right to control aliens' entry into and residence in their territory", must be exercised in accordance with the provisions of the Convention.

A.A.'s allegations concerning the state of the centre where he had been held for three months were corroborated by a number of corresponding reports by international organisations and Greek NGOs. They had indicated the following problems: overcrowding, extremely cramped and dirty conditions, bathroom facilities shared by men and women and in a state of disrepair, bathroom area immersed in 1 cm of water, no possibility of hospital treatment³, defective sewer system, nauseating smells, infectious skin diseases and violence during arrests⁴. All those conditions amounted to an "insult to human dignity", "[blackening] the image of Greece internationally and [constituting] a downright violation of human rights"⁵.

The fact that A. A. had been held for three months in those conditions constituted degrading treatment in breach of Article 3. While the Court could not establish whether violence had been used against the applicant during his arrest, it noted that he had been admitted to hospital two months after the doctor's request, and the diagnosis, although it did not mention any fracture, indicated haemoptysis and skin problems, as confirmed by the organisation Pro Asyl.

There had therefore been a violation of Article 3 on account both of the living conditions in the detention centre, entailing degrading treatment of the applicant, and of the lack of diligence on the part of the authorities in providing him with appropriate medical assistance.

Article 5 § 4

The Court reiterated that⁶ the Greek judicial review of detention with a view to expulsion did not meet the requirements of Article 5 § 4, in particular because an action to have an expulsion decision set aside could concern only the person's return to his country of origin and not his detention. The law as worded (section 76 of Law no. 3386/2005) enabled the Greek courts to examine the detention decision only from the standpoint of the risk of absconding or of danger for public order but not its legal basis. A number of recent administrative court decisions ordering the release of people held illegally had not been sufficient to overcome the ambiguity of the statutory provisions.

Moreover, the assistance of a lawyer was necessary for the drafting of the application – a complex legal document – to the administrative courts for a stay of execution of the removal decision, and was also required for a hearing before them, without which the application

² CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment)

³ Observations of the European Parliament's LIBE Committee delegation after its visit to Samos in June 2007.

⁴ Report on a July 2007 visit by the organisation PRO ASYL and the Athens Group of Lawyers for the Rights of Refugees and Migrants.

⁵ Press release of 2 October 2007 issued by the Athens office of UNHCR.

⁶ See *S.D. v. Greece* (no. 53541/07, 11 June 2009) and *Tabesh v. Greece* (no. 8256/07, 26 November 2009).

would be inadmissible. In reality, in view of the above-mentioned detention conditions and the centre's organisation, the effectiveness of that remedy was purely theoretical.

The Court found that there had therefore been a violation of Article 5 § 4.

Article 5 § 1

As the applicant had not been in possession of any identity document, his arrest had been necessary and reasonable. The stay of execution of the removal procedure could not, under Greek law, automatically be extended to his detention. Whereas detention should remain a measure of last resort, the Greek authorities had been using it systematically for purposes of dissuasion. Article 5 § 1 did not only require that any deprivation of liberty should comply with domestic law, but also that it should be consistent with the protection of the individual against arbitrariness. Thus, a measure of deprivation of liberty could be lawful under domestic law but nevertheless arbitrary and therefore in breach of the Convention.

The Court noted that it was only on the applicant's third attempt that his asylum application was registered, on 12 June 2007, the first not having been taken into account and the registration of the second having been rejected by the detention centre's lawyer on grounds of overwork. While the execution of the removal procedure had been stayed, in accordance with the law, on the registration of the asylum application, A. A. had remained in the detention centre. In spite of the order of 30 July 2007 staying execution of removal pending a decision concerning his asylum application, the applicant was held until 6 August 2007. Thus, at least from 12 June 2007 onwards, when his asylum application was officially registered, and until 6 August, he had been deprived of his liberty without any legal basis. The Court further observed that he had been released solely because the maximum period of detention permitted by law had been reached.

In the absence of any other serious grounds that could justify the prolongation of his detention, the Court did not find that the period of the applicant's detention subsequent to the registration of his asylum application – in conditions that were, moreover, in breach of Article 3 of the Convention – had been necessary for the purposes of the aim pursued. The Court therefore found that there had been a violation of Article 5 § 1.

Article 5 § 2

The applicant's allegations that he was not told the reasons for his arrest and detention in a language he could understand and that he was not notified of the decisions against him, were ambiguous. The acknowledgments of receipt indicating that he had been notified of those decisions all bore his signature and that of the interpreter present at the time of notification. In addition, contrary to the applicant's assertions, the interpreters had been Greek nationals, and not fellow detainees, and had spoken English.

This complaint was thus rejected as manifestly ill-founded.

Article 41

By way of just satisfaction, the Court held that Greece had to pay the applicant 15,000 euros (EUR) for non-pecuniary damage and EUR 8,000 for costs and expenses.

The judgment is available only in French. This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the

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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.