



Although the applicant, who had entered Greece illegally, had benefited from satisfactory conditions of detention, the review of the lawfulness of his detention had been inadequate

In today's **Chamber judgment**¹ in the case of [E.K. v. Greece](#) (application no. 73700/13) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights,

no violation of Article 5 § 1 (right to liberty and security), and

a violation of Article (right to a speedy decision on the lawfulness of detention).

The case concerned the applicant's conditions of detention in the Soufli and Feres border posts, the Attika Sub-Directorate for Aliens (Petrou Ralli) and the Amygdaleza Detention Centre, the lawfulness of his detention, and whether the review of the lawfulness of that detention had been effective.

The Court found in particular that the applicant's conditions of detention had not been contrary to the Convention in any of the establishments in which the applicant had been detained, with reference, in particular, to several reports by international organisations having visited them.

The Court considered that the applicant's detention had not been arbitrary and had been "lawful".

The Court noted, however that the applicant had not benefited from a sufficiently thorough assessment of the lawfulness of his detention.

Principal facts

The applicant, Mr E.K., is a Turkish national who was born in 1985.

On 19 June 2013 Mr E.K., who had entered the country illegally, was arrested by officers from the Soufli border post and brought before the prosecutor at the Alexandroupolis Criminal Court, which imposed a two-year suspended prison sentence. On 21 June 2013 he was placed in pre-trial detention, for an initial duration of three days, with a view to his deportation from the country.

While in detention he submitted an asylum claim, which was transferred to the Attica regional asylum services on 22 June 2013. On the same day the head of the Alexandroupolis police force decided to extend E.K.'s detention pending the decision on his asylum claim, for an initial maximum period of 90 days after submission of that claim. On 26 June 2013 E.K.'s detention was extended on the grounds that he was likely to abscond, for a maximum period of six months.

E.K. was then transferred, first to the premises of the Feres border post, then to the premises of the Attica sub-directorate for aliens, where it was decided on 23 July 2013 to extend his detention for a period of 90 days; he was notified of that decision "in Syrian", a language that he did not understand. On the same date, this decision was amended in order to reflect the new duration of his detention,

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.

now limited to six months, and his asylum interview took place. Mr E.K. was then transferred to the Amygdaleza detention centre.

On 31 July 2013 E.K. challenged the decision of 26 June 2013 before the Piraeus Administrative Court, but subsequently withdrew that appeal. On 1 August 2013 he challenged the decision of 26 June 2013 before the Athens Administrative Court of First Instance, which dismissed his appeal on the grounds that detention was necessary for speedy and effective examination of the asylum claim and to prevent him from absconding. Shortly afterwards E.K. challenged the decisions of 23 July 2013 and 21 June 2013 before the Athens Administrative Court. He also complained about his conditions of detention. His appeals were rejected.

On 10 December 2013 E.K. was granted refugee status and was released three days later.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicant complained about his conditions of detention in the various premises in which he was held. Under Article 5 § 1 (right to liberty and security), he alleged that his detention had been arbitrary. Lastly, relying on Article 5 § 4 (right to a speedy review of the lawfulness of detention), the applicant maintained that the judicial review of his detention had been ineffective

The application was lodged with the European Court of Human Rights on 18 November 2013.

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

Krzysztof **Wojtyczek** (Poland), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Alena **Poláčková** (Slovakia),
Péter **Paczolay** (Hungary),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Lorraine **Schembri Orland** (Malta),

and also Renata **Degener**, *Deputy Section Registrar*.

Decision of the Court

Article 3

Conditions of detention in the Soufli, Feres and Petrou Ralli posts

The Court noted that the applicant had been detained for 22 days in the two border posts and for 18 days at the Attika Under-Directorate for Aliens.

The Court further noted that the applicant's complaint essentially concerned the same problems as regards his conditions of detention on all three premises. Consequently, it considered that it was a case of a "continuing situation" justifying an assessment of the whole period of detention complained of by the applicant in connection with those premises.

The Court observed that it had previously found a violation of Article 3 of the Convention in respect of the premises in question. Nevertheless, the periods covered by the respective judgments did not coincide with those during which the applicant in the present case had been detained. That having been said, there was no overlooking the fact that the conditions of detention in the Soufli and Feres police premises had been criticised in several reports by international organisations which had visited them shortly before the applicant's detention. According to the CPT, which visited the premises in April 2013, the conditions of detention in the Soufli and Feres police premises had considerably

improved since 2011. As regards the premises of the Attika Under-Directorate for Aliens, the Court noted that the CPT, which had also visited the Centre in April 2013, had pointed out that the conditions of detention in the Petrou Ralli Detention Centre had still been completely unsuitable for the detention of illegal migrants for lengthy periods.

The Court observed that the applicant had been detained for short periods in those three units.

Having regard to the foregoing considerations, the Court considered that the applicant's conditions of detention in the Soufli and Feres border posts and the premises of the Attika Under-Directorate for Aliens had not exceeded the severity threshold required by Article 3 of the Convention for characterisation as inhuman or degrading treatment.

Therefore, there had been no violation of Article 3 of the Convention in the present case.

Conditions of detention in the Amygdaleza Detention Centre

The Court noted that the applicant had been detained in the Amygdaleza Detention Centre for a total of four months and thirteen days.

According to the report issued by the CPT, which had visited the Amygdaleza Centre in April 2013, the accommodation had consisted of two bedrooms with two sets of bunkbeds, a table and chairs and a cupboard, each room having an floor area of 9 m², between which there had been two toilet and shower compartments. The detainees had been able to be outside their rooms for most of the day. There had been no special facilities for resting or engaging in sports or other activities. According to the detainees, there had been a shortage of hygiene items, and they had been unable to wash clothes or bedding. Lastly, the CPT stated that the units had been generally clean and in good condition, with adequate lighting and ventilation.

The Ombudsman, who had paid two visits to the Centre, in September 2012 and March 2013, had reached similar conclusions, and the "Intervention Médicale" NGO had been active in the Centre, where social and psychological support had been provided.

The Court also noted that the Ombudsman had not mentioned any particulier overcrowding and that neither the CPT report nor that of the Ombudsman had been critical of the situation in the Centre.

There had therefore been no violation of Article 3 of the Convention.

[Article 5 § 1](#)

In the present case, the Court considered that the applicant's detention had been used to prevent him from unlawfully residing in Greek territory and to guarantee his future expulsion. It concluded that the authorities' good faith could therefore not be called into question.

As regards the duration of detention, the Court observed that under Article 5 § 1 only the conduct of the expulsion procedure justified detention under that article, and that if the procedure was not conducted with the requisite diligence the detention ceased to be justified.

However, the Court noted that the applicant had been detained for five months and twenty-four days. The Court held that that period could not be considered excessive for completing all the administrative formalities for his expulsion.

As regards the asylum application, the Court noted that under domestic law, although the lodging of such an application stayed the execution of the expulsion order, it did not suspend the execution of detention; domestic law only required the asylum procedure to be concluded rapidly, which had been the situation in the instant case.

The Court therefore found that there had been no violation of Article 5 § 1 of the Convention.

Article 5 § 4

The Court observed that in its decision of 5 August 2013 the President of the Administrative Court had found, firstly, that there was a risk of the applicant absconding, and secondly, that his detention was necessary for the speedy and effective assessment of his asylum application. On 18 September 2013 the President of the Administrative Court had dismissed the applicant's objections for the same reasons. The Court noted that all the applicant's objections before the Administrative Court had concerned his conditions of detention, and that he had provided documentary evidence of a fixed residence in Athens in support of his allegations.

The Court noted that the applicant had not benefited from a sufficiently thorough assessment of the lawfulness of his detention to highlight the remedies and other channels provided under domestic law and case-law. That was particularly true with regard to the complaints concerning his conditions of detention, in which connection the Court had found violations on several occasions in other cases.

The Court therefore found a violation of Article 5 § 4 of the Convention.

Just satisfaction (Article 41)

The Court held that Greece was to pay the applicant 3,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that might be chargeable on that sum.

The judgment is available only in French.

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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.