



Afghan family detained in the Pagani detention centre in inhuman and degrading conditions and without effective judicial review

In today's Chamber judgment in the case of [Mahmundi and Others v. Greece](#) (application no. 14902/10), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights;

A violation of Article 13 (right to an effective remedy);

A violation of Article 5 § 4 (right to liberty and security – right to have lawfulness of detention decided speedily by a court).

The case concerned the detention of an Afghan family, including a woman who was eight months pregnant and four minors, in the Pagani detention centre on the island of Lesbos. The Court stressed, in particular, the absence of any specific supervision of the applicants despite their particular status as minors and a pregnant woman. It also noted that non-governmental organisations observed that there had been no improvement in the situation in the Pagani center in spite of their alarming findings in the past. The Court also reiterated its conclusions concerning the shortcomings in Greek law regarding the judicial review of detention with a view to deportation.

Principal facts

The applicants - Ibrahim Mahmudi, Zaharo Huseini, Kobra Huseini, Fatima Huseini and Mohamad Reza Huseini – are Afghan nationals who were born in 1967, 1986, 1973, 1973 and 1987 respectively. They left Greece in 2010 and are currently seeking asylum in Norway. After being rescued by the maritime police from a boat that was starting to sink off the island of Lesbos, they were taken into detention in the Pagani detention centre pending their deportation. Mr Mahmudi and Mrs Z. Huseini, who are husband and wife, were accompanied by their children, aged two and six. Mrs Z. Huseini was eight months pregnant and her sister, Fatima Huseini, was accompanied by her 14-year-old twins.

Mrs Z. Huseini alleged that she and her children had spent part of their detention in an overheated shipping container without access to medical or social care. She claimed not to have undergone any medical examination before giving birth; when she was about to give birth, one of her fellow detainees had alerted the guards by tapping on the wall of the container with a wooden plank. After she was taken to hospital her two children remained in the container and the authorities moved their aunt there to take care of

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

them. On 15 August 2009 Mrs Z. Huseini gave birth in the hospital to which she had been admitted a few days earlier. She said that she had not been informed of the procedure for registering the birth and had received no form for the purpose. The Government provided the Court with a declaration and certificate dated 27 August 2009.

Mr Mahmudi was separated from his wife and children during his detention. Fatima Huseini was also separated from her twins, who were held in a room which, according to them, housed adults although it was intended for children. They alleged that they had received no attention and that the room had contained nothing but a few dirty beds and mattresses. They further claimed that no efforts were made to repair the toilet pipes, which were leaking dirty and foul-smelling water onto the floor. Throughout their detention, they had been allowed to take outdoor exercise on just three occasions, for between fifteen and thirty minutes. All five applicants complained about the conditions of their detention in the Pagani centre, in particular of overcrowding, poor hygiene (toilets and showers, laundry), of having to sleep on the ground and of the children being separated from their parents.

The Greek Government acknowledged that the centre had been overcrowded, on account of the continuous influx of illegal migrants. They claimed that the containers housing pregnant women – who were examined daily and had medical staff on hand round the clock – had been air-conditioned and had been specifically designed to enable the women to be with their young children. According to the Government, doctors had visited once a month to examine detainees; all the children were vaccinated and issued with a medical record card and had access to a social worker and a psychologist. A number of reports by non-governmental organisations (Amnesty International, Médecins sans frontières and the Greek Orthodox Church's Ecumenical Refugee Programme) contradicted these assertions².

Complaints, procedure and composition of the Court

Relying on Article 3, the applicants complained about their conditions of detention in the Pagani centre. They alleged a violation of Article 13 on the grounds that the Greek legal system did not give aliens the possibility of complaining about the conditions of their detention pending deportation. They also alleged violations of Article 5 §§ 1, 2 and 4 (right to liberty and security; right to be informed promptly of the charges; right to have the lawfulness of detention decided speedily by a court). Lastly, relying on Article 8 (right to respect for family life) in conjunction with Article 14 (prohibition of discrimination), they complained that the birth of Mrs Z. Huseini's child had not been registered at the hospital.

The application was lodged with the European Court of Human Rights on 8 February 2010.

Judgment was given by a Chamber of seven judges, 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),

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

2. §§ 44-50 of the judgment.

Decision of the Court

Admissibility

The Court dismissed the Government's preliminary objections of failure to exhaust domestic remedies with regard, firstly, to the conditions of detention and, secondly, to the judicial review of that detention, referring to its findings in similar cases³. It had been, and continued to be, materially impossible for the applicants to take any action before the courts to complain of their conditions of detention in Pagani, and the Court had already ruled on the effectiveness of the review by the Greek courts of detention pending administrative expulsion.

Articles 3, 8 and 13 (conditions of detention)

The Court referred to the reports concerning the situation in the Pagani centre around the time the applicants had been detained there. According to a report by Médecins sans frontières⁴, the number of detainees was four times greater than the centre's capacity, the floor was partially flooded by overflowing toilets and the centre consisted of storage containers unsuitable for the detention of humans. Following its visit to Pagani in September 2009 (less than three weeks after the applicants' departure), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had found that the centre was filthy beyond description, and deplored the fact that there had been no improvement in the situation despite the "abominable" conditions of detention it had criticised in its 2008 report.

In such circumstances, a period of detention of 18 days – the shortest time spent by any of the applicants other than Mrs Z. Huseini – was sufficient to attain the threshold of severity required to amount to "inhuman and degrading treatment". That threshold had also been attained in the case of Mrs Z. Huseini, who had spent 13 days in detention, in view of the fact that she had been pregnant. According to the report by Médecins sans frontières, women in the late stages of pregnancy were held in inhuman conditions; they were not under medical supervision and were given no information as to where they were to give birth and what would become of them and their children.

The parents' suffering had also been aggravated by the fact that their minor children were being held in the detention centre. Fatima Huseini's twins, who had been detained separately from her, had received no attention and their cell had merely contained a few dirty beds and mattresses. During their detention they had been allowed to exercise outdoors on only three occasions, for between fifteen and thirty minutes. Their statements were backed up by the reports of the various non-governmental organisations.

Accordingly, the applicants' conditions of detention had amounted to inhuman and degrading treatment in breach of Article 3. In view of that finding, the Court did not consider it necessary to examine the applicants' complaint under Article 8. In addition, regard being had to its findings concerning the Government's preliminary objections as to domestic remedies (admissibility), the Court held that Greece had failed to comply with its obligations under Article 13.

Article 5

The applicants' complaints under Article 5 § 2 were identical to those under Article 5 § 4. The Court therefore examined these two complaints under the latter provision.

3. See, in particular, *Rahimi v. Greece* (no. 8687/08, 5 April 2011).

4. Report of June 2010; see §§ 46 et seq. of the judgment.

The Court had already pointed out shortcomings in Greek law regarding the effectiveness of the courts' review of detention with a view to deportation, particularly on account of the fact that any objections that aliens in detention might raise against the decision ordering their detention did not expressly empower the court to examine the lawfulness of the deportation which, under Greek law, formed the legal basis for that detention. The legislation in Greece allowed the courts to review the detention order only from the standpoint of the risk that the person concerned might abscond or of a threat to public order. The Government had not provided any new information in that regard. The Court therefore held that there had been a violation of Article 5 § 4.

Article 8

The Court rejected this complaint as being manifestly ill-founded. The authorities' omission to inform Mrs Z. Huseini that the steps needed to register the birth of her baby had been taken, and the delay in issuing her with the certificate, were not sufficient to amount to interference with her family life.

Just satisfaction (Article 41)

The court held that Greece was to pay the applicants 12,000 euros (EUR) each in respect of non-pecuniary damage and EUR 1,000 jointly in respect of costs and expenses.

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.