



Detention of an asylum seeker in Greek police stations found to be degrading treatment, incompatible with Article 3 of the Convention

In today's Chamber judgment in the case of [Horshill v. Greece](#) (application no. 70427/11), 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.

The case concerned the placement in detention of Ismail Alfateh Horshill and the conditions in which he was detained. The applicant, a foreign national who was due to be deported, was held successively for fifteen days in two police stations after having applied for asylum.

Pursuant to a decree transposing a directive from the Council of the European Union into national law, Ismail Alfateh Horshill, who had no travel documents, was placed in detention by the Greek authorities. Noting that the applicant had been released from detention after a short period of two weeks, the Court considered that his detention had not been arbitrary and that it could not be concluded that it had not been "lawful" within the meaning of Article 5 § 1 (f) of the Convention.

Principal facts

The applicant, Ismail Alfateh Horshill, is a Sudanese national who was born in 1984.

In 2010 Mr Horshill entered Greece illegally. An active member of the Sudanese anti-government student movement, he had fled his country, where he had been arrested on three occasions and subjected to torture.

On 29 April 2011 Mr Horshill voluntarily went to the police station for foreigners, without travel documents, in order to apply for asylum. In line with warnings given by a lawyer from the association which was helping him and from police officers, he was arrested and placed in detention, on the basis of a decision by the chief of police.

That decision ordered that Mr Horshill be detained for a period of sixty days, corresponding to the time-limit foreseen for examination of his asylum application. He was detained at the Paramythia police station until 5 May 2011, then at the Filiates police station until 13 May 2011.

Mr Horshill lodged an appeal with the Epirus regional chief of police and submitted objections against his continued detention to the president of the Corfu Administrative Court. He also submitted a request to have the order set aside. Those appeals,

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

objections and requests were dismissed by reasoned decisions which responded to the applicant's different arguments.

On 13 May 2011 Mr Horshill was released, the chief of police having noted that the non-governmental organisation "Médecins du Monde" was offering to accommodate the applicant in its hostel.

On 19 June 2012 the applicant submitted a statement withdrawing his application for political asylum and, taking advantage of a voluntary return programme, he left Greece and returned to his country of origin.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicant complained about the conditions of detention in the premises of the two police stations in question.

Relying on Article 5 § 1 (right to freedom and security), he complained about the fact that he had been placed in detention even though he had gone to the police of his own accord to apply for asylum.

The application was lodged with the European Court of Human Rights on 13 November 2011.

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

Isabelle **Berro-Lefèvre** (Monaco), *President*,
Elisabeth **Steiner** (Austria),
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*.

Decision of the Court

Article 3

The Court noted that the applicant had been held for fifteen days in two police stations. For four days he had suffered from conditions of overcrowding. The cells in one of the police stations had been located in the basement and were thus devoid of natural light. In both police stations, the cells did not have adjoining showers and the detainees had been unable to walk outside or to take part in physical activity.

The Court reiterated that police stations were not appropriate premises for the detention of persons who were awaiting the application of an administrative measure. Such a practice in respect of aliens who were subject to a deportation procedure had already been criticised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Court further noted that the Greek legislation prohibited the detention in police stations of defendants and convicted persons, except for such periods as were absolutely necessary pending their transfer to prison.

The Court considered that the applicant had been subjected to degrading treatment which had entailed a violation of Article 3 of the Convention.

Article 5 § 1

The Court noted that the applicant had been detained pursuant to a decree transposing a directive of the Council of the European Union², by which the States could not detain a person on the sole ground that he or she was applying for asylum, while allowing the possibility of detention in exceptional circumstances. Detention of an asylum seeker was authorised where he or she had no travel documents and it was necessary to verify his or her identity, the circumstances of entry into the country and genuine information about his or her origin. The decision of 9 April 2011 made it clear that the applicant's placement in detention had not been automatic. The president of the administrative court had explained that it was impossible to apply measures other than detention in the applicant's case, since he had neither fixed residence nor stable means of subsistence in Greece.-

Lastly, the Court noted that the applicant had been immediately released, by decision of the Thesprotia chief of police, when the authorities had been assured that he would be accommodated in a hostel run by the non-governmental organisation "Médecins du Monde". It also noted that the applicant had been detained for a short period.

In consequence, the Court considered that the applicant's detention had not been arbitrary and that it could not be concluded that it had not been "lawful" within the meaning of Article 5 § 1 (f) of the Convention.

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.

2. [Council Directive 2005/85/EC of 1 December 2005](#)