

## **ECtHR ? Amadou v Greece, Application No. 37991/11, 4 February 2016**

**Country of Applicant:**

Gambia

**Date of Decision:**

04-02-2016

**Citation:**

ECtHR ? Amadou v Greece, Application No. 37991/11, 4 February 2016

**Court Name:**

European Court of Human Rights (First section)

**Keywords:**[Effective access to procedures](#) [1][Effective remedy \(right to\)](#) [2][Detention](#) [3][Real risk](#) [4][Inhuman or degrading treatment or punishment](#) [5][Refugee Status](#) [6][Material reception conditions](#) [7][Reception conditions](#) [8]

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**Relevant Legislative Provisions:**European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [9]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 3](#) [11]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [10] > [Article 5](#) [12]European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [13]European Union Law > [EN - Recast Reception Conditions Directive, Directive 2013/33/EU of 26 June 2013](#) [14]European Union Law > [EN - Recast Asylum Procedures Directive 2013/32/EU of the European Parliament and of the Council](#) [15]

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**Headnote:**

The Court found a violation of Articles 3 and 5(4) ECHR in relation to the Applicant's detention conditions at Fylakio and Aspropyrgos, and the shortcomings of domestic law in relation to the judicial review of his detention.

**Facts:**

The Applicant is a Gambian national who entered Greece on 31 July 2010. He was arrested by border police at Orestiada and placed in detention pending the adoption of an expulsion decision. On 3 August 2010, the chief of the police ordered his expulsion and detention for up to six months. He was detained at Fylakio. On 1 September 2010, the Applicant challenged this decision, submitting that his conditions of detention were contrary to Article 3 ECHR, and that he could not be expelled as he risked being persecuted for political reasons. This was dismissed on the grounds that the standard procedure for Gambian nationals possessing valid identification was to send them to the embassy in Athens in order to obtain travel documentation. The Applicant was subsequently fined and sentenced to three months' imprisonment for illegal entry. He was transferred to the detention centre at Aspropyrgos.

On 22 September 2010, with the help of the Greek Council for Refugees, the Applicant applied for asylum. He was released from detention some two weeks later. On 24 November 2010, he declared himself homeless and requested accommodation or material and financial assistance from the Ministry of Social Support. He received no response and remained on the streets, with no access to food, drinking water or toilets.

Before the ECtHR, the Applicant complains that Greece has violated:

? Article 3 ECHR with respect to his conditions of detention, and his destitute situation upon release.

? Article 5(4) ECHR insofar as he was unable to challenge the legality of his detention.

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**Decision & Reasoning:****Article 3**

The Court held that the Applicant had been subject to inhuman and degrading treatment throughout his detention and upon his release. In relation to the detention, the Court relied on previous case law concerning the application of Article 3 to both general conditions of detention, and the specific conditions at Fylakio and Aspropyrgos in 2010 and 2011 (Mahammad and others v Greece; F. H. v Greece; Khuroshvili v Greece). It also relied on reports on detention conditions at the two centres by the UNHCR and the CPT.

As for the Applicant's situation upon release, the Court relied on its decision in M. S. S. v Belgium and Greece, where it found a violation of Article 3 in relation to an asylum seeker living in extreme poverty. In the present case, it noted that the Greek authorities had failed to respond to the Applicant's request for social support. Given the obligations under the Reception Conditions Directive, only a diligent examination of the Applicant's asylum claim would have been able to bring his situation to an end, and his claim was still pending three years after it had been filed. The Court therefore found that the Applicant found himself in a degrading situation contrary to Article 3,

which was caused by the Greek authorities.

#### Article 5(4)

Likewise, the Court held that the Applicant's rights under Article 5(4) had been violated owing to shortcomings in domestic law with regard to the effectiveness of judicial review of his detention pending deportation. The Court highlighted the ambiguity of the domestic provision (Article 76, Law 3386/2005), which stated that the administrative tribunal could only review detention ordered on the grounds of flight risk or threat to public safety, and therefore did not provide an express right to judicial review. Although the provision had subsequently been modified to include review of the legality of detention and/or its extension (Law 3900/2010), at the time of the Applicant's detention between July and November 2010 this modification had not yet entered into force. As a result, the Court was entitled to apply case law concerning the incompatibility of the earlier provision with Article 5(4) (Herman and Serazadishvili v Greece).

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#### **Outcome:**

The Court found that both Articles 3 and 5(4) had been violated.

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#### **Observations/Comments:**

This summary was written by Georgia Kandunias, GDL student at BPP University.

#### **Case Law Cited:**

ECtHR - Korkmaz v Turkey, Application No. 42589/98, 20 December 2005

ECtHR - Barjamaj v. Greece, Application No 36657/11

ECtHR - Dougoz v. Greece, Application No. 40907/98

ECtHR - Peers v. Greece, Application No. 28524/95

ECtHR - Riad and Idiab v. Belgium, Application Nos. 29787/03 and 29810/03

[ECtHR - M.S.S. v Belgium and Greece \[GC\], Application No. 30696/09](#) [16]

ECtHR - Akdivar v Turkey, Application No. 21893/93

[ECtHR - B.M. v. Greece, Application No. 53608/11](#) [17]

ECtHR - Bygylashvili v. Greece, Application No. 58164/10

[ECtHR - R.U. v. Greece, Application No. 2237/08](#) [18]

ECtHR - Tsivis v. Greece, Application No. 11553/05

ECtHR - Vaden v. Greece, Application No. 35115/03

[ECtHR - Rahimi v. Greece, Application No. 8687/08](#) [19]

[ECtHR - De los Santos and de la Cruz v. Greece, Applications Nos. 2134/12 and 2161/12](#) [20]

[ECtHR - Herman and Serazadishvili v. Greece, Applications Nos. 26418/11 and 45884/11](#) [21]

ECtHR - Ahmade v. Greece, Application No 50520/09

ECtHR - Khuroshvili v. Greece, Application No 58165/10 (UP)

ECtHR - Gorbulya v. Russia, no. 31535/09, §§ 47-48, 6 March 2014

[ECtHR ? F.H. v Greece, Application No. 78456/11](#) [22]

Lica v. Greece (no. 74279/10)

[ECtHR - Aarabi v. Greece, Application no. 39766/09, 2 April 2015](#) [23]

[ECtHR- A.E. v. Greece \( Application no 46673/10\), 27 February 2015](#) [24]

[ECtHR- Horshill v. Greece, Application no. 70427/11, 1 November 2013](#) [25]

[ECtHR - Mahammad and Others v. Greece, Application no. 48352/12, 15 April 2015](#) [26]

[ECtHR - Tabesh v. Greece, Application no. 8256/07, 26 November 2009](#) [27]

[ECtHR- A.A. v. Greece, Application no. 12186/08, 22 July 2010](#) [28]

[ECtHR- S.D. v. Greece, Application no. 53541/07, 11 September 2009](#) [29]

ECtHR - Kalashnikov v. Russia, No. 47095/99 , § 102, ECHR 2002-VI

ECtHR ? Papageorgiou v Greece, Application No. 59506/00

ECtHR ? Richard Roy Allan v UK, Application No. 48539/99

ECtHR ? Vuckovic and others v Serbia, Application No. 17153/11

ECtHR - A.F. v Greece (no 53709/11, 13 June 2013

ECtHR - Kudla v Poland [GC], Application No. 30210/96

**Attachment(s):**



[AFFAIRE AMADOU c. GR\\_CE.pdf](#)[30]

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**Other sources cited:**

- Report to the Government of Greece on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 27 January 2011.

- Report of findings from the field visit of the Special Reporter for the National Commission for Human Rights on Torture and Inhuman or Degrading Treatment or Punishment.

**Authentic Language:**

French

**State Party:**

Greece

**National / Other Legislative Provisions:**

Greece - Law No. 3386/2005 - Article 76

Greece - Law No. 3900/2010

Greece - Law Accompanying the Civil Code - Article 105

Greece - Decree No. 141/1991 on jurisdiction of the bodies of the Ministry of Public Order - Article 66

Greece - Decree No. 141/1991 on jurisdiction of the bodies of the Ministry of Public Order - Article 91

Greece - Decree No. 141/1991 on jurisdiction of the bodies of the Ministry of Public Order - Article 92

Greece - Decree No. 254/2004 on the Code of Conduct for police officers - Articles 2

Greece - Decree No. 254/2004 on the Code of Conduct for police officers - Articles 3

Greece - Presidential Decree No. 220/2007

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**Links:**

[1] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A11](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A11)

[2] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A30](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30)

[3] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A27](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A27)

[4] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A202](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A202)

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[6] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A192](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A192)

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[9] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

[10] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[11] [https://www.asylumlawdatabase.eu/node/195#toc\\_12](https://www.asylumlawdatabase.eu/node/195#toc_12)

[12] [https://www.asylumlawdatabase.eu/node/195#toc\\_22](https://www.asylumlawdatabase.eu/node/195#toc_22)

[13] <https://www.asylumlawdatabase.eu/node/353>

[14] <https://www.asylumlawdatabase.eu/node/4039>

[15] <https://www.asylumlawdatabase.eu/node/3946>

[16] <https://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609>

[17] <https://www.asylumlawdatabase.eu/en/content/ecthr-bm-v-greece-application-no-5360811>

[18] <https://www.asylumlawdatabase.eu/en/content/ecthr-ru-v-greece-application-no-223708>

[19] <https://www.asylumlawdatabase.eu/en/content/ecthr-rahimi-v-greece-application-no-868708-1>

[20] <https://www.asylumlawdatabase.eu/en/content/ecthr-de-los-santos-and-de-la-cruz-v-greece-applications-nos-213412-and-216112>

[21] <https://www.asylumlawdatabase.eu/en/content/ecthr-herman-and-serazadishvili-v-greece-applications-nos-2641811-and-4588411>

[22] <https://www.asylumlawdatabase.eu/en/content/ecthr-%E2%80%93-fh-v-greece-application-no-7845611>

[23] <https://www.asylumlawdatabase.eu/en/content/ecthr-aarabi-v-greece-application-no-3976609-2-april-2015>

[24] <https://www.asylumlawdatabase.eu/en/content/ecthr-ae-v-greece-application-no-4667310-27->

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[25] <https://www.asylumlawdatabase.eu/en/content/ecthr-horshill-v-greece-application-no-7042711-1-november-2013>

[26] <https://www.asylumlawdatabase.eu/en/content/ecthr-mahammad-and-others-v-greece-application-no-4835212-15-april-2015>

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