

ECtHR- A.A. v. Greece, Application no. 12186/08, 22 July 2010

Country of Applicant:

Palestinian Territory

Date of Decision:

22-07-2010

Citation:

ECtHR- A.A. v. Greece, Application no. 12186/08, 22 July 2010

Court Name:

European Court of Human Rights First Chamber

Keywords:[Effective remedy \(right to\)](#) [1][Detention](#) [2][Inhuman or degrading treatment or punishment](#) [3][Refugee Status](#) [4][Material reception conditions](#) [5]**Relevant Legislative Provisions:**European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [6]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [7] > [Article 3](#) [8]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [7] > [Article 5](#) [9]European Union Law > [EN - Reception Conditions Directive, Directive 2003/9/EC of 27 January 2003](#) [10]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [7] > [Article 29](#) [11]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [7] > [Article 34](#) [12]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [7] > [Article 41](#) [13]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [7] > [Article 44](#) [14]

Headnote:

The European Court of Human Rights held that there was a violation of Article 3 of the Convention with regards to the applicant's living conditions in the detention centre of Samos and the authorities' lack of diligence to provide him with the appropriate medical assistance. Furthermore, it found a violation of Article 5 para 1 and 4 regarding the lawfulness of his detention and his right to liberty.

Facts:

The applicant, a Palestinian national, entered the Greek territorial waters after fleeing the refugee camp he had been living in Lebanon and was arrested by the maritime police while his boat was sinking. He was transferred to the island of Samos, where he expressed his will to apply for asylum, which was not registered by the authorities. On the same day, the Police authorities of Samos ordered his detention. Subsequently, the prosecutor of Samos ordered his return to his country of origin. After the refusal of the authorities to register his demand for asylum, he submitted a new asylum application, which was registered this time. Subsequently, the decision of return of the applicant was suspended until the adoption of a decision on his demand for asylum. He was later released and his application was rejected due to lack of proof of risk of persecution on the grounds of religion, nationality or political opinion in his country of origin.

Invoking Article 3, the applicant complained about the ill-treatment by the maritime police during his arrest as well as about the conditions at the Samos detention centre. Furthermore, he complained under Article 3 about the lack of information on the possibility of appealing and the lack of assistance of a lawyer or interpreter. He also complained about the lawfulness of his detention under the same article.

Decision & Reasoning:

Turning to the complaint under Article 3 about the conditions of the detention centre in Samos where he was detained for three months, the Court noted that his allegations corresponded to reports of international and Greek organisations. More specifically, the Commission, the LIBE Committee, UNCHR Greece and ProAsyl confirmed the overcrowding, the poor hygiene conditions, the lack of infrastructure for leisure or meals and the inappropriateness of sanitary installations [58-60]. Therefore, the Court considered the applicant's detention conditions in Samos combined with the duration of three months as treatment contrary to Article 3 [62]. As to the personal treatment of the applicant, the Court, taking into account the general situation of the applicant's health and the living conditions in the detention centre of Samos, considered that the delays of the authorities to react to the demands of the applicant for a doctor had consequences up to the level of severity required by Article 3 of the Convention [64]. Therefore, it found a violation of this provision because of the living conditions in the detention centre and the authorities' lack of diligence to provide him with the appropriate medical assistance [65].

With regards to the complaint under Article 5 para 4, the Court underlined that the domestic law did not provide for the examination of the lawfulness of the detention of the applicant, being limited to the examination of the detention on the grounds of risk of absconding or of danger to public order [73]. Concerning the request for suspension, the Court highlighted that the applicant should benefit from a lawyer who, provided with the power of attorney duly certified by the authorities, had to go to Syros and file the objections of the applicant. In view of the present circumstances, the living conditions and the organisation in the detention centre of Samos, the efficacy of this measure was only theoretical [78]. Therefore, the Court concluded that there had been a violation of Article 5 para 4.

As to the complaint under Article 5 para 1 (f), the Court noted that the applicant remained in detention despite the fact that the procedure of his return was suspended. Not being able to be deported until the examination of his claim for asylum, his detention was deprived of legal basis in domestic law. As the Court underlined, the applicant was released tardily on the sole ground that the maximum duration of his detention was reached [92]. In the absence of other serious reasons justifying the extension of detention, the Court considered that the period of detention of the applicant after the registration of his asylum application was not necessary for the pursued purpose [93]. Therefore, it concluded that the detention of the applicant was not legal in the sense of Article 5 para 1 (f) of the Convention and there was a violation of this provision [94].

However, it rejected the applicant's complaint under Article 5 para 2 as inadmissible, in compliance with Article 35 §§ 3 and 4 of the Convention [99].

Outcome:

Violation of Article 3

Violation of Article 5 para 1 and 4

Case Law Cited:

[ECtHR - Saadi v. United Kingdom, no. 13229/03, 29 January 2008](#) [15]

ECtHR - Witold Litwa v. Poland, Application No. 26629/95

ECtHR - S.D. v Greece (Application no. 53541/07)

ECtHR - Amuur v. France, Application No. 19776/92

ECtHR - Tabesh v. Greece, Application No. 8256/07

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

ECtHR - Baranowski v Poland, Application No. 28358/95

ECtHR - Winterwerp v. the Netherlands, Application No. 6301/73

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

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

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

ECtHR - Van der Ven v. the Netherlands, Application No. 50901/99

ECtHR - Ramirez Sanchez v. France [GC], Application No. 59450/00

ECtHR - Fressoz Roire v. France [GC], Application No. 29183/95

ECtHR - Dalia v. France, Application No. 26102/95

ECtHR - Mahdid and Haddar v. Austria, Application No. 74762/01

Attachment(s):



[AFFAIRE A.A. c. GRECE.pdf](#)[17]

Other sources cited:

ProAsyl- Group of Lawyers for the Rights of Refugees and Migrants, Athens, [The truth may be bitter, but it must be told](#), [18] October 2007

Committee on Civil Liberties, Justice and Home Affairs - [Report of the delegation of LIBE of the European Parliament on the visit to Greece \(Samos and Athens\) on 14-15 June 2007](#) [19], 17 July 2007

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [Report to the Greek Government on the visit to Greece carried out by the CPT from 4 to 16 April 2013](#) [20], 16 October 2014

Council of Europe, [Resolution 1707\(2010\) Of The Parliamentary Assembly Of The Council Of Europe](#) [21], 28 January 2010

Authentic Language:

French

State Party:

Greece

National / Other Legislative Provisions:

Greece - Law 3386 of 2005 on the entrance

Greece - Presidential Decree No. 61/1999

Greece-Code of Administrative P

Greece- Code of the Civil Procedure

Greek Constitution- Articles 5 & 6

Law 2776/1999 concerning those incarcerated following a condemnation of a penal jurisdiction

Greece- Ministerial Order 58819/2003

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A30

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

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A43

[4] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A192

[5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2485

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

[7] <https://www.asylumlawdatabase.eu/node/453>

[8] https://www.asylumlawdatabase.eu/node/453#toc_21

[9] https://www.asylumlawdatabase.eu/node/453#toc_32

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

[11] https://www.asylumlawdatabase.eu/node/453#toc_127

[12] https://www.asylumlawdatabase.eu/node/453#toc_145

[13] https://www.asylumlawdatabase.eu/node/453#toc_171

[14] https://www.asylumlawdatabase.eu/node/453#toc_186

[15] <https://www.asylumlawdatabase.eu/en/content/ecthr-saadi-v-united-kingdom-no-1322903-29-january-2008>

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<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/AFFAIRE%20A.A.%20c.%20GRECE.pdf>

[18] http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Englisch/Griechenlandbericht_Engl.pdf

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<http://www.europarl.europa.eu/document/activities/cont/200801/20080104ATT17402/20080104ATT17402>

[20] <http://www.cpt.coe.int/documents/grc/2014-26-inf-eng.pdf>

[21] <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17813&lang=en>