

## **ECtHR - Herman and Serazadishvili v. Greece, Applications Nos. 26418/11 and 45884/11**

**Country of Applicant:**

Georgia  
Indonesia

**Date of Decision:**

24-04-2014

**Citation:**

45884/11

**Additional Citation:**

26418/11

**Keywords:**

[Effective remedy \(right to\)](#) [1]  
[Detention](#) [2]

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**Relevant Legislative Provisions:**

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3] > [Article 5](#) [4] > Art 5.1  
Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [3] > [Article 5](#) [4] > Art 5.4

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**Headnote:**

Detention conditions in Greece contrary to Article 3 of the Convention; Lack of effective review of the lawfulness of detention in violation of Article 5 § 4 of the Convention.

**Facts:**

The applicants are nationals of Indonesia (first) and Georgia (second) who were arrested in August 2010 and detained pending removal for being in Greece without a valid residence permit. Their asylum applications and appeals against detention were rejected. In December 2010, the second applicant's release from detention under the sub-directorate of the Aliens Police in Thessaloniki was ordered by a Greek court. In February 2011 the first applicant was released on expiration of the six-month time limit, having spent four months in Thessaloniki (Kordelio) police

custody and then two months in the detention center of Petrou Ralli. Both complained to the ECtHR that their detention conditions were contrary to Article 3 (prohibition of inhuman or degrading treatment) ECHR and that their detention was unlawful and failed to allow for effective review, under Article 5(1) (right to liberty) and 5(4) (right to a speedy decision on the lawfulness of detention) ECHR.

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### **Decision & Reasoning:**

On the basis of previous judgments of the ECtHR concerning these detention facilities at a similar time, and given the corroboration of the applicants' accounts with reports of the Committee for the Prevention of Torture, Amnesty International and UNHCR, the ECtHR found a violation of the applicants' rights under Article 3.

The lack of facilities for personal hygiene, the lack of privacy in cells, and the three square metres of personal space were especially noted with regard to the first applicant. Regarding the second applicant, the ECtHR approved reports of inadequate recreation provision, overcrowding, and the lack of food.

Regarding the lawfulness of detention, the ECtHR concluded that, due to the failure of the Greek authorities to make the necessary arrangements with the Indonesian authorities for the issuance of travel documents, Greece had fallen short of due diligence and had therefore violated Article 5(1)(f). The ECtHR however ruled that the second applicant's rights under the same article were not violated, since contact had been diligently made with the Georgian authorities, which justified the duration of detention.

The ECtHR finally found for both applicants a violation Article 5(4), concerning the lack of effective review of the lawfulness of detention. The ECtHR noted that the applicants' detention took place before the entry into force of an amendment to Greek law explicitly providing for the review of detention legality. On the basis of previous judgments concerning detention prior to this amendment, the ECtHR found that the judicial authorities had an inadequate power to review detention, restricted as they were to reviewing solely on the grounds of risk of flight and danger to public order.

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### **Outcome:**

Violation of Article 3 (degrading treatment) ? in respect of both applicants, on account of their conditions of detention

Violation of Article 5 § 1 ? as regards Ms Herman

No violation of Article 5 § 1 ? as regards Mr Serazadishvili

Violation of Article 5 § 4 ? in respect of both applicants

Just satisfaction: EUR 8,000 each to Ms Herman and Mr Serazadishvili (non-pecuniary damage), and EUR 2,000 to both applicants jointly (costs and expenses)

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### **Case Law Cited:**

ECtHR - Aleksandr Makarov v. Russia, Application No. 15217/07, UP

ECtHR - A.A. v. Greece, Application No. 12186/08

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

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

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

ECtHR - Labita v. Italy [GC], Application No. 26772/95

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

ECtHR - Samaras and others v. Greece, Application No.11463/09, UP

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

ECtHR - UK v. Greece, Application No. 2237/08

ECtHR - Horshill v. Greece, Application No. 70427/11

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

[ECtHR - C.D. and Others v. Greece, Application Nos. 33441/10, 33468/10 and 33476/10](#) [5]

[ECtHR - Saadi v. United Kingdom, no. 13229/03, 29 January 2008](#) [6]

[ECtHR - Gebremedhin \(Gaberamadhien\) v France, Application No. 25389/05](#) [7]

ECtHR - Chkhartishvili v. Greece, Application No.22910/10, UP

[ECtHR - Chahal v the United Kingdom \(Application no. 22414/93\)](#) [8]

#### **Attachment(s):**



[AFFAIRE HERMAN ET SERAZADISHVILI c. GRECE.pdf](#)[9]

#### **Other sources cited:**

The European Commission's for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report on its visit to police stations and detention centres for foreigners in Greece in 2008

CPT report on its visit from 17 till 29 September 2009 to the police station or detention centres for foreigners in Greece

Amnesty International Report 2010, «Irregular migrants and asylum seekers are routinely detained in substandard detention conditions in Greece»

**Authentic Language:**

English

**State Party:**

Greece

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**Links:**

[1] [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)

[2] [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)

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

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

[5] <https://www.asylumlawdatabase.eu/en/content/ecthr-cd-and-others-v-greece-application-nos-3344110-3346810-and-3347610>

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

[7] <https://www.asylumlawdatabase.eu/en/content/ecthr-gebremedhin-gaberamadhien-v-france-application-no-2538905>

[8] <https://www.asylumlawdatabase.eu/en/content/ecthr-chahal-v-united-kingdom-application-no-2241493>

[9]

<https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/AFFAIRE%20HERMAN%20ET%20SERAZA>