

## **ECtHR- S.D. v. Greece, Application no. 53541/07, 11 September 2009**

**Country of Applicant:**

Turkey

**Date of Decision:**

11-09-2009

**Citation:**

ECtHR- S.D. v. Greece, Application no. 53541/07, 11 September 2009

**Court Name:**

European Court of Human Rights First Chamber

**Keywords:**[Effective remedy \(right to\)](#) [1][Detention](#) [2][Real risk](#) [3][Refugee Status](#) [4][Material reception conditions](#) [5][Right to remain pending a decision \(Suspensive effect\)](#) [6][Well-founded fear](#) [7][Political Opinion](#) [8]

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**Relevant Legislative Provisions:**Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [9] > [Article 3](#) [10]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [9] > [Article 5](#) [11]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [9] > [Article 13](#) [12]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [9] > [Article 34](#) [13]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [9] > [Article 35](#) [14]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [9] > [Article 41](#) [15]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [9] > [Article 44](#) [16]

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**Headnote:**

The European Court of Human Rights held that there had been a violation of Article 3 with regards to the applicant's detention conditions in Soufli and Attiki (Petrou Rali). It further found a violation of Article 5 §§ 1 and 4 due to the unlawful detention of the applicant and the lack of remedies to challenge it.

**Facts:**

The applicant, a Turkish national, was arrested twice and was tortured by the Turkish authorities because of his political opinions and journalistic activities. After being released under certain conditions, he left Turkey to avoid new arrests. He entered Greece in 2007 in an irregular manner, was subsequently arrested and had allegedly requested asylum, without his request being registered by the authorities. According to the Greek authorities, he had already submitted an asylum application in 1990, which had been rejected. He subsequently applied unsuccessfully for asylum in Germany but stayed there for four years before returning back to Turkey with forged documents.

Upon his (second) arrival to Greece, he was accused of using forged papers and entering the country illegally. Despite his acquittal, he was arrested again by the police and deportation proceedings were initiated. He was placed in the detention centre of Soufli, pending the decision of deportation, which was not finally taken because the authorities had registered in the meantime his asylum application. He was again arrested on the basis of a new decision of deportation and reiterated his request for asylum. He subsequently appealed unsuccessfully against the decision of deportation. His objections against his detention were also rejected by the President of Administrative Court. Subsequently, he was transferred to the detention centre of Attiki. At a later stage, the Administrative Court accepted his objections and ordered his release given that his asylum application was still pending.

**Decision & Reasoning:**

Turning first to the complaint under Article 3 of the Convention, the Court highlighted that despite the fact that the applicant was sharing a relatively clean cell with hot water during his detention in Soufli, the fact remained that he stayed two months in barracks without the possibility of going outside, telephoning and without being able to have clean blankets and sheets and sufficient hygiene products. Likewise, in the centre in Attiki, the applicant was confined to his cell, without possibility of outdoor exercise and in conditions described as unacceptable by the CPT [51]. Adding the personal situation of torture of the applicant to this, which left important clinical and psychological scars on him, it found a violation of Article 3 of the Convention [53-54].

With regards to the applicant's complaint under Article 5 para 1, the Court noted that the authorities did not take into consideration the applicant's quality as an asylum seeker. The latter, not being able to be deported until the delivery of a decision on his claim, his detention was deprived of a legal basis under domestic law, at least as of May 17, 2007, when his application was formally registered. As the Court highlighted, the applicant was released tardily, when the administrative court accepted his objections [65]. Therefore, it found a violation of Article 5 para 1 (f) of the Convention [67].

Concerning the alleged violation of Article 5 para 4, the Court observed that the Greek legal system did not offer the applicant any possibility to challenge the lawfulness of his detention and thereby concluded a violation of this provision [76-77].

Conversely, the Court rejected his complaint of violation of Article 3 with regards to the administration's decision to deport him without examining his risks of torture in Turkey, as inadmissible in compliance with Article 35 §§ 1 and 4 of the Convention.

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**Outcome:**

Violation of Article 3 regarding detention conditions in Soufli and Attiki(Petrou Ralli)

Violation of Article 5 para 1 (f) and 4

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**Case Law Cited:**

ECtHR- Shamsa v Poland, Application no. 45355/99

ECtHR- Ireland v. United Kingdom, Application no. 5310/71

ECtHR- Albert et Le Compte v. Belgium, Application no. 7299/75 7496/76

ECtHR- Smith and Grady v. the United Kingdom, Application nos. 33985/96 and 33986/96

Kalachnikov v. Russia (no. 47095/99)

[ECtHR - Saadi v. United Kingdom, no. 13229/03, 29 January 2008](#) [17]

ECtHR - Price v. United Kingdom, Application No. 33394/96

ECtHR - Selmouni v. France [GC], Application No. 25803/94

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

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

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

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

ECtHR - Raninen v Finland (Application no. 20972/92)

ECtHR - Tyrer v UK (Application no. 5856/72)

**Attachment(s):**



[AFFAIRE S.D. c. GRECE.pdf](#)[18]

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**Other sources cited:**

Greek Ombudsman, [Report of 29 October 2007 following his visit to the police post of Soufli](#) [19]

United Nations High Commissioner for Refugees, Letter of the Greek Office of UNHCR, 12 December 2008

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

Punishment, [Report to the Government of Greece on the visit to Greece carried out by CPT from 20 to 27 February 2007](#) [20], 8 February 2008

[Council of Europe Commissioner for Human Rights? report following his visit to Greece from 8 to 10 December 2008](#) [21], 19 February 2009

**Authentic Language:**

English

**State Party:**

Greece

**National / Other Legislative Provisions:**

Greece - Law 3386 of 2005 on the entrance

Greece-Presidential Decree 61/1999 that regulates the situation of political refugees and asylum seekers

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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] [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)

[4] [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)

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

[6] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A71](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A71)

[7] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A89](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A89)

[8] [https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field\\_keywords%3A201](https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A201)

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

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

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

[12] [https://www.asylumlawdatabase.eu/node/195#toc\\_60](https://www.asylumlawdatabase.eu/node/195#toc_60)

[13] [https://www.asylumlawdatabase.eu/node/195#toc\\_132](https://www.asylumlawdatabase.eu/node/195#toc_132)

[14] [https://www.asylumlawdatabase.eu/node/195#toc\\_135](https://www.asylumlawdatabase.eu/node/195#toc_135)

[15] [https://www.asylumlawdatabase.eu/node/195#toc\\_165](https://www.asylumlawdatabase.eu/node/195#toc_165)

[16] [https://www.asylumlawdatabase.eu/node/195#toc\\_173](https://www.asylumlawdatabase.eu/node/195#toc_173)

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

[18]

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

[19] [http://www.synigoros.gr/resources/\\_autopsia\\_thraki\\_29\\_01.pdf](http://www.synigoros.gr/resources/_autopsia_thraki_29_01.pdf)

[20] <http://www.cpt.coe.int/documents/grc/2008-03-inf-eng.htm>

[21] <https://wcd.coe.int/ViewDoc.jsp?id=1409353>