

ECtHR - Tabesh v. Greece, Application no. 8256/07, 26 November 2009

Country of Applicant:

Afghanistan

Date of Decision:

26-11-2009

Citation:

Tabesh v. Greece, Application no. 8256/07

Court Name:

European Court of Human Rights, First Chamber

Keywords:[Effective remedy \(right to\)](#) [1][Detention](#) [2][Inhuman or degrading treatment or punishment](#) [3][Right to remain pending a decision \(Suspensive effect\)](#) [4][Reception conditions](#) [5][Return](#) [6]**Relevant Legislative Provisions:**Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [7] > [Article 3](#) [8]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [7] > [Article 5](#) [9] > Art 5.1Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [7] > [Article 5](#) [9] > Art 5.4Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [7] > [Article 35](#) [10]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [7] > [Article 41](#) [11]**Headnote:**

This case related to the conditions of detention at the Thessaloniki Aliens? Police Directorate in Greece, the lawfulness of the applicant?s detention pending deportation and whether there was

had been an effective judicial remedy to challenge his detention.

The Court found that there was a violation of Article 3 as the conditions at the detention centre were inhuman and degrading. The length of his detention violated Article 5(1) as it exceeded the time considered reasonable for the purpose of carrying out his deportation, given the Greek authorities lack of diligence. Domestic law in Greece was incompatible with the safeguards provided for in Article 5(4).

Facts:

The applicant is a national of Afghanistan who entered Greece irregularly and was convicted for possession of false travel documents. His expulsion was ordered due to his criminal conviction and he was detained pending removal, on the basis that he was a danger to the public and was at risk of absconding. He was held for 7 days at Kordelio Border Police facility before being transferred to Thessaloniki Aliens? Police Directorate.

The applicant's challenge to his detention in January 2007 was dismissed by the President of the administrative court of Thessaloniki. On 28 March 2007, the applicant was released as the three month maximum period prescribed by the law for his detention had expired, and he could not be deported to Afghanistan as he did not have travel documents.

He claimed that conditions of his detention amounted to inhuman and degrading treatment contrary to Article 3. He also alleged a violation of Article 5(1) ECHR on the basis that the domestic authorities did not give sufficient reasons to justify his detention and that his detention for the three month statutory maximum period was excessive, as his deportation to Afghanistan was impossible given his lack of travel documents. He also alleged that there was ineffective judicial review of his detention contrary to Article 5(4).

Decision & Reasoning:

With regard to Article 3, the Court emphasised the absolute nature of this provision, and the need for treatment to attain a minimum level of severity. It cited its previous case law which indicated that conditions of detention must be compatible with respect for human dignity.

It noted that the applicant's allegations concerning conditions at the Thessaloniki Aliens? Police Directorate were supported by the findings of an Ombudsman's report and reports by the Committee for the Prevention of Torture (CPT). These corroborated his account of detainees being unable to perform physical exercise, overcrowding, poor hygiene and lack of access to the outside world. The reports also confirmed that the same facility was used for the transfer of prisoners and the low sum given to detainees to cover the costs of food.

The Court considered that the detention of the applicant for three months with no access to recreational activities and without proper meals amounted to degrading treatment contrary to Article 3 ECHR. It found that the Thessaloniki Aliens? Police Directorate was designed for short-term detention and was not suited for such a long period of detention especially as the applicant was not serving a criminal sentence, but was being detained for administrative reasons. Given this finding, the Court found it unnecessary to separately examine detention conditions at the Kordelio Border Police facility.

In relation to Article 5 the Court found that the Administrative Court had not addressed the applicant's argument that his deportation was not possible as his country of origin had not

confirmed to Greece that he was a national. Following its decision in *Saadi v the UK* the Court considered that the place and conditions of the applicant's detention were inappropriate and, in particular found that his detention for three months was arbitrary as he could not be deported without travel documents, and the Greek authorities had not taken necessary, active steps to get these issued. As such the duration of his detention exceeded the time reasonable required for the purpose pursued, and there was a violation of article 5(1)f).

The Court also considered that the Law No. 3386/2005 did not provide the possibility for a foreign national detained pending deportation to directly challenge the lawfulness of detention as the expulsion decision and detention decision were combined. This meant that a successful challenge at court to a detention measure merely resulted in the grant of 30 days to leave the territory, and that bringing an action in the administrative court to annul or stay an expulsion decision would not lead to release from detention.

Considering the above factors, the Court found the deficiencies in domestic law to violate Article 5(4).

Outcome:

The Court found a violation of article 3 with regard to the conditions of detention. There were also violations of article 5(1) and 5(4).

Observations/Comments:

Following this judgment, the European Court of Human Rights has reconfirmed that conditions in the same centre violate Article 3 in *Efremidze v. Greece* and *A.E. v Greece*, and also found violations of Article 5(1) and 5(4).

This case was also relied on by the Court in its judgment in *M.S.S. v. Belgium and Greece*.

Case Law Cited:

ECtHR- *Kaja v. Greece*, no. 32927/03, 27 July 2006

ECtHR - *Iatridis v. Greece* [GC], Application No. 31107/96

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

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

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

[12]

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 - Agnissan v. Denmark, Application No. 39964/98

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

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

[ECtHR - Saadi v. United Kingdom, no. 13229/03, 29 January 2008](#) [13]

[ECtHR - Chahal v the United Kingdom \(Application no. 22414/93\)](#) [14]

Other sources cited:

[12th General Report on the CPT's activities](#) [15], 3 September 2002

Greek Ombudsman report 'Stay of criminal detainees in police premises?' 11 May 2007

Authentic Language:

French

State Party:

Greece

National / Other Legislative Provisions:

Greece - Law No. 3386/2005 - Article 76

Greece - Law No. 3386/2005 - Article 77

Greece - Article 44 of Law No. 2910/2001

relating to the entry and residence of foreigners in the Greek territory

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%3A71

[5] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A753

[6] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2490

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

[8] https://www.asylumlawdatabase.eu/node/195#toc_12

[9] https://www.asylumlawdatabase.eu/node/195#toc_22

[10] https://www.asylumlawdatabase.eu/node/195#toc_135

[11] https://www.asylumlawdatabase.eu/node/195#toc_165

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

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

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

[15] <http://www.cpt.coe.int/en/annual/rep-12.htm>