

Greek authorities unlawfully detained an Afghan asylum seeker in degrading conditions

In today's Chamber judgment in the case of [Ahmade v. Greece](#) (application no. 50520/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment), taken separately and in conjunction with **Article 13 (right to an effective remedy)** of the European Convention on Human Rights, in respect of the conditions of the applicant's detention,

a violation of Article 13 in conjunction with Article 3 in respect of the risk of the applicant's removal,

a violation of Article 5 § 1 (right to liberty and security) and,

a violation of Article 5 § 4 (procedural guarantees of review).

The case concerned the arrest and detention pending removal to Afghanistan of an Afghan national. The Court noted in particular that the applicant's detention had caused him considerable suffering and no effective remedy had been available to him to complain about it. It further observed that he had been held unlawfully and that there had been no review of the lawfulness of his detention. Lastly, the Court once again pointed to the shortcomings in the Greek asylum system. It emphasised that the applicant risked being removed before his asylum appeals had been heard.

Principal facts

The applicant, Seydmajed Ahmade, is an Afghan national who lives in Athens (Greece).

Mr Ahmade arrived in Greece on 23 December 2007. He was arrested several times between then and 11 August 2008 and each time various removal decisions were taken against him. Following a fight, the applicant was arrested again on 27 August 2009. His removal was ordered once again and he was held at the police station on the ground that he posed a threat to public order and was likely to abscond on account of the criminal proceedings against him concerning the fight.

He was committed for trial before the Athens Criminal Court, in particular for illegally entering Greece. On 31 August 2009, for that offence alone, he was given a suspended sentence of 30 days' imprisonment and fined 40 euros for costs. As he could not pay that sum he was held at the police station for 8 days.

On 8 September the applicant lodged an asylum application with the Refugee Commission.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Mr Ahmade applied to the President of the Athens Administrative Court on 11 September 2009 to complain about the conditions of his detention, referring among other things to the overcrowding and atrocious hygiene in the police cells. Even though the main criminal proceedings had in the meantime been discontinued and in spite of his asylum application, he was unsuccessful in the first instance and on appeal and was held in custody on the ground that he might abscond because of his illegal situation.

Mr Ahmade's detention, which was extended in order to guarantee his removal, lasted for 83 days in total in the cells of two police stations in Athens. He was released on 18 November pending a decision on his asylum application, which was ultimately dismissed on 14 December 2009. He lodged two appeals against that decision.

Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of inhuman and degrading treatment) and Article 13 (right to an effective remedy) of the Convention, Mr Ahmade complained about the conditions in which he was detained in the Athens police stations between 27 August and 18 November 2009 and the lack of an effective remedy in that connection. He also alleged that, were he to be removed to Afghanistan, he would face inhuman treatment on account of the current conditions in that country.

Under Article 5 § 1 (right to liberty and security) the applicant further complained that his detention had been arbitrary, and under Article 5 § 4 that the review of the lawfulness of the detention pending removal had been ineffective.

The application was lodged with the European Court of Human Rights on 21 September 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Nina **Vajić** (Croatia), *President*,
Peer **Lorenzen** (Denmark),
Elisabeth **Steiner** (Austria),
Mirjana **Lazarova Trajkovska** (the "Former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Article 3

As regards the conditions of Mr Ahmade's detention in the first police station, the Court referred to the report of the Ombudsman, who visited the applicant on 10 September 2009. The Ombudsman had reported significant overcrowding, poor ventilation, lighting and cleanliness, and no possibility of taking exercise in a courtyard.

The Court further referred to the findings of the United Nations Special Rapporteur on Torture, according to whom detainees had to obtain the authorisation of a police officer to use the toilets, could not take showers, were obliged to sleep on benches or on the floor, and were held in dark and stuffy cells.

Pointing out that the applicant had been held for a total of 83 days in two police stations, the Court observed that Greek regulations normally allowed detention in a police station only for the duration that was strictly necessary to arrange transfer to a prison.

The Court thus concluded that the holding of Mr Ahmade in custody constituted degrading treatment in breach of Article 3.

Article 3 taken together with Article 13

The Court found that Greek law allowed the courts to examine the decision to detain an illegal immigrant only on the basis of a risk of absconding or of a threat to public order but did not give the courts jurisdiction to examine the living conditions in detention centres for illegal immigrants or to order the release of a detainee on the grounds of such conditions.

The Court further noted that the applicant had complained about the poor conditions of his detention on two occasions before the President of the Athens Administrative Court, but had received no answer.

The Court attributed particular weight to the context of the case, noting that the European Committee for the Prevention of Torture had, in a number of its reports, conveyed a bleak picture of the very poor conditions in which illegal immigrants were held in police stations, for months at a time, without any possibility of outdoor exercise or activities and without adequate health care.

The Court concluded that the applicant did not have an effective remedy by which to complain about the conditions of his detention, in breach of Articles 3 taken together with 13.

Article 13 taken together with Article 3

Verifying whether in the present case there were any effective guarantees to protect Mr Ahmade against arbitrary *refoulement* to his country of origin, the Court observed that it had noted, in its judgment in [M.S.S. v. Belgium and Greece \(no. 30696/09\)](#), certain shortcomings in the Greek asylum system (in particular unenforced legislation, structural defects in the asylum procedure, excessive duration of appeals and insufficient judicial scrutiny) and had found that asylum seekers were not protected against arbitrary removal.

The Court noted that, in the present case, the actions brought by the applicant in seeking the annulment of the Refugee Commission's Decision of 14 December 2009 rejecting his asylum application, and in requesting a stay of execution of that decision, were still pending. The Court considered that such a length of time was not reasonable in the case of appeals against removal decisions, especially as the purpose of requesting a stay of execution was precisely to obtain a speedy decision.

The Court thus found that there had been a violation of Article 13 taken together with Article 3 on account of the shortcomings in the Greek asylum system and the risk faced by the applicant, which still existed, of being deported before his asylum appeal had been examined.

Articles 5 § 1

The Court, pointing out that sub-paragraph (f) of Article 5 § 1 of the Convention permitted States to control the liberty of aliens in an immigration context, reiterated that any deprivation of liberty must, however, be "lawful", meaning in particular that it must not be arbitrary. To avoid being branded as arbitrary, detention must be closely connected to the purpose of preventing unauthorised entry of the person to the country.

In the present case, the Court observed that the applicant's deprivation of liberty sought to guarantee his removal. In accordance with the Geneva Convention² and Greek law, asylum seekers were entitled to remain in the country until the procedure for examining their application had been completed. Under Greek law, detention for the purposes of removal was justified only where the removal could actually be executed, and this was not the case for asylum seekers.

The Court took the view that the close connection between the applicant's detention between 8 September 2009 and 18 November 2009 and the possibility of removing him from Greece could not be established and thus found that the detention was not "lawful" within the meaning of Article 5 § 1 (f).

Article 5 § 4

Under Article 5 § 4, the Court observed that it had already addressed the question of the effectiveness in Greece of judicial scrutiny in respect of detention pending administrative removal³. It had thus found that Greek law fell short of the requirements of Article 5 § 4. In particular, section 76 of Law no. 3386/2005, as applied in the present case, did not expressly confer on a court the power to examine the lawfulness of detention other than in terms of the risk of absconding or the threat to public order.

In the applicant's case the Athens Administrative Court had dismissed his complaints concerning his detention without even examining the question of its lawfulness. The Court thus found that there had been a violation of Article 5 § 4.

Just satisfaction (Article 41)

The court held that Greece was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage, and EUR 2,500 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

² Geneva Convention of 1951 relating to the Status of Refugees.

³ See, for example, the case of *Efremidze v. Greece*, no. 33225/08