

Press release issued by the Registrar

**CHAMBER JUDGMENT
S.D. v. GREECE**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *S.D. v. Greece* (application no. 53541/07).

The Court held unanimously that there had been:

- a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, because of the conditions in which the applicant had been detained in holding centres for foreigners; and,
- a **violation of Article 5 §§ 1 and 4** (right to liberty and security), because of the unlawfulness of his detention and the fact that he had been unable under Greek law to challenge its lawfulness.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 10,000 euros (EUR) in respect of non-pecuniary damage. ([The judgment is available only in French.](#))

1. Principal facts

The applicant, S.D., is a Turkish national who was born in 1959 and lives in Athens. Having been subjected to detentions and violence by the Turkish authorities because of his political convictions and his work as a journalist, he left Turkey and swam to Greece in 2007. On arriving in Greece he was arrested by the police for entering the country illegally. From 12 May to 10 July 2007 S.D. was detained in the holding facility at the Soufli border guard station.

S.D. alleged that he had immediately asked for political asylum, but no such request was registered. In 1990 he had already submitted an application for political asylum to the Greek authorities, but it had been rejected.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

When he arrived in Greece on 12 May 2007, proceedings were brought against him for using forged papers and entering the country illegally. Although he was acquitted – the court found that he had been forced to leave Turkey because his life was in danger – the police arrested him again and deportation proceedings were initiated. He was placed in the holding facility at the Soufli border guard station pending his expulsion, but he was not deported because in the meantime the authorities had officially registered his asylum application. During his detention S.D. was not allowed to go outside or make telephone calls, and had no access to blankets, clean sheets or hot water.

On 24 May 2007 the applicant's appeal against the decision to deport him was rejected by the District Police Commissioner, on the grounds that he represented a threat to the country's peace and security.

The applicant's objections against his detention were dismissed by the Administrative Court, according to which such objections were admissible in Greek law only if the person concerned intended to leave the country within thirty days, which was not the case here, as the applicant had applied for political asylum.

After an initial rejection, the processing of the asylum application (which the applicant's lawyer had filed on 15 May 2007) was adjourned on 12 July 2007 as the authorities were awaiting additional information, including the results of medical examinations. This information was received on 19 September 2007 and confirmed the ill-treatment inflicted on the applicant in Turkey, which resembled torture, including electric shocks, 'reverse-hanging' (hanging naked by the arms with the wrists tied behind the back) or isolation in "F-type" cells.

On 10 July, while his asylum application was being processed, the applicant was transferred to the Petrou Rali holding facility for foreigners in Attica, where he remained confined to his cell until 16 July 2007, to be brought before the Advisory Committee on Asylum for an opinion on his application. On 17 July 2007 the applicant was issued with an asylum seeker's certificate valid for six months, which has since been renewed twice, giving him the right to work and to receive medical assistance.

S.D. renewed his objections against his detention before the administrative tribunal, which allowed them on 16 July 2007. The court held that, in general, the expulsion and removal of a foreigner who had entered Greece illegally and applied for asylum there were prohibited. In the case in point it found that the examination of S.D.'s asylum application was pending and ordered his release.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 23 November 2007. The admissibility and merits of the case were examined together.

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

Nina **Vajić** (Croatia), *President*,
Christos **Rozakis** (Greece),
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),

Khanlar **Hajiyev** (Azerbaijan),
Giorgio **Malinverni** (Switzerland),
George **Nicolaou** (Cyprus), *judges*,

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

3. Summary of the judgment²

Complaints

Relying on Article 3, S.D. complained about the conditions in which he had been detained for two months in the Soufli and Petrou Rali holding centres – without physical exercise, contact with the outside world or medical attention. Relying also on Article 5 §§ 1 and 4, he complained that he had been detained while he was an asylum seeker and that the Administrative Court had refused to examine the lawfulness of his detention.

Decision of the Court

Article 3

In reply to the Greek Government, who emphasised the limited duration of the detention (two months), the Court pointed out that the amount of time during which a person was subjected to inhuman or degrading treatment was immaterial, particularly where, as in the applicant's case, the person's state of health was fragile.

The applicant alleged that the Soufli holding facility had been overcrowded and the blankets dirty, and he had been deprived of outdoor activities, medical treatment, hot water and telephone calls. The Greek Government did not explicitly deny those allegations.

The allegations were in fact corroborated by several reports by international institutions – including the Office of the UN High Commissioner for Refugees and Human Rights Watch – confirming the deplorable conditions of detention in all the holding facilities near the border between Greece and Turkey.

The Court considered that, even assuming that the applicant had shared a relatively clean room with a bath and hot water with one other Turkish detainee, as stated by the head of the Greek section of Amnesty International when she visited the Soufli holding facility on 18 May 2007, S.D. had still spent two months in a prefabricated cabin, without being allowed outdoors and without access to a telephone, blankets or clean sheets or sufficient hygiene products. He was subsequently held in Patrou Rali and confined to his cell for six days, in unacceptable conditions as described by the European Committee for the Prevention of Torture following their visit in February 2007.

The Court concluded that S.D., while an asylum seeker, had experienced conditions of detention that amounted to degrading treatment in violation of Article 3.

Article 5 § 1

² This summary by the Registry does not bind the Court.

The Court noted that S.D.'s asylum application had not been registered until the third attempt, on 17 May 2007, and that the authorities had then failed to take his asylum seeker status into account. His detention with a view to expulsion had in fact had no legal basis in Greek law after that date since asylum seekers whose applications were pending could not be deported. His detention had therefore been unlawful, in violation of Article 5 § 1.

Article 5 § 4

The Court noted that in Greece people who, like S.D., could not be expelled pending a decision about their application for asylum but wished to challenge the lawfulness of their detention found themselves in a legal vacuum. Greek law did not permit direct review of the lawfulness of the detention of an alien being held with a view to expulsion.

S.D. had been unable to have the lawfulness of his detention reviewed by the Greek courts. There had been no possibility in Greek law for him to obtain a decision on the matter, in violation of Article 5 § 4.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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.