



Detention of three Afghan nationals in Vial migrant centre in Greece

In today's **Chamber judgment**¹ in the case of **J.R. and Others v. Greece** (application no. 22696/16) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights,

a violation of Article 5 § 2 (right to be informed promptly of the reasons for arrest);

no violation of Article 3 (prohibition of inhuman or degrading treatment); and

no violation of Article 34 (right of individual application).

The case concerned the conditions in which three Afghan nationals were held in the Vial reception centre, on the Greek island of Chios, and the circumstances of their detention.

The Court found in particular that the applicants had been deprived of their liberty for their first month in the centre, until 21 April 2016 when it became a semi-open centre. The Court was nevertheless of the view that the one-month period of detention, whose aim had been to guarantee the possibility of removing the applicants under the EU-Turkey Declaration, was not arbitrary and could not be regarded as "unlawful" within the meaning of Article 5 § 1 (f). However, the applicants had not been appropriately informed about the reasons for their arrest or the remedies available in order to challenge that detention.

As to the conditions of detention in the centre, the Court noted the emergency situation facing the Greek authorities after significant numbers of migrants had arrived and the ensuing material difficulties. It observed that several NGOs had visited the centre and had partly confirmed the applicants' allegations, but found that the conditions were not severe enough for their detention to be characterised as inhuman or degrading treatment had not been reached.

Principal facts

The applicants, Mr J.R., Ms N.R. and Mr A.R., are Afghan nationals who were born in 1990, 1994 and 1989. The first two are brother and sister, while Mr A.R. is the boyfriend of Ms N.R.

On 21 March 2016 the three applicants, together with the two children of Ms N.R., aged 4 and 7, arrived on the island of Chios, where they were arrested and placed in the VIAL centre (migrant reception, identification and registration centre in a disused factory, known by its acronym VIAL). They remained in the centre until September 2016 (J.R.) and November 2016 (N.R. and A.R.). In the meantime they applied for asylum.

Between 21 March and late April 2016, after the entry into force of the EU-Turkey Declaration (an agreement concerning the return of irregular migrants from Greece to Turkey), the centre had to cope with large numbers of new arrivals, bringing the total number of occupants to over 2,000 – more than double its capacity. The overcrowding entailed poor living conditions, according to the applicants and partly confirmed by reports of visits by various organisations including Human Rights

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.

Watch, the European Committee for the Prevention of Torture (CPT) and the Hellenic Council for Refugees: there was insufficient food, a lack of hygiene, the water supply was often cut off, and medical care and legal assistance were scarce.

Complaints, procedure and composition of the Court

Relying on Article 5 § 1 (right to liberty and security), the applicants complained about the conditions and length of their detention in the centre, which they regarded as arbitrary. They also complained that they had not received any information about the reasons for their detention, neither in their mother tongue nor in any other language, in breach of Article 5 § 2 (right to be informed promptly of the charge). They argued that the conditions of their detention in the “Vial” centre also breached Article 3 (prohibition of inhuman or degrading treatment). Lastly, J.R. relied on Article 34 (right of individual application), alleging that the fact of being summoned and questioned by the police in October 2016 concerning his application to the Court constituted an attempt to intimidate him and dissuade him from pursuing his case.

The application was lodged with the European Court of Human Rights on 19 April 2016.

Written comments were received from the Office of the UN High Commissioner for Refugees and the UN High Commissioner for Human Rights, after they had been granted leave by the President to intervene as third parties.

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

Kristina **Pardalos** (San Marino), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Aleš **Pejchal** (the Czech Republic),
Ksenija **Turković** (Croatia),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

[Article 5 § 1 \(right to liberty and security\)](#)

The Court noted that on 21 April 2016 the “Vial” Centre had been converted into a semi-open centre and that the applicants could therefore go out during the day. It concluded that the applicants’ detention in the centre between 21 March and 21 April amounted to deprivation of liberty, whereas after that date they were subject only to a restriction of movement.

The Court considered that the situation in question fell within the scope of Article 5 § 1 (f) of the Convention. The applicants had been detained with a view to their deportation, the aim being to prevent them from remaining in Greece unlawfully and to identify and register them as part of the implementation of the “EU-Turkey Declaration”. It noted that the applicants’ deprivation of liberty was based on section 76 of Law no. 3386/2005 and was intended first of all to guarantee the possibility of their removal. It observed that a detention period of one month should not be considered excessive for the purposes of the necessary administrative formalities. Lastly, it noted that the applicants had been released one month and ten days after expressing their wish to apply for asylum.

The Court therefore found that the applicants' detention had not been arbitrary and that it could not be regarded as "unlawful" within the meaning of Article 5 § 1 (f). There had not, therefore, been a violation of this provision.

Article 5 § 2 (right to be informed promptly of the charge)

The Court found it likely that, while the applicants could have been aware that they had entered Greece unlawfully, they might not have known that their situation was covered by the "EU-Turkey Declaration", signed the day before their arrest. It noted that, even if they had received an information leaflet, as the Government had stated, its content was not such as to provide them with sufficient details about the reasons for their arrest or the remedies available to them.

The Court thus found that there had been a violation of Article 5 § 2 of the Convention.

Article 3 (prohibition of torture and inhuman or degrading treatment)

The Court noted that the facts in question occurred at the time of an exceptional and sharp increase in migratory flows in Greece, which had created organisational, logistical and structural difficulties. It reiterated that, in view of the absolute nature of Article 3, the factors associated with an increasing influx of migrants could not absolve States of their obligations to ensure that all persons deprived of their liberty were held in conditions compatible with respect for human dignity. It observed that several NGOs had visited the centre and confirmed some of the applicants' allegations concerning its general condition.

The Court found that the CPT had not been particularly critical of the conditions prevailing in the centre, particularly as regards the aspects that could have concerned the applicants' situation. Its criticisms had focused mainly on medical care, the lack of adequate information and legal assistance and the poor quality of drinking water and food. It was apparent from the file that those problems were not such as to affect the applicants excessively in terms of Article 3 of the Convention. The Court also noted that the applicants' detention had been short, namely thirty days. It therefore considered that the threshold of severity required for their detention to be characterised as inhuman or degrading treatment had not been reached. There had not, therefore, been a violation of Article 3.

Article 34 (right of individual application)

The Court reiterated that it was in principle not appropriate for the authorities of a respondent State to enter into direct contact with an applicant in connection with his or her case before the Court, although not all enquiries by authorities about a pending application could be regarded as a measure of intimidation. The summons and questioning to which J.R. was subjected concerned the gathering, for the preparation of the Government's observations to the Court, of information on the applicants' residence after leaving the centre and on their representation. In the Court's view, there was nothing to suggest that the aim of the interview had been to persuade the applicants to withdraw or amend their application or to hinder them in the effective exercise of their right of individual application, nor was there any indication that it had had such an effect.

The Court found that the respondent State had not failed to fulfil its obligations under Article 34.

Just satisfaction (Article 41)

The Court held that Greece was to pay the applicants 620 euros (EUR) each in respect of non-pecuniary damage, and awarded EUR 1,000 to the applicants jointly 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.