



The remedies proposed to detained migrants in emergency reception centres in Greece were neither accessible nor sufficient

In today's **Chamber judgment**¹ in the case of **[Kaak and Others v. Greece](#)** (application no. 34215/16) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights;

no violation of Article 5 § 1 (right to liberty and security); and

a violation of Article 5 § 4 (right to a speedy decision on the lawfulness of detention).

The case concerned the conditions of detention of Syrian, Afghan and Palestinian nationals in the "hotspots" of Vial and Souda (Greece), and the lawfulness of their detention in those camps.

The Court considered that the authorities had done all that could reasonably be expected of them in the Vial camp to meet the obligation to provide care and protection to unaccompanied minors. The other applicants had been transferred immediately – or within ten days – from the Vial camp to the Souda camp. The Court also held that the conditions of detention in the Souda camp did not amount to inhuman or degrading treatment.

The Court reiterated its previous finding that a period of one month's detention in the Vial camp should not be considered excessive, given the time needed to comply with the relevant administrative formalities. In addition, the length of the applicants' detention once they had expressed their wish to apply for asylum had been relatively short.

In contrast, the applicants, who did not have legal assistance, had not been able to understand the content of the information brochure; in particular, they were unable to understand the material relating to the various appeal possibilities available under domestic law.

Principal facts

The applicants, 49 adults, teenagers and children of Syrian, Afghan and Palestinian nationalities, unlawfully entered Greece, landing on the island of Chios by boat between 20 March and 15 April 2016.

The applicants were all arrested by the police on the day of their arrival and placed in the Vial reception, identification and registration centre; some were subsequently transferred to the Souda camp. Expulsions orders were issued against them. The expulsion orders mentioned, firstly, that the persons concerned were to be detained with a view to their immediate return to Turkey, and secondly, that they were to remain in detention until their eventual expulsion, in view of the alleged risk of absconding.

Nevertheless, although some of the applicants were sent to other European Union countries for the purposes of family reunion or consideration of their asylum requests, others, having submitted an

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.

asylum request in Greece, had their expulsion orders revoked, with the result that they remained in detention.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants complained about the conditions of detention in the Vial and Souda camps, which they alleged to be a danger to their physical and mental wellbeing. They complained both of the quantity and quality, in health terms, of the meals distributed to them and of the inadequacy of the medical provision. They also highlighted the overcrowding in the camps, which rendered the material conditions of accommodation dangerous. Lastly, they noted the lack of facilities capable of guaranteeing the security and safety of women and children, who constituted particularly vulnerable categories of persons. Relying on Articles 5 §§ 1, 2 and 4 (right to liberty and security), they complained about a lack of free legal aid and the fact that there was no administrative court on Chios, which, in their view, rendered any complaints about their detention impossible in practice, and consequently arbitrary.

The application was lodged with the European Court of Human Rights on 16 June 2016.

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

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Linos-Alexandre **Sicilianos** (Greece),
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Pauliine **Koskelo** (Finland),

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

Decision of the Court

[Article 5 § 1](#)

The Vial camp

The Court noted that the unaccompanied under-age applicants had been placed in the “safe zone” within the Vial camp. As soon as they had been registered, the director of the centre had sent a request to the National Service of Social Solidarity (“EKKA”), inviting it to provide care and to identify appropriate reception facilities. He had also contacted the prosecutor at the Chios court in order to organise the transfer of certain applicants, under escort, to the reception facilities. The director of the Vial camp had also contacted the asylum services in order to take action on requests to lodge asylum applications.

The Court was not therefore convinced that the authorities had not done everything that could reasonably be expected of them to meet the obligation on the respondent State to provide care and protection for those applicants on account of their age and vulnerability.

With regard to the other applicants, the Court noted that some had spent a total of 30 days in the centre, others 24 days. All of the other applicants had been transferred, either immediately or within ten days, from the Vial camp to the Souda camp.

In consequence, the Court held that there had been no violation of Article 3.

The Souda camp

The Court noted that this camp had always been an open structure. In their allegations concerning the living conditions in this camp, the applicants did not specify how they had been affected by the specific conditions, described by them in a very summary manner.

The Court was unable to conclude that the conditions of detention in the Souda camp amounted to inhuman or degrading treatment.

It followed that there had been no violation of Article 3 in this respect.

Article 5 § 1

The Court reiterated its previous finding that a period of one month's detention for applicants in the Vial camp was not to be considered excessive, given the time necessary for the relevant administrative formalities. The Court also noted that the length of the applicants' detention once they had expressed their wish to lodge an application for asylum had been relatively short. Indeed, the camp had become a semi-open structure from 21 April 2016.

For these reasons, the Court considered that the applicants' detention had not been arbitrary and that it could not be considered unlawful for the purposes of Article 5 § 1 (f) of the Convention.

It followed that there had been no violation of Article 5 § 1.

Article 5 § 4

The Court noted that the expulsion orders, which indicated the possibility of lodging an appeal, were written in Greek. It was not certain that the applicants, who had no legal assistance in either camp, had sufficient legal knowledge to understand the content of the information brochure distributed by the authorities, and especially the material relating to the various remedies available under domestic law.

The Court also noted that the information brochure in question referred in a general way to an "administrative court", without specifying which one. However, there was no administrative court on the island of Chios, where the applicants were detained, and the nearest one was on the island of Mytilene.

Even assuming that the remedies were effective, the Court did not see how the applicants could have exercised them. Having regard also to the findings of other international bodies, the Court considered that, in the circumstances of the case, the remedies in question had not been accessible to the applicants.

There had therefore been a violation of Article 5 § 4.

Just satisfaction (Article 41)

The Court held that Greece was to pay each of the applicants 650 euros (EUR) in respect of non-pecuniary damage.

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.