

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English):	
Date of the decision:	(2012/10/02)
Case number: ²	682/2012
Parties to the case: not available	
Decision available on the internet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide the link: http://www.lawnet.gr/assets/files/682-2012.pdf (If no, please attach the decision as a Word or PDF file):	
Language(s) in which the decision is written: Greek	
Official court translation available in any other languages? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (If so, which):	
Country(ies) of origin of the applicant(s): not available	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): not available	
Any third country of relevance to the case: ³	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
For EU member states: please indicate which EU instruments are referred to in the decision: ECHR	Relevant articles of the EU instruments referred to in the decision: ECHR (art. 3,8,13)

Topics / Key terms: (see attached 'Topics' annex):

Prison Conditions, Detention, Inhuman Treatment, Illegal Immigrants.

Key facts (as reflected in the decision): [No more than 200 words]

The defendants, who were detainees in the detention centre of Thesprotia Police Directorate located in the port of Igoumenitsa, wrestled the guards who had entered their cell to remove the garbage and escaped intentionally. The accused had been detained for a period ranging from 9 to 45 days. The detention conditions were appalling and extremely dangerous. The detention facility didn't meet the minimum standards of cleanliness and hygiene (there is only one chemical toilet for all prisoners located in the sleeping area, there is no water supply and the prisoners suffer from communicable -or non-diseases). Large numbers of detainees from different countries of origin, who have not been able to shower or change clothes for weeks, even for months, were continuously accumulated there. More than 30 people were stacked in this detention facility, which measures about 15 sq. m. There are no beds and it is impossible for all of them to lie down on the floor in order to sleep. The accused were limited to the tiny cell 24 hours per day, with no provision for exercise, or access to the yard.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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The defendants, who were detainees in the detention centre of Thesprotia Police Directorate located in the port of Igoumenitsa, escaped intentionally. [para. 1]

From all the evidence of the trial, it is undoubtedly decided that each one of the accused perpetrated the unlawful act of “escape from custody” under the Greek Criminal Code (Article 173 para. 1). This act is a wrongful act and each of the perpetrators is initially held liable for that act. Nevertheless, it was also further proved that the detention conditions, ..., were appalling and extremely dangerous for human beings.[para.2] Thus, it is decided that there is a violation of Article 3 of the European Convention on Human Rights (ECHR) regarding the prohibition of inhuman and degrading treatment of people, ratified by Decree 53/1974 and supersedes any contrary domestic regulation according to Article 28 § 1 of the Greek Constitution. On the other hand, custodial measures are inevitably accompanied by suffering and humiliation, as it is a sober reality, which by itself does not cause violation of Article 3 of the ECHR. This provision requires that the state shall ensure that anyone under custody is detained under conditions consistent with human dignity (see also Article 2 para. 1 of the Greek Constitution), that the methods of implementation of those measures shall not subject anyone to agony or suffering, which does not exceed the unavoidable level of pain or suffering, which such a measure implies, given the practical demands of imprisonment / detention and that health and wellness are adequately secured. (see ECHR Seydmajed v. Greece no. 6376/12, Kudla v. Poland [GC], no. 30210/96 §§ 92 - 94, CEDH 2000 - XI and Mouisel v. France, no. 67623/01 § 40, CEDH 2002-IX).[para. 2]

In this case, the accused have been detained for illegal entry into the territory and/or possession/use of false travel documents, so that the administrative expulsion from the country would be executed. Under the circumstances, both the duration and the conditions of detention are considered to violate Art. 3, 8, 13 of the ECHR and Art. 2 § 1 of the Greek Constitution. Therefore, it is decided that they escaped to prevent serious and unavoidable by other means danger that threatens their health through no fault of their own and in particular to prevent the infection from communicable infectious diseases, given the great difficulty in access to medical care, medication treatment and hospital care. Therefore, it is decided that the liability of the accused is precluded for that wrongful act, in accordance with Article 32 of the Greek Penal Code and everyone should be acquitted.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

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