



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF A.D. v. GREECE

(Application no. 55363/19)

JUDGMENT

STRASBOURG

4 April 2023

This judgment is final but it may be subject to editorial revision.

In the case of A.D. v. Greece,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Yonko Grozev, *President*,

Peeter Roosma,

Ioannis Ktistakis, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 55363/19) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 23 October 2019 by a Ghanian national, A.D., born in 1990 (“the applicant”) who was represented by Ms M. Albert, legal counsellor, Ms J. Fleischer, a lawyer practising in Berlin, and Ms P. Masouridou, a lawyer practising in Athens;

the decision to give notice of the application to the Greek Government (“the Government”), who were represented by their Agent’s delegates, Ms O. Patsopoulou, Ms A. Dimitrakopoulou, Ms S. Trekli, Ms S. Papaioannou and Ms Z. Chatzipavlou, senior advisors at the State Legal Council, and Mr G. Avdikos, a legal representative at the State Legal Council;

the decision not to disclose the applicant’s name;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the United Nations High Commissioner for Refugees and Defence for Children International-Netherlands, who were granted leave to intervene by the President of the Section, and the Government’s observations in reply to the third-party submissions;

Having deliberated in private on 14 March 2023,

Delivers the following judgment, which was adopted on that date:

SUBJECT MATTER OF THE CASE

1. The application concerns the living conditions of the applicant, a woman who was pregnant at the time of lodging her application with the Court. She arrived in Samos on 16 August 2019 and resided at the Samos Reception and Identification Centre (RIC).

2. On 23 October 2019 she lodged a request for an interim measure before the Court, which was granted.

3. On 4 November 2019 the applicant was admitted to the General Hospital of Samos and on 7 November 2019 she gave birth to her daughter.

The applicant was hospitalised until 11 November 2019, and was subsequently moved to a guest house on the island of Samos. On 22 November 2019 she applied for international protection and on 10 March 2020 she was transferred to the mainland by the authorities.

4. The applicant complained of her living conditions under Articles 3 and 8 of the Convention.

I. THE APPLICANT'S VERSION OF THE LIVING CONDITIONS IN THE SAMOS RIC

5. The applicant submitted, in particular, that upon her arrival she had been six months pregnant, with a medical history of miscarriages. She had been living in a tent outside the Samos RIC where she had not had access to adequate sanitary facilities. On 23 September 2019, the applicant's tent had been destroyed, and she had then resided in a new one, located within the premises of the RIC, where the sanitary facilities had been in a precarious hygienic condition.

6. As regards her access to healthcare, she had visited the midwife of the medical unit twice.

7. In October 2019 violent clashes had taken place and fires had broken out. The applicant had feared for her safety and her pregnancy and had suffered from sleeping disorders.

8. The applicant argued that she had been in need of a reception setting that accommodated her particular needs as a pregnant woman, such as adequate accommodation, sanitary facilities and nutrition.

II. THE GOVERNMENT'S VERSION OF THE LIVING CONDITIONS IN THE SAMOS RIC

9. The Government submitted that the Samos RIC was an open accommodation structure. Temporary shelters had been constructed by the RIC's residents near the area because of overpopulation. At the time of the applicant's entry and registration, the RIC's population had been 4,190 while the RIC had a capacity of 648 beds. The population had free access to the medical and psychosocial support division located in the Samos RIC. Within the RIC there were 35 communal toilets, and the residents were offered food and water, as well as a monetary allowance.

10. The Government noted that at the time of the events in question, Greece had been confronted with a new migration crisis. The reception system had been under pressure, as it had become difficult to satisfy the particular needs of a large number of people. However, the applicant had, throughout her stay, received adequate meals and water and her medical screening had taken place promptly.

11. They further argued that the applicant had not sustained any kind of abuse during the short period of time she had resided in the RIC, even if her reception and living conditions had not been fully in line with the reception provisions owing to the massive number of arrivals in that period.

12. The RIC's capacity had been exceeded in the period under consideration and it had been impossible to place the applicant directly in any of the centre's accommodation spaces. However, the applicant's housing conditions had become adequate within less than three months.

III. THE THIRD-PARTY INTERVENERS

13. The third-party interveners, namely the United Nations High Commissioner for Refugees (UNHCR) and Defence for Children International-Netherlands, provided their observations regarding the living conditions in the RIC as follows.

14. According to the UNHCR, the situation had been constantly characterised by overcrowding and inadequate services in respect of shelter, medical support, hygiene and sanitation. In September 2019 approximately 85 tents had been set up in the forest next to the RIC, where lack of access to electricity and wash facilities had been serious challenges for the people living there. Heavy rainfalls had led to flooding in the tents and makeshift shelters.

15. In early November 2019, 879 persons had been living in the RIC containers while 5,353 persons had been living in tents and makeshift shelters. Out of those, 2,300 had been staying outside the RIC's official perimeter in the woods. Sanitation facilities had been lacking in all the extended areas while those in the RIC had not been fully functioning. There had been no designated areas for persons with specific needs. Women in the advanced stages of or with high-risk pregnancy had been living in precarious and unhygienic conditions in tents. The UNHCR concluded that the reception conditions in the Samos RIC, as well as in the informal settlement area, were at variance with the right to an adequate standard of living.

16. According to Defence for Children International-Netherlands, the living conditions of pregnant women and children had been incompatible with human dignity.

IV. REPORTS CONCERNING THE SITUATION IN SAMOS RIC

A. The Council of Europe Commissioner for Human Rights

17. As regards the situation in the RIC, on 31 October 2019 the Council of Europe Commissioner for Human Rights, Dunja Mijatović, at the end of a five-day visit to Greece, stated as follows:

“The situation of migrants, including asylum seekers, in the Greek Aegean islands has dramatically worsened over the past 12 months ... There is a desperate lack of medical care and sanitation in the vastly overcrowded camps I have visited. People queue for hours to get food and to go to bathrooms, when these are available. On Samos, families are chipping away at rocks to make some space on steep hillsides to set up their makeshift shelters, often made from trees they cut themselves. This no longer has anything to do with the reception of asylum seekers. This has become a struggle for survival ... The authorities must boost the capacities of local hospitals, set up *ad hoc* medical facilities in the reception camps and increase the number of health care professionals in the islands in order to provide migrants and local residents with the medical care they are entitled to. Other practical measures with an immediate impact, such as improving the distribution of food and providing more washing facilities and toilets, can and must be taken.”

B. The Parliamentary Assembly of the Council of Europe

18. In Resolution 2280 (2019), the Assembly, *inter alia*, welcomed the efforts of the Greek authorities to transfer all identified vulnerable persons from the island centres to the mainland of Greece. Nevertheless, the Assembly mentioned that the situation at the centres of Moria, Lesbos, and Vathy, Samos, remained a matter of concern as large numbers of people were housed in tents, facing inadequate sanitary installations, insufficient food distribution, lack of health services and poor security, especially at night. It was noted that levels of violence and crime inside the centres were high.

C. The Greek National Commission for Human Rights (GNCHR)

19. During the on-site visit carried out by the GNCHR on 20 and 21 January 2020 in Samos at the RIC of Vathy and the makeshift camp in the surroundings, the GNCHR delegation concluded that the reception system had collapsed. According to the report on the situation of human rights of migrants at the borders, by the GNCHR and the European Network of National Human Rights Institutions (ENNHRI), published in May 2021, the RIC in Samos was designed to host up to 648 persons, but in January 2020, the number of people in the centre or its surroundings (containers, tents and makeshift shacks) reached 7,208 persons. Applicants for international protection were obliged to live under dire or even undignified living conditions during the processing of their applications for international protection, which could take up to several months or even years. The most alarming finding was the lack of control by the authorities over a large part of the informal camp outside the RIC where security incidents were frequently noted, such as violent confrontations and injuries among rival communities, extortion from traffickers or other organized groups, arson for reasons of trespassing of forest land or other reasons, rapes of women and minors, incidents of domestic violence and human trafficking.

20. The GNCHR noted a big gap in the provision of health and psychological services due to lack of staff and appropriate services such as interpretation and shortage of medicines. As a result, the population of the camp was often affected by diseases and other health problems. According to the information collected during the GNCHR's monitoring visit, 330 unaccompanied children were registered by the RIC of Vathy and they were found to be living in unsuitable conditions, often sleeping outdoor.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

21. The Court notes that it will examine the applicant's complaints under Article 3 of the Convention.

22. The Government argued that the applicant had not submitted any written requests to the competent authorities or domestic courts and had therefore failed to exhaust domestic remedies.

23. The applicant submitted that the Government were referring to theoretical remedies. She noted that her particular condition had been identified by the authorities and when it came to persons wholly dependent on the host State, Article 3 of the Convention did not require any prior written request to be submitted.

24. The Court reiterates that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible and capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, §§ 76-77, ECHR 1999-V).

25. Having regard to the facts that no relevant case-law has been provided by the Government and that the applicant's accommodation needs were known to the authorities from 16 August 2019, but were not addressed until 11 November 2019 (see paragraphs 1 and 3 above), the Government's objection must be dismissed.

26. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

27. The applicant stated that her particular needs as a pregnant woman had not been accommodated at the reception setting in the RIC.

28. The Government submitted that the situation had not attained the level of severity for it to fall within the scope of Article 3 of the Convention.

29. As regards the merits, the Court has already had occasion to note that the States which form the external borders of the European Union are experiencing considerable difficulties in coping with the increasing influx of migrants and asylum-seekers. It does not underestimate the burden and pressure this situation places on the States concerned (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 223, ECHR 2011).

30. However, having regard to the absolute character of the rights secured by Article 3, that cannot absolve a State of its obligations under that provision (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 158 and 184, 15 December 2016).

31. According to the Court's well-established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of that level is relative and depends on all the circumstances of the case, principally the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.

32. The general principles concerning the living conditions of asylum-seekers were summarised in *M.S.S. v. Belgium and Greece* (cited above, §§ 251-53), *Khlaifia and Others v. Italy* (cited above, §§ 158-61) and *R.R. and Others v. Hungary* (no. 36037/17, § 64, 2 March 2021), and there is no need to repeat them here.

33. The general principles concerning the living conditions in respect of pregnant women and the duration of ill-treatment suffered were summarised in *Mahmundi and Others v. Greece* (no. 14902/10, § 70, 31 July 2012) and *R.R. and Others v. Hungary* (cited above, §§ 64-65).

34. The Court observes that the applicant resided at the Samos RIC from 16 August 2019 to 4 November 2019, that is, for approximately two and a half months in total (see paragraphs 1 and 3 above). During that period, the applicant was in an advanced stage of her pregnancy and therefore in need of specialised care.

35. It also notes that, following her visit to the RIC, the Council of Europe Commissioner for Human Rights stated that in Samos the situation had become "a struggle for survival" and that practical measures should be taken with an immediate impact (see paragraph 17 above). The Court also takes into account the findings of the Greek National Commission for Human Rights, the national independent advisory body on human rights, following their monitoring visit in Samos (see paragraphs 19 and 20 above). In addition, in its third-party observations, the UNHCR referred to overcrowding and inadequate services in respect of shelter, medical support and sanitation (see paragraphs 14-15 above). It concluded that the reception conditions in the RIC, as well as in the informal settlement area, were not compatible with the right to an adequate standard of living.

36. In these circumstances and having regard to the parties' submissions and all the material in its possession, the Court finds that the situation

complained of subjected the applicant to treatment which exceeded the threshold of severity required to engage Article 3 of the Convention.

37. There has accordingly been a violation of Article 3 of the Convention.

II. RULE 39 OF THE RULES OF COURT

38. The Court observes that, in accordance with Article 28 § 2 of the Convention, the present judgment is final. Accordingly, the measure indicated to the Government under Rule 39 ceases to have any basis.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,069.65 in respect of the costs and expenses incurred for the main proceedings before the Court.

40. The Government argued that the claims were excessive.

41. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

42. Having regard to the documents in its possession and the above findings, the Court considers it reasonable to award EUR 1,000 in respect of the costs for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

A.D. v. GREECE JUDGMENT

Done in English, and notified in writing on 4 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Yonko Grozev
President