

CO/524/2009

**Neutral Citation Number: [2009] EWHC (Admin) 3444**  
**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**THE ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand  
London WC2A 2LL

Monday, 7th December 2009

**B e f o r e:**

**CHRISTOPHER SYMONS**  
(Sitting as a Deputy Judge of the High Court)

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**Between:**

**THE QUEEN ON THE APPLICATION OF HAEDARE**

**Claimant**

v

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Defendant**

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**The Claimant appeared in Person**

**Mr M Kellar** (instructed by Treasury Solicitors) appeared on behalf of the **Defendant**

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J U D G M E N T

1. THE DEPUTY JUDGE: This is an application for judicial review brought by Mr Armia Haedare, pursuant to permission granted by Black J.
2. The applicant is a national of Iran and challenges the decision of the Secretary of State to remove him to Greece under the Dublin Regulations. Issues arise as to whether the applicant left the EU for 3 months and whether Greece is a safe country to which to return the applicant. In addition the applicant alleges that the failure to administer medical treatment to him by the Secretary of State was in breach of his rights under Article 3 and Article 8. It is further alleged that the applicant's continued detention is unlawful and in breach of his Article 5 rights. He seeks various remedies by way of declaration, mandatory order and damages.

### The Facts

3. The claimant was born on 25th March 1974 and he arrived in the United Kingdom illegally on 31st March 2005 having come from Greece. He applied for asylum. He initially denied that he had ever claimed asylum in another country but his fingerprints were subsequently matched via the Eurodac automated fingerprint database to a previous illegal entry into Greece on 10th September 2004.
4. At an interview on 1st April 2005 the claimant initially denied previous entry into Greece but thereafter accepted that he had been in prison there for 3 months before being released and being told to leave Greece within 10 days.
5. On 23rd May 2005 a request was made to the Greek authorities to take responsibility for the claimant and on 1st June 2005 Greece formally accepted responsibility. On 2nd June 2005 the claimant's asylum claim was refused and certified on safe third country grounds by virtue of Schedule 3 paragraph 3(2) of the Asylum and Immigration (Treatment of Claimants) Act 2004. On 7th July 2005, following refusal of further representations, the claimant was removed to Greece. It is then alleged by the claimant but not admitted by the Secretary of State, that he left Greece and went to Iraq, arriving on 20th or 22nd July 2005 and while there carried out political activities for a period of 3 months.
6. It is then alleged by the claimant that he fled Iraq for the United Kingdom because "his situation there had become unsafe". He allegedly arrived in the United Kingdom on or about 1st October 2005. On arrival he did not claim asylum. He was arrested on 1st February 2007, about one-and-a-half years after arriving, on suspicion of conspiracy to supply a Class A drug. He was detained at Stockton Police Station and the claimant stated his real name was Madare Saed Masood. Today Mr Haedare has explained that Madare is a mishearing of the word Haedare of his name, and Masood is his middle name. I need to make no findings about that today.
7. It was found that his fingerprints matched the claimant's and it was established that he had been removed to Greece on 7th July 2005. The claimant claimed asylum on 2nd February 2007 and was granted temporary admission with reporting conditions. The

claimant alleges that he married his current partner in an Islamic ceremony in the UK in March 2007, and claims she gave birth to a son on 8th January 2007.

8. There was an interview by the Secretary of State on 29th May 2008 and the applicant provided further information.
9. On 29th October 2008 a formal request was made to the Greek government to accept responsibility for the claimant and the history was explained. No response was received and therefore the Secretary of State wrote to the Greek authorities to inform them that as no response had been received, Greece was deemed to be the Member State responsible for considering the asylum claim pursuant to Dublin Regulations.
10. On 19th November 2008 the claimant's asylum claim was refused and certificated on safe third country grounds. On 24th December 2008 removal directions were set for 14th January. On 8th January 2009 the Greek authorities formally accepted responsibility for the claimant's asylum claim. The same day the claimant was served with the removal directions. On 10th January the claimant was transferred from police detention to immigration detention facilities. On 13th January the claimant's solicitors threatened to bring judicial review proceedings and as a result his removal was delayed by 72 hours.
11. In the absence of a valid Crown Office reference on the 16th January removal directions were set for 23rd January and the claimant was transferred to IRC Harmondsworth. On 16th January an injunction was obtained by the claimant relating to his medical treatment and judicial review proceedings were issued on 19th January 2009. Removal directions were cancelled on 20th January. Black J noting that no grounds of defence had been served, granted permission in this case on 17th February 2009.
12. Mr Haedare has appeared in person before me, with an interpreter, and has advanced his case in a sensible, measured and appropriate way. He is extremely concerned about being sent back to Greece, since he believes that all that will happen to him will be that he will be issued with a letter requiring him to leave the country within 10 days, that he will receive no medical treatment and, if he does not leave he will be imprisoned for some 3 months before being issued with a further notice requiring him to leave within 10 days. He asked the court not to send him back to Greece and he relies essentially on four grounds to support his application.
13. Firstly, he says he has left the EU for 3 months after he was in Greece and it is no longer appropriate for him to be sent back there. That is in part a factual issue but that is coupled to the issue in which Mr Haedare says that Greece is not a safe country for returning asylum seekers. As I have previously mentioned, he says it gives rise to a breach of his human rights, in particular Articles 3, 6 and 8, or Article 15 of the Dublin Regulations, the humanitarian clause. Then he alleges that the respondents have failed to administer medical treatment to a required standard on his admission to immigration detention. Finally, he alleges that his continued detention has been a breach of his Article 5 rights.

14. Turning to the first point, namely whether Mr Haedare did in fact leave the EU for 3 months after he was detained in Greece, he told me and the Secretary of State that he went to Iraq, from Turkey, leaving for Iraq on 23rd August 2005. It is to be noted that that date does not correspond to an earlier date which was given. He told me he was in Iraq for one-and-a-half months and had an operation while he was there. He left Iraq because many of his relatives were killed there. He returned to Turkey and after 10 days returned to the United Kingdom. It was clear to me that Mr Haedare had some difficulties with dates, and frankly accepted in his submission that he really did not know about those dates.
15. Before turning to the response of the Secretary of State on that matter, I turn to Mr Haedare's second point, namely Greece was not a safe place for him to be returned to. He told me he was disabled now following his accident, and the medical care in Greece was not good enough. He made the point that he now had a partner and child here having got married in an Islamic ceremony. He had no papers so he could not get married in a registry office and had no papers to show he was married, although he produced photographs to me of what appeared to be some sort of marriage ceremony. This ceremony took place in 2007. He pointed out that his sister was also here and four cousins, but since he had only heard his case was going to be heard today, this morning, none of them could be present. In short, he says his family life is here and if returned to Greece that will breach his rights, as it is not a proper place for him to be sent to.
16. For the Secretary of State, Mr Kellar, makes two preliminary points. First he submits that the purpose behind the Dublin Regulations is to regulate responsibility between Member States, not to give rights to individual asylum seekers. Alleged breaches of the regulations are not directly actionable unless the Secretary of State acts irrationally or in breach of human rights and he places reliance on the case of Chen v Secretary of State for the Home Department [2008] EWHC 437. At paragraph 35 Silber J said:

"There is a further difficulty for the claimant which would also mean that the case for the claimant is doomed to failure and that is because the allocation of responsibility between member states under the Dublin regulations cannot be challenged by an individual save on human rights grounds and perhaps on the basis of irrationality, neither of which are relevant to the present case. The matter was made clear by Laws LJ, who said when giving the only substantive judgment of the Court of Appeal in R v AA (Afghanistan) v Secretary of State for the Home Department [2006] EWCA Civ 1550:

'I certainly accept in general terms that an asylum claimant cannot challenge (save perhaps on human rights grounds) the allocation of responsibility between States for the determination of his claim where that has been effected by proper application of Dublin I or II.'

Silber J went on in paragraph 36:

"For the purpose of completeness I should point out that further support for this view can be found in Mota v Secretary of State for the Home

Department [2006 EWCA Civ1380] because Pill LJ (with whom Moses LJ agreed) refused permission to appeal against a decision to the effect that.

'once there had been acceptance of the transfer application the applicant is not entitled to challenge the transfer. The judge found that the regulations confer no rights upon individuals to challenge decisions between states not withstanding that the regulations are directly applicable in the member states'''

17. Secondly, Mr Kellar points to the fact that the evidence relied on has arisen only after the Secretary of State certified that Greece had accepted responsibility. The deemed acceptance being of 19th November 2008, an express acceptance being on 8th January 2009, that the first time the point was raised about Mr Haedare being out of the EU for 3 months was on 18th January 2009. An Iraqi medical certificate, or what appeared to be such certificate was produced today. Mr Kellar submitted that there was no requirement to take that into account as the information was received after Greece had accepted responsibility.
18. The purpose of the Dublin Regulations was to determine responsibility quickly, as the case of Chen, which I previously referred to makes clear. I do not need to refer further to that case. In any event, Mr Kellar submits the applicant has a number of problems: first, he says that the submissions being made are late and fall foul of the case of Chen - the medical report is untranslated. The medical report is also inconsistent as to date, as it predates 23rd August 2005, being the date given by the applicant at interview, on 29th May 2008, of when he went to Iraq. The document presented to me today is dated 8th August. Finally, Mr Kellar makes the point that on the applicant's own submission today his absence from the EU fell short of 3 months.
19. As to it being not being safe to return to Greece, I was referred to the recent decision in the House of Lords of Nasseri, which was handed down on 6th May 2009. In that case Lord Hoffmann, with whose opinion the other Law Lords agreed, expressly endorsed the decision in that case of the Court of Appeal, and also the European Court of Human Rights in the case of KRS.

In Nasseri at paragraph 44, Lord Hoffmann concluded:

"But the Secretary of State is not concerned with Greek law. Like the operation of the Greek system for processing asylum applications and the conditions under which asylum seekers are kept, that is a Greek problem. The Secretary of State is concerned only with whether in practice there is a real risk that a migrant returned to Greece will be sent to a country where he will suffer inhuman or degrading treatment. I agree with Laws LJ that there is no evidence of such a risk and would therefore dismiss the appeal."

20. I was also referred to the case of KRS in the UK, which cited from Nasseri in the Court of Appeal and is, in my judgment, fatal to this part of the applicant's case. As to the medical treatment available in Greece, there is no medical evidence before the court as

to the applicant's present condition but Greece is a signatory to Council Directive 2003/9/EC of 27th January 2003, laying down minimum standards for the reception of asylum seekers. The United Kingdom authorities will inform the Greek authorities of the claimant's needs, and once there Greece has at least equivalent level of health care to that available in the United Kingdom. In addition, the United Kingdom has been given assurances by the Greek authorities that asylum seekers returned to Greece would be able to work and would be given access to health care.

21. As to the applicant's family life, the respondent points to the absence of any Muslim marriage certificate, or any further details regarding the relationship. As I have previously said photographs have been produced to me in court. The alleged marriage took place in 2007, only after the applicant had been returned to Greece under the Dublin regulations, in July 2005, and having unlawfully re-entered United Kingdom in October 2005. Thus it is said by the Secretary of State, and I accept, that the claimant entered into the relationship and had the child in the full knowledge that if apprehended he was likely to be removed from the United Kingdom.
22. The Secretary of State further submits that as a UK citizen, the applicant's partner can exercise her EU treaty rights and travel to Greece, and contact between the two of them would be possible via email and telephone. It is further submitted that the child was still very young and would be able to adapt to life.
23. Finally, it was submitted that in any event there was no evidence that the claimant had in fact fathered the child.
24. I have considered the applicant's case on this ground anxiously, as he is genuinely fearful of being returned to Greece. However, in my judgment, the Secretary of State has acted entirely lawfully and properly in this case. The applicant has misled the authorities on a number of occasions, quite apart from entering this country illegally. Even accepting the language difficulties in dealing with names and dates, I am satisfied that the applicant has not been straightforward. The authorities make it clear that it is not open to the applicant to challenge his removal to Greece, except where his human rights are breached or on the basis of irrationality.
25. In my judgment, having regard to the facts of this case, the approach of the Secretary of State has been proportional and the applicant's removal to Greece will not breach his human rights. In saying that I take into account the applicant's illegal entry into this country, his knowledge that he might be removed and the need to have a consistent and fair immigration policy in this country.
26. Article 15 of the Dublin regulations, the humanitarian clause, while not mentioned by the applicant today, was also included in his grounds for judicial review. In my judgment reliance on this clause is not appropriate here, as those provisions are triggered at the request of another Member State. There has been no such request here. I therefore dismiss this application for judicial review on these grounds.
27. The third point taken relates to the medical treatment on first detention at the immigration centre. In fairness to the applicant he readily accepted, in answer to

questions by me, that his real complaint was not so much the treatment, as the effect of the treatment. There is no doubt that reducing the quantity of methadone was painful, but it was the sensible treatment. I do not believe there is anything in this ground and I dismiss it.

28. Finally, it is said that the applicant's detention has been unlawful. Mr Haedare says he should not have been detained for more than 3 months and his continual detention has been unlawful. However, but for this application for judicial review the applicant would have been removed and therefore out of detention in January 2009. I agree with the submission of the Secretary of State that there was a serious risk of absconding in this case, having regard to the history. The applicant only came to light on his return to the UK when he was arrested. He has made two bail applications which have been carefully considered and rejected by the AIT and, in all the circumstances, I do not find there has been any unlawfulness in his detention. Therefore this ground fails as well.
29. For the reasons that I have given, this application for judicial review fails and must be dismissed.
30. THE DEPUTY JUDGE: Mr Kellar, is there anything else?
31. MR KELLAR: No thank you.
32. THE DEPUTY JUDGE: Mr Haedare, thank you for your careful submissions. Thank you also Mr Kellar.