



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

Communicated on 20 January 2017

**FIRST SECTION**

Application no. 59758/16  
Ahmad QAATEH and others  
against Greece lodged on 17 October 2016

**STATEMENT OF FACTS**

A list of the applicants is set out in the appendix.

**A. The circumstances of the case**

The facts of the case, as submitted by the applicants, may be summarised as follows.

*1. Background of the case*

The first applicant is a twenty-year-old Syrian national who was diagnosed with a malignant sarcoma in Syria in April 2016. Following surgery it was recommended that he undergo chemotherapy and radiation-therapy sessions. Owing to the war in Syria, he was forced to seek medical treatment in Turkey, where he arrived on 13 May 2016. Following his unsuccessful attempts to get the necessary treatment there, he decided to flee to Greece.

The second applicant is a thirty-seven-year-old Syrian national who suffers from diabetes and peripheral neuropathy; the latter has resulted in his diminished mobility. Additionally, his eyesight has been affected. At an unspecified time between October 2015 and early 2016, he fled to Turkey to seek medical treatment in respect of his eyesight problem. In Istanbul, he underwent two unsuccessful surgeries, the second a vitrectomy with a silicone oil injection. Following this, he decided to flee to Greece.

The third applicant is a twenty-year-old Syrian national who is a family member of the second applicant and accompanied him through his journey from Syria to Turkey and later to Greece in order to assist him with his everyday life.

## 2. *The applicants' arrival and medical treatment in Chios*

Following some months spent in Turkey, the applicants arrived in Chios on 11 September 2016. The first two applicants were in a poor state of health and were immediately taken to Chios Hospital with the assistance of volunteers. They had on their person medical certificates drafted in Turkish stating their medical condition. At that time, the first applicant could still walk, though with great difficulty. The applicants were not admitted to Chios Hospital as they had not yet been registered with the State. They were transferred to the VIAL hotspot, where they waited for eight hours to have their personal data registered in accordance with the first-reception procedures, and a decision was issued on the same date restricting their liberty for fifteen days, with the possibility of that period being extended for another twenty-five days. All three applicants upon registration expressed interest in international protection.

After registration and owing to the poor state of health of the first two applicants, all three applicants were transferred to a hotel run by the United Nations High Commissioner for Refugees (“UNHCR”) and were accommodated in a double room in which an extra bunk was put. The applicants stayed at the hotel for approximately three weeks. They were provided with food by the catering company cooperating with UNHCR. However meals were not adapted to the second applicant’s medical situation (he was a diabetic who required an appropriate diet). Throughout their stay in the hotel the applicants were visited only by volunteers and the third applicant was in charge of taking care of them and assisting them in their everyday life tasks. In the meantime, the first applicant’s state of health deteriorated and he became paralysed. Despite the fact that he was suffering from extreme pain, he was only administered paracetamol and light painkillers by volunteers.

On unspecified dates the first two applicants attempted twice to gain admission to Chios Hospital again, but were denied medical assistance. From the documents in the Court’s possession, it appears though that they were examined at some point by doctors at the hospital. In particular, the first applicant has attached a medical certificate from Chios Hospital dated 14 September 2016 stating that he suffered from metastatic chondrosarcoma of the spine (terminal stage) and that he needed to be transferred to an Athens hospital; he also needed to be accompanied by someone as he was bedridden (*κατάκλιση*). The second applicant has attached a medical certificate from Chios Hospital dated 15 September 2016, stating that he suffers from diabetic retinopathy in both eyes. In respect of his right eye, the applicant was said to be suffering from proliferative vitreoretinopathy with fibrovascular film on the vitreous body and that traction retinal detachment (*αποκόλληση αμφιβληστροειδούς*) had been treated unsuccessfully in an operation conducted in Turkey (vitrectomy with silicone oil added and the insertion of a lens). In respect of his left eye, he was said to be suffering from proliferative vitreoretinopathy and chronic oedema of the ochre membranes of the retina. The certificate concluded that the applicant needed a vitrectomy (*υαλοειδεκτομή*) in an Athens hospital. Both certificates were issued for the transfer of the patients.

On 27 September 2016 the decisions by which the applicants’ liberty had been restricted were suspended and the first two applicants were instructed

to get treatment at a hospital in Athens, to stay in Athens until their medical issues were resolved and following this to return to Chios. The third applicant was also instructed to return to Chios following the second applicant's hospitalisation and subsequent treatment of his medical conditions.

On 7 October 2016 the first two applicants were admitted to Chios Hospital and the second applicant was treated for a cyst in his lung and possible pneumonia. Both applicants were discharged from the hospital on 10 October 2016 and were transferred to KAT Hospital in Athens, accompanied by the third applicant as their carer.

### *3. The first and second applicants' hospitalisation in Athens*

The first two applicants were transferred to KAT Hospital in Athens, accompanied by the third applicant and assisted by volunteers. Their situation was assessed and the following day, 11 October 2016, the first applicant was transferred to Agios Savvas Hospital, a hospital specialising in cancer treatment, while the second applicant was transferred to Sotiria Hospital.

The first applicant remains in Agios Savvas Hospital until today. Throughout his stay, he had various medical examinations performed, including an MRI and a biopsy, and his situation was assessed by doctors of various specialties. On 20 October 2016, the doctors concluded that the applicant suffered from chondrosarcoma and that his tumour was inoperable, chemo-resistant and radio-resistant. However, according to the biopsy results dated 2 November 2016, there was no chondral tissue which made the diagnosis of chondrosarcoma unlikely, though the exact nature of the neoplasm could not be identified owing to the small sample taken. On 17 November 2016, the applicant started chemotherapy sessions and the doctors informed his lawyer that his tumour was diminishing. Throughout his stay in the hospital, the first applicant was not seen by a psychologist. Additionally, he was not informed of the seriousness of his condition or of the possible treatments and he never gave his full and informed consent to the various procedures and treatments performed during his hospitalisation as he was an Arabic-speaker and he was not provided with a state-appointed interpreter. He was only once visited by an interpreter, on 8 November 2016, when he was informed that no measures could be taken to save his life.

The second applicant was admitted on 11 October 2016 to Sotiria Hospital in Athens, which was specialised in the treatment of pneumonic diseases. On 12 October 2016, he underwent surgery to have a cyst on his lung removed along with a part of his lung. On 19 October 2016 he was discharged from the hospital and he was asked to come back in ten days so that his progress could be monitored. On 1 November 2016, the second applicant again visited the hospital and he was found to be in good condition following his surgery. He was instructed to see an ophthalmologist. During the period he was hospitalised in Athens he was never visited by a state-appointed interpreter, nor did he ever give his full and informed consent to the various medical procedures performed as they were never explained to him in a language he understood (he only spoke Arabic). Furthermore, he was neither seen by a doctor in respect of his other

conditions, namely diabetes, peripheral neuropathy and diabetic retinopathy, during his hospitalisation nor afterwards.

The third applicant, who was taking care of both the first and second applicants until their transfer to Athens, stayed with the second applicant when the first and second applicants were hospitalised separately. He assisted him in his everyday life tasks inside and outside the hospital, including helping him move around or use the bathroom, and provided round-the-clock care, which resulted in his physical and psychological exhaustion.

## **B. Relevant international law**

### *1. Directive 2013/33/EU*

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (“the Reception Directive”), which became applicable on 21 July 2015, reads, in its relevant parts, as follows:

#### **Article 19 Health care**

“1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders.

2. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.”

### *2. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, Council of Europe, Oviedo, 4.IV.1997*

The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (known as the Oviedo Convention on Human Rights and Biomedicine), which was ratified by Greece by Law 2619/1998, in its relevant provisions reads as follows:

#### **Chapter II – Consent Article 5 – General rule**

“An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.

This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks.”

## COMPLAINTS

1. The first two applicants complain under Article 3 of the Convention that the medical care provided to them since they arrived to Greece was inadequate and has resulted in the deterioration of their health.

2. They also complain, under Article 8, that they never gave their free and informed consent to the various medical interventions carried out as they were never informed of them in a language they understood nor were they provided with an interpreter.

3. The third applicant complains, under Article 3, that the Government's failure to provide adequate medical care to the first two applicants caused him, as their carer, physical and psychological exhaustion that amounted to inhuman and degrading treatment.

4. Lastly, all applicants complain, under Article 13, that they did not have an effective remedy at their disposal in respect of their complaints under Articles 3 and 8 of the Convention.

## QUESTIONS TO THE PARTIES

1. Taking into account the first and second applicants' medical histories, have the Government met their obligation to ensure that the first and second applicants' health and well-being are being adequately secured by providing them with the requisite medical assistance as required by Article 3 of the Convention?

2. Has the third applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention?

3. Has there been a violation of the first and second applicants' right to respect for their private life, contrary to Article 8 of the Convention, on account of the medical examinations and treatments performed? In particular, have the first and second applicants given their full and informed consent to the medical treatment received?

4. Did the applicants have at their disposal an effective domestic remedy for their complaints under Article 3 and 8 of the Convention, as required by Article 13 of the Convention?

## **APPENDIX**

- 1.** Ahmad QAATEH is a Syrian national who was born in 1996
- 2.** Ziad BADAWI is a Syrian national who was born in 1979
- 3.** Ahmad BADAWI is a Syrian national who was born in 1996