



M.S.S. v. Belgium and Greece

M.S.S. v. Belg. & Greece, App. No. 30696/09, Eur. Ct. H.R. (2011).

Country: Greece

Region: Europe

Year: 2011

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Health care and health services, Mental health, Prisons, Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to life

Facts

The applicant is an Afghan male who in early 2008 fled war-stricken Kabul, where he claimed to have feared for his life as a result of his service as a translator for international air force troops based in that city. The applicant first entered Greece, where Greek authorities entered his fingerprints into the common European "Eurodac" identification system. Greek authorities detained the applicant for one week and then issued him an order to leave the country. The applicant did not apply for asylum at that time but instead exited Greece and traveled through France and into Belgium, where he applied for asylum at the Belgium Aliens Office. When the applicant's fingerprints indicated he had registered in Greece, the Belgium Aliens Office requested that Greece take charge of the application pursuant to Article 10, section 1 of Regulation no. 343/2003/EC (the Dublin Regulation). After waiting two months for a response from Greece, as Article 18, section 1 of the Dublin Regulation required, the Aliens Office considered Greece's silence to be "tacit acceptance" of the request to take charge of the application, as paragraph 7 of the Article allowed it to presume. Despite an April 2009 UNCHR letter sent to the Belgian Minister for Migration and Asylum Policy recommending suspension of transfers to Greece due to substandard asylum procedures and reception of asylum applicants in that country, Belgium issued an order directing the applicant to leave Belgium in May of 2009, guaranteeing the applicant an asylum application process in Greece that would conform with European Community rules and regulations. After attempts to secure a stay of execution failed in the Belgian Aliens Appeals Board, the applicant physically refused to the board the aircraft meant to transport him to Greece, fearing the Greek authorities would return him to Afghanistan without adequately examining his asylum claims. The applicant's order for detention and removal was renewed and subsequently upheld in the Brussels Court of First Instance and the Indictments Chamber of the Brussels Court of Appeal. Upon his arrival in Greece under escort in June of 2009, the applicant alleged via text message to his attorney that the Greek authorities had placed him in a detention facility where, as the Court paraphrased, he was "locked up in a small space with 20 other detainees, had access to the toilets only at the discretion of the guards, was not allowed out into the open air, was given very little to eat and had to sleep on a dirty mattress or on the bare floor." The applicant was eventually released whereupon he became homeless and assumed he lacked necessary residency requirements to pursue his asylum application. Fearing potential return to Afghanistan, the applicant attempted to leave Greece on false Bulgarian documents, for which he again placed in detention, where he alleges he was beaten by police officers.

The applicant complained to the European Court of Human Rights that his extremely poor living conditions in Greece and his treatment while in detention in Greece amounted to a violation of Article 3 of the European Convention on Human Rights (the Convention), which protects against inhuman and degrading treatment. He further alleged that Greece's failure to examine the merits of his asylum application amounted to a violation of his right to life under Article 2 of the Convention and that the lack of a remedy for violations of Articles 2 and 3 amounted to a violation of his right to have his complaints examined within the meaning of Article 13 of the Convention. Against Belgium, the applicant also alleged violations of his Article 2 and Article 3 rights for exposing him to risks that arose from subjecting him to the known deficiencies of the Greek asylum procedures. He also alleged that Belgium's failure to provide remedies for violations of Articles 2 and 3 constituted a violation within the scope of Article 13.

Decision and Reasoning

The European Court of Human Rights, sitting in Grand Chamber, held that the conditions of detention in Greece and the living conditions of the applicant in Greece violated his Article 3 rights to freedom from inhuman and degrading treatment. The Court also found that deficiencies in the asylum application

procedures in Greece violated the applicant's Article 13 rights to effective remedy when taken in conjunction with the applicant's Article 3 rights because "the Greek authorities [had] not taken any steps to communicate with the applicant or reached any decision in his case, offering him no real and adequate opportunity to defend his application for asylum." In reaching its conclusion, the court also noted Greece's particularly low asylum application approval rates in comparison to those of other European Union countries. The Court consequently decided there was no need to examine a violation of Article 13 in conjunction with the applicant's right to life under Article 2. Regarding Belgium, the Court found a violation of Article 3 insofar as returning the applicant to Greece "exposed [him] to risks linked to the deficiencies in the asylum procedure in that State," which included exposing the applicant to the harsh living conditions he experienced in Greece. The Court also declined to examine Article 2 complaints against Belgium, including those taken in conjunction with Article 13. However, the Court did find that Belgium violated Article 13 when taken in conjunction with its Article 3 violations. Finally, the Court ordered both Greece and Belgium to pay the applicant specified pecuniary and non-pecuniary damages.

Decision Excerpts

"218. The States must have particular regard to Article 3 of the Convention, which enshrines one of the most fundamental values of democratic societies and prohibits in absolute terms torture and inhuman or degrading treatment or punishment irrespective of the circumstances and of the victim's conduct.

219. The Court has held on numerous occasions that to fall within the scope of Article 3 the ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment and its physical or mental effects and, in some instances, the sex, age and state of health of the victim.

220. The Court considers treatment to be "inhuman" when it was "premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering".

Treatment is considered to be "degrading" when it humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance. It may suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others. Lastly, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3.

221. Article 3 of the Convention requires the State to ensure that detention conditions are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the detainees to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured."

"365. On the merits, the Court reiterates that according to its well-established case-law the expulsion of an asylum seeker by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or inhuman or degrading treatment or punishment in the receiving country. In such circumstances, Article 3 implies an obligation not to expel the individual to that country.

366. In the instant case the Court has already found the applicant's conditions of detention and living conditions in Greece degrading. It notes that these facts were well known before the transfer of the applicant and were freely ascertainable from a wide number of sources. It also wishes to emphasise that it cannot be held against the applicant that he did not inform the Belgian administrative authorities of the reasons why he did not wish to be transferred to Greece. It has established that the procedure before the Aliens Office made no provision for such explanations and that the Belgian authorities applied the Dublin Regulation systematically."

Concurring Opinion of Judge Rozakis:

"The Court has held on numerous occasions that to fall within the scope of Article 3 ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative and it depends on all the circumstances of the case (such as the duration of the treatment, its physical and mental effects and, in some instances, the sex, age and state of health of the victim). In the circumstances of the present case the

combination of the long duration of the applicant's treatment, coupled with Greece's international obligation to treat asylum seekers in accordance with what the judgment calls current positive law, justifies the distinction the Court makes between treatment endured by other categories of people "where Article 3 has not been found to be transgressed" and the treatment of an asylum seeker, who clearly enjoys a particularly advanced level of protection."

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