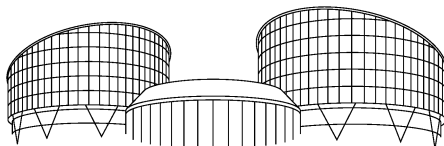


## La Corte EDU sull'obbligo di assistenza medica nei centri di accoglienza e di identificazione dei richiedenti asilo

(CEDU V sez., sent.18 aprile 2024, ric. n. 59841/19)

La Corte EDU si è pronunciata sul ricorso presentato da alcuni richiedenti asilo giunti nelle isole greche ed ha accertato la violazione dell'art. 3 della Convenzione relativamente alle condizioni di vita e di assistenza medica da garantire nei centri di accoglienza e di identificazione (RIC). Nella specie, essa ha condannato lo Stato convenuto per non aver predisposto mezzi e strumenti necessari ed adeguati ad assicurare ai ricorrenti le cure mediche delle quali necessitavano in virtù del loro grave stato di salute né le condizioni di vita base. In più, la Corte di Strasburgo ha dichiarato la violazione dell'art. 5 par. 2 della Convenzione, in quanto una delle ricorrenti aveva lamentato di non essere stata informata nella lingua a lei comprensibile circa le ragioni del suo trattenimento.

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

FIFTH SECTION

### CASE OF *OMISSIS* AND OTHERS V. Greece

(Applications nos. 59841/19 and 2 others)

JUDGMENT  
STRASBOURG  
18 April 2024

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

#### In the case of *omissis* and Others v. Greece,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:  
Stéphanie Mourou-Vikström, *President*,  
Lado Chanturia,

Mattias Guyomar, *judges*,  
and Sophie Piquet, *Acting Deputy Section Registrar*,  
Having regard to:

the applications 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”) by the applicants listed in the appended table, (“the applicants”), on the various dates indicated therein; the decisions not to have the applicants’ names disclosed, the decision to give priority (Rule 41 of the Rules of Court) to the applications, the decision to indicate interim measures to the respondent Government under Rule 39 of the Rules of Court in the applicants’ cases and the subsequent decision to lift the interim measure in the case *A.R. v. Greece*, no. 59841/19;

the decision to give notice of the complaints under Articles 3 and 5 of the Convention to the Greek Government (“the Government”) represented by their Agent, Ms N. Marioli, and her delegates, Mr. K. Georghiadis, counsellor at the Council of the State, Ms. O. Patsopoulou and Ms. S. Trekli, senior advisors at the Council of the State, and Ms. I. Kotsoni and M. A. Zachilas, legal representatives at the Council of the State;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants

the comments submitted by the AIRE Centre, the Dutch Council for Refugees and the European Council on Refugees and Exiles, who were granted leave to intervene by the President of the Section; Having deliberated in private on 28 March 2024,

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

## **SUBJECT MATTER OF THE CASE**

1. The present case concerns the living conditions and medical assistance in the reception and identification centres (RIC) for the applicants, who were asylum seekers arriving to Greek islands in 2019.

## **THE COURT’S ASSESSMENT**

### **I. JOINDER OF THE APPLICATIONS**

2. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

### **II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION CONCERNING LIVING CONDITIONS IN THE RECEPTION CENTRES**

3. The applicants complained under Article 3 about their living conditions in the reception centres during the periods indicated below.

4. The Government argued that the applicants had failed to exhaust domestic remedies. The applicants disagreed stating that the Government’s arguments were largely theoretical and not available in their particular circumstances.

5. The Court reiterates that the Government claiming non-exhaustion must demonstrate 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). Having regard to the facts that no relevant national case-law examples has been provided

by the Government to demonstrate effectiveness of any remedy, the Government's objection must be dismissed.

6. 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.

7. The general principles concerning the living conditions of asylum-seekers were previously summarised in *M.S.S. v. Belgium and Greece* [GC] (no. 30696/09, §§ 251-53, ECHR 2011) and *Khlaifia and Others v. Italy* [GC] (no. 16483/12, §§ 158-61, 15 December 2016).

8. On 16 October 2019 the applicant in the case *A.R. v. Greece*, no. 59841/19 was discharged from the pre-removal detention centre on Kos and on 17 October 2019 she went to the asylum service located in Pyli RIC, where she was given an asylum seeker's card and had her stay restricted to the island of Kos. According to the applicant, she informed the asylum service about her homelessness, but was neither offered any assistance nor referred to the administration of Pyli RIC, and, therefore, started living in a cardboard shed right outside the RIC with no access to any of the facilities or assistance. The Government essentially claimed in their submissions that the applicant voluntarily had not gone to the RIC, where necessary material conditions existed. In support of their position they refer to the absence of the applicant's file in the RIC records. The Court is unable to accept this argument. Irrespective of whether Pyli RIC had been overcrowded at the material time, it is clear that the Greek authorities had been aware of the presence of an asylum-seeker after having provided her with the relevant documentation and restricting her to a geographical location. However, they chose not to take any action regarding her living conditions in a makeshift shelter right outside the RIC. Given that on 28 November 2019 it was found necessary to place the applicant in an independent living facility, it is evident that the authorities had been aware of her situation and remained in at least some contact with her. Almost six weeks of homelessness and lack of access to even basic living arrangements had not been compatible with the Convention guarantees. Accordingly, there has been a violation of her rights under Article 3 of the Convention as far as it concerns her living conditions between 16 October and 28 November 2019.

9. The applicant in the case *M.A. v. Greece*, no. 15782/20, who was 79 years old at the relevant time, suffers from diabetes and a chronic heart condition. Shortly after his arrival to Chios Vial RIC the applicant underwent a medical screening, registration and identification procedure and initiated asylum proceedings. He was placed in a temporary tent installed outside of overcrowded accommodation containers. On 20 May 2020 the applicant was transferred from the tent to an accommodation container and eventually on 21 December 2020 was placed in an independent living facility.

10. The Court takes note of the fact that according to statistical reports from the Greek Ministry of Migration and Asylum (see e.g. *National Situational Picture Regarding the Islands at Eastern Aegean Sea* (18/10/2019) and (25/03/2020)) the nominal capacity of Vial RIC was 1,014 persons, while between 4,452 and 5,300 individuals had found themselves there during the relevant period. While the parties disagree about the living arrangements in the temporary tents and accommodation containers and whether the applicant had signalled to the authorities his special needs during the initial screening in October 2019, the applicant's vulnerability as an asylum seeker should have been evident due to his advanced age. Admittedly, the applicant's situation improved once he was moved to an accommodation container on 20 May 2020. However, the impact of the RIC's overcrowding by 400 to 500% had a deleterious effect on his living conditions and access to medical and sanitary facilities. It is best illustrated by the fact that he had to share 20 "Wash and WC" installations and 55 portable toilets with at least 4,500 other individuals. Accordingly, there has been a violation of his rights under Article 3 of the Convention as far as it concerns his living conditions in Chios Vial RIC between 21 October 2019 and 21 December 2020.

11. After his arrival to Greece the applicant in the case *W.A. v. Greece*, no. 21997/20 stayed in Samos RIC between 16 August 2019 and 15 July 2020. According to reputable international and domestic sources the situation in the RIC during this period was characterised by severe overcrowding, lack of access to medical and sanitary facilities, insufficient food supply, lack of security and high crime rates (see the material cited in *A.D. v. Greece* (Committee), no. 55363/19, §§ 14-20, 04 April 2023). The applicant's stay in these living conditions for almost a year had not been compatible with the Convention guarantees. Accordingly, there has been a violation of his rights under Article 3 of the Convention as far as it concerns his living conditions in Samos RIC between 16 August 2019 and 15 July 2020.

### III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION CONCERNING THE LACK OF ADEQUATE MEDICAL ASSISTANCE

12. The applicant in the case *W.A. v. Greece*, no. 21997/20 complained under Article 3 of the Convention about the lack of adequate medical assistance in Samos RIC.

13. The Government argued that the applicant had failed to exhaust domestic remedies. The Court considers that this objection must be dismissed for the reasons presented above (see 4-5 above). 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.

14. The relevant general principles were previously summarised in *Rooman v. Belgium* [GC] (no. 18052/11, §§ 141-148, 31 January 2019) among many other authorities.

15. According to the applicant he was first diagnosed with hepatitis B in 2017 and suffered from various symptoms prior to and after his arrival to Greece. After arrival to Samos RIC the applicant had his blood tested several times – on 11, 18 September and 29 October 2019 – and the results, which had been included in his RIC file, indicated chronic hepatitis B. During the lodging of his asylum application on 27 November 2019 he also mentioned his condition. However, it was not until the examinations and blood tests at the General Hospital of Samos on 11 February and 3 March 2020 that a hepatologist's consultation was recommended and only on 15 July 2020 he was transferred to mainland to ensure access to specialised medical services. There is no evidence in the case-file that during the above period he received any treatment – beyond paracetamol – for the viral infection or the symptoms.

16. The Court finds it incompatible with the Convention guarantees that at least for ten months the applicant was left without suitable medical supervision and proper treatment for his serious medical condition known to the authorities (*Murray v. the Netherlands* [GC], no. 10511/10, § 106, 26 April 2016).

17. Accordingly, there has been a violation of his rights under Article 3 of the Convention.

### IV. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

18. The applicant in the case *A.R. v. Greece*, no. 59841/19 complained under Article 5 § 2 that she had not been informed in the language she understands about the reasons for her detention.

19. 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.

20. The general principles concerning the right to be informed about the reasons for the deprivation of liberty have been summarised in *Khlaifia and Others* [GC] (cited above, § 115) among many other authorities.

21. The Court notes that the factual and legal setting of this complaint is largely similar to one examined in the case *J.R. and Others v. Greece* (no. 22696/16, §§ 119-123, 25 January 2018) where a violation of the applicants' rights under Article 5 § 2 had been found.

22. In the present case the parties disagree whether the leaflet had been given to the applicant at any moment and no copy of the leaflet had been submitted to the Court to examine its contents and language. Under these circumstances there appears to be no grounds to reach a conclusion different from the above *J.R. and Others* case (*ibid.*).

23. There has accordingly been a violation of Article 5 § 2 of the Convention in the case *A.R. v. Greece*, no. 59841/19.

## V. REMAINING COMPLAINTS

24. In the case *A.R. v. Greece*, no. 59841/19 the applicant also complained under Articles 3 about the conditions of detention in the police stations of Symi and Kos, the living conditions in the pre-removal detention centre on Kos and the lack of medical assistance in the above facilities. She further complained under Article 5 §§ 1 and 4 about the alleged unlawfulness of her detention and lack of available judicial review in that regard. In the case *M.A. v. Greece*, no. 15782/20 the applicant further complained under Article 3 about an alleged lack of medical assistance in Chios Vial RIC and his living conditions in an independent housing facility.

25. The Court has examined that part of the applications and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

26. It follows that this part of the applications must be rejected in accordance with Article 35 § 4 of the Convention

27. Lastly, the interim measures indicated to the Government under Rule 39 of the Rules of Court in cases *M.A. v. Greece*, no. 15782/20 and *W.A. v. Greece*, no/ 21997/20 cease to have any basis.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicants claimed between 12,000 and 23,000 euros (EUR) in respect of non-pecuniary damage.

29. The Government contested these claims.

30. The Court, having regard to the nature of the violations of the applicants' rights and acting on equitable basis, awards the applicant the amounts indicated in the appended table in respect of non-pecuniary damage plus any tax that may be chargeable to the applicants.

31. The applicants made no claim in respect of costs and expenses and, therefore, the Court makes no award in this regard.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints under Article 3 concerning the living conditions of the applicants in the reception centres, as well as the complaints under Article 3 concerning medical assistance in the case *W.A. v. Greece*, no. 21997/20 and under Article 5 § 2 in the case *A.R. v. Greece*, no. 59841/19 admissible and the remainder of the applications inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention as regards the living conditions of the applicants in the RICs;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of lack of adequate medical assistance in the case *W.A. v. Greece*, no. 21997/20;
5. *Holds* that there has been a violation of Article 5 § 2 of the Convention in the case *A.R. v. Greece*, no. 59841/19;
6. *Holds*
  - (a) that the respondent State is to pay the applicants within three months, the amounts indicated in the appended table, plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (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;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court

Sophie Piquet  
Acting Deputy Registrar

Stéphanie Mourou-Vikström  
President

#### APPENDIX

No.	Application no. Case name Lodged on Year of birth Nationality Represented by	Period and place of detention/residence	Article 41 award
1.	<u>59841/19</u> <b>A.R. v. Greece</b> 19/11/2019  1989 Cameroonian  Niki GEORGIOU	16/06/2019 – 19/06/2019 allegedly in a location on Symi island unidentified by the parties  19/06/2019 – 24/06/2019 police department on Symi island  24/06/2019 – 01/07/2019 police department on Rhodes island	EUR 3,000

No.	Application no. Case name Lodged on Year of birth Nationality  Represented by	Period and place of detention/residence	Article 41 award
		01/07/2019 – 16/10/2019 pre-removal detention centre on Kos island  28/11/2019 – placed in independent living facility on Kos, left voluntarily in October 2020	
2.	<u>15782/20</u> <b>M.A. v. Greece</b> 06/04/2020  1940 stateless born in Kuwait  Niki GEORGIYOU	21/10/2019 - 20/05/2020 tent in Chios Vial RIC  20/05/2020 – 21/12/2020 accommodation container in Chios Vial RIC  21/12/2020 – placed in independent living facility	EUR 2,500
3.	<u>21997/20</u> <b>W.A. v. Greece</b> 05/06/2020  1996 Cameroonian  Jenny FLEISCHER	16/08/2019 - 15/07/2020 Samos RIC	EUR 4,000