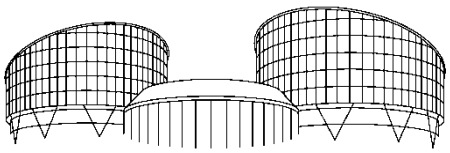
dirittifondamentali.it

La CEDU sulla violazione degli artt. 3, 13 e 5 §1 della Convenzione.
(CEDU, sez. III, sent. 14 ottobre 2025, ric. n. 59816/13)

Nel caso di specie, la Corte EDU è stata chiamata a pronunciarsi sulla presunta violazione degli artt. 3, 13 e 5 §1 della Convenzione. Il ricorrente, entrato in Grecia per chiedere protezione internazionale, era stato arrestato per ingresso irregolare e sottoposto a detenzione amministrativa. Successivamente rilasciato, la mancata comparizione al colloquio con le autorità aveva comportato l'interruzione della procedura d'asilo e la riattivazione dell'ordine di espulsione, con un nuovo arresto. In tale occasione, egli aveva lamentato l'illegittimità della propria detenzione in attesa dell'esame della domanda di protezione, nonché le condizioni materiali della stessa, facendo riferimento al sovraffollamento, alla scarsa igiene, alla bassa qualità del cibo e alla sua personale condizione di salute. Il tutto accompagnato dalla mancanza di un ricorso effettivo che gli permettesse di far valere le proprie doglianze, sia in relazione alla detenzione in sé, sia rispetto alle condizioni a cui era costretto. La Corte ha innanzitutto accolto la doglianza relativa alla violazione dell'articolo 3, ritenendo che vi fosse stato un trattamento degradante, non solo per le condizioni della detenzione, ma soprattutto per il fatto che il ricorrente fosse stato trattenuto per più di due mesi in una stazione di polizia, inidonea ad accogliere detenuti per periodi prolungati, non rispettando pertanto gli standard minimi richiesti. Quanto alla violazione dell'articolo 13, in combinato disposto con l'articolo 3, la Corte ha osservato che il ricorrente non disponeva di un ricorso effettivo per contestare le condizioni della propria detenzione. Le sue denunce, peraltro adeguatamente documentate, sono state respinte dalle autorità nazionali senza una valutazione concreta, né una motivazione adeguata. Ne è derivata la violazione dell'articolo 13, proprio per l'assenza di una tutela effettiva a livello interno. Infine, con riferimento alla violazione dell'articolo 5 § 1 della Convenzione, i giudici di Strasburgo hanno ritenuto che la detenzione del ricorrente in attesa di espulsione fosse avvenuta in conformità con il diritto interno e che non risultasse alcun profilo di arbitrarietà. In particolare, la Corte ha osservato che la detenzione, seppur censurabile nelle sue condizioni materiali, era fondata su una base legale sufficientemente chiara, prevista dalla normativa greca, e che le autorità avevano agito in buona fede, senza che emergesse alcun elemento indicativo di una mancanza di diligenza o di abuso del potere detentivo.

***



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

THIRD SECTION

CASE OF XXX v. GREECE
(Application no. 59816/13)

JUDGMENT
STRASBOURG

14 October 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision

In the case of XXX v. Greece,

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

Peeter Roosma, *President*,
Ioannis Ktistakis,
Lətif Hüseynov,
Darian Pavli,
Diana Kovatcheva,
Canòlic Mingorance Cairat,
Vasilka Sancin, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 59816/13) 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 an Iranian national, Mr XXX ("the applicant"), on 19 September 2013;

the decision to give notice to the Greek Government ("the Government") of the complaints concerning the applicant's conditions of detention and the availability of an effective remedy in that respect, the legality of his detention and the availability of judicial review thereof, and the decision to declare the remainder of the application inadmissible pursuant to Rule 54 § 3 of the Rules of Court;

the decision not to disclose the applicant's name;

the parties' observations;

Having deliberated in private on 23 September 2025,

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

INTRODUCTION

1. The application concerns an "Omissis" national who, after unlawfully entering Greece, applied for asylum on account of his sexual orientation and religious beliefs. The applicant complained about the unlawfulness of his detention and the conditions thereof, the lack of an effective remedy

in respect of those conditions, and the absence of a substantive judicial review of the lawfulness of his detention pending the examination of his asylum request. He relied on Articles 3, 5 §§ 1 and 4 and Article 13 of the Convention.

THE FACTS

2. The applicant was born in "Omissis" in "Omissis". He was represented by "Omissis", a lawyer practising in Athens.

3. The Government were represented by their Agent, Mr G. Papadaki, assessor at the State Legal Council.

4. The facts of the case may be summarised as follows.

I. THE APPLICANT'S FIRST ARREST AND APPLICATION FOR ASYLUM

5. On 1 August 2012, the applicant entered Greece, seeking international protection on the basis of his sexual orientation. On the same day, he was arrested by officers of the Didimoticho police and border guard station for unlawfully entering the Greek territory and was placed in administrative detention.

6. On 4 August 2012, the director of the Orestiada police directorate (*Διευθυντής Αστυνομικής Διεύθυνσης Ορεστιάδας*) issued decision no. 9135/1-A/5093-λϱδ'/4.8.2012 ordering the extension of the applicant's detention under Article 76 § 1 (b) of Law no. 3386/2005 on the ground that there was a risk that he might abscond, as well as his deportation under Article 21 of Law no. 3907/2011.

7. On the same date, the applicant lodged an asylum application.

8. On 26 October 2012, the applicant was issued an asylum seeker's card, valid until 21 November 2012, the date on which his personal interview was scheduled, and he was released. The Government submitted that the proof of notification, issued in a language he understood well (Farsi), stated that the applicant had been informed of his obligation to appear before the Orestiada police subdirectorate to undergo an interview. The applicant submitted that the interpretation had been conducted by a fellow detainee and had not been adequate for him to properly understand his obligations and the relevant procedural requirements.

9. On an unspecified date, the applicant moved to Athens.

10. On 1 December 2012, the director of the Orestiada police directorate issued decision no. 5401/1-A/1831-ε' discontinuing the asylum proceedings because the applicant had failed to attend the interview and reinstating the deportation decision in accordance with Article 14 § 3 (b) of Presidential Decree no. 114/2010. The applicant submitted that he had been informed of that decision on 7 July 2013.

11. On 31 March 2013, he was baptised in the Athens Baptist Church.

12. According to a document issued on 4 July 2013 by a pathologist of Attikon University Hospital, the applicant was examined at the hospital and was diagnosed with asthma and

bronchial spasms, which could become paroxysmal. He was prescribed treatment and advised to avoid humid and smoke-filled environments.

II. THE APPLICANT'S SECOND ARREST AND NEW APPLICATION FOR ASYLUM

A. The applicant's second arrest and his attempts to challenge it

13. On 7 July 2013, the applicant was arrested by officers of the Kolonos police station.

14. On 8 July 2013 the head of the Aliens Subdirectorate of Attica (*Προϊστάμενος της Υποδιεύθυνσης Αλλοδαπών Αττικής*) issued detention decision no. 532793/1-α'/8.7.2013 in respect of the applicant on account of, *inter alia*, the lack of a valid residence permit, the discontinuation of the proceedings relating to his asylum application and the existence of the pending deportation order (decision no. 9135/1-A/5093-λρδ'/4.8.2012, see paragraph 6 above) issued under Article 76 § 1 (b) of Law no. 3386/2005 and Article 21 of Law no. 3907/2011.

15. On 9 July 2013, the applicant lodged an appeal (*αίτηση θεραπείας*) against the decision of the director of the Orestiada police directorate dated 1 December 2012 (see paragraph 10 above). He requested the continuation of the examination of his asylum application, arguing that his previous claim had not been examined. He explained his failure to attend the interview by reference to a combination of factors, such as financial hardship, medical issues and a lack of adequate information provided by the authorities. He stated that he was an asylum seeker and, since 1 February 2013, had had a permanent address in Athens, where he lived with his partner. He submitted an affidavit signed by his partner.

16. On 10 July 2013, he submitted objections (*αντιρρήσεις*) before the director of the Athens deportation department, arguing that he did not pose a flight risk, he was unlikely to offend and his continued detention was detrimental to his bronchial asthma. In support of his objections, he resubmitted the affidavit signed by his partner.

17. On 11 July 2013, the head of the Aliens Subdirectorate of Attica issued a new return decision on the grounds that the applicant lacked identity documents, that the proceedings relating to his initial asylum application had been discontinued, and that there was a pending deportation order. In the same decision, he extended his detention pending deportation in accordance with Article 76 § 1 (b) of Law no. 3386/2005 and Article 21 of Law no. 3907/2011 on the ground that there was a risk that the applicant might abscond (decision no. 532793/1-β'/11.7.2013).

18. On 25 July 2013, the director of the Orestiada police directorate rejected his appeal (decision no. 5401/1-A/1831-θ).

B. The applicant's new application for asylum

19. On 7 August 2013, the applicant applied again for asylum before the Attica regional asylum office *via* the Kolonos police department. In support of his application, he submitted his baptism certificate and medical documentation relating to his bronchial asthma, together with an affidavit signed by his partner. He further supplemented the file with affidavits from members of his partner's family.

20. On the same day, the director of the Aliens Subdirectorate of Attica issued a decision modifying the legal basis for the applicant's detention and basing it instead on the applicant's lack of travel documents, the need to verify his identity and to ensure the prompt and effective examination of his asylum application (decision no. 532793/1-ε΄/7.8.2013) in accordance with Article 12 of Presidential Decree no. 113/2013 and Article 2 of Presidential Decree no. 116/2012. The same decision suspended the applicant's expulsion order.

21. On 6 September 2013, the asylum service registered his asylum application. His interview was scheduled for 20 September 2013.

III. THE APPLICANT'S CHALLENGES IN RESPECT OF THE CONDITIONS OF HIS DETENTION AND DEPORTATION

22. The applicant was detained at the Kolonos police station from 7 July to 24 September 2013. On 7 August 2013, the applicant lodged objections (first set of objections, no. 21086/2013) before the Athens Administrative Court of First Instance (*Διοικητικό Πρωτοδικείο Αθηνών*) against the continuation of his detention and his expulsion. He argued, *inter alia*, that his initial application for international protection had never been examined on the merits on account of his inability to attend the interview and that he had only become aware of the discontinuation of those proceedings upon his arrest. He further pointed out that, in the meantime, he had lodged a new application for international protection. Relying on Presidential Decree no. 114/2010, issued to transpose Directive 2005/85/EC, as amended by Presidential Decree no. 113/2013, he submitted that asylum seekers were permitted to remain in the country until the completion of the administrative examination of their claim and could not be detained solely for having entered and remained unlawfully. He argued that detention was permissible only exceptionally and if alternative measures under Article 22 § 3 of Law no. 3907/2011 could not be applied, and that none of the statutory grounds justifying his detention applied in his case. He also asserted that his detention conditions were inadequate and detrimental to his health. He stated that he suffered from bronchial asthma and chronic productive cough, for which he was receiving daily treatment, and had been medically advised to avoid humid environments and exposure to smoke. He claimed that, in the overcrowded cell where he was held, most detainees smoked continuously, the atmosphere was unventilated and oppressive, and the humidity in the cell aggravated his asthma, causing persistent coughing and breathing difficulties. He relied on the medical certificate issued by Attikon University Hospital.

23. On 8 August 2013, the President of the Athens Administrative Court of First Instance dismissed the applicant's objections (judgment no. 4227/2013). In her reasoning, she held that the applicant did not have a valid residence permit, employment documentation or a permanent address and had no established social ties to the country. She considered that the affidavit signed by the applicant's partner was insufficient to constitute proof of residence, thereby concluding that he posed a flight risk. The President held that the applicant's medical condition – bronchial asthma – was not of sufficient severity to justify his stay in the country.

24. On 27 August 2013, the applicant's lawyer submitted a request for the expedited scheduling of his asylum interview, reiterating the same arguments and, in addition to the previous documents, submitted the applicant's baptism certificate.

25. On 9 September 2013, the applicant lodged objections before the Athens Administrative Court of First Instance, asking for judgment no. 4227/2013 and decision no. 532793/1-β' to be revoked (second set of objections). He also requested his release pending the examination of his asylum claim. Relying on the Court's case-law, he argued that both the continuation of his detention and the deportation decision had been in breach of his rights under the Convention, as his detention conditions were extremely poor and posed a serious risk to his health, given that he suffered from bronchial asthma. In that regard, he referred to overcrowding and inadequate ventilation which, coupled with the constant smoking of other detainees, aggravated his respiratory condition. He further pointed to inadequate diet, the absence of outdoor exercise, unhygienic and potentially hazardous sanitary facilities, the prevalence of communicable diseases, and insufficient access to medical and pharmaceutical care. He asserted that police stations were *per se* unsuitable for long-term detention on account of overcrowding, unsanitary conditions, inadequate food quality and lack of access to outdoor space or recreational activities. Additionally, the applicant argued that he should not remain in detention solely because he had filed an asylum claim and maintained that he was not a flight risk, as he had provided his personal data to the authorities and had a permanent residence with his male partner. He stated that he had strong personal and social ties in Greece, as he had been living with his Greek partner before his arrest. The applicant cited reports by international organisations acknowledging the unsuitability of police stations for long-term detention. Lastly, he argued that his case had attracted public interest and parliamentary scrutiny. The applicant resubmitted the medical certificate, the affidavit signed by his partner and his baptism certificate. He also submitted the affidavits from his partner's relatives and friends and press articles reflecting public and parliamentary interest in his case.

26. On 11 September 2013, the Athens Administrative Court of First Instance dismissed the applicant's objections (judgment no. 4956/2013). In her reasoning, the President of the Court emphasised that no new evidence had been presented and that his arguments had related solely to his asylum claim, which was deemed irrelevant to the assessment of the lawfulness of his detention. Regarding his complaints concerning detention conditions, the court found them generic and unsubstantiated, lacking sufficient supporting evidence.

IV. FURTHER DEVELOPMENTS

27. On 20 September 2013, the applicant was transferred to the asylum office for his interview.

28. On 23 September 2013, the applicant's lawyer submitted a memorandum to the asylum office, requesting urgent and prioritised examination of his asylum claim, referring to the inadequate conditions of his detention.

29. On 24 September 2013, the applicant was released, as the regional asylum office did not recommend his continued detention, and director of the Aliens' Dirtectorate of Attica ordered the

suspension of his deportation pending the issuance of a decision on his application for international protection.

30. On 15 October 2013 the applicant was granted refugee status. On 30 October 2013 the applicant was notified of that decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

31. The relevant domestic law and practice on States' liability for the unlawful acts or omissions of public officials under Article 105 of the Introductory Law to the Civil Code and moral damage under Articles 57 and 932 of the Civil Code are summarised in *A.F. v. Greece* (no. 53709/11, §§ 22-25, 13 June 2013).

32. Articles 76 and 83 of Law no. 3386/2005 and Article 30 of Law no. 3907/2011 governing the detention of foreign nationals subject to deportation orders, as in force at the material time, are reproduced, in so far as relevant, in *Barjamaj v. Greece* (no. 36657/11, §§ 17-22, 2 May 2013).

33. The detention of asylum seekers was governed by Article 13 of Presidential Decree no. 114/2010, as described in *A.E. v. Greece* (no. 46673/10, § 23, 27 November 2014).

34. Article 23 of Presidential Decree no. 113/2013 sets out the procedural framework for the examination of subsequent applications for international protection, including the admissibility criteria, the obligation to present new substantial elements and the suspension of removal measures during the preliminary assessment stage.

35. The obligations of the authorities responsible for the detention of foreign nationals against whom an administrative deportation order has been issued, whether in detention centres or police facilities, are outlined in *A.F. v. Greece* (cited above, § 32).

II. RELEVANT INTERNATIONAL MATERIAL

A. Council of Europe

36. Following its visit to Greece in January 2011, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report dated 10 January 2012 CPT/Inf (2012) 1), stating in paragraph 13 that "the conditions in which irregular migrants are held would appear to be a deliberate policy by the authorities in order to deliver a clear message that only persons with the necessary identity papers should attempt to enter Greece". In another report dated 16 October 2014 (CPT/Inf (2014) 26), following its visit to Greece in April 2013, the Committee noted that police and border guard stations were not suitable for lengthy periods of detention and that the conditions in which most of these individuals were held amounted to inhuman and degrading treatment (paragraph 35 of the report).

37. In his report (CommDH(2013)6, dated 16 April 2013) following a visit to Greece from 28 January to 1 February 2013, Nils Muižnieks, Council of Europe Commissioner for Human Rights, expressed serious concern over the systematic detention of migrants on their arrival in the country.

During his visit to Athens, he encountered numerous migrants who could not be deported owing to legal or factual obstacles, yet they remained in detention.

B. United Nations

38. The report of the Special Rapporteur on the human rights of migrants, François Crépeau, following an official visit to Greece from 25 November to 3 December 2012 (A/HRC/23/46/Add.5, dated 19 April 2013), highlighted that irregular migrants were detained for several months in various establishments, including police stations which were clearly unsuitable for long-term detention. In general, detention conditions were found to be inappropriate in all facilities (paragraph 48 of the report).

39. The United Nations Working Group on Arbitrary Detention, in its report (A/HRC/27/48/Add.2, dated 30 June 2014) following a visit to Greece from 21 to 31 January 2013, observed that most of the detention facilities visited were severely overcrowded and did not meet international human rights standards (paragraph 81 of the report).

40. In the Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, on his mission to Greece from 10 to 20 October 2010 (A/HRC/16/52/Add.4, dated 21 April 2011), he found the conditions of detention in police stations, criminal investigation departments, border guard stations and migration detention centres to be extremely poor throughout the country (paragraph 41 of the report). Among other concerns, he highlighted the highly insufficient reception capacity for asylum seekers, the dysfunctional asylum application system in the Athens Aliens police directorate and the systematic and prolonged detention of irregular migrants in substandard conditions.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicant complained that the conditions of his detention at the Kolonos police station had subjected him to inhuman or degrading treatment in violation of Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

42. Referring to, among other cases, *Adiele and Others v. Greece* (no. 29769/13, 25 February 2016) and *Papadakis and Others v. Greece* (no. 34083/13, 25 February 2016), the Government argued that the applicant had failed to exhaust the available domestic remedies, namely an action for compensation under Article 105 of the Introductory Law to the Civil Code.

43. The Court reiterates that Article 35 of the Convention requires only the exhaustion of available and adequate remedies that relate to the alleged violation (see *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-II).

44. The Court observes from the outset that, unlike in the cases referred to above by the Government, where the applicants' detention had been subject to the provisions of the penitentiary code, the applicant in the present case was a foreign national, who was placed in administrative detention at the Kolonos police station pending his expulsion. In this regard, the Court reiterates its previous findings that the remedy provided by Article 105 of the Introductory Law to the Civil Code is not capable of affording an appropriate redress in such situation, as the applicable domestic legal framework consisting primarily of Presidential Decree no. 141/1991 on the competence of the Ministry of Public Order, and of Presidential Decree no. 254/2004 on the Police Code of Conduct only impose general obligations on the administration but do not guarantee foreign nationals subjective and enforceable rights before domestic courts (*A.F. v. Greece,* cited above, §§ 59- 61). The Court sees no reasons to reach a different conclusion in the present case.

45. The Court further observes that the applicant repeatedly complained of poor conditions of his detention by way of objections raised in the proceedings, which he initiated on 7 August and 9 September 2013 (see paragraphs 22 and 25 above). It thus considers that the applicant alerted the domestic courts about the conditions of his detention, providing them with an opportunity to examine his conditions of detention and to remedy them, if necessary (see *MD v. Greece*, no. 60622/11, § 39, 13 November 2014). The Court therefore rejects the Government's objection of non-exhaustion of domestic remedies.

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

B. Merits

47. The applicant reiterated the grievances he had raised in the domestic proceedings regarding his conditions of detention. He referred to overcrowding, lack of hygiene and poor quality of food, as well as to his medical condition. He further emphasised that he had been detained for a period of two months and eighteen days at the Kolonos police station, which by its nature was not suitable for prolonged detention.

48. The Government submitted that the Kolonos police station had been designed for short-term accommodation, with a capacity of twenty-five individuals across five cells, each equipped with bedding. They provided further details on different material aspects of the applicant's detention, emphasising that all the detainees had unrestricted access to legal counsel and daily visitation hours. They referred to the official records according to which the applicant had not applied for a medical transfer or lodged other complaints in respect of his conditions of detention.

49. The Court notes that it has, on many occasions examined the conditions of detention of persons remanded or detained pending expulsion in police stations in Greece and has found them to be in breach of Article 3 of the Convention (see, as a recent authority, *H.T. v. Germany and Greece*, no. 13337/19, § 82, 15 October 2024, with many further references). There had been specific deficiencies in the applicants' detention conditions in each of those cases, particularly overcrowding, a lack of outdoor space for exercise, poor sanitary conditions and poor-quality food.

In addition to those specific deficiencies, the Court based its finding of a violation of Article 3 on the nature of police stations *per se*, which are designed to accommodate people for a short time only (ibid.).

50. Turning to the present case, the Court notes that the applicant, notwithstanding his objections (see paragraphs 22 and 25 above), was detained for a period of two months and eighteen days at the Kolonos police station, a facility which, in terms of its design, lacked amenities required for prolonged periods of detention (see *H.T. v. Germany and Greece*, cited above, § 83).

51. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government did not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case from the one it reached in the above-cited cases.

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

II. ALLEGED VIOLATION OF Article 13 in conjunction with Article 3 of the CONVENTION

53. The applicant complained that he did not have an effective remedy to complain under Article 3 about his conditions of detention, contrary to Article 13 of the Convention, which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

54. The applicant's complaint under Article 13 in conjunction with Article 3 is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

55. In view of the conclusions reached above under Article 3 of the Convention, the Court finds that the applicant had an arguable complaint for the purposes of Article 13 of the Convention.

56. The applicant submitted that the remedy of objections under Article 76 of Law no. 3386/2005 was ineffective in practice, as complaints concerning conditions of detention were consistently rejected, reflecting a broader pattern of disregard irrespective of their merits. In his case, he argued that the domestic courts had not examined the conditions in which he had been held, despite being explicitly empowered to do so under domestic law. He emphasised that his claims were rejected through formalistic reasoning, without consideration of the adverse effects of prolonged detention on his health, asylum proceedings and personal circumstances, or of his allegations of mistreatment linked to his sexual orientation.

57. The Government submitted that the applicant had had access to judicial proceedings to challenge his detention, referring to the remedy of objections, provided by Article 76 § 3 of Law no. 3386/2005, which allowed third-country nationals detained with a view to expulsion to contest the lawfulness of their detention before the Administrative Court of First Instance. The Government further argued that, following the legislative amendment introduced by Law no. 3900/2010, which had come into effect on 1 January 2011, the scope of judicial review had been substantially expanded, enabling administrative judges to examine any individual aspect of the legality of the detention.

58. As to the principles applicable to the effectiveness of remedies under Article 13 of the Convention, the Court refers to its well-established case-law (see, among many authorities, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 96-98 and 214, 10 January 2012, with further references).

59. The Court observes that, under Article 76 §§ 4 and 5 of Law no. 3386/2005 as amended by Article 55 § 2 of Law no. 3900/2010, the administrative courts which receive objections submitted by a detainee who is in the process of being deported are granted powers not only to review whether this person poses a danger to public order or there is a risk of his or her absconding, but also to "oppose the detention" and thus examine any aspect of his or her detention, taking into account the concrete and substantiated allegations of his or her state of health or age, those relating to overcrowding and compliance with conditions justifying the detention, and to consider the possibility of applying less restrictive measures or to order their release or transfer to more suitable facilities (see *Herman and Serazadishvili v. Greece*, no. 26418/11 and 45884/11, § 72, 24 April 2014, and *MD v. Greece*, § 65, cited above). It further notes that the amendment of Article 76 of Law no. 3386/2005 and the existence of case-law of the domestic courts, in which they examined in depth the lawfulness of detention with a view to deportation and, where appropriate, ordered release, are in the direction of strengthening the guarantees afforded to foreign detainees (see *MD v. Greece*, cited above, § 68). Notwithstanding, the Court has previously found that the domestic courts failed to engage with substantiated complaints concerning health or detention conditions, relying instead on brief or stereotypical reasoning (ibid., § 68 and *S.Z. v. Greece*, no. 66702/13, §§ 71-72, 21 June 2018).

60. Turning to the present case, the Court observes that, on the date when the Athens Administrative Court of First Instance dismissed the applicant's objections, namely 8 August and 11 September 2013, the amendments were already in force. However, it finds that the applicant was not afforded the benefit of a review of his complaints about the conditions of his detention to an extent sufficient to reflect the possibilities offered by Article 76 § 5, as amended. His detailed objections, supported by documentary evidence (see paragraphs 22 and 25 above), were dismissed by the domestic courts without a meaningful assessment of their substance (see paragraphs 23 and 26 above). In particular, the applicant's submissions regarding the impact of detention on his health, the adequacy of medical care and the conditions of his detention were either not examined or were the subject of brief and insufficient reasoning by the domestic courts.

61. Accordingly, there has been a violation of Article 13 of the Convention taken together with Article 3.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

62. The applicant complained that his detention had been arbitrary, contrary to Article 5 § 1 of the Convention, the relevant parts of which read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

63. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

64. Relying on *Saadi v. the United Kingdom* ([GC], no. 13229/03, § 74, ECHR 2008), the applicant argued that his detention had been arbitrary and unlawful for several reasons. He submitted that the authorities had acted in bad faith, since his deportation to Iran had been manifestly unfeasible owing to the fact that he faced a real risk of persecution and capital punishment in his home country on account of his sexual orientation and religious beliefs. He further contended that his detention had lacked proportionality and that the authorities had failed to consider less restrictive alternative measures. Regarding the length of his detention, the applicant argued that it had had no genuine connection to the purpose of deportation and had served no legitimate aim. He asserted that its continuation had become punitive in nature and had been intended to penalise him for seeking asylum while in custody. As to the place and conditions of detention, he referred to the description provided above (see paragraph 47 above). Lastly, he relied on reports by the Greek Ombudsman, who had concluded that the detention of asylum seekers had been applied even in cases where deportation had not been feasible. The applicant additionally pointed to the inadequate transposition of European Union asylum law into domestic legislation as a contributing factor to the systemic deficiencies affecting the lawfulness of his detention.

(b) The Government

65. The Government submitted that the applicant's detention had been lawful under domestic law and based on the respective decisions issued by the competent authorities in accordance with domestic legal provisions then in force. They indicated, in respect of the period between 7 July and 6 August 2013, that the detention had been justified under Article 76 § 1 (b) of Law no. 3386/2005

taken in conjunction with Articles 21 and 30 § 1 of Law no. 3907/2011 on account of, *inter alia*, the applicant's lack of a valid residence permit, the discontinuation of his asylum application and the existence of a pending deportation order. As regards the period between 7 August 2013 and 24 September 2013, they referred to the lack of travel documents, the need to verify the applicant's identity and to ensure the prompt and effective examination of his asylum application in accordance with Article 12 of Presidential Decree no. 113/2013 and Article 2 of Presidential Decree no. 116/2012. Furthermore, they asserted that, under Greek law, the introduction of an asylum application suspended deportation but did not affect the validity of a detention order, provided that the conditions set out in Article 12 § 2 of Presidential Decree no. 113/2013 were fulfilled. They referred to the Court's jurisprudence to the effect that the duration of detention extending over several months could be considered compatible with Article 5 § 1 (f) of the Convention, provided that it remained proportionate and was pursued with due diligence in the context of deportation proceedings.

2. *The Court's assessment*

66. It has not been disputed by the parties that the applicant's placement in detention amounted to a "deprivation of liberty", and that his arrest and detention fell within the ambit of sub-paragraph (f) of Article 5 § 1 of the Convention, as the applicant had been detained with a view to deportation.

67. The Court reiterates that Article 5 § 1 (f) does not demand that the detention of a person against whom action is being taken with a view to deportation be reasonably considered necessary, for example to prevent his or her committing an offence or fleeing (see *Chahal v. the United Kingdom*, 15 November 1996, § 112, *Reports of Judgments and Decisions* 1996-V). Any deprivation of liberty under the second limb of Article 5 § 1 (f) will be justified only for as long as deportation or extradition proceedings are in progress. If such proceedings are not pursued with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, §§ 169-170, ECHR 2009, with further references). The Court also reiterates that deprivation of liberty under Article 5 § 1 (f) of the Convention must conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. The notion of "arbitrariness" in Article 5 § 1 extends beyond a lack of conformity with national law, so that deprivation of liberty may be lawful in terms of domestic law but still arbitrary, and therefore contrary to the Convention. To avoid being branded as arbitrary, detention under Article 5 § 1 (f) must be carried out in good faith; it must be closely connected to the grounds of detention relied on by the Government, the place and conditions of detention must be appropriate, and the length of the detention must not exceed that reasonably required for the purpose pursued (see *Saadi*, cited above, § 74; *Azimov v. Russia*, no. 67474/11, § 161, 18 April 2013; and *L.M. and Others v. Russia*, nos. 40081/14 and 2 others, § 146, 15 October 2015).

68. In addition, in asking whether "action is being taken with a view to deportation", the Court has found that removal must be a realistic prospect (see *A. and Others v. the United Kingdom*, cited

above, § 167; *Mikolenko v. Estonia*, no. 10664/05, § 68, 8 October 2009; *Louled Massoud v. Malta*, no. 24340/08, § 69, 27 July 2010; and *Amie and Others v. Bulgaria*, no. 58149/08, § 77, 12 February 2013).

69. In examining whether the applicant's detention was compatible with the criteria set out in paragraph 67 above, the Court notes that the overall length of the applicant's detention may be divided into two distinct periods. As regards the period between 7 July and 6 August 2013, the applicant's deprivation of liberty was based on Article 76 of Law no. 3386/2005 and was aimed at preventing him from remaining unlawfully in Greek territory and ensuring the execution of his expulsion (see paragraph 14 above). The Court does not disregard that in the present case the applicant lodged his first asylum application on his arrival in Greek territory but that its examination was discontinued as a result of his failure to attend a personal interview, even if the reasons thereof are in dispute between the parties (see paragraphs 8, 10 and 15 above). Consequently, a deportation order against him was issued and was pending execution. He applied anew for asylum on 7 August 2013, that is, one month after his second arrest and his several attempts to challenge the discontinuation of the examination of his first asylum application (see paragraphs 15 and 16 above).

70. Accordingly, the applicant's detention during that period was in accordance with the letter of national law and closely connected to the grounds of detention relied on by the Government (see, *inter alia*, *MD v. Greece*, cited above, § 56; *A.E. v. Greece*, no. 46673/10, § 49, 27 November 2014; *A.Y. v. Greece*, no. 58399/11, § 84, 5 November 2015; and *S.Z. v. Greece*, cited above, § 55).

71. Once the applicant lodged a new asylum application on 7 August 2013, the legal basis and the grounds for his detention were modified. During the relevant period, that is, between 7 August and 24 September 2013, the applicant was detained pursuant to Article 12 of Presidential Decree no. 113/2013 and Article 2 of Presidential Decree no. 116/2012 for the purpose of verifying his identity and enabling the speedy and effective examination of his asylum claim (see paragraph 20 above). His detention thus had a clear basis in domestic law and was aimed at ensuring the speedy and effective examination of his asylum application (see *E.K. v. Greece*, no. 73700/13, § 94, 14 January 2021).

72. In view of the above, the Court considers that the good faith of the competent authorities cannot be called into question.

73. As far as the asylum application is concerned, the Court notes that in accordance with national law, if such an application suspends the execution of an expulsion, it does not suspend that of detention. Therefore, even assuming that the domestic authorities should have considered the applicant an asylum-seeker for part of his detention, this would not have had any effect on the decision to detain him (see, among many other authorities, *R.T. v. Greece*, no. 5124/11, § 88, 11 February 2016). In the present case, the applicant was released two weeks after the registration of his new asylum application, that is, on 24 September 2013.

74. In these circumstances, the Court considers that it has no grounds to conclude that the authorities did not conduct the proceedings diligently enough.

75. As regards the third criterion, the place and conditions of detention, the Court has already found that the conditions of the applicant's detention at the Kolonos police station between 7 July and 24 September 2013 were in breach of Article 3 of the Convention (see paragraph 52 above). The Court reiterates that inadequate conditions of detention may, in certain circumstances, contribute to a finding that a deprivation of liberty is arbitrary. The Court has, for example, attached decisive weight to the unsuitability of conditions where the purpose of detention required particular safeguards, such as in cases involving minors (see, *inter alia*, *M.H. and Others v. Croatia*, § 235, 18 November 2021, and *A.D. v. Malta*, no. 12427/22, § 190, 17 January 2024). In contrast, in cases involving adult asylum seekers with no specific vulnerabilities, such as *Z.A. and Others v. Russia* (nos. 61411/15 and 3 others, § 165, 21 November 2019), the Court found that the applicants' detention was primarily unlawful on account of the absence of a clearly defined legal basis and further took into account a number of aggravating circumstances, including the prolonged duration of the detention and the unsuitable conditions in which it was carried out. The Court observes that the present case is to be distinguished in both respects. The applicant was not a person with specific vulnerabilities, and his detention was ordered by a competent authority, based on a clearly defined legal provision, and pursued a legitimate aim. In the instant case, while the applicant was held in facilities not intended for prolonged detention, and the conditions have already been found incompatible with Article 3 of the Convention (see paragraph 52 above), the Court is not persuaded that these deficiencies, taken alone, in themselves, undermined the connection between the lawful basis of the detention and its conditions of execution so as to render the detention arbitrary within the meaning of Article 5 § 1 of the Convention.

76. Finally, as regards the length of the applicant's detention, that is, two months and eighteen days, the Court has previously found that such period of detention could not, in principle, be regarded as excessive taking into account the administrative formalities that had had to be completed before the applicant's expulsion could take place (see *E.K. v. Greece*, cited above, § 96). It observes in particular that, although the applicant, assisted by a lawyer, was repeatedly challenging his detention and submitting a number of elements in support of his claims, it does not appear that he provided the authorities with sufficient documents to ascertain his identity and the reasons preventing his expulsion (contrast *S.Z. v. Greece*, cited above, §§ 56-58).

77. In view of the above considerations, the Court concludes that there has not been a violation of Article 5 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

78. The applicant further alleged a violation of Article 5 § 4 of the Convention, arguing that the judicial review of the lawfulness of his detention had been merely formalistic and the proceedings had been inadequate. Article 5 § 4 reads as follows:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

79. The Court has already found a violation of Article 13 of the Convention taken together with Article 3 on account of the lack of an effective remedy in respect of the applicant's conditions of detention (see paragraph 61 above).

80. Having regard to the facts of the case, the submissions of the parties and its findings under Article 13 taken together with Article 3, the Court considers that it has examined the main legal questions raised by the applicant's complaint under Article 5 § 4. It therefore finds that there is no need to give a separate ruling on this complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 150-53, ECHR 2014).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

82. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage for the alleged violation of his rights under Article 3 of the Convention, EUR 12,000 for each of the alleged violations under Article 5, and EUR 10,000 for the alleged violation of Article 13 taken in conjunction with Article 3, for a total amount of EUR 54,000.

83. The Government contested those claims, arguing that the sum was excessive.

84. The Court considers that the circumstances which led it to conclude that there was a violation of Article 3 and Article 13 taken in conjunction with Article 3 of the Convention in the present case are such as to have caused the applicant anxiety and suffering which cannot be compensated for solely by the finding of a violation. Ruling in equity as required under Article 41 of the Convention, the Court therefore awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

85. The applicant also claimed EUR 1,500 for the costs and expenses incurred before the Court plus any tax that might be chargeable to him on that amount on the basis of a private representation agreement (*ιδιωτικό συμφωνητικό εργολαβικό δίκης*) signed with his representative on 27 August 2013. In accordance with the terms of that agreement, in the event that the Court found a violation of the Convention, the applicant would have to pay to his representative EUR 1,500 plus 10% of the amount awarded to him by the Court. In the event that no violation was found, the lawyer would have to bear the costs herself. The applicant also asserted that that amount could not be considered excessive, given that, in accordance with the Lawyers' Code, the hourly fee for work carried out by a lawyer amounted to EUR 98. He also asked for the relevant sum to be deposited directly into his representative's bank account.

86. The Government submitted that only documented claims should be reimbursed and that, therefore, the applicant's request should be rejected. They argued that the applicant had failed to produce the required documents which would have proved that he had actually incurred those costs. In any event, they found that claim excessive and unsubstantiated, especially since no hearing had taken place.

87. The Court reiterates that an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-371, 28 November 2017). According to its case-law, fees payable under a conditional-fee agreement are to be regarded as "actually incurred" only in so far as such an agreement is legally enforceable in the relevant jurisdiction (see *Merabishvili*, cited above, § 371; compare also *S.Z. v. Greece*, cited above, § 80).

88. In the present case, the Court notes that on 27 August 2013 the applicant signed a private representation agreement with his counsel, comparable to a contingency-fee agreement, under which he undertook to pay EUR 1,500 plus 10% of any award in the event of a favourable outcome. The Court observes that such agreements are enforceable under Greek law, provided they meet the statutory requirements. It therefore accepts that the sums claimed were "actually payable" by the applicant within the meaning of its case-law (see S.Z. *v. Greece*, cited above, § 80).

89. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,500 for costs and expenses incurred in the proceedings before the Court plus any tax that may be chargeable to the applicant. The amount is to be deposited in the bank account indicated by his representative.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 3, 5 § 1 and 13 of the Convention admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention taken in conjunction with Article 3;
4. *Holds* that there has been no violation of Article 5 § 1 of the Convention;
5. *Holds* that it is not necessary to examine the admissibility and merits of the complaint under Article 5 § 4 of the Convention;
6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account of the applicant's representative, as indicated by the applicant;

(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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar

Peeter Roosma President