

Mr. Shayan Baram Saadi (“the applicant”), an Iraqi national, brought an individual application claim in the Grand Chamber of the European Court of Human Rights (“Grand Chamber”) against the United Kingdom of Great Britain and Northern Ireland (“UK”) alleging illegal detention in violation of Article 5(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). The applicant further claimed that he was given inadequate reasons for the detention in violation of Article 5(2) of the Convention. On January 29, 2008, the Grand Chamber held eleven votes to six that the UK had not violated Article 5(1). The Grand Chamber, however, held unanimously that there had been a violation of Article 5(2).

On December 30, 2000, the applicant arrived at Heathrow Airport after fleeing the Kurdish Autonomous Region of Iraq. He claimed asylum. There was no room at the Oakington Reception Centre (“Oakington”), a government-run holding and housing center for detained refugees seeking asylum, but the applicant was granted temporary admission and allowed to stay at a hotel on the condition he returned to the airport the following day. The applicant returned the next day and was again granted temporary admission. When he reported again on January 1, 2001, he was again granted temporary admission. Finally, when he returned the last time he was detained and transferred to Oakington.

Upon arrival at Oakington, the applicant was given a standard “Reasons for Detention and Bail Rights” form. The form set out a list of reasons, such as risk of absconding, but did not include the possibility of detention for fast-track processing at Oakington. On January 4, the applicant met with a lawyer, and on January 5, seventy-six hours after his initial detention, the lawyer was informed, over the telephone, that the applicant was being detained because he fulfilled the Oakington criteria. The Oakington criteria are part of a UK parliamentary order allowing the detention of asylum seekers at Oakington largely for convenience purposes. There are roughly 13,000 asylum applications handled per year at Oakington with, on average, 150 separate interviews being held each day. It was determined that housing certain applicants at Oakington, a large site with outdoor recreation, on-site legal advice, a library, medical centre, and religious observation room, was the most efficient way to enhance the process.

The applicant’s asylum claim was refused on January 8, 2001. The following day, seven days after his initial detention, he was released from Oakington. He was again granted temporary asylum pending appeal. On January 14, 2003 his appeal was allowed and he was granted asylum.

The judicial review of the decision to detain the applicant at Oakington found that Article 5(1)(f) did not allow detention solely for administrative efficiency. The Court of Appeal overruled the lower court, finding that dealing with the large numbers of asylum seekers posed heavy administrative problems and it was in the interests of all asylum seekers to have their status determined as quickly as possible. The Court of Appeal’s determination was upheld by

the House of Lords and also by the Grand Chamber. The issue was one of first impression before the Grand Chamber.

The result in this case hinged on the Grand Chamber's interpretation of Article 5(1)(f). It reads,

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.

It was undisputed that the applicant's detention amounted to a deprivation of liberty. However, the deprivation of liberty would only be unlawful if it did not fall within one of the grounds listed in Article 5(1). The Grand Chamber ruled that the phrase "... to prevent his effecting unauthorised entry into the country" includes the UK procedures at Oakington. It found that until a State has authorized entry into the country, any entry is unauthorized. To interpret Article 5(1) any more narrowly would allow detention only when a person is actively attempting to evade entry restrictions. The Grand Chamber then acknowledged that while Article 5(1)(f) permits the detention of an asylum seeker prior to obtaining authorization to enter, that detention must be compatible with the overall purpose of Article 5. The purpose is to safeguard the right to liberty. To ensure this, no one can be detained in an arbitrary fashion.

The Grand Chamber notes that the Convention refers only to national law and an obligation to conform to that law. But compliance with national law alone is not sufficient to find an action not to be arbitrary. The Grand Chamber found that to move beyond arbitrariness, the person must be detained in good faith and that there be some relationship between the grounds of detention and the place and conditions of the detention. Detention should only be used as a last resort or where other, less severe measures have been found insufficient.

In the current case, detention was found to be not arbitrary. The duration of the applicant's detention at Oakington was reasonable and the conditions sufficiently related to the grounds of his confinement. In order to manage the sheer number of interviews and application, the UK lawfully instituted the program at Oakington.

In regards to Article 5(2), the applicant alleged that he was not informed of the genuine reason for his detention. The Grand Chamber found that the general statement given upon his third return to the airport was insufficient. Furthermore, even if being orally alerted about the reasons was a sufficient means, the applicant was not orally informed until seventy-six hours after his initial detention. Accordingly, the Grand Chamber found there had been a violation of Article 5(2).

The Dissent disagreed with the Majority's interpretation of Article 5(1) of the Convention that the government's showing of "good faith" was a sufficient basis for detention. The Dissent declared that detention is only proper if used to prevent unauthorized entry or when the asylum seeker is the subject of criminal charges. The Dissent's belief was primarily based on Article 18

of the European Union Charter of Fundamental Rights which provides that a person shall not be held solely because he/she is an applicant for asylum. According to the Dissent, this is a minimum standard and detention should only be used when the case has been considered on an individual basis and only after careful examination of the necessity in each case. The United Nations and Article 9 of the International Covenant on Civil and Political Rights also prohibit arbitrary detention in the context of immigration controls.

Furthermore, contrary to the Majority's logic that all asylum seekers are unlawfully in a country until given permission, the Dissent found that all asylum seekers are *ipso facto* lawfully within the territory of a State. The Dissent based this belief on Article 12 of the International Covenant on Civil and Political Rights, which espouses the principle that an asylum seeker who presents a claim for protection is lawfully within a country. It noted that in the current case, the applicant was granted permission for three days to be within the country, and thus was already lawfully in the country.

For more information on this case, visit the ECHR's homepage at: <http://www.echr.coe.int/echr/> (Case Application no. 13229/03).

Written by: Gabriel Siehr