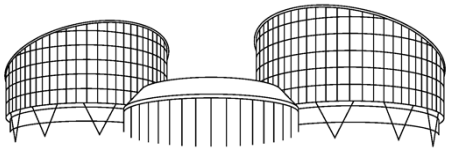

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF H.T. v. GERMANY AND GREECE

(Application no. 13337/19)

JUDGMENT

Art 3 (procedural) • Expulsion • Immediate removal of a Syrian asylum-seeker from Germany to Greece under an administrative arrangement between the two countries • No processing of asylum request before removal • Insufficient basis at the material time for a general presumption of an access to an adequate asylum procedure in Greece protecting against *refoulement* and of non-exposure to treatment contrary to Art 3 and no guarantees in that respect by the administrative arrangement nor by individual assurance • Lack of an individualised risk assessment by the German authorities before removal • Applicant hastily removed without access to a lawyer prior to removal
Art 3 (substantive) • Degrading treatment • Applicant's detention, following removal from Germany, for two months and seventeen days in a Greek police station without amenities required for prolonged periods of detention • Art 5 § 1 • Deprivation of liberty • Overall detention in Greece pending deportation, lasting for two months and twenty-three days, justified • Art 5 § 4 • No examination of the legality of the detention

Prepared by the Registry. Does not bind the Court.

STRASBOURG

15 October 2024

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 H.T. v. Germany and Greece,

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

Gabriele Kucsko-Stadlmayer*, President*,
Tim Eicke,
Faris Vehabović,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ioannis Ktistakis,
Anne Louise Bormann*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 13337/19) against the Hellenic Republic and the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Syrian national, Mr H.T. ("the applicant"), on 1 March 2019;

the decision to give notice of the application to the Greek and German Governments;

the decision not to have the applicant's name disclosed;

the observations submitted by the respondent Governments and the observations in reply submitted by the applicant;

the comments submitted by the AIRE Centre, the Dutch Council for Refugees and the European Council on Refugees and Exiles, and the European Center for Constitutional and Human Rights, Pro Asyl and Refugee Support Aegean, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 24 September 2024,

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

INTRODUCTION

1. The application concerns, firstly, the removal of the applicant, a Syrian national who had expressed his intention to seek asylum to the German authorities, from Germany to Greece under an administrative arrangement between the two countries. The applicant was removed on the day of his arrival. He alleged a violation by Germany of, in particular, Article 3 of the Convention. The application concerns, secondly and under Articles 3 and 5 §§ 1 and 4 of the Convention, the conditions and legality of the applicant's subsequent detention in Greece as well as the judicial control of that detention's legality.

THE FACTS

2. The applicant was born in 1993. He was represented by Mr A. Konstantinou, Ms E. Koutsouraki and Mr V. Papadopoulos, lawyers practising in Athens.

3. The Greek Government were represented by their Agent's delegate, Mr K. Georgiadis, Senior Advisor at the State Legal Council. The German Government were represented by two of their agents, Mr H.-J. Behrens and Ms N. Wenzel, of the Federal Ministry of Justice.

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

I. THE APPLICANT'S ARRIVAL IN GREECE ON THE FIRST OCCASION

5. On 30 June 2018 the applicant, a Syrian national, arrived on Megisti island, in Greece. He was detained upon arrival.

6. On 4 July 2018 the Greek authorities ordered his removal to Türkiye on the basis of an agreement concluded between the member States of the European Union and Türkiye on 18 March 2016 ("the EU-Türkiye Statement"), which provides for migrants to be returned from Greece to Türkiye under certain conditions when they arrive irregularly. The applicant's detention for the purposes of deportation was ordered, and he remained in detention in the police department of Megisti until his transfer to Leros island on 14 July 2018.

7. On 18 July 2018 the applicant lodged an asylum application with the Regional Asylum Office of Leros. A condition not to leave Leros island (a "geographical limitation") was imposed on him (see paragraph 53 below). Execution of the removal order was suspended until the asylum or readmission procedure was completed.

8. According to the applicant, he was exposed to substandard living conditions in the Leros Reception and Identification Centre, a reception and identification centre (a "hotspot"), owing to overcrowding and poor reception conditions, and he left Leros for that reason. He was subsequently unable to continue the asylum procedure, as applications for international protection submitted by applicants who were subject to a condition not to leave a given island could only be examined by the competent asylum authorities of the respective island.

9. On 13 August 2018 the Greek Asylum Service discontinued the examination of the applicant's asylum application, as he did not attend the asylum interview scheduled for that day.

10. According to the applicant, he left Greece owing to the lack of effective access to international protection and his fear that he would be arrested, detained and returned to Leros.

II. THE APPLICANT'S ARRIVAL IN GERMANY AND HIS RETURN TO GREECE

A. The German Government's version of events

11. According to the German Government, the events unfolded as follows. On an unspecified date the applicant travelled to Hungary. On 4 September 2018 he attempted to enter Germany via Austria by bus. At about 5 a.m. he was stopped during a check carried out by officers of the German Federal Police in the immediate vicinity of the German-Austrian border, in the Rottal-Ost area on the BAB3, a German federal motorway. The applicant tried to identify himself using a Bulgarian identity card issued to a different person. A search of the police databases showed that the identity card had been reported stolen. The applicant told the officers that he had bought the identity card in Greece for 2,000 euros (EUR) from a person he did not know. The officers searched the applicant and found, among other things, a Syrian identity card, a certificate of arrival issued by the Greek authorities and handwritten notes about organisations in Germany which helped refugees. The applicant told the officers that he intended to travel to Dortmund, where his brother lived; his brother had already applied for asylum there.

12. The applicant was placed under provisional arrest on suspicion of unauthorised entry, unlawful residence and misuse of identity papers. As a person subject to provisional arrest, the applicant was informed that he had the right to contact defence counsel and to notify a relative or a person of his choosing of his arrest at any time, and that he could request that a person translate and interpret for him. The order for his provisional arrest, including the above-mentioned information as to his rights, was given to the applicant in writing, in Arabic.

13. The officers took the applicant to Passau police station for questioning. There, the applicant was informed about his rights again and he was given an Arabic-speaking interpreter. The applicant indicated his wish to apply for asylum in Germany and to live with his brother in Dortmund. He expressly refused to consent to the Syrian mission in Germany being notified of his arrest. While being questioned as an accused person, the applicant was informed that he was to be returned to Greece. When asked by the officers if he would make himself available for voluntary return, the applicant stated that he would.

14. The applicant was further informed that he was being refused entry because he had presented forged travel documents and did not possess the documents which would have permitted him to enter and reside in Germany, and he was heard on these points in the presence of an interpreter. The written refusal of entry issued under the Schengen Borders Code contained information including an Arabic translation of instructions on the right of

appeal, which stated that an objection to the order refusing entry could be lodged with the Munich police headquarters within one month following notification of the refusal. That written decision also stated that the applicant would be returned to Austria.

15. The applicant was returned to Athens by plane at 7.20 p.m. that same day, that is, 4 September 2018, on the basis of the "Administrative Arrangement between the Ministry of Migration Policy of the Hellenic Republic and the Federal Ministry of the Interior, Building and Community of the Federal Republic of Germany on cooperation when refusing entry to persons seeking protection in the context of temporary checks at the internal German-Austrian border" concluded in 2018 (see paragraph 63 below, hereafter "the administrative arrangement between Germany and Greece"). The German police issued a "notification of refusal of entry" to the Greek authorities, which stated that the applicant had been apprehended during a check at the border between Germany and Austria while attempting to enter Germany, that he did not meet the conditions for entry, that he had expressed a desire for international protection and that the Eurodac database showed that he had applied for asylum in Leros on 18 July 2018 (see paragraph 7 above).

16. Shortly before the applicant was due to depart for the airport, the German officers in charge became aware that the "written notice of refusal of entry issued under the Schengen Borders Code" (see paragraph 14 above) was not the correct document by which to refuse the applicant entry. Therefore, shortly before departing, the applicant was issued with a refusal of entry for asylum-seekers, which an officer orally explained to him in English. An Arabic-speaking interpreter was not available at the time. The order refusing him entry was based on section 18(2) point 2 of the Asylum Act (see paragraph 54 below) and stated that there were indications that Greece had a responsibility to take back the applicant, under Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (see paragraph 61 below; hereafter "the Dublin III Regulation"). The order had a notice of the right to appeal attached to it, which indicated that any action against the decision should be brought before the Munich Administrative Court within two weeks after it had been delivered (section 74(1) of the Asylum Act, see paragraph 54 below).

B. The applicant's version of events

17. The applicant's version of events differs from the one provided by the Government on the following points. According to the applicant, during his questioning at the police station he stated that he wished to apply for asylum

in Germany. He was never willing to consent to being returned to Greece from Germany, as proven by the fact that he expressed his wish to apply for asylum to the German authorities. The German police officers told him during the questioning that he would be returned to Greece in any event, on a voluntary basis or otherwise, and that his asylum application would not be registered in Germany. Indeed, his asylum application was never registered, contrary to Germany's obligation under, *inter alia*, the 1951 Convention relating to the Status of Refugees (see paragraph 57 below; hereafter, "the 1951 Convention") and European Union (EU) law. He was never assisted by a lawyer and could not have access to reliable legal information concerning his right to remain in German territory to have his asylum application registered and examined. He asked to consult a lawyer for the criminal proceedings, but for reasons unknown to him he was never put in touch with one.

18. During his questioning as an accused at the police station, the applicant was informed of the initial decision to refuse him entry. He received contradictory information at this stage. He was initially informed orally that he had been refused entry and that he was to be returned to Greece. No information on his right to have access to a lawyer or on available legal remedies was provided during the questioning. A written decision on refusal of entry under the Schengen Borders Code was given to the applicant, together with an information note in Arabic regarding the refusal of entry. Unlike the oral information he had previously been given, the written information mentioned that he would be returned to Austria. The same document, informing him about his return to Austria, mentioned his right to lodge an appeal with the Munich police headquarters (see paragraph 14 above). No information on legal assistance was provided in this note.

19. Arabic was the only language the applicant understood. For that reason, his questioning at the police station was in Arabic, with the assistance of an interpreter, and he was served with the initial refusal of entry decision based on the Schengen Borders Code in Arabic. The later decision on refusal of entry for asylum-seekers was not explained to him by any officer in any language, and the Government did not provide any document to the Court to show that that decision had been explained to him, even in English.

20. According to the applicant, he remained in Germany for only a few hours, as he was arrested at 5.15 a.m. on 4 September 2018 and returned to Greece at 7.20 p.m. the same day. He was transferred several times during those hours. His mobile phone was confiscated and he was allowed to make one phone call. He called his brother, who did not pick up the call.

III. PROCEEDINGS IN GREECE FOLLOWING THE APPLICANT'S RETURN

21. Upon his arrival at Athens Airport from Munich on 4 September 2018 (see paragraph 15 above), the applicant was arrested. He was placed in detention in the Attica Directorate for Foreigners for a maximum period of six months, with a view to executing the removal decision of 4 July 2018 (see paragraphs 6-7 above – decision no. 666297/1-a). That decision mentioned Laws nos. 3386/2005, 3907/2011 and 4375/2016 (see paragraphs 49 and 50 below) and stated, *inter alia*, that there was a risk of absconding, as the applicant had violated the conditions of stay in the country. It was added that the applicant lacked the necessary documents, that he was dangerous for the public order and that the decision of 4 July 2018 concerning his removal to Turkey (see paragraph 6 above) was pending.

22. On 6 September 2018 the applicant lodged an application for the continuation of the asylum proceedings (see paragraphs 7 and 9 above).

23. According to the Greek Government, on 10 September 2018 the applicant was transferred to the island of Leros, where he was placed in detention at the local police station. According to the applicant, this transfer took place on 9 September 2018.

24. On 12 September 2018 the Asylum Service decided not to revoke the decision to discontinue the asylum proceedings (see paragraph 9 above). The applicant had five days to appeal against that decision, but did not do so. Therefore, the decision became final on 17 September 2018.

25. According to the applicant, on 21 September 2018 he was transferred to the Leros Reception and Identification Centre, where he was accommodated in a container. A new asylum application was registered.

26. According to the Greek Government, the applicant was detained at the police station in Leros. The Government submitted a document issued by the police director of the Dodecanese, which mentioned this. Whenever it was necessary in the context of the asylum proceedings, the applicant was transferred to the Leros Reception and Identification Centre.

27. On 5 October 2018 the applicant lodged objections against his detention with the administrative tribunal of Rhodes. He described the conditions of his detention in detail, submitted that these conditions were contrary to Article 3 of the Convention and relied on the Court's case-law on the matter. He added that his detention was illegal, as he was a Syrian asylum-seeker acting in good faith and did not present a flight risk.

28. On 9 and 11 October 2018 the applicant's asylum interview took place. He was then transferred back to Leros police station.

29. According to the applicant, on 11 October 2018 he was examined by a psychiatrist and was diagnosed as a person suffering from an "anxiety-depressive disorder"; medication was prescribed.

30. On 11 October 2018 the president of the administrative tribunal of Rhodes rejected the objections (see paragraph 27 above – judgment no. AP148/2018). He mainly considered that the fact that an asylum application was pending did not preclude the applicant's removal, as this could take place after the completion of the asylum proceedings. He stated that detention was a necessary measure, and added that the applicant had not proved his allegations concerning the conditions of his detention or that he had a stable place of residence.

31. On 12 October 2018 an expert from the European Asylum Support Office ("EASO") identified the applicant as a person belonging to a vulnerable group ("persons with disabilities or suffering from an incurable or serious illness") and concluded that he should be exempted from the relevant border procedure (see paragraph 52 below).

32. On 14 November 2018 the applicant lodged new objections with the administrative tribunal of Rhodes. He described his conditions of detention in detail, stating that he had not had access to outdoor space and exercise for two months and that these conditions were contrary to Article 3 of the Convention; he relied on the Court's case-law on the matter. The applicant added that he was a vulnerable person and that his state of health was deteriorating owing to his detention. He also complained that his detention was contrary to Article 5 § 1 of the Convention, mainly because he was an asylum-seeker and therefore his removal could not take place.

33. On 16 November 2018 the president of the administrative tribunal of Rhodes rejected the objections (judgment no. AP170/2018). She considered that the applicant had previously left the island of Leros irregularly, had left the country, and had been arrested by the German authorities. He was therefore considered to be at risk of absconding. The president of the administrative tribunal of Rhodes further noted that the applicant's state of health did not constitute a danger to his physical integrity or life, as he was being provided with medical care. She added that he had not proved his allegations concerning the conditions of his detention.

34. On 21 November 2018 the Reception and Identification Service issued a note to the Asylum Service, informing the latter that the applicant had been identified as a person belonging to a vulnerable group (see paragraph 31 above). On 23 November 2018 the Asylum Service referred the applicant's asylum application so that it could be examined by way of the regular procedure. On 27 November 2018 the applicant was released from detention.

35. On 7 April 2020 the Greek authorities recognised the applicant as a refugee.

IV. CONDITIONS OF THE APPLICANT'S DETENTION IN LEROS

A. The Greek Government's version of events

36. According to the Greek Government, Leros police station has capacity for six detainees, and five people in total were being detained at the material time. The detention facilities comprise two cells, two toilets and one shower, and the total surface area is 30 sq. m. The facilities are cleaned and detainees are fed. Detainees can walk and have access to entertainment in a special area of the police station.

B. The applicant's version of events

37. According to the applicant, from 9 to 21 September 2018 and from 11 October 2018 to 27 November 2018 he was held at Leros police station. He remained in his cell 24 hours a day during the whole period of his detention and never had access to outdoor space and exercise. Leros police station is still located in the same building that it was in at the time of the Greek Ombudsman's visit in June 2015, when the Ombudsman established "the yard area is of a very small surface, and it is not suitable for any use" (see paragraph 73 below); nothing has changed since then. The applicant was not allowed to access his mobile phone, there was not enough natural light or ventilation, the cell was very damp, and there were no chairs or a table or a space for recreation or dining. He had no access to any recreational activity or communication with the outside world. There was a lack of personal hygiene items, and he did not receive his prescribed medication for a significant period of time.

38. From 21 September to 11 October 2018 he was accommodated in a container, which was used as an informal police cell in Leros Reception and Identification Centre.

39. Owing to the nature of the cells at the police station and the reception and identification centre, both facilities were to be used for short-term detention.

V. SUBSEQUENT PROCEEDINGS IN GERMANY

40. Through a German lawyer, the applicant filed an action before the Regensburg Administrative Court on 9 November 2018. He sought an order annulling the refusal of entry dated 4 September 2018 (see paragraph 14 above) and obliging the competent German authorities to readmit him under the Dublin III Regulation, bring him back to Germany immediately and continue the asylum procedure there. The applicant applied for *restitutio in integrum* as regards the time-limit within which such an action must be brought – within two weeks after the delivery of the relevant decision (see section 74(1) of the Asylum Act, quoted in paragraph 54 below). He

submitted that he had been prevented from lodging the action earlier: he was no longer in possession of the decision refusing him entry, he had been detained in Greece immediately upon his return from Germany and he was still in detention. He had been unable to contact lawyers in Germany earlier; any contact with his German lawyer required facilitation by the Greek Council for Refugees.

41. By an order of 12 December 2018 the Regensburg Administrative Court referred the applicant's action to the Munich Administrative Court.

42. In their submissions in reply of 6 January 2019, the Federal Police sought to have the action dismissed as inadmissible, because the applicant had not challenged the impugned decision within two weeks after its delivery, as required by section 74(1) of the Asylum Act. As regards the application for *restitutio in integrum*, the Federal Police asserted that the applicant had not sufficiently substantiated his claim that he had been prevented from lodging the action earlier.

43. As those proceedings were still pending when the present application was lodged with the Court and when the parties exchanged observations on its admissibility and merits, the Court subsequently asked the parties to provide additional information about them.

44. According to the applicant, for years there was no progress in the proceedings before the Munich Administrative Court, even though his lawyer requested that they be accelerated. On 12 July 2021, nearly three years after initiating the proceedings, the applicant re-entered Germany on his own and applied for asylum there the following day. By a letter of 24 August 2021 his lawyer informed the Munich Administrative Court about this development and stated that there was no longer any need to rule on the applicant's request for an order obliging the German authorities to readmit him to Germany. The applicant also submitted that he had a legitimate interest in obtaining a declaratory judgment finding that the decision refusing him entry and his removal to Greece had been unlawful. The applicant's lawyer added that an oral hearing could be dispensed with if the Munich Administrative Court intended to follow the approach it had taken in proceedings for interim relief in another case, in which it had ruled that the removal of another individual on the basis of the administrative arrangement between Germany and Greece had been unlawful (decision of 4 May 2021, see paragraph 65 *in fine* below).

45. By a decision of 30 June 2022 the Federal Office for Migration and Refugees granted the applicant subsidiary protection in Germany. Referring to the judgment of the Court of Justice of the European Union (CJEU) of 19 March 2019 in *Ibrahim and Others* (Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17, ECLI:EU:C:2019:219), in which the CJEU had found that Article 33, paragraph 2 (a) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, had to be interpreted as precluding a Member State from exercising the option granted

by that provision to reject an application for international protection as being inadmissible on the ground that the applicant had been previously granted international protection by another Member State, where the living conditions that the applicant could be expected to encounter as a beneficiary of international protection in that other Member State would expose him to a substantial risk of suffering inhuman or degrading treatment, the Federal Office for Migration and Refugees took the view that there was a real risk that the living conditions which the applicant could be expected to encounter as a beneficiary of international protection in Greece would expose him to inhuman or degrading treatment within the meaning of Article 3 of the Convention and Article 4 of the Charter of Fundamental Rights of the European Union (see paragraph 58 below). His asylum application in Germany could therefore not be rejected as inadmissible on the ground that the applicant had already been granted international protection in Greece (see paragraph 35 above).

46. On 7 February 2023 the Munich Administrative Court requested information from the applicant about the state of the asylum proceedings. It subsequently scheduled an oral hearing for 16 March 2023.

47. On 8 March 2023 the applicant's lawyer informed the Munich Administrative Court that the applicant had been granted subsidiary protection in Germany in the meantime (see paragraph 45 above) and there was no longer any need to rule on his action. The lawyer proposed that the scheduled oral hearing be cancelled, as the applicant would not be present. In his submissions to the Court, the applicant explained that he could not afford to travel some 600 kilometres from Dortmund, where he lived, to Munich in order to attend the oral hearing. On 29 March 2023 the respondent authority agreed that there was no longer any need to rule on the action.

48. By an order of 17 April 2023 the Munich Administrative Court discontinued the proceedings, in view of the parties having declared that there was no longer any need to rule on the applicant's action. It ordered each of the parties to bear half of the costs. In this regard, it explained that on the basis of a summary examination, the applicant's initial claim by which he had sought to have the decision refusing him entry quashed and to obtain authorisation to be readmitted to Germany appeared to be admissible and was probably well founded. In particular, the action appeared to have complied with the relevant time-limit, in view of the incorrect information provided to the applicant about the legal remedy to be pursued, given that the two decisions refusing him entry which had been served on him had contained wholly contradictory information in this regard. However, with regard to the applicant's claims as subsequently amended, it was questionable whether he had had a legitimate interest in obtaining a declaratory judgment.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGAL FRAMEWORK

A. Greek legal framework

49. Articles 76 and 83 of Law no. 3386/2005, as in force at the material time, are reproduced, in so far as relevant, in *Barjamaj v. Greece* (no. 36657/11, § 17, 2 May 2013). Law no. 3907/2011, as in force at the material time, applied to aliens staying illegally on the Greek territory (Article 17); its Article 30, which set out the detention of aliens subject to removal proceedings, is summarised in *J.R and Others v. Greece* (no. 22696/16, § 30, 25 January 2018).

50. Article 46(2) of Law no. 4375/2016, as in force at the material time, provided that an asylum-seeker who submitted an application for international protection while he was in detention according to the relevant provisions of laws no. 3386/2005 and 3907/2011 shall, exceptionally, remain in detention if this was considered necessary after an individual assessment upon the condition that no alternative, less coercive measures could be applied, for one of the following reasons: (i) in order to determine his identity or nationality; (ii) in order to determine those elements on which the application for international protection was based which could not be obtained otherwise, in particular when there was a risk of absconding of the asylum-seeker; (iii) when it was ascertained on the basis of objective criteria, including that he or she already had the opportunity to access the asylum procedure, that there were reasonable grounds to believe that the asylum-seeker was making the application for international protection merely in order to delay or frustrate the enforcement of a return decision, if it was probable that the enforcement of such a measure could be effected; (iv) when he or she represented a danger for national security or public order; (v) when there was a serious risk of absconding of the asylum-seeker.

51. Article 47(4) of Law no. 4375/2016, as in force at the material time, provided that an alien, in respect of whom the competent authority decided to discontinue the examination of the application for international protection, had the right to request the continuation of the examination of his or her application within nine months from the date of the discontinuation decision. The individual could not be deported until a final decision on the application was rendered.

52. Article 60(4) of Law no. 4375/2016, as in force at the material time, provided for a fast-track border procedure for persons applying for international protection at the border or in airport/port transit zones, or while they were in reception and identification centres, with vulnerable individuals being exempt from that procedure.

53. In accordance with the national legislation applicable at the relevant time, the condition to remain on one of the Aegean islands was imposed automatically on applicants for international protection who entered Greek territory through the islands of Lesbos, Samos, Chios, Kos, Rhodes and Leros "for public interest reasons and in particular for the implementation of the EU-Türkiye Statement of 18/03/2016" (Decision no. 8269, Gov. Gazette B'- 1366/20.04.2018 of the Director of the Greek Asylum Service). Police Circular no. 1604/16/1195968, issued by the Directorate of the Greek Police in June 2016, regulates the administrative treatment of aliens on whom a condition not to leave a given island has been imposed, if they are found in another part of the mainland. In such cases, "the detention measure will be restored and efforts will be made to transfer [the alien] back to the island for detention/further management (readmission to Türkiye)."

B. German legal framework

54. The relevant provisions of the Asylum Act read as follows:

Section 18

"(1) Any foreign national making an asylum request to an authority responsible for police supervision of cross-border traffic (a border authority) shall immediately be referred to the competent reception centre, or, if that is not known, to the nearest [reception centre], for the purpose of registration.

(2) The foreign national shall be refused entry if

...

2. in accordance with European Community law or an international treaty, there are indications that another country is responsible for processing the asylum application, and proceedings to admit or readmit [the foreign national] have been initiated, ...

(3) The foreign national shall be removed if the border authority finds him near the border immediately before or after [his] illegal entry, and if the conditions defined in subsection 2 apply.

..."

Section 74

"(1) An action against decisions pursuant to this Act must be brought no later than two weeks after [such a] decision has been delivered; in cases where an application under section 80(5) of the Administrative Courts Act must be filed within one week (section 34a(2), first and third sentences, section 36(3), first and tenth sentences), the action must also be brought within one week.

..."

Section 75

"(1) An action brought against decisions pursuant to this Act shall have suspensive effect only in cases under section 38(1) and section 73, 73b and 73c.

..."

55. Section 80(5) of the Administrative Courts Act provides that the court dealing with the main proceedings may grant suspensive effect in cases concerning administrative appeals or actions to set aside an administrative act, where such an appeal or action does not have automatic suspensive effect. Section 123(1) of the same Act provides that the court may make an interim order in other cases.

56. Section 32(1) of the Federal Constitutional Court Act provides that the Federal Constitutional Court may provisionally decide a matter by way of a preliminary injunction if this is urgently required to avert a severe disadvantage, to prevent imminent violence, or for some other important reason in the interest of the common good.

II. INTERNATIONAL LAW

57. The relevant provisions of the 1951 Convention relating to the Status of Refugees have been reproduced in *M.A. and Others v. Lithuania* (no. 59793/17, § 51, 11 December 2018).

III. EUROPEAN UNION LAW AND MATERIAL

58. Relevant provisions of the Charter of Fundamental Rights of the European Union have been summarised in *M.A. and Others v. Lithuania* (cited above, § 56).

59. Relevant provisions of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders ("the Schengen Borders Code") have been summarised in *M.A. and Others v. Lithuania* (cited above, § 57).

60. The principle of mutual trust between the Member States, on which the Common European Asylum System is based, is of fundamental importance in EU law (see, for example, the judgment of the Court of Justice of the European Union in *M.S. and Others v Minister for Justice and Equality*, C-616/19, ECLI:EU:C:2020:1010, § 48, 10 December 2020).

61. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 ("the Dublin III Regulation") establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. The second and the third subparagraphs of Article 3(2) of the Dublin III Regulation provide:

"Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible."

62. Commission Recommendation (EU) 2016/2256 of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No 604/2013 of the European Parliament and of the Council provided as follows in its recitals:

"(33) The Commission acknowledges the important progress made by Greece, assisted by the Commission, EASO, Member States and international and non-governmental organisations, to improve the functioning of the Greek asylum system since the M.S.S judgement in 2011. However, Greece is still facing a challenging situation in dealing with a large number of new asylum applicants, notably arising from the implementation of the pre-registration exercise, the continuing irregular arrivals of migrants, albeit at lower levels than before March 2016, and from its responsibilities under the implementation of the EU-Turkey Statement. There are moreover further important steps to be taken to remedy the remaining shortcomings in the Greek asylum system, in particular as regards the quality of reception facilities, the treatment of vulnerable applicants and the speed with which asylum applications are registered, lodged and examined in the two instances. In order to take account of the impact of this challenging situation on the overall functioning of the asylum system and in order to avoid placing an unsustainable burden on Greece, it is not yet possible to recommend a full resumption of Dublin transfers to Greece, although it remains the ultimate goal.

(34) However, significant progress has been attained by Greece in putting in place the essential institutional and legal structures for a properly functioning asylum system and, there is a good prospect for a fully functioning asylum system being in place in the near future, once all the remaining shortcomings have been remedied, in particular as regards reception conditions and the treatment of vulnerable persons, including unaccompanied minors. It is, therefore, appropriate to recommend that transfers should resume gradually and on the basis of individual assurances, taking account of the capacities for reception and treatment of applications in conformity with relevant EU legislation, and taking account of the currently inadequate treatment of certain categories of persons, in particular vulnerable applicants, including unaccompanied minors. ...

...

(39) The responsibility for deciding on the resumption of transfers in individual cases lies exclusively with Member States' authorities under the control of the courts ..."

The Recommendation set out the following conditions and procedures relating to the resumption of transfers of asylum applicants to Greece under the Dublin III Regulation:

Scope

"(9) The resumption of transfers should apply to asylum applicants who have entered Greece irregularly at external borders from 15 March 2017 onwards or to other persons for whom Greece is responsible under criteria other than Article 13 in Chapter III of Regulation (EU) No 604/2013 from that date gradually, following the capacities of reception and treatment of applicants in Greece conformity with Directives 2013/32/EU and 2013/33/EU. Vulnerable asylum applicants, including unaccompanied minors, should not be transferred to Greece for the time being.

Cooperation and individual assurances

(10) Before transferring an applicant to Greece, Member State authorities are invited to cooperate closely with the Greek authorities in order to ensure that the conditions indicated in point 9 are met and in particular that the applicant will be received in a reception facility meeting the standards set out in EU law, in particular in the Reception Conditions Directive 2013/33/EU, that his or her application will be examined within the deadlines specified in the Asylum Procedures Directive 2013/32/EU, and that he or she will be treated in line with EU legislation in every other relevant respect. The Greek authorities are invited to fully cooperate in providing such assurances to the other Member States."

The Recommendation and the relevant procedures were in use at the time the present application was lodged.

IV. ADMINISTRATIVE ARRANGEMENT BETWEEN GERMANY AND GREECE

63. The "Administrative Arrangement between the Ministry of Migration Policy of the Hellenic Republic and the Federal Ministry of the Interior, Building and Community of the Federal Republic of Germany on cooperation when refusing entry to persons seeking protection in the context of temporary checks at the internal German-Austrian border" (see paragraph 15 above) was concluded in 2018. In so far as relevant, it provided as follows:

"Part I: Cooperation when refusing entry to persons seeking protection in the context of temporary checks at the border between the Federal Republic of Germany and the Republic of Austria

1. Content and scope

i. This Administrative Arrangement covers the refusal of entry of persons in the framework of applicable national law if the following conditions are met:

a) The person has been identified during a check at the border between the Federal Republic of Germany and the Republic of Austria and is to be refused entry.

b) The person is not an unaccompanied minor at the time of identification.

c) The person has expressed a desire for international protection.

d) An entry in the Eurodac system (Category I Eurodac hit) indicates that the person has already requested protection in Greece, and such entry in the Eurodac system is dated from 1 July 2017 onwards.

ii. In cases of subsection (i), the Greek Side will readmit the person after being notified that the German Side has refused entry.

...

3. Implementing refusal of entry

i. The German Side refusing entry may return the person by air only, at the Athens International Airport. The return should be initiated no more than 48 hours after the person has been apprehended at the border between the Federal Republic of Germany and the Republic of Austria, unless the Greek Side objects to the return within six hours from the automatic confirmation of receipt of notification, demonstrating why the conditions of Part I, No. 1 have not been met.

..."

64. Seven persons were returned to Greece from Germany in 2018 on the basis of the administrative arrangement, and thirty-one persons were returned in 2019 (see Publication of the Federal Parliament no. 19/19887, 12 June 2020, p. 28). No individual assurances were given by the Greek authorities in respect of persons returned to Greece from Germany under that administrative arrangement (see Publication of the Federal Parliament no. 19/13857, cited above, pp. 13-14).

65. Certain individuals who had been returned from Germany to Greece on the basis of and in the manner set out in the administrative arrangement between Germany and Greece initiated proceedings before German administrative courts and applied for interim relief. In essence, those individuals sought a ruling obliging the German authorities to transfer them back to Germany at the authorities' expense and to allow them to enter Germany on a provisional basis and continue the asylum procedure there. In a decision of 9 May 2019 in case no. M 5 E 19.50027, the Munich Administrative Court dismissed the application for interim relief because the requested interim measure would anticipate the result of the main proceedings; in the circumstances of that case, it was not necessary to do so in order to avert unreasonable disadvantages for the applicant in question. In a decision of 8 August 2019 in case no. M 18 E 19.32238, the Munich Administrative Court granted the interim relief in so far as it ordered the German authorities to work towards transferring the applicant in question back to Germany at their own expense and to allow him to enter Germany on a provisional basis. It found that it appeared likely, based on a summary examination, that the applicant's removal to Greece had been unlawful. Rejecting the application for interim relief – to the extent that it was granted – would entail unreasonable disadvantages for the applicant, who had substantiated his contention that he ran a significant risk of being removed

from Greece to his country of origin, Afghanistan, in the near future, without an assessment of the merits of his asylum application in any European State. Notably, decisions taken by the Greek authorities indicated that the applicant was not considered a "Dublin returnee" or an asylum-seeker, but an alien whose presence was illegal. The proceedings in Greece concerning his previous asylum application had been discontinued as the applicant had abandoned the application; they could no longer be reopened. If he were to lodge another asylum application in Greece, such an application would presumably be treated as a subsequent application, and any appeals against the dismissal of such an application would not have suspensive effect. In a decision of 4 May 2021 in case no. M 22 E 21.30294, the Munich Administrative Court granted the interim relief and ordered the authorities to arrange for the applicant's return from Greece to Germany, finding that his removal from Germany to Greece had been unlawful, *inter alia*, because the administrative arrangement did not render the Dublin III Regulation inapplicable and that a procedure under that Regulation would have had to be carried out.

V. MATERIAL CONCERNING THE SITUATION IN GREECE AT THE RELEVANT TIME

A. Execution of the Court's judgment in *M.S.S. v. Belgium and Greece*

66. The execution of the judgments in *M.S.S. v. Belgium and Greece* ([GC], no. 30696/09, ECHR 2011) and related cases was under the supervision of the Committee of Ministers of the Council of Europe when the present application was lodged. This is still the case, notably as regards the general measures to be taken by Greece in relation to the violations of Article 3 of the Convention found on account of the conditions of detention and living conditions of asylum-seekers, as well as the lack of an effective remedy against expulsion due to deficiencies in the asylum procedures. In 2017 the Committee of Ministers invited the Greek authorities to, *inter alia*, "improve conditions of detention in all detention facilities where irregular migrants and asylum seekers are detained, including by providing adequate health-care services" (CM/Del/Dec(2017)1288/H46-15, 7 June 2017, paragraph 4). In 2019 the Committee of Ministers "welcomed the ongoing efforts made by the Greek authorities ... to improve the national asylum system, and the notable increase in the overall rate of granting asylum; noting, however, with grave concern the increase of arrivals of third country nationals that could adversely affect the functioning of the asylum system and [was] the reason for the significant increase in the average time taken to register and process asylum applications, and the deficiencies of the asylum appeal procedure which [had] been reported by the Greek Ombudsman and expert NGOs" (CM/Del/Dec(2019)1348/H46-9, 6 June 2019, paragraphs 3-4). The

Committee of Ministers further noted "with satisfaction that certain immigration detention facilities visited by the CPT in 2018 provided decent conditions, [but] expressed serious concern at the fact that a number of other immigration facilities and police stations seem[ed] to be below Convention standards", and "invited the authorities to give effect to the recommendations made by the CPT and to improve the conditions in immigration detention facilities, including by providing adequate health-care services" (ibid., paragraphs 11 and 13).

B. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT")

67. The main findings of the CPT's report of 26 September 2017 (CPT/Inf (2017) 25) in relation to reception and identification centres (so-called "hotspots") on the Aegean islands are summarised in *J.R. and Others v. Greece* (cited above, §§ 54-57); the report was published following the CPT's visits from 13 to 18 April 2016 and from 19 to 25 July 2016, shortly after the entry into force of the EU-Türkiye Statement (see paragraph 6 above). The same report described the conditions of immigration detention for adults in facilities other than reception and identification centres as very poor and inadequate in most of the places visited (paragraphs 51-61). In particular, the CPT observed that it had repeatedly been very critical of the conditions of detention found in many police and border guard stations, which did not offer suitable accommodation for lengthy periods of detention, and that foreign nationals continued to be detained in some police stations for many months (paragraphs 54-55).

68. In its subsequent report of 19 February 2019 (CPT/Inf (2019) 4), following a visit from 10 to 19 April 2018, the CPT stated:

> "70. In the period since 2005, the CPT has paid particular attention to the issue of foreign nationals deprived of their liberty under aliens' legislation in Greece and visited the country no less than nine times regarding this matter. Most recently, following its visits in April and July 2016, the CPT expressed its concern over the situation in the 'hotspots' on the Aegean islands and was highly critical of the continued and routine detention of foreign national children. The report also highlighted the totally inadequate conditions of detention in immigration detention facilities and in most of the police stations visited. ...
>
> 72. ... [T]he CPT notes with concern that the use of immigration detention in Greece has significantly increased. ...
>
> 84. The CPT has in its previous reports been very critical of the conditions of detention in police and border guard stations, and has repeatedly stressed that the detention facilities in most of them were totally unsuitable for holding detained persons for periods exceeding 24 hours. This remained the case for most police stations visited by the delegation in April 2018, and yet they are still being used to detain irregular migrants for prolonged periods. On the other hand, there are a few police and border guard stations that provide decent conditions of detention for short periods of stay. ..."

C. The United Nations High Commissioner for Refugees ("UNHCR")

69. In its "Recommendations for Greece in 2017" of February 2017, UNHCR stated, *inter alia*, "[a]lthough progress has been made, significant challenges related to reception, registration, asylum-processing, and solutions remain, giving raise to significant protection and safety risks" (DH-DD(2017)435, p. 1). UNHCR called for a number of concrete actions, including actions to "[a]ddress the serious gaps on the islands immediately", and stated "[k]eeping people on the islands in overcrowded, inadequate and insecure conditions is inhumane and must no longer be maintained" (ibid.).

70. In a submission of 5 May 2017 to the Committee of Ministers in the context of supervision of the execution of the judgment in *M.S.S. v. Belgium and Greece* (DH-DD(2017)584 – see paragraph 66 above), UNHCR stated, *inter alia*, that there had been improvements in the asylum procedures in Greece since the delivery of that judgment in January 2011, but various challenges persisted (p. 1). Reception conditions on the islands, where all newly arrived third-country nationals who had arrived irregularly were initially placed following the EU-Türkiye Statement (see paragraph 6 above), remained very poor (p. 10). Moreover, UNHCR stated that "a high number of third-country nationals, including asylum seekers, mainly on the islands, continue to be held in detention facilities operated by the police directorates and in police stations, which are totally inappropriate for immigration detention" (p. 11). In that same submission, UNHCR stated:

> "... [G]iven the public nature of this document, UNHCR takes note of the European Commission's Recommendation addressed to Member States on the resumption of transfers to Greece under the Dublin Regulation ... which proposes that transfers could resume on the basis of individual assurances from the Greek authorities as to the availability of reception places and access to asylum procedures within a reasonable timeframe. UNHCR does not oppose the recommendation that transfers could resume on the basis of individual assurances from the Greek authorities, including the exclusion of vulnerable persons from the ambit of the recommendation."

71. In another submission of May 2019 to the Committee of Ministers (DH-DD(2019)600), UNHCR stated that the administrative detention of asylum-seekers was "no longer broadly applied as a systematic punitive and deterrence measure, as in the past ... However, conditions and procedural safeguards continue[d] to be problematic" (p. 6).

D. The UN Special Rapporteur on the human rights of migrants

72. In his report of 24 April 2017 on his mission to Greece (A/HRC/35/25/Add.2), the UN Special Rapporteur on the human rights of migrants expressed various concerns about the fast-track border procedure (see paragraph 52 above), including the lack of an individual assessment of each case and the high risk of violating the *non-refoulement* principle (paragraph 82 of the report).

E. The Greek Ombudsman's report following his visit to Leros in June 2015

73. Following a visit to Leros island, the Greek Ombudsman published his findings. As regards Leros police station, it was established that the building was old and needed repair; it also needed to be painted and cleaned, especially the parts which served as the detention areas. The premises, which had been designed to host six people, had sustained much damage as a result of the number of people hosted over the years and were filthy, with cracks on the walls, dirty blankets on the floor, insufficient lighting and inappropriate toilet facilities. According to the Ombudsman, this situation created a danger for the health and safety of the migrants and possibly also for the policemen in charge. The detention areas were not suitable for hosting people, even temporarily. The yard was very small and not suitable for any purpose.

THE LAW

I. PRELIMINARY REMARKS

74. The German Government asked for the application against Germany to be separated from the rest of the proceedings and for a separate decision to be issued on the admissibility of the application directed against Germany under Article 29 § 1, second sentence, of the Convention.

75. Having regard to the facts of the case and the complaints against Germany and Greece, the Court rejects this request and examines the complaints against both Contracting Parties in one single judgment, as it had done in earlier cases concerning the removal from one Contracting State to another in which the applicants brought complaints against both States (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, ECHR 2011, and *Sharifi and Others v. Italy and Greece*, no. 16643/09, 21 October 2014).

76. In the circumstances of the present case, the Court finds it appropriate to proceed by firstly examining the applicant's complaints against Greece and then his complaints against Germany (see also *M.S.S. v. Belgium and Greece*, §§ 204 et seq., and *Sharifi and Others*, §§ 135 et seq., both cited above).

II. THE APPLICANT'S COMPLAINTS AGAINST GREECE

A. Alleged violation of Article 3 of the Convention

77. The applicant alleged that the conditions of his detention in Greece following his return from Germany had amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention, which reads:

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

1. Admissibility

78. 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.

2. Merits

79. The applicant contested the Greek Government's submissions concerning his conditions of detention, and emphasised that he had been detained for a period of two months and seventeen days in places which, by their nature, were not suitable for prolonged detention. He added that he had been detained in both Leros police station and a container in the Leros Reception and Identification Centre, and that his detention had started on 9 September 2018 (see paragraph 23 above).

80. The Government submitted that the conditions in Leros police station from 10 September to 27 November 2018 had not amounted to inhuman treatment or punishment.

81. The Court notes that the parties were not in agreement as to the place of the applicant's detention. It notes that according to a document submitted by the Government and issued by the police director of the Dodecanese, the applicant was detained in Leros police station at the material time (see paragraph 26 above). The Court has no reason to doubt the authenticity of that document or the accuracy of the information contained therein. It therefore considers that the applicant was detained in Leros police station from 10 September to 27 November 2018.

82. The Court notes that it has on many occasions examined the conditions of detention in police stations in Greece of persons remanded or detained pending expulsion, and has found them to be in breach of Article 3 of the Convention (see *Siasios and Others v. Greece*, no. 30303/07, 4 June 2009; *Vafiadis v. Greece*, no. 24981/07, 2 July 2009; *Shuvaev v. Greece*, no. 8249/07, 29 October 2009; *Tabesh v. Greece*, no. 8256/07, 26 November 2009; *Efremidi v. Greece*, no. 33225/08, 21 June 2011; *Aslanis v. Greece*, no. 36401/10, 17 October 2013; *Adamantidis v. Greece*, no. 10587/10, 17 April 2014; *Kavouris and Others v. Greece*, no. 73237/12, 17 April 2014; and *S.Z. v. Greece*, no. 66702/13, 21 June 2018). There were specific deficiencies in the applicants' detention conditions in each of the above 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 findings of a violation of Article 3 on the nature of police stations *per se*, which are places designed to accommodate people for a short time only. Detention in a police station lasting one to three months was thus considered to be contrary to Article 3 (see *Siasios and Others*, § 32; *Vafiadis*, §§ 35-36; *Shuvaev*, § 39; *Tabesh*, § 43; *Efremidi*, § 41; *Aslanis* § 39; *Adamantidis* § 33; and *Kavouris and Others*, § 38, all cited above).

83. Turning to the present case, the Court notes that the applicant was detained for a period of two months and seventeen days in Leros police station, a facility which, in terms of its design, lacked the amenities required for prolonged periods of detention.

84. 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.

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

B. Alleged violation of Article 5 § 1 of the Convention

86. The applicant complained that his detention in Greece had been arbitrary, in breach of 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."

1. Admissibility

87. 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.

2. Merits

(a) The parties' submissions

(i) The applicant

88. The applicant submitted that his detention had not been in line with national legislation because (i) his status as an asylum-seeker had not been taken into consideration by the authorities, and (ii) the legal basis for his detention had been incorrect. Had the procedure under the Dublin III Regulation (see paragraph 61 above) been followed – a procedure which the German and Greek authorities had circumvented by applying the administrative arrangement they had concluded (see paragraph 15 above), thus depriving him of the guarantees provided for by EU law – the Greek authorities would have been obliged under domestic law to revoke the decision to discontinue the examination of his asylum application and instead continue the examination of that application (see paragraph 51 above). He had thus remained an asylum-seeker until 17 September 2018, when the

decision to reject his application for the continuation of the asylum proceedings had become final (see paragraph 24 above). Therefore, his detention had been ordered contrary to the "procedure prescribed by national law", as his status as an asylum-seeker had not been taken into consideration, and the legal basis for his detention had been incorrect, as Law no. 3907/2011 was not applicable to asylum-seekers and Article 46 of Law no. 4375/2016 (see paragraph 50 above) should have been applied in his case.

89. The applicant further argued that his detention with a view to examining his asylum application had exceeded the reasonable required period, taking into consideration the precise legal obligations of the Greek authorities: as his asylum application of 21 September was subject to the fast-track border procedure, its examination should have been concluded within two weeks in accordance with domestic legislation. In addition, while an EASO expert had identified him as a person belonging to a vulnerable group and had concluded on 12 October 2018 that he should be exempted from the relevant border procedure (see paragraph 31 above), the Asylum Service had not referred his application to the regular asylum procedure until 23 November 2018, and he had not been released until 27 November 2018 (see paragraph 34 above). Moreover, alternative measures to detention had not been examined, contrary to the requirement under domestic law to do so. Lastly, the place and conditions of his detention had not been appropriate.

(ii) The Government

90. The Government argued that the applicant's arrest and detention had taken place in the context of his administrative removal, i.e. to ensure the execution of the removal decision against him, in accordance with Articles 76 and 83 of Law no. 3386/2005 (see paragraph 49 above). Detention had been necessary and proportionate to the aim pursued, as the applicant had not had travel documents or a stable place of residence, and he had been detained for the shortest possible time, that is, for two months and seventeen days.

(b) The third-party interveners

91. In their joint submissions, the AIRE Centre, the European Council on Refugees and Exiles ("ECRE") and the Dutch Council for Refugees submitted that, in the light of the obligations of EU member States under EU law, including the recast Reception Conditions Directive and Article 53 of the Convention, the detention of asylum-seekers falling within the scope of that Directive would be unlawful and arbitrary where it was imposed automatically. In the light of the applicable EU and international law, the consideration of less intrusive alternatives to detention was required to prevent arbitrary detention, including in the context of immigration control. Where there was no such consideration and detention was not a measure of last resort, it was arbitrary. Detention decisions needed to consider the

individual's personal circumstances, and procedures needed to be individualised to identify vulnerability and prevent detention where it might not be safe or appropriate.

(c) The Court's assessment

92. It is not disputed that the applicant's placement in detention amounted to a "deprivation of liberty", and that his arrest and detention fell within the ambit of Article 5 § 1 (f) of the Convention, as the applicant was detained with a view to deportation.

93. Applying the relevant general principles as summarised in *S.Z. v. Greece* (cited above, §§ 53-54) to the present case, the Court notes firstly that the decision of 4 September 2018 to detain the applicant referred to Laws nos. 3386/2005, 3907/2011 and 4375/2016 as the basis for his deprivation of liberty. According to the same decision, there was a risk of absconding, the applicant lacked the necessary documents, and he was dangerous for public order (paragraph 21 above). Given that there was an expulsion decision of 4 July 2018 against the applicant (see paragraph 6 above), and that Article 46 of Law no. 4375/2016 allowed for the detention of asylum-seekers subject to an administrative expulsion decision in certain circumstances (see paragraph 50 above), the Court sees no reason to doubt that the applicant's detention was in compliance with the letter of the national law, even if the applicant were considered to be an asylum-seeker when his detention was ordered on 4 September 2018.

94. There are no elements in the file that could cast doubt on the authorities' good faith when ordering the applicant's detention pending expulsion. The detention was also closely connected to the grounds of detention relied on by the Government.

95. Turning to the length of the detention, the Court observes that the applicant was detained for a period of two months and twenty-three days, that is from 4 September to 27 November 2018. It considers that such a period of detention cannot in principle be considered excessive, taking into account the administrative formalities that had to be completed before the applicant's expulsion could take place.

96. 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 *R.T. v. Greece*, no. 5124/11, § 88, 11 February 2016).

97. With respect to the conditions of detention at the police station where the applicant was detained the Court has already found a violation of Article 3 (see paragraphs 81-85 above). It therefore does not consider it necessary to address this aspect again under Article 5 § 1 (f) (see, for example, *Ha.A.*

v. Greece, no. 58387/11, § 41, 21 April 2016, and *R.T. v. Greece*, cited above, § 85, with further references).

98. Having regard to the foregoing (paragraphs 93-96 above), the Court considers that the applicant's detention was justified under Article 5 § 1 (f) of the Convention. Therefore and for the reason outlined above (see paragraph 97), the Court finds that there has not been a violation of Article 5 § 1 of the Convention (see *R.T. v. Greece*, § 89, and *Ha.A. v. Greece*, §§ 42-43, both cited above).

C. Alleged violation of Article 5 § 4 of the Convention

99. The applicant further complained that he had not had at his disposal an effective remedy by which he could challenge the lawfulness of his detention, as provided for by Article 5 § 4 of the Convention, which 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."

1. Admissibility

100. 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.

2. Merits

(a) The parties' submissions

101. The applicant submitted that in the present case the objections lodged against his detention (see paragraphs 27 and 32 above) had not constituted an effective remedy, as his specific allegations concerning the conditions of his detention had not been examined in the context of those proceedings. In two decisions (see paragraphs 30 and 33 above), the president of the administrative tribunal of Rhodes had rejected the allegations without a thorough examination, without giving adequate reasons and on the basis of a formulaic decision.

102. The Government argued that the applicant had had an effective remedy at his disposal to complain of the legality of his detention, as the applicable law at the time had allowed a national judge to examine all aspects of the legality of his detention. The president of the administrative tribunal of Rhodes had examined the applicant's allegations very thoroughly and had rejected them. The applicant's allegations concerning his conditions of detention had been rejected as vague and unsubstantiated. The fact that the applicant's objections had been rejected did not automatically entail a violation of Article 5 § 4 of the Convention.

(b) The third-party interveners

103. In their joint submissions, the AIRE Centre, the ECRE and the Dutch Council for Refugees submitted that effective judicial review of detention was an essential safeguard against arbitrary detention, including in the context of immigration control. In *E.A. v. Greece* (no. 74308/10, § 97, 30 July 2015) the Court had found a violation of Article 5 § 4 owing to the domestic judge's rejection of the applicant's objections to his detention without any consideration of his asylum application or any examination of his conditions of detention.

(c) The Court's assessment

104. As regards the general principles governing the application of Article 5 § 4 of the Convention in cases raising similar issues to those raised in the present case, the Court refers to its relevant case-law on the subject (see, in particular, *Dougoz v. Greece*, no. 40907/98, § 61, ECHR 2001-II; *S.D. v. Greece*, no. 53541/07, § 72, 11 June 2009; *Herman and Serazadishvili v. Greece*, nos. 26418/11 and 45884/11, § 71, 24 April 2014; and *S.Z. v. Greece*, cited above, § 68). In particular, Article 5 § 4 does not impose an obligation on a court examining an appeal against detention to address every argument contained in the appellant's submissions. However, the court cannot treat as irrelevant, or disregard, concrete facts which are relied on by the detainee and are capable of putting into doubt the existence of the conditions essential for the "lawfulness", in the sense of the Convention, of the deprivation of liberty (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II).

105. The Court notes at the outset 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 judge responsible for examining the objections lodged by a person who has been detained with a view to being expelled is no longer limited to examining only whether the detainee posed a danger to public order or was a flight risk; the judge can now "object to the detention" and thus examine any issue arising from the detention, including a detainee's specific and substantiated allegations relating to his state of health and age, and those relating to overcrowding, the conditions justifying the detention, and the possibility of accommodating the person concerned in a place where the authorities can find him. When appropriate, that judge orders the release of the detainee in question or his transfer to a detention centre offering better conditions of detention (see *MD v. Greece*, no. 60622/11, § 65, 13 November 2014, and *S.Z. v. Greece*, cited above, § 69).

106. The Court observes that in the present case the competent administrative tribunal rejected the applicant's objections against his detention twice. As regards the examination of the conditions of the applicant's detention, the competent tribunal did not examine the substance

of those allegations. On the first occasion, on 11 October 2018 the president of the administrative tribunal of Rhodes considered that the applicant had not proved his allegations concerning the conditions of his detention (paragraph 30 above). In the second decision dated 16 November 2018, the president of that tribunal noted once again that the applicant had not proved his allegations concerning the conditions of his detention (paragraph 33 above).

107. However, in his objections against his detention, the applicant had described in detail the conditions of his detention, submitted that those conditions were contrary to Article 3 of the Convention, and invoked the Court's case-law on the matter (paragraphs 27 and 32 above).

108. The Court considers that the amendment of Article 76 of Law no. 3386/2005 (see paragraph 105 above) serves to reinforce the guarantees of which foreigners detained with a view to expulsion should have the benefit. However, the Court finds that in the present case, the applicant did not have the benefit of an examination of the legality of his detention which was as thorough as that provided for in the amended version of paragraph 5 of Article 76, especially since the complaint mainly concerned his conditions of detention, in relation to which the Court had already found violations in similar cases. In the Court's view, such a complaint certainly deserved a reply from the authorities (see, *mutatis mutandis*, *G.B. and Others v. Turkey*, no. 4633/15, §§ 175-76, 17 October 2019).

109. There has accordingly been a violation of Article 5 § 4 of the Convention.

III. THE APPLICANT'S COMPLAINTS AGAINST GERMANY

A. Alleged violation of Article 3 of the Convention on account of the applicant's removal to Greece

110. The applicant complained that his removal from Germany to Greece had been contrary to Article 3 of the Convention for two reasons. Firstly, he had been removed without his asylum application being registered by the German authorities and without an assessment of the risk of chain *refoulement* from Greece to Türkiye and ultimately to his country of origin, Syria. Secondly, he had been removed to Greece without the German authorities assessing the risk of him being detained in Greece in conditions in breach of Article 3, and without any individual guarantees being obtained as regards the treatment which he would face in Greece, despite there being substantial grounds to believe that he would be detained in conditions contrary to Article 3.

1. Admissibility

(a) The parties' arguments

(i) The Government

111. The German Government submitted that the applicant had not exhausted domestic remedies, contrary to the requirement of Article 35 § 1 of the Convention. To start with, the applicant had made incomplete and partially false statements concerning the circumstances of his examination by German police officers on 4 September 2018. In reality, he had been informed of his rights by German police officers on several occasions, including in Arabic, and could easily have had access to the services of a lawyer, as set out in the Government's version of the facts (see paragraphs 12-14 above). It was only the refusal of entry for asylum-seekers that could not be handed to the applicant in Arabic or in the presence of an interpreter; owing to an oversight by the police officers involved, this had to be explained to him in English (see paragraph 16 above). However, this did not alter the fact that he had received information in a language he could understand indicating that he had been refused entry and that he was entitled to take legal action against that decision. The same held true with regard to his right to contact a lawyer. However, he had not requested the assistance of a lawyer. Instead, he had agreed to make himself available for voluntary return (see paragraph 13 *in fine* above). While an action against the return decision before the administrative courts would not have had automatic suspensive effect, the applicant could have asked an administrative court to grant suspensive effect (see section 80(5) of the Administrative Courts Act, quoted in paragraph 55 above).

112. In any event, the applicant could pursue an effective remedy following his return to Greece, and had in fact done so by initiating proceedings before the German administrative courts (see paragraph 40 above). Those proceedings concerning the refusal of entry which had purportedly been in violation of his rights under the Convention constituted an effective remedy. They allowed the court dealing with the matter to determine the lawfulness of the measures and whether there had been a violation of the applicant's rights under Articles 3 and 13 of the Convention. If it were established in those proceedings that the applicant's rights under the Convention had been violated, he could subsequently claim damages in proceedings on State liability before civil courts. When initiating those proceedings, the applicant had failed to comply with the relevant time-limit under domestic law, which in itself meant that the present application was inadmissible. Even assuming that his application for *restitutio in integrum* were granted, the present application would be inadmissible, as the matter had still been pending before the domestic courts when the applicant had lodged his application with the Court on 1 March 2019, which was the relevant point in time for assessing whether domestic remedies had been

exhausted. Moreover, the applicant could have applied for interim relief under section 123(1) of the Administrative Courts Act (see paragraph 55 above) and asked the relevant administrative court to oblige the Federal Police to bring him back to Germany at their own expense and to allow him entry into Germany on a provisional basis, as other applicants had done in the past following their return from Germany to Greece (see paragraph 65 above). Lastly, the applicant had failed to lodge a constitutional complaint with the Federal Constitutional Court, which he would have been required to do in order to exhaust domestic remedies. Before that court, he could also have requested a preliminary injunction.

113. Lastly, it could be considered an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention that the applicant had alleged that no effective remedy was available to him in Germany and had failed to inform the Court that he was simultaneously pursuing administrative court proceedings in Germany.

(ii) The applicant

114. The applicant emphasised that he had expressed his wish to apply for asylum in Germany to the German police officers; however, the German authorities had never registered his asylum application and had not followed the procedures provided for by EU law, depriving him of access to an effective remedy and the opportunity to explain in detail why he objected to being transferred to Greece. He had never agreed to make himself available for voluntary return (see paragraph 17 above).

115. He had been informed of the initial decision refusing him entry during his questioning as an accused at the police station. At that stage, he had received contradictory information. Firstly, he had been informed orally that he had been refused entry and that he was to be returned to Greece. No information on access to a lawyer or available legal remedies had been provided. A written decision on the refusal of entry under the Schengen Borders Code had also been given to him, together with an information note in Arabic regarding the refusal of entry. Contrary to the oral information he had already received, the written information had mentioned that he would be returned to Austria (see paragraph 18 above). The same document informing him of his return to Austria had mentioned his right to lodge an appeal with the Munich police headquarters. No information on legal assistance had been provided in this note. Shortly before he had been due to depart for the airport, the legal basis of his removal had been changed and he had been issued with a refusal of entry for asylum-seekers. The content of that latter decision and information about the legal remedy against it (an appeal to the Munich Administrative Court) had not been explained to him in any language, and certainly not Arabic, which was the only language he understood. No information on legal assistance had been provided in either of the two decisions refusing him entry which had been served on him, or in

the information note in Arabic that had been given to him. He had only been informed that he could have access to a lawyer in connection with the criminal proceedings against him, and had asked to be assisted by a lawyer in connection with those criminal proceedings, but had never been put in contact with one. The whole return procedure had been carried out very hastily. He had remained in Germany for only a few hours, as he had been arrested at 5.15 a.m. on 4 September 2018 and had returned to Greece at 7.20 p.m. the same day (see paragraph 20 above). During those hours, he had firstly been taken to Passau police station, where he had been questioned by police for about two hours, and later he had been transferred to the airport, which was located more than a ninety-minute drive away. In practice, it had been impossible for him to lodge an appeal against the decision ordering his removal to Greece prior to his removal. The applicant added that he could not have lodged a constitutional complaint prior to his removal for the same reasons.

116. Besides having been unavailable to him in practice, the existing remedy under domestic law against decisions refusing entry for asylum-seekers did not have automatic suspensive effect (the applicant referred to sections 18, 74(1) and 75(1) of the Asylum Act – see paragraph 54 above) and thus did not meet the requirements of an effective remedy under Article 13 of the Convention, given that he had had an arguable claim that his removal would breach Article 3. The possibility to apply to the competent administrative court for suspensive effect had not been mentioned in the decision on refusal of entry.

117. In so far as the Government had referred to the applicant being able to apply for interim relief under section 123(1) of the Administrative Courts Act and ask a domestic court to oblige the German authorities to bring him back to Germany (see paragraph 112 above), the applicant emphasised that in the present application he had complained of violations which had occurred prior to his removal to Greece and of the circumstances of that removal. The remedy referred to by the Government was not a remedy that could prevent the removal which had already occurred, and did not relate to the violations alleged in the present application. It could not grant appropriate relief and was not effective for the purposes of the complaints raised. For the same reason, the proceedings he had initiated before the Munich Administrative Court after being removed to Greece (see paragraph 40 above), which were still pending when he lodged the present application with the Court, were irrelevant for the assessment of the Convention violations he had alleged in the present application, and it did not constitute an abuse of the right of individual application that he had not mentioned those irrelevant proceedings in his application form. In his subsequent submissions in response to the Court's request for information on the developments in those proceedings, the applicant noted, with reference to those proceedings, that he had not received effective protection promptly.

(b) The third-party interveners

118. The AIRE Centre, the ECRE and the Dutch Council for Refugees made joint submissions, as did the European Center for Constitutional and Human Rights ("ECCHR"), Pro Asyl and Refugee Support Aegean. All the interveners emphasised that for a remedy in Article 3 removal cases to be effective, it had to have automatic suspensive effect. The ECCHR, Pro Asyl and Refugee Support Aegean submitted that none of the remedies available under German law against decisions on refusal of entry had automatic suspensive effect. All the interveners asserted that for a remedy to be effective, it had to be accessible in practice, and they emphasised the importance of access to an interpreter, to a lawyer and to information as to the procedure to be followed.

(c) The Court's assessment

(i) Whether the applicant waived his rights

119. The Court takes note of the Government's submission that the applicant agreed to make himself available for voluntary return to Greece when he was questioned at Passau police station (see paragraphs 13 and 111 above). Even assuming that the rights guaranteed by Article 3 of the Convention can be waived at all, such as by a person agreeing to make himself available for voluntary return (in this regard, see *Akkad v. Turkey*, no. 1557/19, § 74, 21 June 2022; *M.A. v. Belgium*, no. 19656/18, §§ 60-61, 27 October 2020; and *M.S. v. Belgium*, no. 50012/08, §§ 121-25, 31 January 2012), the Court reiterates that for a waiver to be effective for Convention purposes, it must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance; it must be voluntary and constitute a knowing and intelligent relinquishment of a right (see, more generally, *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 117, 18 December 2018). In the present case, it has not even been established that the applicant agreed to make himself available for voluntary return to Greece, given that he asserted that he had never consented to this (see paragraphs 17 and 114 above) and that no evidence – in the form of a signed voluntary return form, for example – was submitted to the Court (compare and contrast *Akkad*, § 74, and *M.A. v. Belgium*, § 29, both cited above). This is sufficient for the Court to conclude that the applicant did not waive his rights under Article 3 of the Convention.

(ii) Exhaustion of domestic remedies

(α) General principles

120. The Court reiterates that in removal cases, the criteria for determining whether a remedy is effective for the purposes of Article 13, taken together with Article 3 of the Convention, are the same as those relating

to the question of the effectiveness of remedies which have to be exhausted for the purposes of Article 35 § 1 of the Convention in asylum cases (see *A.M. v. the Netherlands*, no. 29094/09, § 66, 5 July 2016; for the general principles concerning exhaustion of domestic remedies, see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-45, 27 November 2023). The accessibility of a remedy in practice is decisive when assessing its effectiveness (see *M.S.S. v. Belgium and Greece*, cited above, § 318, and *Akkad*, cited above, § 80). In the case of asylum-seekers and persons to be removed, elements to be taken into account when determining whether a remedy was accessible in practice include the access, or lack thereof, to the necessary information about the procedures to be followed and about their rights in a language they understood, and the opportunity, or lack thereof, to have access to an interpreter and a lawyer (see *D v. Bulgaria*, no. 29447/17, § 132-33, 20 July 2021; *Akkad*, cited above, § 80; *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, §§ 202-05, ECHR 2012; and *Sharifi and Others*, cited above, §§ 167-69 and 177). Moreover, the hasty implementation of a removal order can render existing remedies inaccessible in practice and therefore not effective (see *D v. Bulgaria*, cited above, § 134).

121. Lastly, with regard to the usefulness of continuing proceedings to have an order to leave the country set aside even after an applicant's transfer, the Court has previously stated that it failed to see how a subsequent decision in that regard, without suspensive effect, could still offer the applicant suitable redress even if it contained a finding of a violation of Article 3 (see *M.S.S. v. Belgium and Greece*, cited above, §§ 388 and 393).

(β) Application of these principles to the present case

122. The Court notes that during the check carried out by the German police near the German-Austrian border, the applicant initially tried to identify himself using a Bulgarian identity card reported stolen and issued to a different person, and that he told the police officers that he had bought the identity card in Greece from a person he did not know (see the Government's version of events at paragraph 11 above, which is not disputed by the applicant in this regard). The Court reiterates that States' concern to foil the increasingly frequent attempts to circumvent immigration controls is legitimate, but cannot go so far as to render ineffective the protection afforded by the Convention, in particular Article 3 of the Convention (see *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 184, 13 February 2020).

123. It is not in dispute between the parties that the applicant expressed his wish to apply for asylum in Germany when he was questioned at Passau police station (see paragraphs 13 and 17 above). Indeed, the German authorities informed the Greek authorities that the applicant had expressed a desire for international protection in Germany, and the administrative arrangement between Germany and Greece, under which the applicant was

removed to Greece, only applied to persons who had expressed a wish to apply for international protection in Germany (see paragraphs 15 and 63 above). The order on refusal of entry, on the basis of which the applicant was ultimately returned to Greece, was based on section 18(2) point 2 of the Asylum Act and relied on the consideration that under the Dublin III Regulation, Greece was responsible for processing the applicant's asylum application (see paragraphs 16 and 54 above).

124. The Court observes that the said order was served on the applicant shortly before his departure for the airport to be returned to Greece, and it is not in dispute that it was not given to him in Arabic, which he claimed was the only language he understood, and that no interpreter was present at the time (see paragraphs 16, 19, 111 and 115 above). He was also not assisted by a lawyer during the short period of time which he spent on German territory (see paragraphs 12-13, 17, 111 and 115 above). In so far as the Government submitted that the applicant had earlier been informed, in Arabic, that he had been refused entry and that he was entitled to take legal action against that decision (see paragraph 111 above), the Court cannot but note that the first decision refusing him entry, which was issued to the applicant in Arabic, relied on a different legal basis, indicated a different country to which he was to be removed (Austria instead of Greece) and stated that an appeal against the decision was to be lodged with the Munich police headquarters rather than the Munich Administrative Court, within a different time-limit (one month instead of two weeks – see paragraphs 14, 16, 18 and 115 above). In the decision discontinuing the proceedings which the applicant had initiated after his removal to Greece, the Munich Administrative Court similarly noted that the applicant had been provided with incorrect information about the legal remedy to be pursued, in view of the two decisions refusing him entry which had been served on him and which had contained wholly contradictory information in this regard (see paragraph 48 above). In the light of the foregoing, the Court concludes that prior to being returned to Greece, the applicant did not have access to an effective remedy in practice.

125. In so far as the Government referred to different remedies which the applicant could pursue before German courts after being returned to Greece (see paragraph 112 above), the Court reiterates that a subsequent decision, even if it contained a finding of a violation of Article 3, could not offer the applicant suitable redress for the violation alleged in the present case (see *M.S.S. v. Belgium and Greece*, § 388 and 393, and *Hirsi Jamaa and Others*, § 206, both cited above).

126. It follows that the Government's objection concerning the non-exhaustion of domestic remedies must be dismissed.

(iii) Abuse of the right of individual application

127. The Court reiterates that a failure on the part of an applicant to inform it at the outset of a fact essential for the examination of the case could, in

principle, lead to the application being declared inadmissible for abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention. In order for the Court to reach such a conclusion, the misleading information should concern the very core of the case. Moreover, an intention to mislead the Court must always be established with sufficient certainty (see *Belošević v. Croatia* (dec.), no. 57242/13, § 47, 3 December 2019, with further references).

128. Reiterating that a remedy pursued after his return to Greece could not offer the applicant suitable redress for the alleged violation of Article 3 of the Convention (see paragraph 125 above), the Court concludes that the applicant's failure to inform the Court about the proceedings he had initiated before the German administrative courts after being returned to Greece (see paragraph 40 above) did not amount to an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention. At the same time, it considers that the applicant should have informed the Court, on his own initiative, as required by Rule 47 § 7 of the Rules of Court, about the subsequent developments in those proceedings (see paragraphs 43-48 above), given that the Government had argued that he had not exhausted domestic remedies because those proceedings had been pending when he had lodged the present application with the Court (see paragraph 112 above).

(iv) Conclusion

129. The Court further observes that the complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

(i) The applicant

130. The applicant submitted that despite his express statement made to the German police officers indicating that he wanted to seek international protection in Germany (see paragraph 17 above), his asylum application had not been registered by the German authorities. Instead, the German authorities had removed him to Greece within a few hours of his arrest, without assessing (i) whether there were sufficient guarantees in Greece that he would be protected against *refoulement*, and (ii) the risk of him being detained in Greece in conditions in breach of Article 3; the authorities had also removed him without obtaining any individual guarantees as regards the treatment which he would face in Greece, despite there being substantial grounds for believing that he would be detained in conditions contrary to Article 3. As the German authorities had not registered his asylum application, he had not had the opportunity to explain in detail why he objected to being transferred to Greece. The German authorities had been

under an obligation to assess these risks of their own motion, prior to removing him. He pointed out that a number of reliable sources, which the German authorities had known about or should have known about, had revealed that there were substantial grounds for believing that systemic deficiencies in the Greek asylum system persisted. Those deficiencies had concerned, in particular, the fast-track border procedure used to process his (first) asylum application in Greece, owing to the absence of an individual assessment of each case in that procedure, as it was applied to asylum-seekers entering Greece from Türkiye, and Türkiye was considered to be a "safe third country" in that procedure. Using that procedure to process an asylum application thus entailed a high risk of *refoulement* to Türkiye, where, in turn, there were no sufficient safeguards for Syrians against *refoulement* to Syria. He had managed to lodge another asylum application in Greece after being removed to that country (see paragraph 25 above), and eventually the regular asylum procedure had been used to process that application after he had been identified as a person belonging to a vulnerable group (see paragraph 34 above); however, that did not exempt the German authorities from their obligations under Article 3.

131. The applicant added that it had been foreseeable that he, like any other asylum-seeker subject to a "geographical limitation" measure on Leros island (see paragraph 7 above), would be detained if found off that island and then transferred back there for further detention, given that a police circular in force at the relevant time had set out these measures. There had been no dedicated detention facility in Leros for foreign nationals, and it had been foreseeable that he would be detained in a police station in conditions in breach of Article 3. Indeed, he had been detained upon his arrival in Athens from Germany, and transferred back to Leros (see paragraphs 21 and 23 above), where he had remained in detention for two months and seventeen days in facilities which, by their nature, did not comply with Article 3. The German authorities had been obliged to obtain sufficient guarantees that he would not be exposed to treatment contrary to Article 3 in Greece, prior to removing him.

132. Referring to the Recommendation of the European Commission of 8 December 2016 (see paragraph 62 above), he added that asylum-seekers at the relevant time could be returned to Greece on the basis of the Dublin III Regulation only if the Greek authorities provided individual guarantees to the German authorities. As a vulnerable person, he should have enjoyed further guarantees. Indeed, that Recommendation provided for vulnerable individuals being exempt from transfers to Greece. The administrative arrangement between Germany and Greece, on the basis of which he had been returned within a few hours of his arrest, circumvented the procedure and safeguards provided for by the Dublin III Regulation, in that it provided for a fast-track procedure to return persons wishing to seek international protection

in Germany to Greece, without the registration of asylum applications in Germany, contrary to obligations under EU law, among other things.

(ii) The Government

133. The Government did not make observations on the merits of the application, beyond the points they raised in respect of its admissibility (see paragraphs 111-113 above).

(b) The third-party interveners

134. All the interveners asserted that before removing an asylum-seeker to a third, intermediary country, the authorities of the removing State had to assess, of their own motion and prior to the removal, whether the individual would have access to an adequate asylum procedure in the receiving third country or whether he risked direct or indirect *refoulement*, and whether living and detention conditions in the receiving third country were compatible with Article 3 of the Convention, including where the receiving third country was a EU member State (they relied, in particular, on *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, 21 November 2019). The ECCHR, Pro Asyl and Refugee Support Aegean emphasised that the obligation to assess the conditions in the receiving country existed regardless of whether the individual to be removed had relied on and substantiated relevant individual circumstances as to such a risk (they relied on *M.S.S. v. Belgium and Greece*, cited above, § 366). The AIRE Centre, the ECRE and the Dutch Council for Refugees added that it could never be sufficient to merely rely on a bilateral agreement, particularly when deficiencies in the asylum system of the receiving third country were known to the authorities or ought to have been known to them, including through publicly available information from reputable sources. The ECCHR, Pro Asyl and Refugee Support Aegean added that the deficiencies in the Greek asylum system were long-standing and documented in publicly available information, including the practice of detaining asylum-seekers in poor conditions. They added that the number of transfers of asylum-seekers from Germany to Greece under the Dublin III Regulation following the resumption of such transfers had remained low, and that at the relevant time a number of such transfers had been suspended by German administrative courts on account of their incompatibility with Article 3 of the Convention, owing to lasting systemic deficiencies in the Greek asylum system.

135. The AIRE Centre, the ECRE and the Dutch Council for Refugees submitted that in *Tarakhel v. Switzerland* ([GC], no. 29217/12, ECHR 2014 (extracts)) the Court had found that it had been incumbent on the authorities of the removing State to obtain an individual assurance from the receiving State regarding the applicants' reception conditions following their transfer, as the possibility that asylum-seekers transferred under the (then) Dublin II

Regulation would be left in inadequate reception conditions in the receiving State had not been unfounded. Those interveners submitted that the considerations and standards which had led to that finding should apply in the context of detention conditions. They added that general assurances could not be relied on in relation to countries where the number of people in need of protection was higher than the capacity of the asylum system, or where inadequate reception conditions and deficiencies in the asylum system prevailed. The ECCHR, Pro Asyl and Refugee Support Aegean added that it needed to be examined whether any assurances which were obtained were specific enough, individually framed and had relevant information about the situation in practice.

136. Lastly, all the interveners submitted that the administrative arrangement between Germany and Greece was in breach of EU law, notably because it circumvented the procedures and safeguards provided for by the Dublin III Regulation.

(c) The Court's assessment

(i) General principles

137. *Ilias and Ahmed* (cited above, §§ 128-41) concerned the removal of asylum-seekers whose asylum applications had been declared inadmissible by the authorities of the removing State because they had arrived from a neighbouring State, to which they had been removed, and the removing State had designated that neighbouring non-EU State a "safe third country" in its legislation. In that case, the Court set out the relevant principles under Article 3 of the Convention in cases concerning the removal of asylum-seekers to third intermediary countries which were not members of the European Union without an assessment by the authorities of the removing State of the merits of the asylum claim. The Court subsequently also applied these principles to cases in which applicants who had sought to lodge an asylum application with border officials and/or communicated fear for their safety to them had been denied entry to the territory in question and removed in a summary manner to a third country outside the European Union (see *M.K. and Others v. Poland*, nos. 40503/17, 42902/17 and 43643/14, §§ 171-86, 23 July 2020; *D.A. and Others v. Poland*, no. 51246/17, §§ 58-70, 8 July 2021; and *O.M. and D.S. v. Ukraine*, no. 18603/12, §§ 80-98, 15 September 2022).

138. In all cases of removal of an asylum-seeker from a Contracting State to a third intermediary country without examination of the asylum requests on the merits, regardless of whether the receiving third country is an EU member State or not or whether it is a State Party to the Convention or not, it is the duty of the removing State to examine thoroughly the question whether or not there is a real risk of the asylum-seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or

her against *refoulement* (see *Ilias and Ahmed*, § 134, and *M.K. and Others v. Poland*, § 173, both cited above). This examination must precede the removal to the third country (see *Ilias and Ahmed*, § 137, and *M.K. and Others v. Poland*, § 178, both cited above). If it is established that the existing guarantees in this regard are insufficient, Article 3 implies a duty that the asylum-seekers should not be removed to the third country concerned (see *Ilias and Ahmed*, § 134, and *M.K. and Others v. Poland*, § 173, both cited above).

139. In *Ilias and Ahmed*, which concerned the removal of an asylum-seeker from a Contracting State to a third country which was not an EU member State, the Court further stated that in addition to the main question whether the individual would have access to an adequate asylum procedure in the receiving third country, where the alleged risk of being subjected to treatment contrary to Article 3 concerned, for example, conditions of detention or living conditions for asylum-seekers in the receiving third country, that risk was also to be assessed by the expelling State (see *Ilias and Ahmed*, cited above, § 131).

140. Failure to discharge the above-mentioned procedural obligation under Article 3 of the Convention to assess the risks of treatment contrary to that provision prior to removing asylum-seekers to a third intermediary country constitutes a violation of Article 3 of the Convention (see *Ilias and Ahmed*, cited above, §§ 163-64).

(ii) Application of these principles to the present case

141. It is not in dispute between the parties that the applicant expressed his wish to apply for asylum in Germany when he was questioned at Passau police station (see paragraphs 13 and 17 above and compare *M.K. and Others v. Poland*, §§ 174-76; *D.A. and Others v. Poland*, §§ 60-62; and *O.M. and D.S. v. Ukraine*, §§ 85-91, all cited above). The German authorities did not process the applicant's asylum request before returning him to Greece.

142. The impugned measure and the administrative arrangement on which it was based need to be viewed in the specific context of the developments in the aftermath of the Court's judgment in *M.S.S. v. Belgium and Greece* (cited above) in 2011. Following that judgment, transfers to Greece under the "Dublin system" were suspended for a number of years. In late 2016 the European Commission considered that Greece had made significant progress, but that shortcomings in the Greek asylum system remained, and recommended that member States gradually resume transfers to Greece subject to certain conditions, including the exemption of vulnerable asylum applicants (see paragraph 62 above). Concurring in substance with the assessment of the European Commission, the Committee of Ministers of the Council of Europe and UNHCR similarly considered that improvements in the Greek asylum system had been made, but that various challenges persisted (see paragraphs 66 and 69-70 above). The different stakeholders identified

challenges and shortcomings in relation to, *inter alia*, the processing of asylum applications, the capacity and quality of reception facilities, the treatment of vulnerable individuals as well as the conditions of detention of asylum-seekers (see paragraphs 66-73 above).

143. At the relevant time, with regard to transfers of asylum-seekers to Greece (under the Dublin III Regulation), the European Commission made the following recommendation (see paragraph 62 above):

> "Before transferring an applicant to Greece, Member State authorities are invited to cooperate closely with the Greek authorities in order to ensure that the conditions indicated in point 9 [of the Recommendation of 8 December 2016] are met and in particular that the applicant will be received in a reception facility meeting the standards set out in EU law, in particular in the Reception Conditions Directive 2013/33/EU, that his or her application will be examined within the deadlines specified in the Asylum Procedures Directive 2013/32/EU, and that he or she will be treated in line with EU legislation in every other relevant respect."

144. It follows that, on the basis of the information available, the German authorities knew or ought to have known about the above-mentioned general shortcomings in the Greek asylum system (compare *Ilias and Ahmed*, cited above, § 134).

145. In view of the foregoing particular situation, at that time there was an insufficient basis for a general presumption that the applicant would, following his removal from Germany to Greece, have access to an adequate asylum procedure in Greece, protecting him against *refoulement*, and that he would not risk being exposed to treatment contrary to Article 3 there.

146. The Court does not overlook the fact that the applicant was removed on the basis of an administrative arrangement between Germany and Greece and that the Greek authorities were notified of his removal (see paragraphs 15 and 63 above). On the one hand, this distinguishes the present case from *Ilias and Ahmed*, where the applicants were not returned on the basis of an arrangement between the Hungarian and Serbian authorities, but were induced to enter Serbia illegally, which exacerbated the risks of denial of access to an asylum procedure in Serbia (see *Ilias and Ahmed*, cited above, §§ 161 and 163). On the other hand, the administrative arrangement on the basis of which the applicant was removed from Germany to Greece did not contain any provisions guaranteeing that asylum-seekers removed under that arrangement would, following their removal, have access to an effective asylum procedure in Greece in which the merits of their asylum claim would be assessed, including, if need be, by continuing or reopening an earlier asylum procedure where such a procedure had been terminated without assessment of the asylum claim. Nor did the arrangement contain guarantees that the asylum-seekers removed on the basis of the arrangement would not be exposed to treatment contrary to Article 3 in Greece on account of, for example, conditions of detention or living conditions for asylum-seekers (in respect of the acceptability of guarantees of a more general nature in removal

cases, see, for example, *J.A. and Others v. the Netherlands* (dec.), no. 21459/14, §§ 30-31, 3 November 2015).

147. Nor did the Government submit that the German authorities, prior to removing the applicant, had ensured that he would have access to an adequate asylum procedure in Greece and that he would not be exposed to treatment contrary to Article 3 there on account of conditions of detention or living conditions for asylum-seekers. Moreover, they did not submit that such risks had been assessed before the applicant's removal to Greece. The order refusing the applicant entry to Germany on the basis of which he was ultimately returned to Greece did not contain an assessment of whether he would, following his removal, run a real risk of being denied access to an asylum procedure in Greece affording sufficient guarantees to avoid him being removed, directly or indirectly, to Syria without a proper evaluation of any risks of treatment contrary to Article 3 which he might face there; nor did it contain an assessment of whether he would face conditions of detention in Greece which might be in breach of Article 3 (see paragraphs 16 and 54 above and the case-law quoted in paragraphs 138-139 above, and compare *O.M. and D.S. v. Ukraine*, cited above, §§ 96-97).

148. Moreover, as established in paragraph 124 above, the German authorities initially gave the applicant incorrect information about the country to which he was going to be removed, the legal basis for his removal and where to lodge a remedy against that decision. The order on the basis of which the applicant was ultimately removed to Greece was served on him shortly before his departure for the airport and was not given to him in Arabic. In addition, no interpreter was present, and he was not assisted by a lawyer during the short period of time which he spent on German territory.

149. Having regard to the foregoing, the Court finds that the respondent State failed to discharge its procedural obligation under Article 3 of the Convention to satisfy itself, through respective guarantees in the administrative arrangement, or an individualised assessment, that the applicant did not run a real risk of being denied access to an adequate asylum procedure in Greece and would not be detained in conditions contrary to Article 3 there.

150. The above-mentioned considerations are sufficient for the Court to conclude that the applicant's removal from Germany to Greece was in violation of Article 3 of the Convention – notably the fact that at the relevant time (i) there was an insufficient basis for a general presumption that the applicant would, following his removal from Germany to Greece, have access to an adequate asylum procedure in Greece, protecting him against *refoulement*, and would not risk being exposed to treatment contrary to Article 3 there; (ii) neither the administrative arrangement on the basis of which the applicant was removed nor an individual assurance provided for any guarantees that asylum-seekers removed under that arrangement would, following their removal, have access to an effective asylum procedure in

Greece in which the merits of their asylum claim would be assessed, and that asylum-seekers removed under that arrangement would not be exposed to treatment contrary to Article 3 in Greece on account of, for example, conditions of detention or living conditions for asylum-seekers; (iii) the German authorities had not demonstrated that they had assessed such risks before removing the applicant to Greece; and (iv) the applicant was hastily removed without having access to a lawyer prior to his removal. While the events in Greece which occurred following the applicant's removal do not alter this finding, the Court observes that the applicant was detained in conditions contrary to Article 3 of the Convention following his removal (see paragraphs 81-85 above; see also, *mutatis mutandis*, *M.S.S. v. Belgium and Greece*, cited above, §§ 366-67). Moreover, the applicant, against whom a final removal decision was issued when he was returned to Greece from Germany (see paragraphs 6-7 and 21 above), did not manage to have the decision discontinuing the proceedings concerning his first asylum application in Greece – proceedings in which the merits of his asylum claim had not been assessed – revoked (see paragraphs 9, 22 and 24 above). The applicant later managed to lodge another asylum application in Greece, which was assessed by way of the regular asylum procedure after it had been determined that he was vulnerable, and which led to him being granted refugee status (see paragraphs 25, 31, 34-35 and 52 above). While the applicant thus eventually had access to an effective asylum procedure in Greece, which protected him against *refoulement* to Syria, this turn of events was neither guaranteed nor reasonably foreseeable when the German authorities removed the applicant to Greece without discharging their procedural obligation under Article 3 of the Convention.

151. It follows that there has been a violation of the procedural limb of this provision.

B. Alleged violation of Article 13 in conjunction with Article 3 of the Convention on account of the applicant's lack of access to an effective domestic remedy to challenge his return to Greece

152. The applicant alleged that in Germany he had not had access to an effective domestic remedy against his removal to Greece, as required by Article 13 of the Convention, despite having an arguable complaint under Article 3 on account of both the Greek asylum procedure exposing him to a risk of chain *refoulement* and the detention conditions he would face there.

Article 13 of the Convention 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."

153. The Court observes that this complaint is closely linked to the complaint lodged against Germany under Article 3 and must be likewise declared admissible.

154. Having regard to the reasoning which has led it to conclude that the German authorities' procedural obligation under Article 3 of the Convention was breached in the present case (see paragraphs 148 and 150 above), the Court does not consider it necessary to examine separately the same facts from the standpoint of Article 13 in conjunction with Article 3 of the Convention (see *O.M. and D.S. v. Ukraine*, § 100, and *Ilias and Ahmed*, § 179, both cited above).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

155. 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. Non-pecuniary damage

1. Greece

156. In respect of non-pecuniary damage, the applicant claimed 10,000 euros (EUR) in relation to the violation of Article 3 of the Convention, and EUR 5,000 in relation to the violation of Article 5 §§ 1 and 4 of the Convention.

157. The Greek Government considered that these amounts were excessive and unjustified.

158. The Court awards the applicant EUR 6,500 in respect of non-pecuniary damage, plus any tax that may be chargeable. It dismisses the remainder of the applicant's claim for just satisfaction.

2. Germany

159. In respect of non-pecuniary damage, the applicant claimed EUR 20,000 in relation to the violation of Article 3 of the Convention, and EUR 5,000 in relation to the violation of Article 13 read in conjunction with Article 3 of the Convention.

160. The German Government submitted that the applicant was not entitled to just satisfaction. In any event, the amounts claimed were excessive.

161. The Court considers that the applicant must have suffered non-pecuniary damage as a result of the procedural violation of Article 3 of the Convention found in the present case. Having regard to the relevant circumstances of the case, it awards EUR 8,000 to the applicant in respect of

non-pecuniary damage, plus any tax that may be chargeable (see, *mutatis mutandis*, *Ilias and Ahmed*, cited above, § 255).

B. Costs and expenses

162. The applicant did not present a claim for costs and expenses. Hence, the Court is not called upon to make an award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation by Greece of the substantive limb of Article 3 of the Convention;

3. *Holds* that there has been no violation by Greece of Article 5 § 1 of the Convention;

4. *Holds* that there has been a violation by Greece of Article 5 § 4 of the Convention;

5. *Holds* that there has been a violation by Germany of the procedural limb of Article 3 of the Convention;

6. *Holds* that there is no need to examine the merits of the applicant's complaint directed against Germany under Article 13 of the Convention, taken in conjunction with Article 3;

7. *Holds*
   (a) that the Greek Government 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, EUR 6,500 (six thousand five hundred euros), 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Holds*
   (a) that the German Government 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, EUR 8,000 (eight

thousand euros), 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President