

ECtHR - Saadi v. United Kingdom, no. 13229/03, 29 January 2008

Country of Applicant:

Iraq

Date of Decision:

29-01-2008

Citation:

Application No. 13229/03

Court Name:

Grand Chamber; European Court of Human Rights

Keywords:[Accelerated procedure](#) [1][Delay](#) [2][Detention](#) [3][Obligation to give reasons](#) [4][Procedural guarantees](#) [5]**Relevant Legislative Provisions:**International Law > [1951 Refugee Convention](#) [6] > [Art 1](#) [7]International Law > [1951 Refugee Convention](#) [6] > [Art 31](#) [8]International Law > [1951 Refugee Convention](#) [6] > [Art 33](#) [9]European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [10]European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [11] > [Art 7](#) [12]Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [13] > [Article 5](#) [14] > Art 5.1Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [13] > [Article 5](#) [14] > Art 5.2European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [11] > [Art 18](#) [15]**Headnote:**

The seven day detention of a temporarily admitted asylum seeker under the fast-track

procedure was non-arbitrary and consistent with Article 5(1), but the 76 hour delay in providing the individual with the real reasons for his detention did not satisfy the promptness requirement of Article 5(2).

Facts:

The Applicant, an Iraqi Kurd, fled Iraq and arrived in the UK on 30 December 2000. He had been working as a hospital doctor, and had treated and facilitated the escape of three fellow members of the Iraqi Workers' Communist Party who had been injured in an attack. He claimed asylum at the airport and was granted 'temporary admission' while the immigration authorities located a room in a detention centre.

On reporting to the authorities on 2 January 2001, he was detained and transferred to Oakington Reception Centre. This centre was used for asylum seekers considered unlikely to abscond and whose applications could be dealt with by the 'fast-track' procedure. He was given a standard form with the reasons for his detention and his rights, but did not explain that he was being detained under the fast-track procedure. On 5 January 2001 the Applicant's representative was informed via telephone call by an immigration officer that the reason for the detention was that the Applicant was an Iraqi who met the criteria for detention at the reception centre.

The Applicant's asylum claim was initially refused on 8 January 2001. He was released the next day and subsequently granted asylum after successfully appealing. He sought judicial review of his detention, which went to the House of Lords, which upheld his detention as proportionate.

On 11 July 2006, a Chamber of the ECtHR held that the seven-day detention of the Applicant after he had been granted 'temporary admission' did not violate Article 5(1). However, the 76-hour delay in informing the Applicant of the grounds for his later detention in a reception centre was found to constitute a violation of the Article 5(2) requirement to give reasons promptly.

Decision & Reasoning:

As to Article 5(1), the Grand Chamber ('GC') began by interpreting the reason for detention under Article 5(1)(f): 'to prevent his effecting an unauthorised entry'. The majority held that this phrase covered those who had surrendered themselves to the authorities and had applied for permission to enter, whether by way of asylum or otherwise. If 5(1)(f) were held to only apply to evasive persons, this would be too narrow and inconsistent with UNHCR and Council of Europe guidelines.

As to the implications of the principle that detention should be non-arbitrary, the majority noted that 5(1)(f) imposed no requirement that detention should reasonably be considered necessary. Instead, the principle of proportionality required only that the detention should not continue for an unreasonable length of time. Accordingly, 5(1)(f) detention would not be arbitrary if it met four conditions: (1) carried out in good faith; (2) closely connected to the purpose of preventing unauthorised entry to the country; (3) the place and conditions of detention were appropriate bearing in mind that the detainee was an asylum seeker rather than a suspected criminal; (4) the length of the detention did not exceed that reasonably required for the purpose pursued.

Applying these interpretations to the facts of this case, the majority accepted that the Oakington detention regime ensured the speedy resolution of some 13,000 of the approximately 84,000 asylum applications being made annually in the UK at the time. Achieving that objective required 150 interviews a day and small delays could be disruptive.

The majority decided that the Applicant had been selected for detention in good faith, satisfying condition (1), on the basis that his case was suited for fast-track processing, and that expedition was for the benefit of asylum seekers. Condition (2) was met since detention was intended to enable the authorities to determine the Applicant's asylum claim quickly and efficiently. As to condition (3), the centre was specifically adapted to hold asylum seekers and offered various facilities for recreation, religious observance, medical care and legal assistance. The Applicant had not complained about the conditions. Finally, his detention for seven days before his release the day after his claim to asylum was refused at first instance satisfied condition (4). The GC also noted that the provision of a more efficient system for determining large numbers of asylum claims had made a positive impact, by rendering unnecessary recourse to broader and more extensive use of detention powers.

By a majority of 11 to 6, the GC found no violation of Article 5(1).

The six dissenting judges, in a joint opinion, regarded the majority as failing to appreciate the distinction between asylum seekers and other non-nationals, and wrongly regarding detention as in the interests of asylum seekers. The minority disputed the majority's interpretation of Article 5(1)(f), holding instead that it cannot apply to those who do not enter unlawfully. The seven day period was seen as unreasonable. Significantly, the minority regarded the detention of asylum-seekers as attracting further obligations than just non-arbitrariness. Instead, drawing on Article 9 ICCPR, judgments of the UN Human Rights Committee, the EU Charter of Fundamental Rights, the Procedures Directive and a Recommendation of the Committee of Ministers of the Council of Europe, the minority stated that requirements of necessity and proportionality oblige the State to furnish relevant and sufficient grounds for the measure taken, to consider other less coercive measures, to give reasons why those measures are deemed insufficient, and to consider the individual circumstances of the Applicant. In the minority's opinion, these obligations, in the present case, had not been complied with. The minority accordingly argued that Article 5(1) had been violated.

As to Article 5(2), the GC unanimously agreed with the lower Chamber that the 76 hour delay during detention before informing the Applicant via his representative of the real reason for his detention was incompatible with the promptness requirement. General statements ? such as parliamentary announcements ? could not replace the need for the individual being directly informed.

Outcome:

By majority of 11 to 6, no violation of Article 5(1). Unanimously, violation of Article 5(2). Finding of violation was just satisfaction.

Subsequent Proceedings :

In June 2010, the Court adopted a final resolution ([CM/ResDH\(2010\)67](#) [16]), wherein it found that the UK had taken adequate execution measures. On the individual level, the Court noted that the applicant was granted asylum. On the general level, in 2002 the relevant form presented to asylum-seekers when they are detained was changed to include a box indicating that detention was authorised for applications ?which may be decided using the fast-track procedures?. In addition, an instruction was circulated to Immigration Officers which states that they must include further reasons why detention is considered to be appropriate since the sole reason that detention is authorised under the fast-track procedure is not sufficient.

Case Law Cited:

UN Human Rights Committee - Celepi v. Sweden, Communication No. 456/1991 (18 July 1994), UN Doc. CCPR/C/51/D/456/1991

ECtHR - T. v. the United Kingdom [GC], Application No. 24724/94

[ECtHR - Brogan & Ors v The United Kingdom \(Application nos. 11209/84, 11234/84, 11266/84, 11386/85\)](#) [17]

UK - Szoma v Secretary of State for the Department of Work and Pensions [2005] UKHL 64

ECtHR - Conka v Belgium (Application no. 51564/99)

ECtHR - Aerts v Belgium (1998) 5 BHRC 382

ECtHR - Amuur v. France, Application No. 19776/92

ECtHR - Al-Adsani v United Kingdom [GC], Application No. 35763/97

ECtHR - Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi (Bosphorus Airways) v. Ireland [GC], Application No. 45036/98

ECtHR - Golder v United Kingdom, 21 February 1975, § 29, Series A No. 18

ECtHR - Stec and Others v United Kingdom [GC], Application No. 65731/01 and 65900/01

ECtHR - Winterwerp v. the Netherlands, Application No. 6301/73

ECtHR - Witold Litwa v. Poland, Application No. 26629/95

ECtHR - Engel and others v. The Netherlands, Application Nos. 5100/71, 5101/71/, 5102/71 and 5354/72

ECtHR - Abdulaziz, Cabales and Balkandali v. the United Kingdom, Application Nos. 9214/80, 9473/81 and 9474/81

UN Human Rights Committee - C. v. Australia, Communication No. 900/1999 (28 October 2002), UN Doc. CCPR/C/76/D/900/1999

UK - R. (on the application of Saadi and others) v. Secretary of State for the Home Department [2001] EWHC Admin 670, [2001] EWCA Civ 1512, [2002] UKHL 41

ECtHR - Johnston and Others v. Ireland, Application No. 9697/82

ECtHR - Lithgow and Others v. the United Kingdom, Application Nos. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81, and 9405/81

ECtHR - Bozano v. France, Application No. 9990/82

ECtHR - Bouamar v. Belgium, Application No. 9106/80

ECtHR - O'Hara v. United Kingdom, Application No. 37555/97

ECtHR - Enhorn v. Sweden, Application No. 56529/00

ECtHR - Hilda Hafsteinsdóttir v. Iceland, Application No. 40905/98

ECtHR - Vasileva v. Denmark, Application No. 52792/99

ECtHR - McVeigh and Others v. United Kingdom, Application Nos. 8022/77, 8025/77 and 8027/77

ECtHR - Stafford v. United Kingdom [GC], Application No. 46295/99

UN Human Rights Committee - A. v. Australia, Communication No. 560/1993 (30 April 1997), UN Doc. CCPR/C/59/D/560/1993

[ECtHR - Chahal v the United Kingdom \(Application no. 22414/93\)](#) [18]

Attachment(s):



[CASE OF SAADI v. THE UNITED KINGDOM.pdf](#)[19]

Other sources cited:

- White Paper published in 1998 entitled 'Fairer, Faster and Firmer? A Modern Approach to Immigration and Asylum' (Cm 4018);
- 16 March 2000 written answer by Barbara Roche MP to a parliamentary question;
- UK Home Office 'Operational Enforcement Manual?';
- Vienna Convention on the Law of Treaties (1969) Articles 31-33;
- Universal Declaration of Human Rights (UDHR) Articles 3, 9, 13, 14;
- Executive Committee of the United Nations High Commissioner for Refugees' Programme Conclusion relating to the detention of asylum-seekers (no. 44 (XXXVII) ? 1986), as approved by the General Assembly on 4 December 1986 (Resolution 41/124);
- United Nations High Commissioner for Refugees (UNHCR) Guidelines on the detention of asylum-seekers 1995, revised and reissued on 10 February 1999;
- 18 December 1998 United Nations Working Group on Arbitrary Detention report on its visit to the United Kingdom (E/CN.4/1999/63/Add.3);
- 2003 Committee of Ministers of the Council of Europe Recommendation (Rec (2003)5);
- 8 June 2005 Council of Europe Commissioner for Human Rights report on his visit to the United Kingdom (CommDH(2005)6).

Authentic Language:

English

State Party:

United Kingdom

National / Other Legislative Provisions:

- UK - Immigration Act 1971 - Para. 8 of Sched. 2
- UK - Immigration Act 1971 - Para. 2 of Sched. 2
- UK - Immigration Act 1971 - Para. 9 of Sched. 2
- UK - Immigration Act 1971 - Para. 10 of Sched. 2
- UK - Immigration Act 1971 - Para. 16 of Sched. 2
- UK - Immigration Act 1971 - Para. 21 of Sched. 2
- UK - Immigration Act 1971 - Para. 2(A) of Sched. 2
- UK - Immigration Act 1971 - Para. 2(B) of Sched. 2
- UK - Immigration Act 1971 - Para. 2(C) of Sched. 2

UK - Immigration Act 1971 - Para. 2(D) of Sched. 2
UK - Immigration Act 1971 - Para. 2(E) of Sched. 2
UK - Immigration Act 1971 - Section 11
ICCPR - Art 12
ICCPR - Art 9(1)

Links:

- [1] https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A9
- [2] https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A26
- [3] https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A27
- [4] https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A2487
- [5] https://m.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A59
- [6] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>
- [7] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>
- [8] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#31>
- [9] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#33>
- [10] <https://m.asylumlawdatabase.eu/node/453>
- [11] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>
- [12] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%207>
- [13] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>
- [14] https://m.asylumlawdatabase.eu/node/195#toc_22
- [15] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2018>
- [16] https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805cecd0#_Toc263689140
- [17] <https://m.asylumlawdatabase.eu/en/content/ecthr-brogan-ors-v-united-kingdom-application-nos-1120984-1123484-1126684-1138685>
- [18] <https://m.asylumlawdatabase.eu/en/content/ecthr-chahal-v-united-kingdom-application-no-2241493>
- [19] <https://m.asylumlawdatabase.eu/sites/default/files/aldfiles/CASE%20OF%20SAADI%20v.%20THE%20UN>