



## Q & A

### *Ilias and Ahmed v. Hungary*, Grand Chamber judgment of 21 November 2019

#### What are Grand Chamber judgments and how do they differ from Chamber judgments?

The Grand Chamber has the task of deciding afresh, fully and freely, on the complaints raised in the cases referred to it. Where a case has been decided by a Chamber and is then taken up by the Grand Chamber, the work of the two bodies is by definition different: the first worked from a blank page, while the second must necessarily take a position on a judgment that has already been delivered.

The questions raised thus lead to an in-depth examination by the Grand Chamber, within which the debate evolves in relation to the Chamber's findings, particularly having regard to the parties' observations, whether in writing or in oral argument during a hearing, and bearing in mind the fact that the composition of the bench is different (17 judges instead of 7 in the Chamber).

Unlike Chamber judgments, Grand Chamber judgments are final on delivery.

#### What is the main difference between the Grand Chamber judgment in *Ilias and Ahmed v. Hungary* and the Chamber judgment?

One main difference is the Grand Chamber's finding under Article 5 (right to liberty and security) of the European Convention on Human Rights.

The Chamber found that there had been a violation of Article 5 §§ 1 and 4 of the Convention as the applicant's confinement in Hungary's Röszke transit zone on the border with Serbia had amounted to deprivation of liberty and that there had been no formal decision with reasons for that measure or any review of it by the courts.

The Grand Chamber has found that Article 5 does not apply to the applicants' situation.

#### Why has the Grand Chamber found differently from the Chamber on Article 5?

The Grand Chamber carried out an in-depth examination of the conditions for making Article 5 applicable. In particular, it identified four criteria that had been laid down in previous cases concerning airport transit zones and migrant reception centres, applying them to the novel situation of a transit zone located on the border between two Council of Europe states for asylum-seekers awaiting a decision on their asylum applications.

Summing up, the Court found that the factors it had identified as being relevant meant the applicants had not been *de facto* deprived of their liberty. The applicants had decided to enter Hungary from Serbia on their own initiative and it had been realistically possible for them to return to Serbia, without a direct threat to their life or health known by or brought to the attention of the Hungarian authorities.

It contrasted the situation in the land transit border zone in question with that of transit zones in airports, where in some cases it had found that it was not realistic for applicants to leave of their own free will, in particular because of factors such as the possible destination, having to board an airplane, potentially having to obtain visas and the need for the cooperation of various authorities and agencies.

The Grand Chamber also held that Article 5 could not be made applicable on the grounds that the Hungarian authorities had not fulfilled their separate duties under Article 3.

A Grand Chamber judgment on conditions in an airport transit zone, *Z.A. and Others v. Russia*, has also been delivered today.

### Are there any other differences or similarities between the two judgments?

Similarly to the Chamber, the Grand Chamber found that there had been a violation of Article 3 owing to the applicants being returned to Serbia without a proper examination of their reception there. The Grand Chamber carried out a fuller analysis of this aspect of the case, coming to similar conclusions but making a number of points about the duties of States when they decide not to examine asylum-seekers' application but refer to the notion of a safe third country to remove them.

The Grand Chamber found no violation of Article 3 as regards the conditions in which the applicants had had to live in the transit zone, a decision that was the same as the Chamber's.

It also found differently from the Chamber on the question of a complaint by the applicants under Article 13 (effective remedies) in conjunction with Article 3 (prohibition of torture and inhuman or degrading treatment) about the conditions in the transit zone. It held that his complaint had been lodged outside the six-month time-limit set by the Convention, whereas the Chamber held that the complaint was admissible and found a violation.

### What are the consequences of this judgment for States?

Under the European Convention, Governments are expected to take account of the Court's findings in domestic court decisions and in their legislation if necessary. This judgment will become part of their considerations when dealing with asylum-seekers in similar situations as in this case.

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.