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United Kingdom: detention of asylum-seekers must be the exception, not the rule

Amnesty International is gravely concerned by the potential implications of the decision by the European Court of Human Rights in the case of *Saadi v UK*, handed down on 29 January. The decision appears to give states a broad discretion to detain people who are fleeing persecution, and are often in fear for their lives, for no other reason than the administrative convenience of the state in which they have sought asylum or international protection.

Amnesty International urges the UK, and other states who might view this decision as a green light to the routine detention of asylum-seekers, to recognize instead that detention should always be a last resort, and that it can only be justified in the most exceptional circumstances. Seeking asylum is not a crime, and it should not be treated as if it were.

The UK and other states should build a strong presumption against detention into the system for deciding claims for asylum. Any decision to detain an individual who has sought asylum must be based on a detailed assessment of that individual, including an assessment of their personal history and of the risk that they might abscond. There should be no routine detention of whole categories of asylum-seekers; detention must be a last resort, not a first response.

Amnesty International recognizes that it is in the interest of both states and individual asylum-seekers that claims for asylum or international protection should be assessed as promptly as they can thoroughly and fairly be. The organization nonetheless considers that a legitimate policy objective – ensuring that claims are processed promptly – does not justify the routine deprivation of the liberty of asylum-seekers.

In this light Amnesty International welcomes the strong and compelling arguments put forward by the minority of judges of the European Court of Human Rights who dissented from part of this decision (which was reached on an 11-6 split between the judges of the Court).

The six dissenting judges described the position adopted by the majority of the judges, that the detention of individual asylum-seekers was in their own best interests, since it facilitated the prompt processing of their claims, as “exceedingly dangerous”. They criticized the failure of the judges in the majority to give proper consideration to the question of whether less intrusive alternatives than detention were available to the UK, and went on to note (emphasis added):

As regards detention generally [that is, in contexts other than the detention of asylum-seekers], the requirements of necessity and proportionality oblige the State to furnish relevant and sufficient grounds for the measure taken and to consider other less coercive measures, and also to give reasons why those measures are deemed insufficient to safeguard the private or public interests underlying the deprivation of liberty. **Mere administrative expediency or**

convenience will not suffice. We fail to see what value or higher interest can justify the notion that these fundamental guarantees of individual liberty in a State governed by the rule of law cannot or should not apply to the detention of asylum seekers.

Amnesty International shares the concerns of the dissenting judges. Asylum-seekers are entitled to the same level of protection against arbitrary detention as everyone else, and they must not be detained solely because it is convenient for the state in which they have sought asylum or international protection while it assesses their claims.

Background

The case of *Saadi v UK* (*Application no. 13229/03*) concerned an Iraqi doctor, Shayan Baram Saadi, who arrived in the UK in December 2000, seeking asylum. He made his claim for asylum as soon as he arrived. On the day of his arrival he was given 'temporary admission', and was allowed to stay at a hotel of his choice, so long as he returned to the airport the following morning. This continued for three days, during which time Shayan Baram Saadi complied fully with the reporting requirements. However as soon as a bed became available at Oakington Reception Centre he was instead detained there for seven days, while his claim was assessed under the so-called 'fast track' procedure. He was released from Oakington following an initial refusal of his claim for asylum, against which he appealed; finally, in January 2003, his appeal was allowed and he was granted asylum in the UK.

At all stages Shayan Baram Saadi had complied with all reporting requirements placed upon him. The decision to detain him at Oakington while his claim was considered was taken despite the fact that Shayan Baram Saadi was not adjudged to present any risk of absconding. Detention was not claimed to be 'necessary' to prevent him from absconding, or for any other reason related to him personally; it was claimed only that it served the UK's aim of processing claims for asylum more promptly, since if it was able to keep asylum-seekers detained it could ensure that they would be available for an assessment interview as and when an interview slot became free.

In the decision handed down on 29 January all 17 judges of the Grand Chamber of the European Court of Human Rights agreed that the UK had violated Shayan Baram Saadi's right to be given a prompt and genuine explanation of the reason for his detention; but the majority (11-6) of the judges held that detention had been permissible within the meaning of Article 5(1)(f) of the European Convention on Human Rights, which allows detention of a person "to prevent his effecting an unauthorised entry into the country", among other reasons. The Court held that such detention was permissible provided it was not 'arbitrary'; and that it would not be 'arbitrary' provided that it was "carried out in good faith", and was "closely connected to the purpose of preventing unauthorised entry of the person to the country"; that "the place and conditions of detention [were] appropriate"; and that the length of the detention did not "exceed that reasonably required for the purpose pursued".

Research conducted by Amnesty International in 2005 (see below) indicated that the decision to detain asylum-seekers in the UK was often made on what appeared to be indeed an arbitrary basis, since it was determined first and foremost by the availability of beds within the immigration detention estate, rather than on considerations of necessity and proportionality. This would appear to have been the case with Shayan Baram Saadi, who was given 'temporary admission', and not detained, until such time as a bed became available to allow for his detention at Oakington.

For an analysis of the use of detention specifically in the UK see Amnesty International's 2005 report *Seeking asylum is not a crime: Detention of people who have sought asylum* (AI Index: EUR 45/015/2005); for a full statement of Amnesty International's concerns about the detention of asylum-seekers and other migrants see *Migration-Related Detention: A research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees* (AI Index: POL 33/005/2007).

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