

**Press release issued by the Registrar**

**Chamber judgment**  
Not final<sup>1</sup>

**[Xiros v. Greece](#)** (application no. 1033/07)

## **INADEQUATE CARE PROVIDED TO A SICK PRISONER**

***Violation of Article 3 (prohibition of inhuman or degrading treatment)  
of the European Convention on Human Rights***

### **Principal facts**

The applicant, Savvas Xiros, is a Greek national who was born in 1962 and is now in Korydallos Prison (Greece). In 2002 he was seriously injured when a bomb exploded in his hands while he was preparing an attack. After spending 65 days in intensive care in hospital he was remanded in custody. On 8 and 17 December 2003 Athens Assize Court imposed six life sentences on the applicant and 25 years' imprisonment for membership of a terrorist group called "17 November" and participation in its criminal activities. He still suffers from various consequences of the explosion, including an amputated hand and serious problems affecting his sight, hearing and movements.

Mr Xiros received medical attention from the beginning of his detention. He underwent four eye operations between 2002 and 2004. In 2005 the head of the Penteli Hospital eye clinic noted that the applicant's vision was worsening and considered that systematic and frequent general check-ups, requiring hospitalisation in a specialist eye clinic, were necessary to prevent a drastic deterioration in his eyesight. Tests carried out at Athens General Hospital in 2005 and 2006, however, concluded that the applicant's eyesight was stable. Mr Xiros underwent various tests and treatments for his other health problems, which did not require lengthy stays in hospital.

During the first six months of his detention Mr Xiros, because of his state of health, shared a cell with his brother, who had also been convicted of membership of the "17 November" terrorist organisation. The latter assisted him in the performance of everyday tasks. Since then, the applicant has been detained in an individual cell measuring approximately 12 sq. m. He is assisted on a daily basis, where necessary, by the prison staff and his fellow prisoners. He has a separate toilet and shower in his cell, which is also heated. He has access to a courtyard for between eight and nine hours a day.

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on the day the request is rejected.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

Mr Xiros lodged several appeals against his detention, citing health reasons. In particular, he applied to the Piraeus Criminal Court in May 2006 for a stay of execution of his sentence so that he could undergo hospital treatment in a specialist eye clinic. The court requested reports from two forensic experts to establish whether it was necessary to admit the applicant to hospital; both concluded that it was necessary. However, the court refused to grant a stay of execution on the grounds that Mr Xiros was already “effectively receiving hospital treatment” in Korydallos Prison, and that the tests carried out in Athens General Hospital had not concluded that it was necessary to admit him to hospital.

### **Complaints, procedure and composition of the Court**

Relying in particular on Article 3, Mr Xiros complained that, in view of his state of health, keeping him in prison constituted torture or inhuman or degrading treatment. He also complained of a lack of adequate and suitable medical treatment.

The application was lodged with the European Court of Human Rights on 27 December 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Nina **Vajić** (Croatia), **President**,  
Christos **Rozakis** (Greece),  
Khanlar **Hajiyev** (Azerbaijan),  
Dean **Spielmann** (Luxembourg),  
Sverre Erik **Jebens** (Norway),  
Giorgio **Malinverni** (Switzerland),  
George **Nicolaou** (Cyprus), **judges**,

and also Søren **Nielsen**, **Section Registrar**.

### **Decision of the Court**

The Court reiterated that under Article 3 of the Convention the State had a duty of care towards sick prisoners, comprising three specific obligations.

First of all, the State had to be satisfied that the person concerned was fit to be detained. On that point, the Court noted the very significant after-effects suffered by Mr Xiros. However, it observed that at no point during his detention had any of the doctors attending him suggested that he was unfit to serve his sentence. They had simply recommended a stay of execution of his sentence so that he could be admitted to hospital for the time required to treat him. Mr Xiros’s application for a stay of execution was refused, but it remained open to him to make a further application – or to request his release – should his state of health deteriorate further. Accordingly, the Court considered that the applicant’s situation did not fall into the category of exceptional cases in which a prisoner’s state of health was wholly incompatible with his continued detention.

The State was further required to provide prisoners with the medical care they needed. This requirement was of especial relevance in Mr Xiros’s case, given his particularly worrying state of health. The Court observed that as far as his hearing, neurological and respiratory problems were concerned, the applicant had received medical treatment from the competent authorities which was appropriate to his condition. As to his eyesight, the Court stressed that three of the four specialists who examined him had recommended that he be admitted to a

specialist eye clinic for the time needed to treat him. However, the application for a stay of execution lodged by Mr Xiros for that purpose had been rejected by Piraeus Criminal Court. It was not for the Court to rule in the abstract on how the application should have been dealt with; however, it took the view that the court in question had not given sufficient consideration to all the evidence available to it. If the domestic court did not wish to endorse the findings of the doctors who recommended that Mr Xiros be treated in hospital, it would have been preferable for it to request an additional expert report on that controversial point instead of itself taking a decision on an essentially medical issue which was central to the applicant's treatment. Those considerations were lent further weight by the fact that the medical care likely to be provided in Korydallos Prison fell some way short of what would be available in a hospital (various reports, including one from the CPT, were explicit on that point), and by the indisputably serious state of Mr Xiros's health. In those circumstances the Court was unable to find, with regard to the medical treatment provided for the applicant's eyesight problems, that the competent authorities had done what could reasonably be expected of them in terms of the requirements of Article 3.

Lastly, the State had to adapt the overall conditions of detention of the person concerned as necessary to his or her particular state of health. That was also of particular relevance in the applicant's case given the seriousness of his condition and the fact that, normally speaking, he would be subjected to his current conditions of detention for the rest of his life. The Court stressed at the outset that the applicant's overall conditions of detention (the size of his cell, opportunities for exercise, etc.) were not open to criticism. While mindful of the fact that Mr Xiros was alone in his cell without assistance in performing everyday tasks, it observed that he had not requested such assistance and that at the beginning of his detention he had been allowed to share a cell with his brother.

In view of those considerations the Court acknowledged that the prison authorities had demonstrated their willingness to provide Mr Xiros with treatment carried out by specialist medical personnel in a medical setting. However, it held, by four votes to three, that there had been a breach of Article 3 on account of the shortcomings in the treatment provided for his eyesight problems.

Under Article 41 (just satisfaction), the Court held that the Greek State was to pay Mr Xiros 1,000 euros (EUR) for non-pecuniary damage.

Judges Jebens, Malinverni and Nicolaou expressed a joint dissenting opinion which is annexed to the judgment.

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The judgment is available in French only. This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on its [Internet site](#). To receive the Court's press releases, you can subscribe to the [Court's RSS feeds](#).

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