



European Court finds an illegal migrant was tortured by one of the Greek coastguard officers supervising him

In today's Chamber judgment in the case [Zontul v. Greece](#) (application no. 12294/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights.

The case concerned an illegal migrant who complained that he had been raped with a truncheon by one of the coastguard officers supervising him, that the authorities had refused to allow him to be examined by a doctor who was on the premises, that the conditions of detention in the asylum seekers' camp had been poor, that the authorities had failed to conduct a thorough, fair and impartial investigation and that those responsible had not been adequately punished, as the Appeals Tribunal had not considered that his rape with a truncheon constituted an aggravated form of torture.

Principal facts

The applicant, Necati Zontul, is a Turkish national who was born in 1968 and lives in London (United Kingdom).

On 27 May 2001 he and 164 other migrants boarded a boat in Istanbul which was bound for Italy. On 30 May the vessel was intercepted by Greek coastguards and escorted to the port of Chania (Crete). The migrants were placed in a disused merchant navy training school. According to Mr Zontul, the conditions of detention there were poor and several detainees were deliberately attacked by guards. He alleged that, between 1 and 6 June 2001, several detainees had been taken into a room from which they had emerged with injuries and, in some cases, unable to walk. There had also been reports of mock executions and Russian roulette.

On 5 June 2001 Mr Zontul reported that two coastguard officers had forced him to undress while he was in the bathroom. One of them had threatened him with a truncheon and had then raped him with it. One of the applicant's fellow detainees had helped him back to the dormitory after the officers had left. In protest at that incident, the detainees had decided to go on hunger strike the following morning. Some of the coastguard officers had then burst into the dining room and gathered the detainees together, before beating them with truncheons and splashing them with water and a product resembling eau de cologne. One of the detainees had been made to "jump like a rabbit".

¹ 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 five 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 that day.

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

On 6 June 2001 the commanding officer of the coastguard service, who had not been present during the events, ordered an investigation after hearing the detainees' account. Mr Zontul was asked to identify the officer who had raped him, but his request to be examined by a doctor who was on the premises was refused. However, the doctor examined the detainees who claimed to have been beaten, and noted that 16 of them had injuries consistent with their account of events. Five of them were admitted to hospital.

On 8 June the Minister of Merchant Shipping confirmed that an internal administrative inquiry had been started. On 10 June the migrants were transferred to the former airport in Chania, where they were visited by representatives of the organisation *Médecins du Monde*. On 12 June Mr Zontul and three other migrants were invited to give evidence in the internal administrative inquiry, with an interpreter present. When Mr Zontul was shown a copy of his statement a year later, he saw that the rape of which he had spoken had been recorded as a "slap" and "use of psychological violence", that the facts had been summarised inaccurately and that he was reported as saying that he did not want to see the coastguard officers punished. In July 2001 the migrants received documents certifying their status as asylum seekers, tickets for travel to Athens and five drachmas each. During a bus transfer Mr Zontul escaped from the convoy and made his own way to Athens.

On 14 August 2001 a senior coastguard officer submitted the report of the administrative inquiry. The report was based on the evidence given by officer D., who said that he had struck Mr Zontul lightly on the buttocks with his truncheon and had not reported the incident, which he regarded as insignificant. The report accepted D.'s evidence as credible, given that there had been no mention of any injury to Mr Zontul in the infirmary's patient records.

The file was forwarded to the public prosecutor at the Chania Naval Tribunal, who on 3 October 2001 ordered the commencement of criminal proceedings against five coastguard officers. In a decision of 13 December 2002 the Committals Division of the Naval Tribunal committed six officers for trial on charges of causing bodily injury, impairing health, unlawful physical or psychological violence and undermining human dignity. With regard to officer D., the Committals Division considered that his conduct had humiliated and debased the applicant and constituted a violent assault on the latter's human and sexual dignity. The trial was twice adjourned.

On 15 November 2003 Mr Zontul contacted the Greek Ombudsman. The latter wrote to the Minister of Merchant Shipping asking him to order a fresh disciplinary inquiry as the first inquiry had not taken into consideration the rape of the applicant by one of the coastguard officers. The Ombudsman pointed out that the case was damaging to the image and honour of the coastguard service and cast doubt on the country's ability to ensure respect for human rights.

In February 2004 Mr Zontul left Greece, travelling first to Turkey and then to the United Kingdom with his partner. He contacted the Greek embassy in London regularly in order to keep track of the progress of the proceedings.

On 15 October 2004 the Naval Tribunal imposed prison sentences, some of them suspended, on five coastguard officers. D. was sentenced to 30 months' imprisonment for an offence against sexual dignity. Another officer received a sentence of one year and four months' imprisonment for aiding and abetting the offence, while the three others were sentenced to prison terms of 18 months for abuse of authority. The coastguard officers appealed. On 20 June 2006 the Naval Appeals Tribunal held that D. had inflicted bodily injury and impaired the health of a person under his authority, had engaged in unlawful physical violence against that person and had seriously undermined his sexual dignity with the aim of punishing him. The Appeals Tribunal sentenced D. to a suspended

term of six months' imprisonment, which was commuted to a fine. V., who had admitted aiding and abetting the offence, was sentenced to five months' imprisonment, suspended. His sentence was also commuted to a fine.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicant complained that he had been the victim of torture, since he had been sexually abused and the authorities had refused to allow him to see a doctor who was on the premises. He also complained that the conditions of detention in the asylum seekers' camp had been poor, that the authorities had not conducted a thorough, fair and impartial investigation and, lastly, that the Appeals Tribunal had imposed inadequate penalties on the convicted coastguard officers, as it had not considered that his rape with a truncheon amounted to an aggravated form of torture.

The application was lodged with the European Court of Human Rights on 27 February 2007.

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

Nina **Vajić** (Croatia), *President*,
 Anatoly **Kovler** (Russia),
 Peer **Lorenzen** (Denmark),
 Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),
 Julia **Laffranque** (Estonia),
 Linos-Alexandre **Sicilianos** (Greece),
 Erik **Møse** (Norway), *Judges*,

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

Decision of the Court

Article 3

The Court observed that the Naval Tribunal, like the Appeals Tribunal, had clearly established the offences of assault and rape. All the courts examining the case had noted that there had been forced penetration which had caused the applicant acute physical pain. The Court reiterated that the rape of a detainee by an official of the State was to be considered as an especially grave and abhorrent form of ill-treatment. A number of international courts – the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the Inter-American Court of Human Rights – had accepted that penetration with an object amounted to an act of torture. The treatment to which Mr Zontul had been subjected, in view of its cruelty and its intentional nature, had unquestionably amounted to an act of torture from the standpoint of the Convention.

As to whether a thorough and effective investigation had been carried out in the context of the proceedings brought against the coastguard officers D. and V., the Court noted that Mr Zontul's request to be examined by a doctor after the rape incident had been refused. With regard to the internal administrative inquiry, the Court considered that the report's finding that the coastguard officers' account of events appeared credible, since the applicant's case was not mentioned in the infirmary's patient records, was not satisfactory. It observed that Mr Zontul's evidence had been falsified, as the rape of which he had complained had been recorded as a "slap" and "use of psychological violence", that the events had been summarised inaccurately and that Mr Zontul had been reported as saying that he did not wish the coastguard officers to be punished.

At the same time, the Court observed that proceedings had been instituted in the criminal courts and that D. had been convicted at first instance and on appeal. The internal administrative inquiry and the criminal proceedings had been sufficiently prompt and diligent to meet the Convention standard.

Nevertheless, the penalty imposed on D. had been insufficient in view of the fact that a fundamental Convention right had been breached. Furthermore, such a penalty could not be said to have a deterrent effect nor could it be perceived as fair by the victim. The Court considered that there had been a clear lack of proportion, given the seriousness of the treatment to which the applicant had been subjected. It therefore took the view that the Greek criminal justice system, as applied in the today's case, had not had a deterrent effect such as to prevent the torture of which the applicant had been victim, nor had it provided him with adequate redress.

Because he was no longer in Greece, and in spite of his efforts to track the progress of and participate in the proceedings, Mr Zontul had not been kept informed by the Greek authorities in such a way as to enable him to exercise his rights as a civil party and claim damages. The Greek authorities had therefore failed in their duty of information. The communications from the Greek embassy in London had been confined to informing the applicant that the hearing before the Naval Appeals Tribunal had been held and that the latter had delivered its judgment. The fact that Mr Zontul had been unable to attend the trial was of particular significance given that, after being given leave during the investigation stage to join the proceedings as a civil party, he had been prevented from fully exercising all the rights conferred on civil parties by the Code of Criminal Procedure.

Accordingly, the Court held that there had been a violation of Article 3 of the Convention, on account of the acts committed and of the failure to allow Mr Zontul to be involved in the proceedings as a civil party.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Greece was to pay the applicant 50,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,500 in respect of costs and expenses.

The judgment is available only in French.

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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.