



European Court find that conditional release system in Greece offers sufficient safeguards to protect society

In today's Chamber judgment in the case of [Choreftakis and Choreftaki v. Greece](#) (application no. 46846/08), which is not final¹, the European Court of Human Rights held, **by four votes to three**, that there had been:

No violation of Article 2 (right to life) of the European Convention on Human Rights.

The case concerned the murder of the applicants' son by a man previously convicted of intentional homicide who had been released on licence.

Principal facts

The applicants, Antonis Choreftakis et Eirini Choreftaki, are Greek nationals who were born in 1960 and 1963 respectively and live in Chania (Crete). They are the father and mother of Emmanuel Choreftakis, who was stabbed to death by a stranger in the street on 16 May 2008, at the age of 21. His assailant, Z.L., was identified and arrested two days later. Emmanuel Choreftakis' parents joined the proceedings as civil parties. Z.L. confessed to the murder, but maintained that he had not intended to kill the applicants' son. An expert examination showed that Z.L. did not suffer from any psychological disorder, but his behaviour and personality showed that he was indifferent to social conventions.

Z.L. had been convicted of several criminal offences in the past. In particular, on 10 November 1998 he had been sentenced to life imprisonment, combined with an accessory penalty of ten years and nine months, for intentional homicide, attempted robbery, unauthorised possession and carrying of weapons and driving without a licence. On 26 January 2006 the Crete Assize Court examined his application to have his sentences combined, and fixed the total sentence remaining to be served at 26 years, ten months and ten days.

On 29 August 2007 the prison director submitted an application for Z.L.'s release on licence, noting in his report that the prisoner had behaved very well in prison since 2004. The Indictment Division of the Criminal Court rejected the application, referring to disciplinary sanctions imposed on the applicant during his incarceration. Z.L. appealed.

On 23 January 2008 the Indictment Division of the Court of Appeal set the decision aside and granted Z.L. early release, together with the obligation to report to his local police station every month, and not to leave the country. The court noted that by that date Z.L. had served 15 years and one day – that is to say three fifths – of his combined sentence.

The Indictment Division of the Court of Appeal took note of the disciplinary sanctions imposed on Z.L. by the prison authorities in 1998, 1999, 2001, 2002 and 2004, for

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

physically aggressing a fellow inmate, possession of a stick and a spike, using a mobile phone in prison, attacking a fellow inmate and hitting him on the head, and possession of two knives of his own making, a penknife and a mobile phone in prison.

It also referred to a report by the prison director, dated 29 August 2007 stating that: "the prisoner was punished for various disciplinary offences committed because of his young age, which have been deleted from his personal file. Since August 2004 he has incurred no further disciplinary punishment and he is well-behaved and assiduous ... His general attitude in prison indicates that he regrets his former mistakes and will not bother the justice system again when he leaves prison".

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicants complained that the authorities had helped to set the scene for their son's murder. Their complaint was not about the man who killed their son but about the State authorities who had ordered his release on licence.

The application was lodged with the European Court of Human Rights on 17 September 2008.

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

Nina **Vajić** (Croatia), *President*,
 Elisabeth **Steiner** (Austria),
 Khanlar **Hajiyev** (Azerbaijan),
 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 2

The Court noted that Mr and Mrs Choreftakis were not complaining about the fate the courts would reserve for their son's presumed murderer but about the fact that the judicial authorities had allowed his release from prison. According to them the facts of this case showed how careless and negligent the authorities had been to release such a dangerous individual.

The Court reiterated that the first sentence of Article 2 created an obligation for the State to take appropriate steps to safeguard the lives of those within its jurisdiction. That did not mean, however, that there was a positive obligation to prevent every possibility of violence.

Not every claimed risk to life could entail for the authorities a requirement to take operational measures to prevent that risk from materialising. Before deciding that the authorities had violated their positive obligation to protect the right to life in the context of their duty to prevent and suppress offences against the person, it had to be established that they knew or ought to have known of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures which might reasonably have been expected to avoid that risk.

While emphasising that one of the essential functions of a prison sentence is to protect society, the Court recognised the legitimate aim of a policy of progressive social reintegration of people sentenced to imprisonment, including those convicted of violent crimes.²

The applicant's son had been killed because of a sequence of chance events. In the Greek judicial system a prisoner had to have served a minimum term of imprisonment to qualify for conditional release. If that condition was satisfied the law provided for "release on licence in all cases, save where it is judged for specific reasons that the prisoner's behaviour in prison makes it strictly necessary for him to remain in detention in order to prevent him from committing other offences". In the today's case the authorities had applied the relevant legislation and made sure that the requisite conditions had been satisfied. Accordingly, there had been no irregularity in the judicial procedure that led to the Z.L.'s release on licence.

In view of the great variety of systems of conditional release in Europe, the Court reiterated that questions relating to the release of prisoners fell within the power of the States concerned to determine their own criminal policy.

The Court considered that it could not criticise the rehabilitation measures applicable in Greece. Greek legislation was among those systems where conditional release was the rule and was applied almost automatically. Articles 105 and 106 of the Greek criminal code, inspired by the legitimate aim of encouraging the social reintegration of criminals, seemed to introduce a system of automatic release, granted "in all cases" provided that the prisoner had served a minimum term of imprisonment and displayed "good conduct" in prison. Disciplinary sanctions were removed from the prisoner's record between six months and two years after the event and were not taken into account in the judge's decision to grant conditional release. The conditional release order had been based on the prison director's report stating that Z.L. had behaved "very well" since 2004, and while he was aware that disciplinary sanctions had been imposed on Z.L. in the past, he thought that the breaches of discipline could be attributed to his "young age".

The Court could not ignore the murder of the applicants' son following the prisoner's early release, but there was no direct and solid causal link between the functioning of the Greek justice system and the murder.

The system of conditional release in Greece had therefore not upset the fair balance that had to be struck between the aims of social reintegration and preventing recidivism. The system of conditional release in Greece provided sufficient safeguards to protect society from people convicted of violent criminal offences. The fact that Z.L. was released on licence could not be regarded as a failure by the authorities in their duty to protect the life of the applicants' son. The Court, therefore, found by four votes to three that there had been no violation of Article 2.

Separate opinion

Judge Sicilianos, joined by Judges Steiner and Lazarova Trajkovska, expressed a dissenting opinion which is annexed to the judgment.

The judgment is available only in French.

² The Court referred on this point to Recommendation Rec(2003)22 of the Committee of Ministers of the Council of Europe: "conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community; ... it should be used in ways that are adapted to individual circumstances and consistent with the principles of justice and fairness."

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Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Emma Hellyer (tel: + 33 3 90 21 42 15)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Céline Menu-Lange (+ 33 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

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.