EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 242 (2015)
09.07.2015

Inadequate physical conditions and sanitation facilities for HIV-positive persons in Korydallos Prison Hospital

In today's **Chamber** judgment[1] in the case of **Martzaklis and Others v. Greece** (application no. 20378/13) 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) taken alone and in conjunction with Article 14 (prohibition of discrimination) of the Convention of the European Convention on Human Rights;

a violation of Article 13 (right to an effective remedy) of the Convention.

The case concerned the conditions of detention of HIV-positive persons in the psychiatric wing of Korydallos Prison Hospital.

The Court found established the inadequate physical conditions and sanitation facilities for persons detained in the prison hospital, and also the irregularities in the administration of medical treatment. It held that the applicants had been subjected to physical and mental suffering going beyond the suffering inherent in detention.

Principal facts

The applicants are thirteen Greek nationals. They are HIV positive, with a degree of disability of over 65%. They were detained or continue to be detained in the psychiatric wing of Aghios Pavlos Hospital, attached to Korydallos Prison.

In a petition sent on 5 October 2012 to the supervising prosecutor responsible for Korydallos Prison, 45 HIV-positive persons detained in the prison hospital, including the thirteen applicants, complained of their conditions of detention. They highlighted the situation of overcrowding, the unsupervised admission of new patients and the fact that they were detained with other persons suffering from contagious diseases who should have been accommodated in individual cells. The washing machine was out of order, although their clothes should have been washed every day at a high temperature, and they were not allowed to touch the bars through which the nurses delivered their medication in order to prevent any risk of infection. The HIV-positive prisoners, including the applicants, also complained to the prison hospital board but received no reply.

The applicants maintained that the cells were overcrowded and that personal living space was restricted to less than two square metres per person. The bathrooms did not comply with minimum hygiene standards, the food was low in nutritional value, the premises were inadequately heated, the air was polluted by tobacco smoke and none of the doctors present was a specialist in infectious diseases.

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.

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Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), taken alone and in conjunction with Article 14 (prohibition of discrimination), the applicants complained of their conditions of detention in Korydallos Prison Hospital, their "ghettoisation" in a separate wing of the hospital and the authorities' failure to consider whether those conditions were compatible with their state of health. Relying on Article 3, taken alone and in conjunction with Article 13 (right to an effective remedy), they alleged that they had not had access to an effective domestic remedy by which to complain of their conditions of detention and their medical treatment in the prison hospital. Under Article 3 taken in conjunction with Article 14, they complained of discriminatory treatment between HIV-positive prisoners convicted under a judicial decision and those in pre-trial detention.

The application was lodged with the European Court of Human Rights on 19 March 2013.

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

Isabelle **Berro** (Monaco), *President*,
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),
Julia **Laffranque** (Estonia),
Paulo **Pinto de Albuquerque** (Portugal),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),

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

Decision of the Court

Article 3 taken alone and in conjunction with Article 14

The Court noted that it was clear from the domestic legislation that individuals who were HIV positive and who had already developed symptoms were entitled to immediate release under Article 110A of the Criminal Code. The Court observed that at the time of their imprisonment, the applicants who had just been convicted had simply been HIV positive and as such could not claim entitlement under the provisions of Article 110A of the Criminal Code. The Court noted that the courts had not granted suspensive effect to the appeals lodged by the applicants, in accordance with Article 497 § 4 of the Code of Criminal Procedure. Hence, the courts had clearly considered that the applicants' state of health was not incompatible with detention. The Court also observed that the applicants had complained to the prison hospital board but that their complaints had not been followed up.

It followed that on 19 March 2013, the date on which their application was lodged, and in view of their state of health at the time, the applicants had not had available to them a remedy enabling them to lodge an effective complaint concerning their conditions of detention in Korydallos Prison Hospital or to apply for conditional release.

The Court reiterated that Article 3 compelled the State to ensure that prisoners were detained in conditions that were compatible with respect for human dignity, that the manner and method of the execution of the measure did not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being were adequately secured by, among other things, providing them with the requisite medical assistance.

The Court also reiterated the duty of the domestic authorities to ensure that the diagnosis and treatment of illness in prison, including in prison hospitals, was carried out promptly and was appropriate.

The Court noted that the Government did not dispute the specific allegations made by the applicants. The latter complained that the cells were overcrowded, with personal living space of less than two square metres per person. They alleged that the bathrooms did not comply with minimum hygiene standards and that the food was low in nutritional value, to the point of dangerously weakening persons who were HIV positive and were liable to develop symptoms. The premises were inadequately heated and the hospital did not have a doctor specialising in infectious diseases. The supply of the medication prescribed to some of the applicants was frequently interrupted without explanation for periods ranging from a week to a month.

The Court could not criticise the authorities' initial intention to move the HIV-positive prisoners to the prison hospital in order to provide them with a greater degree of comfort and regular supervision of their medical treatment. However, as these had not materialised, the move to the Korydallos hospital had not had the intended effect.

The applicants' allegations were corroborated at national level by the findings of the Ombudsman and the comments made by the Minister of Justice and the public prosecutor at the Court of Cassation, and at international level by the Parliamentary Assembly of the Council of Europe and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

In the circumstances, the Court found established the inadequate physical conditions and sanitation facilities for persons detained in the prison hospital, and also the irregularities in the administration of the appropriate medical treatment. It held that the applicants had been subjected to physical and mental suffering going beyond the suffering inherent in detention and that their segregation had not been objectively and reasonably justified.

The Court held that there had been a violation of Article 3, taken alone and in conjunction with Article 14 of the Convention.

Article 3 taken in conjunction with Article 13

In the light of its previous finding – namely, that on 19 March 2013, the date on which their application was lodged, and in view of their state of health at the time, the applicants had not had available to them a remedy enabling them to lodge an effective complaint concerning their conditions of detention in Korydallos Prison Hospital or to apply for conditional release – the Court held that the domestic remedies did not satisfy the requirements of Article 13 of the Convention.

Just satisfaction (Article 41)

The Court held that Greece was to pay 10,000 euros (EUR) to each of the applicants in respect of non-pecuniary damage and EUR 2,500 to the applicants jointly 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.