



The investigation into the helicopter crash involving the Patriarch of Alexandria and his entourage was effective

In today's Chamber judgment in the case **Papapetrou and Others v. Greece** (application no. 17380/09), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

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

The application was lodged by relatives of the Patriarch of Alexandria and of members of his entourage who died in a helicopter crash in 2004. They complained in particular of shortcomings in the investigation into the causes of the crash.

Principal facts

The applicants are seven Cypriot nationals who live in Nicosia (Cyprus) and three Greek nationals who live on the island of Lesbos (Greece).

On 11 September 2004 a helicopter in which the Orthodox Patriarch of Alexandria and all Africa, Petros VII, and 16 members of his entourage were travelling crashed into the Aegean Sea near Mount Athos, where the patriarch had been due to make his first official visit.

The same day the public prosecutor at the Thessaloniki Military Court instituted criminal proceedings for causing death by negligence, endangering aircraft safety, failure to comply with a military order and breach of the safety rules on aircraft maintenance in peacetime. He also ordered the opening of an investigation by a military judge of the same court.

A few days later the Minister of National Defence ordered the setting-up of an investigating committee tasked with conducting an investigation into the crash and recovering the wreckage of the aircraft. The recovery operation was carried out between 14 September 2004 and 22 November 2005 and was filmed by the armed forces. One of the two black boxes was retrieved, containing the aircraft's full mechanical history since its delivery to the armed forces.

In 2004 an American military delegation examined parts of the wreckage and drew up a report which was not sent to the investigating committee. In July 2006 some important pieces of wreckage were transferred to the United States, to military laboratories and laboratories owned by Boeing, the company that had manufactured the helicopter. The

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

applicants alleged that the black box which had been recovered was destroyed, purportedly by accident, while it was being examined in the United States.

The applicants joined the proceedings as civil parties. They sought to have a search undertaken for the second black box and the front part of the sunken helicopter's rotor. Basing their arguments on a circular issued by Boeing, the helicopter's manufacturers, they alleged that the rotor in question had been part of a batch identified in the circular as defective.

The military investigating judge appointed a commission of 13 experts (members of the armed forces, forensic specialists and scientists) to study the wreckage of the helicopter and determine the causes of the crash. The commission produced a detailed report which it submitted to the investigating judge in March 2007 and which stated, among other findings, that the co-pilot had not satisfied the safety requirements for the flight as his health record and his professional competence tests had not been up to date. The commission further stressed that the main difficulty in producing the report had been the absence of the supposedly defective part of the helicopter which had not been recovered.

On 12 July 2006 the Committals Division of the Thessaloniki Military Court refused a request from the applicants for the victims' bodies to be exhumed with a view to conducting a second autopsy. The Committals Division found that histological tests carried out 22 months after the burial would serve no purpose.

The advisory committee set up in the United States sent its report to the Thessaloniki military judge; it did not identify any specific cause for the crash.

On 12 May 2008 the Committals Division of the Military Court, in an order accompanied by detailed reasons, held that it had not been possible to identify the exact causes of the helicopter crash, and that the co-pilot might have been partly responsible if he had indeed lacked the necessary professional competence. Taking the view that it was impossible to prove that a punishable offence had been committed, it applied Article 79 of the Code of Criminal Procedure (mistake as to the identity of the accused) by analogy and held that the prosecution was null and void². It observed that the rotors had been inspected before the flight in full compliance with the safety rules and that the helicopter had therefore been authorised to fly without restrictions.

On 11 May 2009 the public prosecutor at the Court of Review rejected the applicants' request to commence a fresh investigation into the case on the basis of 10 documents not included in the file. The public prosecutor found that the documents in question did not alter the facts or the assessment of the facts as established in the court order. The application of Article 79 of the Code of Criminal Procedure had rendered the decision final, ruling out re-examination of the case in the absence of fresh evidence.

Complaints, procedure and composition of the Court

Relying on Article 2, the applicants complained, in particular, of the authorities' failure to identify the causes of the crash in which their relatives had died and of their finding that no punishable criminal offence had been committed.

The application was lodged with the European Court of Human Rights on 20 March 2009.

² Under the terms of Article 79 of the Code of Criminal Procedure, "where it is clear that the proceedings have been brought against an individual as the result of mistaken identity, the judge shall declare the prosecution null and void." According to the settled case-law of the criminal courts, that provision is applied by analogy where the person being prosecuted has already died or where it is not possible to prove the commission of the offence for which proceedings have been brought either against a named individual or against a person or persons unknown.

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

Nina **Vajić** (Croatia), *President*,
Anatoly **Kovler** (Russia),
Peer **Lorenzen** (Denmark),
George **Nicolaou** (Cyprus),
Mirjana **Lazarova Trajkovska** ("the former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece), *Judges*,

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

Decision of the Court

The Court pointed out that the obligation to protect the right to life entailed guaranteeing that the State agents or bodies involved were held accountable for deaths occurring under their responsibility. For an investigation into alleged unlawful killing by State agents to be effective, it was generally necessary for those responsible for and carrying out the investigation to be independent from those implicated in the events, and also for all reasonable steps to have been taken to identify and punish those responsible; that was an obligation not of results, but of means. Any deficiency in the investigation might lead to the conclusion that it had been ineffective.

The Court observed that the public prosecutor at the Thessaloniki Military Court had commenced criminal proceedings straight away on the day of the crash and had ordered the opening of an investigation by a judge of the same military court. A few days later the Minister of National Defence had ordered the setting-up of an investigating committee, and in 2004 an American military delegation had travelled to Greece to conduct investigations and had issued a report.

The Court noted that the wreckage of the helicopter had been recovered by the army immediately after the crash and that the most important parts had been sent to the United States for forensic examination, following a procedure frequently used in the case of aircraft manufactured and serviced by an American company. As to the main problem identified by the commission of experts (the fact that a rotor was missing), the Court observed that the order of 12 May 2008 by the Committals Division stated that the helicopter's rotors had been serviced regularly, which explained why the helicopter had been given clearance to fly without restrictions.

The Court observed that the public prosecutor's decision not to open a fresh investigation on the basis of the 10 new documents produced by the applicants had been justified on the grounds that the documents did not constitute fresh evidence warranting re-examination of the case. The Court therefore found that the Greek courts' application by analogy of Article 79 of the Code of Criminal Procedure had not been arbitrary, and pointed out that it was not its task to substitute its assessment for that of the domestic authorities.

As to the question of the independence of the investigating authorities, the Court remarked that the committees had been made up of experts from different fields, both officers and non-commissioned officers from the air force (specialising in the type of helicopter in question) and civilians. All those concerned had had an interest in helping to shed light on the causes of the crash.

The Court further noted that the applicants had duly participated in the investigation with a view to best defending their interests. In particular, they had had access to the documents and forensic reports transmitted to the judicial authorities. They had also

submitted a report setting out their observations on the findings of the various expert bodies.

Lastly, although the authorities had not granted the applicants' request for the bodies to be exhumed with a view to a further autopsy, the Court stressed that the Committals Division had given sufficient reasons for that decision: re-examining the bodies at such a late stage would have served no purpose as it would have added nothing to the findings of the first autopsy.

Accordingly, the investigation conducted by the authorities could be said to have been "effective" and Article 2 had therefore been complied with.

The judgment is available only in French.

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Press contacts

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

Frédéric Dolt (tel: + 33 3 90 21 53 39)

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)

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

Denis Lambert (tel: 33 3 88 41 41 09)

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.