



Sanction imposed on police officer for torture was disproportionately lenient

In today's **Chamber judgment**¹ in the case of **Sidiropoulos and Papakostas v. Greece** (application no. 33349/10) 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, under its procedural head;

a violation of Article 6 § 1 (right to a fair hearing within a reasonable time) on account of the length of the Assize Court proceedings; and

a violation of Article 13 (right to an effective remedy) on account of the absence of an effective remedy by which to complain of the length of proceedings.

The case concerned criminal proceedings leading to the conviction of a police officer for torturing Mr Sidiropoulos and Mr Papakostas, and in particular the sanctions imposed on the offender: a five-year prison sentence commuted to a fine of five euros per day of detention, payable in 36 instalments over three years. An administrative investigation was closed.

The Court found in particular that the criminal and disciplinary system had proved to be seriously lacking in rigour and incapable of having a deterrent effect to ensure the effective prevention of illegal acts such as torture. The outcome of the proceedings against the police officer had not provided appropriate redress for the breach of the right enshrined in Article 3 of the Convention, as the offender had never suffered from the consequences of his actions as a police officer and the leniency of the criminal sanction had been manifestly disproportionate having regard to the seriousness of the treatment inflicted on the applicants.

The Court also found that the length of the criminal proceedings (eight years for one level of jurisdiction) had not been reasonable and that Mr Sidiropoulos and Mr Papakostas had not had a domestic remedy by which to obtain redress for this complaint.

Principal facts

The applicants, Georgios Sidiropoulos and Ioannis Papakostas, are Greek nationals who were born in 1985 and 1982. They live in Aspropyrgos (Greece).

Mr Sidiropoulos and Mr Papakostas were arrested separately by the police on the night of 13 to 14 August 2002 for various road traffic offenses. They were both taken to the police station in Aspropyrgos for questioning by police officer C.E. They subsequently complained of C.E.'s conduct, indicating that during the questioning he had applied a black device emitting an electric current to different parts of their bodies. Injuries were reported by doctors.

An administrative investigation was opened and then closed in July 2003, as no suspicious objects had been found at the police officer's home. The officer, however, did give the authorities a black portable transceiver which had been at his disposal during the questioning of Mr Papakostas. C.E.

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.

was ordered to pay a fine of 100 euros (EUR) for using a transceiver, without prior authorisation, in the course of his duties.

Criminal proceedings were also brought against C.E., and Mr Sidiropoulos and Mr Papakostas joined the proceedings as civil parties. In December 2011 the Athens Assize Court found C.E. guilty of torturing persons under his authority in the course of his duties. In February 2014 the Athens Criminal Court of Appeal upheld the first-instance judgment, sentencing C.E. to five years' imprisonment, commuted to a monetary penalty of EUR 5 per day of detention, payable in 36 monthly instalments over three years. The Court of Appeal took the view that the pecuniary sanction was sufficient to deter him from committing other offences in view of his financial situation and his personality. In the meantime, in 2010, it was decided to remove C.E. from the police force, in accordance with his request. Upon his departure, C.E. was promoted from master sergeant to warrant officer.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of torture and inhuman or degrading treatment), 6 § 1 (right to a fair hearing within a reasonable time) and 13 (right to an effective remedy), Mr Sidiropoulos and Mr Papakostas complained about the sanctions imposed on the offender, the length of the criminal proceedings and the lack of an effective remedy.

The application was lodged with the European Court of Human Rights on 17 May 2010.

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

Kristina **Pardalos** (San Marino), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** ("the former Yugoslav Republic of Macedonia"),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

[Article 3 \(prohibition of torture and inhuman or degrading treatment\)](#)

The Court noted that two sets of proceedings (criminal and administrative) had been opened and that they could have had consequences for the criminal or personal situation of the offender (C.E.).

1. Criminal proceedings

The liability of C.E. for the alleged acts had been recognised by the national courts and the proceedings had resulted in a conviction for torture by electric shocks. As regards the penalty imposed, the fact that Mr Sidiropoulos had been a minor at the material time was not taken into account. The Court of Appeal, finding mitigating circumstances, had sentenced C.E. to five years' imprisonment, taking the view that the offence committed by C.E. was one of particular moral indignity for the "legal civilisation" and for the "personal rights" of Mr Sidiropoulos and Mr Papakostas. It then commuted this sentence to a fine of EUR 5 per day of imprisonment, when the maximum provided for by domestic law was EUR 100 per day, payable in 36 monthly instalments. Thus the Court of Appeal only took into account the financial situation of the police officer C.E. and the question whether this sentence was capable of preventing him from committing such offences in the future.

In the Court's view, such a penalty could not be considered to deter the offender or other State agents from committing similar offences, or be perceived as fair by the victims, all the more so as the acts complained of had been characterised as torture. The purpose of the domestic law provisions on punishment for torture inflicted by State agents was, however, to ensure genuine protection of individuals, in particular where those concerned were under the sole supervision of the police, and to establish effective measures to punish and prevent ill-treatment by State agents. In sum, the Court considered that the leniency of the penalty imposed on police officer C.E. had been manifestly disproportionate in view of the seriousness of the treatment inflicted on Mr Sidiropoulos and Mr Papakostas.

2. The administrative investigation

The case had been closed with respect to the use of an electric shock device and C.E. had been fined EUR 100 for using a portable transceiver without prior authorisation. This procedure had ended before the completion of the criminal proceedings and both sets of proceedings had reached substantially different conclusions. C.E. had never suffered from the consequences of his actions as a police officer, as he had left the police force of his own accord, having served with it for eight years after the facts. Owing to the length of the criminal proceedings, it had been impossible to resume the disciplinary procedure as C.E. had left the police in the meantime. Lastly, on his departure, C.E. had been promoted, with all the moral and pecuniary implications involved (C.E. was promoted from master sergeant to warrant officer).

Consequently, the Court found that the criminal and disciplinary system, as applied in the present case, had proved to be seriously lacking in rigour and incapable of having a deterrent effect to ensure the effective prevention of illegal acts such as those complained of by Mr Sidiropoulos and Mr Papakostas (torture). The outcome of the proceedings against the police officer had not provided appropriate redress for the breach of the right enshrined in Article 3 of the Convention. **There had thus been a violation of Article 3, under its procedural head.**

Article 6 (right to a fair hearing within a reasonable time) and Article 13 (right to an effective remedy)

Referring to its *Michelioudakis v. Greece* judgment², the Court noted that the proceedings had lasted for eight years at one level of jurisdictions and that Mr Sidiropoulos and Mr Papakostas had not had any effective remedy by which to obtain redress for the breach of their right to have their case determined within a reasonable time. **There had been a violation of Articles 6 § 1 and 13 of the Convention.**

Just satisfaction (Article 41)

The Court held that Greece was to pay each of the applicants EUR 26,000 in respect of non-pecuniary damage and EUR 2,000, jointly, for costs and expenses.

The judgment is available only in French.

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² *Michelioudakis c. Grèce*, n° 54447/10, §§ 54 et 68-70, 3 avril 2012

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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.