

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

THIRD SECTION

CASE OF POULOPOULOS v. GREECE

(Application no. 27936/18)

JUDGMENT

STRASBOURG

20 March 2025

This judgment is final but it may be subject to editorial revision.



In the case of Poulopoulos v. Greece,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Oddný Mjöll Arnardóttir*, President*,
Úna Ní Raifeartaigh,
Mateja Đurović*, judges*,
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 27 February 2025,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application against Greece lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 15 June 2018.

2. The applicant was represented by Ms E.-L. Koutra, lawyer practising in Athens.

3. The Greek Government ("the Government") were given notice of the application.

THE FACTS

4. The applicant, a terminally ill patient, complained about poor conditions of detention at the Korydallos Prison Hospital and of the lack of an effective remedy in this respect. He refered to Articles 3 and 13 of the Convention.

5. On 19 January 2017 the applicant was convicted of robbery. He was sent to serve his sentence at Larissa Prison.

6. Following his request, he was transferred on 1 March 2018 to the Korydallos Prison Hospital ("the Prison Hospital"). After his transfer, he was immediately taken to the Attikon Hospital, where he remained until 9 March 2018. On that date, he was diagnosed with diffuse hepatic cancer, as well as with hepatic cirrhosis (stage CHILD PUGH C) due to an HCV infection.

7. The applicant was treated at the Agia Varvara Hospital on 19 March, and again at the Attikon Hospital between 21 and 28 March 2018.

8. On 19 March 2018 the applicant lodged a request for release on medical grounds under Article 110A of the Criminal Code.

9. On 20 June 2018 the prosecutor proposed that the Piraeus Indictments Division grant the applicant's request on the grounds that he could not receive long term hospitalisation at the Prison Hospital, required by his medical condition.

10. Having considered that medical documents submitted by a prosecutor were insufficient to make the finding, on 9 July 2018 the Piraeus Indictments Division appointed an infectiologist to assess whether the applicant had

terminal-stage cancer or a handicap superior to 67%. After the expert resigned due to a lack of required expertise, on 20 July 2018 the court appointed as expert the hepatologist who had been treating the applicant at the Attikon Hospital. On 3 August 2018 the expert reiterated her findings regarding the applicant's non-treatable condition made during his hospitalisation at the Attikon Hospital in March 2018 and corroborated by the examination carried out on 30 July 2018.

11. On 17 August 2018 the court ordered the applicant's release. The applicant was released on the same day. He died on 12 September 2019.

12. The applicant complained about poor conditions of detention at the Prison Hospital between 1 March and 27 August 2018, in particular, about overcrowding, poor hygiene and absence of the prescribed special food regime, and of the lack of an effective remedy in that respect. He alleged that those conditions were incompatible with his medical condition.

THE LAW

I. LOCUS STANDI

13. On 18 May and 19 June 2021 the applicant's representative informed the Court that the applicant had died and, acting as the legal representative of the applicant's siblings, Ms Maria Poulopoulou and Mr Ilias Poulopoulos, confirmed their intention to pursue the present application. She submitted a copy of the applicant's death certificate and a certificate confirming that Ms Maria Poulopoulou and Mr Ilias Poulopoulos were the applicant's siblings. She also submitted affidavits indicating that they had cared for and had provided material and moral support to the applicant while he was in detention and after his release.

14. The Government contested that Ms Maria Poulopoulou and Mr Ilias Poulopoulos had standing to pursue the application, notably as they had not substantiated the fact that they were the applicant's heirs, and as the rights in question were not transferable in nature.

15. The Court reiterates that the transferable nature or not of the right arising from Article 3 cannot be decisive because the moral dimension of the case and the involvement of the applicant's heirs during the incarceration of the latter are sufficient to give rise to a legitimate interest in ensuring that justice is done (see *Tsokas and Others v. Greece*, no. 41513/12, §§ 73-74, 28 May 2014). In the absence of the Government's submission to the contrary as regards their involvement, the Court finds that Ms Maria Poulopoulou and Mr Ilias Poulopoulos have standing to continue the proceedings on behalf of late Mr Poulopoulos.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

16. The applicant complained of poor conditions of his detention, including about overcrowding at the Prison Hospital, and about the failure to provide him with a hepatic food regime prescribed by the Attikon Hospital. He relied on Article 3 of the Convention.

17. The Government objected, having noted that the application was premature, as it had been lodged with the Court before the Piraeus Indictments Division ordered his release. The Court notes that it accepts that the last stage of domestic remedies may be reached shortly after the lodging of the application but before it determines the issue of admissibility (see *Molla Sali v. Greece* [GC], no. 20452/14, § 90, 19 December 2018, with further references). Accordingly, it dismisses the objection.

18. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

19. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, ECHR 2016).

20. In previous cases (see *Zabelos and Others v. Greece*, no. 1167/15, §§ 81-86, 17 May 2018, and *Martzaklis and Others v. Greece***,** no. 20378/13, §§ 67-69 and 75, 9 July 2015), the Court found a violation of Article 3 in respect of conditions of detention in the Prison Hospital on account of the same defects complained of by the applicant.

21. The Court refers to its standard of proof and methods for assessment of evidence in conditions of detention cases (Muršić, cited above, §§ 127-28). In particular, in reply to a prima facie case of ill-treatment, complained of by the applicant, the Government is expected to provide primary evidence showing cell floor plans and the actual number of inmates during the specific periods of the applicant's detention (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 123, 10 January 2012, and, for example, *Sparysh and Kutsmand v. Ukraine* [Committee], nos. 49709/18 and 49870/18, 12 September 2024). In the present case, the Government did not provide any primary evidence regarding the applicant's conditions of detention for the period complained of. The Court reiterates that certificates established by the impugned detention facility are of little evidentiary value when they do not contain references to the original prison documentation and are apparently based on personal recollections rather than on any objective data (see *Ananyev and Others*, cited above, § 124). It further notes that the applicant's complaints, in particular as regards overcrowding and lack of hygiene in the sanitation facilities, are corroborated by the report of the European Committee for the Prevention of Torture (CPT/Inf(2020)15) drawn up following its visit of the Prison Hospital in March and April 2019. In these circumstances, the Court finds the inadequate conditions of the applicant's

detention established, notably as regards the overcrowding, poor hygiene and absence of the appropriate food regime.

22. The above considerations are sufficient for the Court to conclude that the conditions of the applicant's detention were incompatible with Article 3 of the Convention. The Court gives particular weight to the applicant's state of serious vulnerability as a terminally ill prisoner, noting that the domestic court ordered his release on account of his state of health.

23. Accordingly, there has been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN RELATION TO THE COMPLAINTS ABOUT POOR CONDITIONS OF DETENTION

24. The applicants also raised a complaint under Article 13 of the Convention complaining about the lack of a domestic effective remedy to air his complaints about the inadequate conditions of detention in the Prison Hospital.

25. This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds. Accordingly, it must be declared admissible.

26. The Court finds that the applicant had an "arguable claim" for the purposes of Article 13 of the Convention, considering that it found a violation of Article 3 (see paragraph 23 above).

27. The Government argued that the applicant had at his disposal the remedies under Article 6 of the Penitentiary Code and Article 572 of the Code of Criminal Procedure. The Court reiterates that it does not view the above remedies as effective in connection to the applicant's allegation that he was individually affected by the general conditions of detention at the Prison Hospital, such as overcrowding, insufficient nutrition and lack of hygiene (see *Tsokas and Others*, cited above, § 80, with further reference). As regards the applicant's complaint on the incompatibility of his detention with his health condition, the Court notes that the applicant's requests for transfer to the Prison Hospital and for release on medical grounds were both granted (ibid., *mutatis mutandis*, §§ 79 and 81). It reiterates that an applicant who has exhausted a remedy that is apparently effective and sufficient cannot also be required to have tried others that were available but probably no more likely to be successful (see *Alković v. Montenegro*, no. 66895/10, § 51, 5 December 2017, with further references).

28. Turning to the applicant's request for release under Article 110A of the Criminal Code, the Court considers that the length of the relevant proceedings cannot be considered reasonable. It reiterates that it has previously found a violation of Article 13 taken in conjunction with Article 3 in a case where such proceedings lasted approximately ten months (see *Kalandia*, cited above, §§ 95-97), and a violation of Article 5 § 4 where they

lasted 47 days (see *Christodoulou and Others v. Greece*, no. 80452/12, § 70, 5 June 2014). In the present case, it notes that the proceedings lasted approximately five months and that more than four months elapsed between the submission of the request for release and the appointment of an expert hepatologist (see paragraphs 10 and 11 above). The Court reiterates that such a remedy should be examined within a time frame capable of taking into account the prisoners' dignity and specific needs and, if necessary, put an end to the suffering they endure as quickly as possible, especially since their detention often takes place in conditions incompatible with Article 3 of the Convention. Considering the above, it finds that the remedy's effectiveness was compromised due to the excessive length of the relevant proceedings (see *Kalandia*, cited above, §§ 96-97).

29. Accordingly, there has been a violation of Article 13 of the Convention.

IV. OTHER COMPLAINTS

30. The applicant also complained under Article 3 of the Convention that the medical treatment he received in the Prison Hospital was inadequate. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no.47848/08, § 156, ECHR 2014).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. The applicant claimed 250,000 euros (EUR) in respect of non-pecuniary damage, and EUR 12,000 in respect of costs and expenses incurred before the Court. On 5 August 2024 the Court received an additional claim for just satisfaction in the amount of EUR 620 in respect of costs and expenses.

32. The Government contested the above sums as excessive and unjustified.

33. The Court considers it reasonable to make an award of EUR 8,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount (see *Kalandia v. Greece*, cited above, § 101), and dismisses the remainder of the applicant's claim for compensation of non-pecuniary damages.

34. As regards costs and expenses, the Court notes that the applicant did not produce any legally binding agreement with his representative, or any relevant invoice to that effect. It therefore dismisses the claim under this head as unfounded.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* that Ms Maria Poulopoulou and Mr Ilias Poulopoulos have standing to pursue the proceedings before the Court in the late applicant's stead;

2. *Declares* the complaints under Articles 3 and 13 of the Convention about the poor conditions of the applicant's detention in the Prison Hospital and lack of an effective domestic remedy in that regard admissible and *finds* that there is no need to examine separately the remaining complaints;

3. *Holds* that there has been a violation of Article 3 of the Convention in view of the poor conditions of detention of the applicant in the Prison Hospital;

4. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective domestic remedies to complain about poor conditions of detention;

5. *Holds*
   (a) that the respondent State is to pay, jointly, to the applicant's heirs, Mr Ilias Poulopoulos and Ms Maria Poulopoulou, within three months, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Oddný Mjöll Arnardóttir President

APPENDIX

Application raising complaints under Article 3 of the Convention (inadequate conditions of detention and lack of effective domestic remedy in that regard)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Applicant's account of his conditions of detention	Government's account of the applicant's conditions of detention
27936/18 15/06/2018	**Charalambos POULOPOULOS** 1970 Died in 2019	Koutra Electra-Leda Athens	-Serious overcrowding (less than 3 sq. m of personal space); - serious lack of hygiene regarding the common toilets and showers; - dirty and mouldy mattresses, infested with bedbugs; - insufficient food regime despite prescription by the Attikon Hospital	- Sufficient personal space, ranging from 6.4 to 7.2 sq. m; - sanitary facilities in good condition; - prison menu determined weekly following medical inspection; - adequate medical care in the Prison Hospital (integrated in the national healthcare system, adequately staffed and providing first-level treatment and short-term hospitalisation) and in civilian hospitals (the applicant was treated by a hepatologist in the Attikon Hospital).

Heir(s) in application no. 27936/18

Decedent	Heir
Charalambos POULOPOULOS Died in 2019	Ilias POULOPOULOS Born in 1969
	Maria POULOPOULOU Born in 1977