



Detainee who was assaulted and raped in Serbian prison suffered breaches of his Article 3 rights

In today's **Chamber judgment**¹ in the case of [Gjini v. Serbia](#) (application no. 1128/16) 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 owing to the authorities' failure to protect the applicant from being ill-treated by his prison cell mates, and

a violation of Article 3 because of the lack of an investigation into his complaints.

The case concerned inter-prisoner violence, in particular, the applicant's complaint that he was assaulted, raped and humiliated by his cell mates in prison, that the prison failed to protect him and that the prison authorities failed to investigate his complaints properly.

The Court found in particular that the applicant had made credible claims of being a victim of violence from his cellmates in prison. It should have been obvious to prison staff at the time of the events that he was being ill-treated, but they had done nothing to protect him.

The State had also failed to carry out an investigation or launch a prosecution over his complaints, even though the authorities must have been aware of them because he won compensation in civil proceedings and complained to various bodies about what had happened to him.

Principal facts

The applicant, Fabian Gjini, is a Croatian national who was born in 1972 and lives in Crikvenica (Croatia).

Mr Gjini was arrested in August 2008 for trying to use an allegedly counterfeit 10 euro note at a Serbian-Croatian border toll. Unable to pay the required 6,000 euros (EUR) in bail, he was placed in detention pending the outcome of the investigation. He spent 31 days in Sremska Mitrovica Prison before being released when the criminal case was ended after the 10 euro note was found to be genuine.

Mr Gjini stated that during his period in detention he was subjected to assault and humiliation by his cellmates, including being raped after he was drugged.

The ill-treatment and humiliation allegedly began as soon as he was placed in prison, with his cellmates forcing him to mop the floor, not allowing him to raise his head and kicking him from time to time. He was also made to stand in cold water, which caused the skin to peel off his feet. The cellmates, who apparently thought he was a police informer, said they would stage his suicide if he informed the authorities about the ill-treatment.

His cellmates later found out about his Croatian and Albanian origin and began to treat him even worse. They forced his head into a bucket of water and then made him take a cold shower. He was

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.

made to fight another prisoner and was then beaten by his cellmates for hitting a Serb. He was also made to sing Serbian nationalist songs. He stated that the prison guards knew what was going on.

He could not remember exactly when the rape happened but recounted that he was given a glass of water and then lost consciousness. When he came to, his eyebrows had been shaved – a sign in prison that someone has been raped – and he had a painful anus with blood in his stools. His head had also been shaved.

His lawyer, noticing a change in Mr Gjini's behaviour, asked for him to be moved to another cell, after which the ill-treatment ended. After his release Mr Gjini began civil proceedings for compensation for the fear, physical pain and mental anxiety caused by his treatment in prison. In judgments delivered in 2013 he was awarded approximately EUR 2,350 in compensation.

He lodged a constitutional appeal in January 2014, which was rejected in June 2015.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman and degrading treatment), the applicant complained about being subjected to ill-treatment by his cellmates and that the authorities had failed to protect him or provide an effective response to his allegations.

The application was lodged with the European Court of Human Rights on 12 December 2015.

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

Vincent A. **De Gaetano** (Malta), *President*,
Branko **Lubarda** (Serbia),
Helen **Keller** (Switzerland),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),
Jolien **Schukking** (the Netherlands),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Admissibility

The Government objected that Mr Gjini could no longer claim to be a victim of a violation of the Convention as he had been awarded compensation. The applicant argued that the sum he had been given was not sufficient. The Court found that the domestic award was less than the level of just satisfaction it awarded in such cases and Mr Gjini could legitimately pursue his case in Strasbourg.

The Government also argued that Mr Gjini had not exhausted domestic remedies as he had failed properly to substantiate his Constitutional Court complaint. The Court found that the applicant had specifically complained of ill-treatment that had happened with "the silent approval of officials" who had known the situation they had placed him in. He had therefore formulated his constitutional complaints properly and the Government's objection had to be rejected.

The Government objected in addition that Mr Gjini had not exhausted domestic remedies for his submission that the authorities had failed to react in an effective manner as he had never lodged a criminal complaint against those responsible for ill-treating him. The Court held that this objection went to the heart of the applicant's complaint and joined it to the merits of the case.

Merits

The Court noted that the parties were in dispute over whether the applicant had been ill-treated by his cellmates or not. However, the domestic courts had found that Mr Gjini had lost 10% of his physical capacity owing to the events in the prison and the Court held that that conclusion was enough to establish that he had suffered such ill-treatment and that Article 3 applied to his case.

The Government had denied any responsibility for what had happened to Mr Gjini through any failure or omission on the part of the prison authorities, in particular because he had not lodged any official complaint at the time.

However, the Court noted that the Committee for the Prevention of Torture (CPT) had reported serious incidences of inter-prisoner violence at Sremska Mitrovica Prison and that no action whatsoever had been taken by the prison or State authorities to deal with that problem. The CPT had also criticised the failure of prison medical personnel to record injuries caused by such violence.

Furthermore, prison staff should have been aware of incidents involving Mr Gjini, in particular that his eyebrows had been shaved off, that he had a strange haircut and that his skin had been damaged. The authorities had either failed to notice or had failed to react to such signs, and had not provided a safe environment for him. They had thus failed to detect, prevent, or monitor the violence against him. For those reasons there had been a violation of Article 3.

The Court went on to examine whether the authorities had investigated the applicant's complaints properly, under the heading of the procedural requirement of Article 3.

While it was true that the applicant had never lodged a criminal complaint with the police, prosecutor's office or prison, his lawyer had turned to the prison authorities at the time of the events in question and Mr Gjini had been moved to another cell.

Furthermore, the applicant had later complained to the civil courts and written to the President, the Ombudsman and the Ministry of Justice about his ill-treatment, but no official investigation had ever taken place. There had been nothing in Serbian law to prevent such an investigation, indeed, the law required that public authorities had to report prosecutable offences they became aware of.

The Court concluded by dismissing the Government's objection of non-exhaustion of domestic remedies owing to the absence of a criminal complaint by the applicant and found that there had been another violation of Article 3 owing to the lack of an effective investigation.

Just satisfaction (Article 41)

Taking account of the domestic award, the Court held by five votes to two that Serbia was to pay the applicant 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 for costs and expenses.

Separate opinions

Judges Pastor Vilanova and Serghides expressed a joint partly dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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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.