



Detention conditions of HIV/AIDS sufferers were satisfactory in Thebes prison but the remedy was ineffective

The case concerned the conditions of detention of six applicants who are HIV/AIDS sufferers, who were held in the women's prison of Thebes (Greece) before or after final conviction, and the lack of an effective remedy by which to complain about those conditions.

In today's **Chamber judgment**¹ in the case of [Dikaïou and Others v. Greece](#) (application no. 77457/13) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 3 (prohibition of torture and inhuman or degrading treatment) taken separately and together with **Article 14 (prohibition of discrimination)** of the European Convention on Human Rights; and

a violation of Article 13 (right to an effective remedy) taken together with Article 3.

The Court found that the general conditions of the applicants' detention had been satisfactory. It also took the view that their placement together in the same collective cell pursued a legitimate aim (considerations of efficiency in handling the group and in prison management) and it did not detect any intention on the part of the authorities to segregate them. It observed lastly that the authorities had not failed in their duty to provide the applicants with medical assistance in accordance with their health-related needs.

As to the remedies under Greek law concerning conditions of detention, the Court referred to its established case-law in such matters, especially concerning Greece. It found that neither the preventive remedy nor the compensatory remedy under Greek law had been effective in enabling the applicants to complain about the conditions in which they were held.

The Court found no difference in treatment between prisoners held before and after a final conviction with regard to the Greek legislation governing release on health grounds. It declared this complaint manifestly ill-founded.

Principal facts

The applicants are three Greek nationals, a Russian national, a Tanzanian national and a Rwandan national. They were born between 1966 and 1988.

They were held at different times in Thebes prison, between 2012 and 2015, before or after a final conviction.

In October 2013 they wrote to the prosecutor supervising the prison alleging a violation of their rights under various Convention Articles on account of the conditions of their detention as HIV/AIDS sufferers. They complained about a lack of appropriate medical and pharmaceutical care, insufficient doctors and individual medical support, and of their stigmatisation as a result of being placed together in the same collective cell. They also complained about the general conditions of their detention resulting from problems with heating, the supply of hot water and running water, 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.

food and the duration of outdoor exercise. Those applicants who were imprisoned prior to final conviction alleged that they were treated differently because they could not apply for release on health grounds, under the Criminal Code (Article 110A), unlike HIV/AIDS sufferers who were serving a final sentence.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 14 (prohibition of discrimination), the applicants complained of a lack of care adapted to their state of health. They also argued that they were discriminated against for having HIV/AIDS, on account of being placed together in the same collective cell, entailing their “ghettoisation and stigmatisation”.

Relying on Article 13 (right to an effective remedy), the applicants complained that there was no effective remedy by which to submit their complaints under Article 3 in respect of their detention conditions and medical treatment.

Relying on Article 14 (prohibition of discrimination) in conjunction with Article 3, the applicants who were on remand or imprisoned pending an appeal complained that they had been treated differently from those serving final sentences, as they could not apply for release on health grounds, under Article 110 A of the Criminal Code.

The application was lodged with the European Court of Human Rights on 5 December 2013.

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

Ksenija **Turković** (Croatia), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),

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

Decision of the Court

[Article 3 \(prohibition of torture and inhuman or degrading treatment\) and Article 14 \(prohibition of discrimination\): complaints about conditions of detention](#)

General conditions of detention: The Court noted that the applicants had had sufficient personal space and that following their letter to the public prosecutor they had been provided with a water heater and an electric heater to compensate for the limited central heating. They had been able to go outside to exercise for two hours in the morning and two hours in the afternoon. Unlike the mainstream female prisoners, they had been given better and higher-quality meals, bleach to disinfect their room and free hygiene products for those who could not afford them. Their general conditions of detention had therefore been satisfactory.

The alleged “ghettoisation and stigmatisation”: The fact that the applicants had been placed together had not in itself demonstrated any intention on the part of the prison administration to segregate them. Their placement in the same collective cell – in a wing which also housed mainstream inmates – had stemmed from considerations of efficiency in handling the group and in prison management. Since two of the applicants were HIV positive and the others had AIDS, dispersing them in different cells would have had the effect of increasing the feeling of anxiety among other inmates, as was understandable in a closed place like a prison. In addition, the

applicants were able to exercise outdoors at the same times as the other prisoners in the prison yard and shared the prison freezer with them, despite the protests that this arrangement had triggered. The Court therefore considered that the grouping together of the applicants pursued a legitimate aim and was reasonably proportionate to the aim pursued.

Medical care: The Government had produced a voluminous file relating to the applicants' condition, containing a large number of medical reports, results of medical examinations and prescriptions, from the time of their imprisonment. Furthermore, the applicants had merely claimed that, because of their illness, prison was not the appropriate place for them to be and that they should either be transferred to a hospital or be released under Article 110A of the Criminal Code. The Court took the view that neither the life nor even the health of the applicants had ever been endangered throughout the period of their detention in Thebes prison and that the authorities had not failed in their duty to provide them with medical assistance in accordance with their health-related needs.

Consequently, there had been no violation of Article 3 taken separately or in conjunction with Article 14 of the Convention in respect of the applicants' conditions of detention.

Article 13 (right to an effective remedy) in conjunction with Article 3

The Court explained that its *Ulemek v. Croatia*² case-law concerning conditions of detention required that preventive remedies (to be granted relief and the prompt discontinuance of the violation of the right not to suffer inhuman or degrading treatment) and compensatory remedies (to obtain redress for the violation) had to be available in parallel, these remedies being complementary.

The Court pointed out that in a number of cases concerning conditions in Greek prisons it had observed that the remedies in domestic law, in particular under Article 572 of the Code of Criminal Procedure, were of no use. In the present case it found that neither the preventive remedy nor the compensatory remedy under Greek law had been effective, within the meaning of the *Ulemek* case-law.

Consequently, there had been a violation of Article 13 of the Convention.

Article 14 (prohibition of discrimination) in conjunction with Article 3: complaint that prisoners held prior to final conviction were treated differently from those serving a sentence

The Court noted that the Greek legal system provided for different treatment of people with HIV/AIDS in the criminal system, distinguishing between a number of situations. In the present case Article 110A of the Criminal Code had been applied to three of the applicants after conviction who had already been diagnosed with AIDS. In addition, two other applicants who were serving a sentence but were only HIV positive at the relevant time had also been released, one on the basis of Article 105 of the Criminal Code and the other under section 19 of Law no. 4242/14 concerning carriers of AIDS. With regard to these five applicants, the Court therefore found no difference in treatment in breach of Article 14.

A final applicant, who was HIV positive and imprisoned prior to final conviction for approximately one year, had been released after being sentenced to a suspended prison term by the Court of Appeal. This applicant, as an inmate not yet finally convicted, could have invoked her state of health at the time and requested, depending on the severity of her condition, a suspension of her detention, on the basis of Article 282 of the Code of Criminal Procedure and the relevant case-law of the Greek courts. However, she had not made such an application.

Consequently, this part of the application was manifestly ill-founded.

² *Ulemek v. Croatia*, no. 21613/16, §§ 71-74, 31 October 2019

Just satisfaction (Article 41)

The Court held that Greece was to pay each applicant 2,000 euros (EUR) in respect of non-pecuniary damage.

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.