



Disclosure of the identities and medical data of women who had been diagnosed with HIV was a breach of their right to private life

The case of [O.G. and Others v. Greece](#) (applications nos. 71555/12 and 48256/13) concerned the publication, by decision of the domestic authorities, of medical data concerning women who had been diagnosed as HIV-positive and were suspected of working as prostitutes, and the media coverage of this incident. It also concerned the circumstances in which they were required to undergo a blood test.

In today's **Chamber judgment**¹ in this case the European Court of Human Rights held, unanimously, that there had been two violations:

a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights, with regard to two applicants, on account of the blood tests they had been required to undertake.

The Court considered that the blood samples imposed on two applicants had amounted to an interference with their private life and noted that this had not been in accordance with the law within the meaning of Article 8 of the Convention, given that the provisions of domestic law in issue ought to have been foreseeable with regard to their effects for the applicants. In particular, the Court noted that none of the provisions cited by the Government had been capable of justifying a medical intervention, whether carried out by police officers or doctors, such as that imposed on the applicants concerned.

- a violation of Article 8 (right to respect for private life) of the European Convention with regard to four applicants, on account of the publication of data concerning them.

The Court considered that the publication of the four applicants' data had amounted to a disproportionate interference with their right to respect for private life. These applicants' names and photographs and the information that they were HIV-positive, had been downloaded to the police department's website and broadcast by the media, and the prosecutor had not attempted to establish whether other measures, capable of ensuring less media exposure of the applicants, could have been taken in their cases.

Lastly, the Court decided to strike parts of the applications out of its list where they concerned five applicants, four of whom had died. It also dismissed the complaints of certain applicants as being out of time or for non-exhaustion of domestic remedies.

Principal facts

The applicants are eleven Greek nationals who were born between 1976 and 1986. Ten of the applicants were women who had been diagnosed as HIV-positive; one applicant was the sister of an HIV-positive woman.

In the context of a police operation in the centre of Athens, **ten applicants** were arrested by the police on different dates in 2012. According to the Government, the arrested women had, through

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.

their conduct, aroused police suspicion that they were engaged in prostitution without the relevant permit and special legally required health pass. They were required to undergo an identity check, medical screening for sexually transmitted diseases and blood tests which confirmed that they were HIV-positive. Charges were brought against them for intentionally attempting to inflict serious bodily harm, together with the offence of inflicting simple harm.

The prosecutor subsequently ordered, on the basis of Law no. 2472/1997, that their names and photographs be made public, together with the reasons why criminal proceedings had been brought against them, and a reference to their HIV-positive status. The prosecutor's order was downloaded to the police website and the dissemination of their personal data received extensive media coverage for several days, especially on television.

Following these events, **the applicant whose sister had been arrested** was alerted – by an acquaintance – that her name and photograph had been broadcast on the main evening television news programme instead of those of her sister.

Before the Court, the applicants complained about the dissemination of sensitive personal and medical data. Ten applicants also alleged that their consent had not been sought prior to the blood tests.

Complaints

The applicants relied in particular on Article 8 (right to respect for private life) of the Convention.

Procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 30 October 2012 and 6 July 2013.

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

Pere **Pastor Vilanova** (Andorra), *President*,
Jolien **Schukking** (the Netherlands),
Yonko **Grozev** (Bulgaria),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),
Ioannis **Ktistakis** (Greece),
Oddný Mjöll **Arnardóttir** (Iceland),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

Striking out

The Court decided to strike out (Article 37 of the Convention) the application by five applicants, as four of them had died and one was no longer in contact with her representatives. It decided to continue the examination of the application with regard to six applicants, one of whom had died but whose children wished to pursue the application in their own name.

Imposition of a blood test without prior consent

This complaint was submitted by five applicants, one of whom had presented her complaint after the expiry of the time-limit laid down in Article 35 of the Convention; two others had not exhausted the domestic remedies available to them. The Court declared inadmissible the complaints by these three applicants.

With regard to the two other applicants, the Court considered that the blood test in question amounted to an interference with their private life.

The Government indicated that the intervention in question had been based on a combination of provisions. The Court noted that all of the legal provisions referred to by the Government concerned the obligation for individuals engaged in prostitution, with or without authorisation, to submit to screening tests for certain diseases, including HIV/Aids. However, none of these provisions indicated the procedure to be followed, nor any reference to screening that was to be carried out by police or judicial authorities, with or without the consent of the individuals concerned. In addition, the provisions of the Code of Criminal Procedure required a prosecutor's order before the investigating judge or police officers could carry out investigative measures, the only exception being where there existed an imminent danger, an argument that the Government had never relied on and which, in any event, had not been the case here.

Even supposing that the measure had been taken with a view to obtaining evidence of the applicants' involvement in an offence in the context of a preliminary investigation, no order authorising the imposition of blood tests had been issued to the police or to doctors from the KEELPNO (a team of doctors assigned to the disease control and prevention centre). Accordingly, no analysis, or even a reference to the relevant legal provisions had preceded the contested acts. Furthermore, no specific procedure had been followed with regard to the medical acts in question, which had been carried out in police premises.

Thus, none of the provisions referred to by the Government could justify a medical intervention by the police officers or by the KEELPNO doctors such as that which had been carried out on the applicants. For this reason, the Court considered that this interference had not been "in accordance with the law" within the meaning of Article 8 of the Convention, given that the provisions of domestic law in question ought to have been foreseeable as to their effects for the applicants.

It followed that there had been a violation of Article 8 of the Convention in respect of the two applicants concerned.

Publication of the applicants' personal data

This complaint was submitted by six applicants, one of whom had lodged it out of time; her complaint was therefore dismissed.

With regard to the applicant whose name had been published instead of her sister's, the Court noted that she had applied for revocation of the prosecutor's order, and this had been accepted. The Greek authorities had thus acknowledged, at least in substance, and then afforded redress for, the breach of the Convention complained of by the applicant in respect of the alleged harm sustained by her. In addition, she had the possibility of obtaining financial compensation through proceedings for damages or by joining the criminal proceedings as a civil party. For these reasons, the Court declared inadmissible this applicant's complaint.

With regard to the other four applicants, the Court noted that the publication of the applicants' data had amounted to an interference with their right to respect for their private life. The legal basis for this interference had been Article 2 and Article 3 of Law no. 2472/1997, and the aim had been "protection of the rights and freedoms of others".

With regard to the necessity of the interference in a democratic society, the Court reiterated that it had found a violation of Article 8 of the Convention in the *Margari v. Greece*² case, holding that the disclosure, under the same domestic legislation, of the applicant's photograph accompanied by a reference to the charges against her had not been necessary in a democratic society. The Court saw

² *Margari v. Greece*, no. 36705/16, 20 June 2023.

no reason to hold otherwise with regard to the application of Law no. 2472/1997 in the present case, especially as it concerned data on HIV status which were by their nature extremely sensitive.

The Court also noted that the prosecutor had not examined in his order whether other measures, capable of ensuring a lesser degree of exposure for the applicants, could have been taken in the present case. He had merely ordered the publication of the data in question, without examining the particular situation of each of the applicants or assessing the potential consequences for them of such dissemination. Nor had he examined whether a general announcement, restricted to the region in which the events had occurred and referring merely to the arrest of prostitutes who were HIV-positive, could have sufficed to achieve the aim pursued. Although the domestic authorities were seeking to protect public health, and more specifically the health of individuals who had had sexual relations with the applicants at any point, there was nothing to indicate that the above measure would not have achieved the aim sought, while having less significant repercussions for the applicants' private lives. Moreover, the applicants had not had a legal possibility to be heard by the prosecutor before he ruled on the disclosure of their date, nor could they, once the order had been issued, lodge an appeal in order to have it re-examined by the prosecutor attached to the appellate court. This form of appeal had not been introduced in the domestic legislation until after the events which had given rise to the present applications. Those considerations were particularly relevant here, in that the information disseminated concerned the applicants' HIV-positive status, disclosure of which was likely to dramatically affect their private and family life, as well as social and employment situation, since its nature was such as to expose them to opprobrium and the risk of ostracism.

Equally, the Court was mindful of the fact that, according to the principles set out in a circular from the Minister of Health, although persons engaged in prostitution were among the social groups for whom screening for the HIV virus was, exceptionally, authorised, they were not, however, included in the list of cases allowing for an exception to the rule that such tests were confidential.

Accordingly, the interference with the right of these four applicants to respect for their private life had not been sufficiently justified and had been disproportionate to the legitimate aims pursued. It followed that there had been a violation of Article 8 of the Convention.

Just satisfaction (Article 41)

The Court held that Greece was to pay a total of 70,000 euros (EUR) to the applicants concerned (that is, EUR 20,000 each to the applicants listed under no. 1 and no. 6 in the judgment, and EUR 15,000 to each of the applicants listed as nos. 2 and 7) in respect of non-pecuniary damage.

Separate opinion

Judges Vilanova, Grozev and Ktistakis expressed a joint partly dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

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Press contacts

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

We would encourage journalists to send their enquiries via email.

Inci Ertekin (tel.: + 33 3 90 21 55 30)
Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)
Denis Lambert (tel.: + 33 3 90 21 41 09)
Neil Connolly (tel.: + 33 3 90 21 48 05)
Jane Swift (tel.: + 33 3 88 41 29 04)

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.