



A vulnerable prisoner's conditions of detention ruled incompatible with the Convention

In today's **Chamber** judgment¹ in the case of [Kargakis v. Greece](#) (application no. 27025/13) 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,

a violation of Article 13 (right to an effective remedy) read in conjunction with Article 3 concerning the general conditions of detention in Diavata Prison, and

no violation of Article 5 § 4 (right to a speedy decision on the lawfulness of detention).

The case concerned the medical provision for the applicant during his pre-trial detention and his conditions of detention in Diavata Prison, the lack of an effective remedy to complain about the latter, and the length of the proceedings relating to the judicial review of that detention.

The Court found in particular that the conditions of detention in Diavata Prison had subjected the applicant to an ordeal whose severity had surpassed the inevitable degree of suffering in detention, having regard in particular to his disability and the duration of his imprisonment.

However, the Court considered that the proceedings before the appeal court had complied with the requirement of promptness under the particular circumstances of the case, given its complexity and the fact that both the investigating judge who had ordered the applicant's detention and the investigating authority which had re-examined the applicant's placement in detention had been independent and impartial judicial bodies.

Principal facts

The applicant, Mr Kleanthis Kargakis, is a Greek national who was born in 1950 and lives in Thessaloniki (Greece).

The case concerns the medical care received by the applicant during his pre-trial detention and his conditions of detention in Diavata Prison, the lack of an effective remedy in this respect and the length of the procedure for judicial review of the lawfulness of his detention.

On an unspecified date criminal proceedings were brought against Mr Kargakis for attempting to assist a foreign national to leave the country without the latter having submitted himself to the relevant controls, by a person acting in the exercise of his profession and with a combination of offences. On 16 January 2013 Mr Kargakis was arrested and placed in pre-trial detention on the basis of a warrant issued by the investigating judge at the Thessaloniki Criminal Court. On 7 February 2013 he was placed in Diavata Prison in Thessaloniki.

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.

While being admitted to pre-trial detention, Mr Kargakis stated that he had already suffered a stroke and had a history of diabetes and heart disease, and that he was taking medication. In the course of the detention he was examined by the prison psychiatrist, who diagnosed reactionary self-destructive depression and placed him under psychiatric care. On 24 January 2013 Mr Kargakis was rushed to the Papanikolaou General Hospital in Thessaloniki, suffering from a probable stroke. His health improved while in hospital, and he was discharged on his own initiative on 6 February 2013, with strict recommendations as to his diet and environment in prison. He was required to return to hospital for emergency care on two occasions in March and left the hospital for prison on 9 April 2013.

Mr Kargakis, who is a wheelchair-bound diabetic, alleges that in Diavata Prison he shared a cell measuring 20m² with four other prisoners; the cell was unsanitary and not adapted to the needs of people with disabilities. He also submits that the food was unsuitable for his health conditions. In addition, he claims that he was unable to benefit from the authorised exercise periods because the courtyard was neither sheltered nor adapted for persons with disabilities.

On 18 February 2013 Mr Kargakis lodged an appeal with the judge against the order of 16 January 2013 placing him in pre-trial detention. Following several requests by the applicant to speed up the examination of his appeal, the prosecutor at the first-instance court prepared his opinion for the investigating judge on 15 April 2013, suggesting that the detention order against the applicant be lifted and replaced by other restrictive measures. The investigating judge endorsed the prosecutor's opinion. On 26 April 2018, however, Mr Kargakis was sentenced to five years' imprisonment. He lodged an appeal on the same date.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicant complained about the conditions of his detention in Diavata Prison and the alleged shortcomings in his medical treatment. Under Article 13 (right to an effective remedy), he submitted that no effective remedy had been available to him. Lastly, he alleged that there had been a violation of Article 5 § 4 (right to a speedy decision on the lawfulness of detention). He considered that his appeal against the detention order imposed on him had not been examined "speedily" by the investigating judge.

The application was lodged with the European Court of Human Rights on 17 April 2013.

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

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Linos-Alexandre **Sicilianos** (Greece),
Alena **Poláčková** (Slovakia),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),

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

Decision of the Court

[Article 3](#)

The Court first of all noted that the parties had presented different versions of the situation as regards overcrowding and other conditions in Diavata Prison. It then examined what it considered to be more objective pieces of information from other sources.

Thus, the Court noted that according to information provided to the Government by the Director of Diavata Prison in a document of 9 May 2018, each prisoner benefited from an individual area of approximately 4.4 sq. m. That information tallied with the Government's version.

As regards the conditions relating to heating, hot water, lighting, cleanliness of dormitories and provision of hygiene items, the Court could not comment on the applicant's allegations. It did, however, note that Diavata Prison had no canteen and that the prisoners had to eat their meals in their cells, seated on their beds. Moreover, the Court took note of the applicant's statements to the effect that he had not had access to the exercise yard, that the latter had not been adapted to the needs of persons with disabilities, that his food had been unsuited to his diabetic condition, and that he had had to share his cell with smokers, in breach of doctor's orders. The Government did not contest those allegations.

Having regard to the foregoing considerations, the Court found a violation of Article 3 of the Convention as regards the applicant's general conditions of detention in Diavata Prison.

[Article 13 read in conjunction with Article 3](#)

The Court pointed out that the remedy required under Article 13 of the Convention had to be "effective" in practice as well as in law. In the present case the Court noted that in his appeal of 18 February 2013 the applicant had mentioned his health issues, his invalidity and the fact that he had been hospitalised for several days after his detention, backing up his assertions with the relevant medical certificates. The applicant had also referred to his health issues and his "poor" conditions of detention in the requests which he had submitted to the investigating judge on 5 April 2013. Furthermore, on 9 April 2013 the applicant had lodged a supplementary memorial to his appeal of 18 February 2013, stating that his health problems had worsened since his placement in detention and that his conditions of detention, which he had described in detail, had been incompatible with his state of health.

The Court noted that although the investigating judge had eventually decided to release the applicant on licence, he had only done so after ascertaining that the latter was unlikely to commit any further offences. The investigating judge did not analyse the applicant's conditions of detention or his health issues, even though the prosecutor's opinion had highlighted his serious heart problems and opined that his continued detention in a prison was liable to prove fatal owing to the poor conditions prevailing in Greek prisons.

That being the case, the Court considered that the remedy used by the applicant had not provided proper redress, because, above and beyond the matter of his release, the investigating judge had not responded to the applicant's complaints concerning his conditions of detention.

The Court therefore found that there had been a violation of Article 13 of the Convention read in conjunction with Article 3 concerning the general conditions of detention in Diavata Prison.

[Article 5 § 4](#)

As regards the period to be taken into account in order to determine whether the respondent State fulfilled the "speediness" requirement laid down in Article 5 § 4, the Court observed that such period had begun on 18 February 2013, when the applicant had applied for release on licence. It had ended on 24 April 2013, when the investigating judge had allowed the application. That period had therefore lasted for sixty-five days. The applicant himself would not appear to have substantially delayed the proceedings in question.

The Court reiterated that the applicant had been arrested and placed in pre-trial detention by the investigating court on 16 January 2013. It noted that the latter, as a judicial authority, was independent and impartial. The Court took the view that a distinction should be drawn between the present case and other cases in which the applicants' detention had been ordered by an administrative

body without equivalent guarantees. Moreover, the review of the lawfulness of the applicant's detention following his application for release lodged on 18 February 2013 had been conducted by an investigating judge, who had also been independent and impartial and had adjudicated on the basis of the opinion of the public prosecutor with the court of first instance.

The Court noted the relative complexity of the proceedings before the investigating judge in both legal and factual terms. The investigating judge had had to assess, at second instance, the applicant's appeal against his placement in detention.

Furthermore, the Court noted that before adjudicating on the applicant's appeal of 18 February 2013, the investigating judge had been required to transmit the case file to the public prosecutor's office so that the latter could express an opinion on the applicant's continued detention. That procedure, which was prescribed by domestic law, clearly extended the length of proceedings.

The Court therefore considered that the proceedings before the court of appeal had, in the circumstances of the case, complied with the "speediness" requirement. There had accordingly been no violation of Article 5 § 4 of the Convention.

Just satisfaction (Article 41)

The Court held that Greece was to pay the applicant EUR 3,900 in respect of non-pecuniary damage and EUR 1,000 in respect of costs and expenses, plus any tax that might be chargeable on those sums.

The judgment is available only in French.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

During the current public-health crisis, journalists can continue to contact the Press Unit via echrpess@echr.coe.int.

Denis Lambert

Tracey Turner-Tretz

Inci Ertekin

Neil Connolly

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.