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

Press Release
issued by the Registrar of the Court

ECHR 399 (2018)
22.11.2018

Eleven inmates of Grevena Prison were ill-treated during a search of their cells in 2013

The case concerned inmates of Grevena Prison who had complained of ill-treatment inflicted on them by members of a special police anti-terrorist unit during a surprise search of their cells in April 2013.

In today's **Chamber** judgment[1] in the case of Konstantinopoulos and Others v. Greece (no. 2) (application no. 29543/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of the substantive and procedural limbs of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights as regards eleven of the applicants, and **no violation of the substantive and procedural limbs of Article 3** as regards ten of the applicants.

The Court found in particular that the injuries found on eleven of the applicants had occurred during the April 2013 search and that they had attained the requisite threshold of severity to fall foul of Article 3. The Court also ruled that the acts in question had constituted ill-treatment rather than torture.

The Court noted failings on the part of the Greek authorities during the investigation into the allegations of ill-treatment, considering that the latter had not been thorough, prompt or independent.

Principal facts

The 22 applicants are Greek, Albanian and Bulgarian nationals who are detained in Grevena Prison (Greece).

On 13 April 2013 a surprise search was carried out of cells in Grevena Prison on the basis of information pointing to a possible prison break or mutiny. The search was conducted in the presence of a public prosecutor by prison staff, assisted by police officers belonging to the "EKAM" (a special anti-terrorist unit). After the search 28 prisoners were examined by the prison doctor, who noted bruises and traces of dermatitis, but was unable to determine their cause.

A few days later, a number of prisoners lodged a complaint with the public prosecutor's office of Grevena Criminal Court, alleging, in particular, that the EKAM officers had made excessive use of Tasers against 31 prisoners, had struck them and verbally abused them and had forced them to crawl on their hands and knees to the prison sports hall, strip naked and stand facing the wall for some time.

A preliminary investigation was conducted, reaching the conclusion that no disciplinary offence had been committed. The police chief shelved the case. In November 2014 the public prosecutor with

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.

the criminal court decided that there was insufficient circumstantial evidence to bring criminal proceedings. The following month, the prosecutor with the court of appeal decided to drop the case.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicants complained that they had suffered ill-treatment and torture. They also alleged that the investigation into the case had been ineffective and that they had not had any effective remedy to ensure the identification of the officers responsible for the ill-treatment with a view to pressing charges.

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

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

Ksenija **Turković** (Croatia), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Jovan **Ilievski** (the Former Yugoslav Republic of Macedonia),
Gilberto **Felici** (San Marino),

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

Decision of the Court

Article 3 (prohibition of torture and inhuman or degrading treatment)

1. Ill-treatment inflicted on eleven applicants (substantive limb)

The Court noted that the EKAM police unit had not been suddenly called in to deal with any spontaneous prison mutiny. Their intervention had been ordered and organised by the prison authorities and the public prosecutor's office. The applicants had therefore not been injured during a random operation which might have given rise to unexpected developments triggering an impromptu reaction from the police, but during an operation which had been planned and sufficiently prepared for in terms of risk assessment. The Government attempted to justify the use of force with arguments relating to general security in the prison. Drawing on the findings of the prosecutor who had conducted the investigation, the Government submitted that the EKAM unit had been warned by the prison authorities that most of the prisoners were armed with improvised knives, that some prisoners had thrown objects at the EKAM officers, kicked over tables and attempted to occupy the corridor running along the cells in order to take control of the area outside the cells and confront the police. However, the Court noted that the same report pointed out that the prisoners had gone into their cells and that the cell doors had been immediately closed. Subsequently, the doors had been opened one by one and the EKAM officers had entered the cells in order to prevent any attempt at resistance by the prisoners or attacks with the aforementioned improvised weapons. The Court deduced that the whole EKAM team and the prison staff should have searched just one cell and its three occupants. Even supposing the latter had refused to comply, the Court considered that the security of the prison and the need to check on three prisoners who might have thrown objects and kicked over tables had necessitated the use possibly of truncheons, but certainly not of Tasers. However, the forensic doctor's report had specified that some of the applicants had injuries which could have been caused by Tasers. Furthermore, during the administrative inquiry, one of the police officers questioned had stated that when the prisoners had reacted aggressively by throwing objects and kicking over tables, the police officers had used their Tasers.

The Court therefore considered that the injuries noted on eleven of the applicants (in the forensic doctor's report) had occurred during the search of 13 April 2013, and that they attained the requisite threshold of severity to fall foul of Article 3. It also held that those applicants had sustained ill-treatment and not been tortured. **There had therefore been a violation of Article 3 in respect of eleven applicants.**

2. Lack of an effective investigation as regards eleven applicants (procedural limb)

The Court voiced doubts about the impartiality of the prison doctor, who had been a prisoner himself and who, after examining the applicants at the end of the cell search, had claimed that he was unable to determine the cause of the bruises and traces of dermatitis. The Court also noted that the senior police officer and the public prosecutor had not intensified their investigation despite all the contradictory statements emerging about the use of Tasers. It further observed that the authorities had not acceded to the request submitted by the applicants' representatives for a copy of the audio and video recording of the prison on the day of the search. Moreover, the authorities had failed in their obligation to conduct a thorough and prompt investigation: some twenty months had elapsed between the time of the applicants' complaint and the authorities' decision to discontinue the case. The Court also considered that there had been no independent inquiry into the allegations of ill-treatment: the inquiry had been assigned to a prosecutor attached to Grevena Criminal Court, even though the prosecutors of that court were also the prosecutors responsible for supervising Grevena Prison, one of whom had, furthermore, been present during the cell search of 13 April 2013. As regards the action for damages provided for in Article 105 of the Civil Code, the Court noted that that provision only applied to cases of damage caused by unlawful acts by State bodies in the exercise of public authority. In the instant case, however, the administrative inquiry had detected no unlawful act or omission on the part of the police. Therefore, an action based on Article 105 would have had no real chance of succeeding. In that connection, the Court pointed out that the obligation imposed by Article 3 on a State to conduct an investigation geared to identifying and punishing persons responsible for ill-treatment would be illusory if, in the context of a complaint lodged under that article, the applicant were required to exhaust a remedy which could only lead to an award of damages.

The Court therefore noted shortcomings on the part of the Greek authorities in the investigation conducted into the allegations of ill-treatment, and held that that investigation had not been thorough, prompt or independent. There had therefore been a **violation of the substantive limb of Article 3 (investigation)** in respect of eleven applicants.

Other applicants

As regards the allegations of ill-treatment submitted by the other ten applicants, who had presented no evidence, prima facie or otherwise, of injuries allegedly sustained, or had not been examined by the forensic doctor or had refused to undergo such examination, the Court considered that it had not been established that they had been victims of ill-treatment, or at least of treatment attaining the requisite threshold of severity to fall foul of Article 3.

As regards one other applicant (Nikolla Xhollo), the Court noted that he had not co-signed the complaints lodged by the other applicants involved in the incidents of 13 April 2013. It therefore declared the part of the application concerning him inadmissible on the grounds of incompatibility *ratione personae* with the provisions of the Convention.

Article 41 (just satisfaction)

The Court held that Greece was to pay each of the eleven applicants, whose names were specified in the judgment, 10,000 euros (EUR) in respect of non-pecuniary damage, and EUR 1,500, jointly, in respect of costs and expenses.

The judgment is available only in French.

Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

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)
Patrick Lannin (tel: + 33 3 90 21 44 18)
Somi Nikol (tel: + 33 3 90 21 64 25)