



Assault of Afghan nationals by police searching for a fugitive: several violations of Article 3 of the Convention

The case concerned ten Afghan nationals who complained of being subjected to ill-treatment by police officers searching for an Afghan fugitive who had escaped from a courtroom. Nine of the applicants complained of being ill-treated in the building in which they were living, and a tenth alleged ill-treatment at a police station.

In today's **Chamber judgment**¹ in the case of **Sarwari and Others v. Greece** (application no. 38089/12) the European Court of Human Rights held, unanimously, that there had been:

A violation of the procedural aspect of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights in respect of nine applicants.

The Court noted, among other findings, that the proceedings had lasted for around seven years and that the preliminary stage of the criminal investigation had included a period of inactivity of more than one year. Furthermore, the possibility of a racist motive had not been examined thoroughly and the courts had not given due weight to certain factors, including the fact that the police officers had been acting in the context of an informal operation; the applicants had not attempted to attack the police officers and had not engaged in violent behaviour; and one of the applicants had been a minor at the relevant time.

A violation of the substantive aspect of Article 3 in respect of four applicants.

The Court considered that the treatment to which four of the applicants had been subjected constituted inhuman and degrading treatment.

No violation of the substantive aspect of Article 3 in respect of five applicants.

The Court noted that the medical reports concerning five of the applicants were inconclusive as to the possible cause of their injuries and that this was due in large part to the lack of a thorough and effective investigation by the national authorities.

Lastly, the Court declared the application inadmissible with regard to one of the applicants.

Principal facts

The applicants are ten Afghan nationals who were born between 1975 and 1988.

In December 2004 R.A.N. (an Afghan national) escaped from a courtroom while under the supervision of police officers H.D. and E.K.

Subsequently, H.D. and E.K. searched for the fugitive, both alone and with colleagues from the police station, including in a building where some Afghan nationals were living. A few days later a television station broadcast a report containing allegations that police officers had ill-treated a number of Afghan nationals after violently forcing their way into the hotel where they were staying.

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 facts, which occurred on 14 and 15 December 2004, were established as follows by the Athens Criminal Court of Appeal. The two police officers – together with other police officers who could not be identified and who were in civilian dress – went to a building where a number of Afghan nationals were living, to search for the fugitive (R.A.N.). They woke up all the people staying there, led them into the living room of the building and forced them to face the wall. They then showed them a photograph of the fugitive, asking them if they knew him and if they had seen him in the area. Finally, they punched them, kicked them and hit them with sticks. The next day they returned to the building and repeated their actions. In addition, one of the applicants alleged that he had been ill-treated at the police station on 15 December 2004.

On different dates the applicants underwent medical examinations and some of them were found to have bodily injuries. Nine of the applicants lodged complaints and all the applicants also brought an action for damages against the State.

An administrative investigation and disciplinary proceedings were carried out. In June 2006 the disciplinary board imposed a six-month temporary suspension on H.D. and E.K. The penalties were not enforced as H.D. was not in active service and E.K. had left the service.

Criminal proceedings were also commenced. In March 2012 the Court of Appeal sentenced H.D. to 20 months' imprisonment and E.K. to 25 months' imprisonment for unprovoked assault. Both sentences were suspended.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 6 (right to a fair trial), the applicants alleged that they had been ill-treated by the police officers. They also complained about the investigation and the judicial proceedings, as well as the length of those proceedings.

The application was lodged with the European Court of Human Rights on 19 June 2012.

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),
Krzysztof **Wojtyczek** (Poland),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),

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

Decision of the Court

[Article 3 \(prohibition of inhuman or degrading treatment\)](#)

Regarding the admissibility of the application, the Court declared it admissible with regard to nine applicants and inadmissible with regard to one applicant who had applied to the Court out of time and had not lodged a complaint with the domestic authorities.

As to the effectiveness of the investigations the Court found a violation of the procedural aspect of Article 3 in respect of nine applicants, noting in particular the following.

The proceedings had lasted for seven years and for seven years and three months. In addition, the preliminary stage of the criminal investigation, which had lasted for five years, included a period of

inactivity of more than one year, which may have compromised the effectiveness of the investigation. The passing of time inevitably eroded the amount and quality of the evidence available, and the appearance of a lack of diligence cast doubt on the good faith of the investigative efforts.

The reports of the forensic doctors had lacked precision and their quality had fallen well short of the CPT's² recommended standards and the Istanbul Protocol³ guidelines. In particular, they had not contained an account of the incidents reported by the applicants or any indications as to when they had occurred. They had merely stated that no injuries had been found, without indicating whether the examination had been carried out with the assistance of an interpreter, as the applicants did not speak Greek.

The possibility of a racist motive had not been thoroughly examined by the Assize Court or the Court of Appeal. Moreover, H.D. and E.K. had not been questioned at any stage about their general attitude towards the ethno-cultural group to which the victims belonged. Likewise, the investigative bodies had not sought to ascertain, for example, whether the accused had been involved in violent incidents with a racial connotation in the past or whether they had affinities, for instance, with extremist or racist ideologies.

The courts had not lent due weight to certain factors, including the fact that the police officers had been acting in the context of an informal operation; they had not had an arrest or search warrant; there had been no causal link between the use of force by the police officers and the conduct of the applicants (who had not attempted to attack the police officers and had not engaged in violent behaviour); and one of the applicants had been a minor at the relevant time.

The domestic courts had acknowledged the existence of extenuating circumstances and had imposed suspended sentences, with the result that the police officers had not served their sentences. Lastly, the disciplinary sanctions (a six-month temporary suspension) had not been enforced.

One of the applicants had not been involved in the proceedings to a sufficient degree, and the applicant who alleged ill-treatment at the police station had not had the benefit of an effective investigation.

As to the allegations of torture and ill-treatment (substantive aspect), the Court found no violation of the substantive aspect of Article 3 in respect of five applicants and a violation of the substantive aspect of Article 3 in respect of four applicants. It observed the following points in particular.

Firstly, the Court noted that the medical reports concerning five of the applicants were inconclusive regarding the possible origin of their injuries, and that the evidence in the file did not provide sufficient certainty, beyond reasonable doubt, as to what had caused them. This was largely due to the absence of a thorough and effective investigation by the national authorities. There was therefore insufficient evidence to conclude beyond reasonable doubt that these applicants had been subjected to the alleged treatment.

Secondly, the Court noted that the Court of Appeal has clearly established that an assault had been committed against four of the applicants. In particular, the Court of Appeal found that H.D. and E.K. had kicked and punched the applicants concerned and had hit them with sticks on different parts of their bodies, causing simple bodily harm. Furthermore, it had found the perpetrators guilty of unprovoked assault of the applicants and had classified the acts as "bodily harm". In the Court's view, the treatment to which these four applicants had been subjected constituted inhuman and degrading treatment.

² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

³ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Just satisfaction (Article 41)

The Court held that Greece was to pay 26,000 euros (EUR) to one of the applicants, EUR 19,500 each to four of the applicants and EUR 16,000 each to a further four applicants in respect of non-pecuniary damage. It was also to pay the applicants EUR 1,500 jointly in respect of costs and expenses.

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.