



Ineffective investigation into a racist assault on an Afghan national and his conditions of detention in an Athens police station breached the Convention

In today's **Chamber** judgment¹ in the case of **Sakir v. Greece** (application no. 48475/09) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) and a violation of Article 13 (right to an effective remedy) of the European Convention on Human Rights with regard to Mr Sakir's conditions of detention in the Aghios Panteleïmon police station in Athens,

a violation of Article 3 of the Convention with regard to the conduct of the investigation carried out following the assault.

The case concerned an assault against Rafi Sakir in 2009 in the centre of Athens which led to his hospitalisation, and also the conditions in which he was detained in a police station after his release from hospital.

The Court found in particular that the police had not sought to ascertain from the hospital whether Mr Sakir's state of health allowed him to be placed in detention. It noted that, in spite of specific instructions from his doctors, there had been shortcomings in the manner in which his medical condition and state of vulnerability were taken into account.

The Court also found a violation of Article 13 of the Convention on account of the lack of an effective remedy to complain about the conditions of detention.

Furthermore, the Court noted shortcomings in the investigation conducted following the assault, with regard to the gathering of evidence and the questioning of witnesses. In particular, it queried the authorities' failure to shed light on whether or not A.S.'s statement was truthful and on the circumstances surrounding his statements. Finally, it noted that the authorities had failed to assess the case in the particular context of the racist incidents which frequently occurred in Athens.

Principal facts

The applicant, Rafi Sakir, is an Afghan national who was born in 1985 and lives in Athens.

On 27 August 2009 Mr Sakir was attacked by a group of masked individuals, dressed in black and armed with knives and metal bars, who stabbed him and beat him severely. A.S., a compatriot who was present at the scene, alerted the police and Mr Sakir was taken to hospital.

A preliminary investigation was opened and A.S. identified two individuals, A.P. and T.P., as the main assailants, but withdrew his statement a few hours later. Criminal proceedings were then brought against A.S. for his illegal entry into Greece, and also for perjury and making a false statement to a public authority. A.P. and T.P. also lodged a complaint against him for defamation. Faced with this threat, A.S. then claimed that he had not lied in his first statement. The criminal proceedings against him for perjury and defamation were ultimately abandoned, and the criminal court acquitted him of making a false statement to the public authorities.

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.

In his witness statement, P.P., a police officer based at the Aghios Panteleïmon police station, confirmed that Mr Sakir was suffering from a chest injury and had been transferred to a public hospital. He also confirmed that another witness, A.K., had described the presence of a group numbering 15 to 20 persons, who had allegedly attacked another group of foreigners on Attikis Square. P.P. stated that he and other police officers had immediately investigated the incident once A.S. had told them that A.P and TP were among those participating in the attack. He also specified that A.S. had been taken to the police station because he had no documents indicating that he was legally resident in the country, and emphasised that his allegations to the effect that A.P. and T.P. had been wearing masks and black clothing were false.

The preliminary investigation was then closed by the police and the case file sent to the prosecutor's office, which on 17 September 2012 discontinued the proceedings on the ground that the perpetrators had not been identified.

Mr Sakir left hospital four days after the attack. Several medical certificates confirmed that he had been wounded by a pointed and sharp object, particularly on the rib cage. In the absence of a residence permit, he was immediately placed in detention in the Aghios Panteleïmon police station and an expulsion procedure was opened.

On 7 December 2009 Mr Sakir lodged an asylum application and submitted a request to the Attica Aliens Sub-Directorate not to deport him. He also asked that his detention be lifted, accompanying his request with arguments against his continued detention. He argued that the authorities had placed him in detention in spite of his poor health condition on leaving hospital, and that he had received no medical care, in spite of the specific instructions given by his doctors. He also explained that he had not been invited by the police to identify the two individuals recognised by A.S.

He received no reply to his complaints and was released on 19 September 2009, with an order to leave Greece within 30 days. On 31 March 2014 the examination of his asylum claim was stopped and the claim was placed on file, having been considered as tacitly withdrawn.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) of the Convention, Mr Sakir complained that the national authorities had failed to meet their obligation to conduct an effective investigation following the assault against him. Relying on Article 3 (prohibition of inhuman or degrading treatment), he also complained about the conditions of his detention in the Aghios Panteleïmon police station and of shortcomings in his medical treatment. Lastly, relying on Article 13 (right to an effective remedy), he considered that he had not had available an effective remedy that would have enabled him to complain about his conditions of detention.

The application was lodged with the European Court of Human Rights on 10 September 2009.

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

Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"), *President*,
 Ledi **Bianku** (Albania),
 Kristina **Pardalos** (San Marino),
 Linos-Alexandre **Sicilianos** (Greece),
 Paul **Mahoney** (the United Kingdom),
 Aleš **Pejchal** (the Czech Republic),
 Armen **Harutyunyan** (Armenia),

and also André **Wampach**, *Deputy Section Registrar*.

Decision of the Court

Article 2

The Court accepted that Article 2 of the Convention could be applicable where an individual had been the victim of an assault which put his or her life in danger, even if he or she survived. It considered, however, that although Mr Sakir's injuries may have been serious, it did not appear from the file that his survival had been in doubt. It therefore concluded that Article 2 did not apply to this case.

Article 3 and 13 (with regard to the conditions of detention)

With regard to the material conditions of detention, the Court noted that the Ombudsman had reported overcrowding in the Aghios Panteleïmon police station and highlighted the unsuitable nature of the premises. It also emphasised that the UN Special Rapporteur on Torture, visiting Greece in 2010, had noted that certain police stations, including Aghios Panteleïmon, seemed to be used as places of detention for irregular immigrants, where they were held in unsatisfactory conditions.

The Court noted that the police had not sought to ascertain from the hospital whether Mr Sakir's state of health allowed him to be placed in detention. It drew attention to shortcomings in the manner in which Mr Sakir's medical condition and state of vulnerability had been taken into account. It noted that he had been unable to take a shower or tend to his wounds, that he was still wearing the same bloodstained clothes and that the authorities had not offered him clean clothing while in detention. In spite of specific instructions from his doctors, Mr Sakir was ultimately transferred to hospital for examination only one day prior to his release. In the light of these factors, the Court concluded that there had been a violation of Article 3 of the Convention. In addition, after noting that no effective remedy had been available to enable the applicant to complain about the conditions of his detention, the Court held that there had been a violation of Article 13 in this respect.

Article 3 (with regard to the conduct of the investigation)

With regard to the investigations conducted following the assault, the Court noted shortcomings with regard to the gathering of evidence; no statement had been taken from Mr Sakir during the ten days he was held in the police station. The police authorities did not even invite him to identify AP. and TP., who were accused of being among the perpetrators. Neither had any steps been taken to identify other persons who had links with extremist groups known to have committed racist attacks.

In addition, neither the police authorities nor the prosecutor had sought to establish in detail the nature and cause of the injuries inflicted on Mr Sakir, by ordering, for example, a forensic medical report, the conclusions of which could have helped to identify the perpetrators.

The Court also noted failings with regard to the questioning of witnesses by the police authorities, since the only people questioned as witnesses by the police were P.P. and A.S., although P.P. had referred in his own statement to the existence of A.K. as another eyewitness, and yet the latter was never summoned for questioning. The Court also expressed doubts about the way in which A.S. – who, as an irregular migrant, was particularly vulnerable – had been questioned. It considered that the police ought to have provided him with conditions for questioning which could have guaranteed the reliability and veracity of any information he could give. In particular, the Court queried A.S.'s withdrawal of his statement concerning A.P.'s and T.P.'s involvement in the attack, and the fact that the police authorities did not question him about this change of position. Although the charges of perjury, defamation and making a false declaration to the public authorities against A.S. were ultimately declared unfounded, the relevant judicial authorities had taken no steps to establish *in fine* the veracity of his initial witness statement.

Finally, the Court draw attention to the general context of the case, and to the reports by international NGOs or Greek national bodies highlighting the phenomenon of racist violence in the centre of Athens, especially in the Aghios Panteleimon district, and serious omissions on the part of the police in investigating those attacks. The Court noted that in the present case the police and judicial authorities had failed to make a connection between the assault against Mr Sakir and other similar incidents.

In the light of all these circumstances, the Court concluded that the authorities had not dealt with Mr Sakir's case in a sufficiently effective manner, in violation of Article 3 of the Convention under its procedural aspect.

Just satisfaction (Article 41)

As the applicant had not submitted a claim in respect of pecuniary or non-pecuniary damage, or in respect of costs and expenses, the Court considered that there was no call to award him any sum under those heads.

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.