

EUROPEAN COURT OF HUMAN RIGHTS
21.6.2007

Press release issued by the Registrar

https://wcd.coe.int/ViewDoc.jsp?id=1155523&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&ShowBanner=no&Target=_self

CHAMBER JUDGMENT
KARAGIANNOPOULOS v. GREECE

The European Court of Human Rights has today notified in writing its Chamber judgment in the case of *Karagiannopoulos v. Greece* (application no. 27850/03).

The Court held unanimously that there had been:

- **a violation of Article 2** (right to life) of the European Convention on Human Rights on account of the Greek State's failure to protect the applicant's right to life;
- **a violation of Article 2** of the Convention on account of a breach by the Greek State of its duty to conduct an effective investigation into the circumstances of the incident which had put the applicant's life at risk;
- **no violation of Article 14** (prohibition of discrimination).

Under Article 41 (just satisfaction), the Court awarded the applicant 100,000 euros (EUR) for pecuniary damage and EUR 20,000 for non-pecuniary damage. (The judgment is available only in French.)

1. Principal facts

Ioannis Karagiannopoulos is a Greek national of Roma origin, who lives in Serres (Greece). The applicant has been disabled since being shot in the head by a police weapon.

The facts are in dispute between the parties.

The Greek Government alleged that on 26 January 1998 the police, who suspected that the Karagiannopoulos family was involved in drug trafficking, carried out a search at the family home. Among others, they arrested the applicant, who was then aged 17; he offered to take the police officers to a place where cannabis was hidden. On arrival, the two police officers unlocked the applicant's handcuffs; he shoved them away and attempted to escape. The applicant was caught by one of the policemen, but he managed to grab the latter's gun and the two men fought; the gun went off accidentally and wounded the applicant in the head.

The applicant alleged that, on arrival at the family home, the policemen fired into the air, caught him by the hair and then handcuffed him. Instead of taking him to the police station, they took him to a nightclub car-park and began beating him so that he would name other places where drugs were hidden. The applicant told them that he did not know of any such places. The policeman responsible for starting the beating then took out his weapon and placed it against the applicant's head, threatening to kill him if he did not speak; he finally shot and wounded him in the head.

On the day of the incident the policeman concerned was arrested and criminal proceedings were brought against him for negligently causing injury; he was released the following day. On 3 April 1998 the applicant's parents filed a complaint against the policeman with an application to join the proceedings as a civil party.

In the context of the subsequent investigation, a forensic medical examination carried out just after the incident established that the injury had been caused by a shot fired at point-blank range; the bullet had entered at the temple and exited from the forehead. No attempt was made, however, to search for gunpowder traces on the various protagonists' hands. On 28 February 2003

the Serres Court of First Instance acquitted the policeman on the ground of doubt “as to his alleged negligence”.

In the meantime the administrative investigation conducted by the police following the incident concluded that the policeman concerned had shown excessive professional zeal in the exercise of his duties, and slight negligence in detaining the applicant and in respect of the rules governing use of his weapon. In February 1999 the head of police imposed the minimum fine on the policeman for slight negligence.

The applicant brought proceedings for damages, which were dismissed by the administrative courts on the ground that the policeman concerned had acted in legitimate self-defence.

Following the incident the applicant spent about three months in hospital. He has since been hospitalised on two occasions for bacterial meningitis which, according to a doctor, is a result of his injury. He was declared unfit for work by the social security authorities, who have classified him as 100 % permanently disabled.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 21 August 2003 and declared partly admissible on 9 March 2006.

Judgment was given by a Chamber of 7 judges, composed as follows:

Loukis **Loucaides** (Cypriot), *President*,

Christos **Rozakis** (Greek),

Nina **Vajić** (Croatian),

Anatoli **Kovler** (Russian),

Khanlar **Hajiyev** (Azerbaijani),

Dean **Spielmann** (Luxemburger),

Sverre Erik **Jebens** (Norwegian), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

3. Summary of the judgment

Complaints

The applicant complained that the police had used excessive and life-threatening firepower against him, and that the Greek authorities had not carried out an adequate and effective investigation in this case. He relied on Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination).

Decision of the Court

The Court considered that the facts called for an examination under Article 2 alone.

Article 2

As to the authorities' breach of their duty to protect the applicant's life

The Court noted that it was not contested that the applicant's injury was sustained after his arrest, when he was entirely under the control of police officers. As to that injury's origin in a shot fired at point-blank range, the Government had merely referred to the conclusions of the court which acquitted the defendant for lack of evidence. However, the police officer's acquittal did not absolve the Greek State from its responsibility under the Convention.

The Court was struck by the apparent lack of professionalism on the part of the officers involved in the incident. It appeared that the applicant's arrest was followed by events which could have been avoided if the policemen responsible for taking him to the police station had not taken senseless initiatives and if the police officer had had better control of his weapon. Further, the Court considered that the fact that the situation degenerated as it did is all the more inexcusable in that it took place in the context of a police operation planned in advance, which the police officers involved were able to plan carefully, including the stage of taking arrested individuals to the police station.

The Court did not overlook the fact that, at the relevant time, the use of weapons by State agents was governed by legislation that has been recognised as obsolete and inadequate in a modern democracy. The system in place did not provide law-enforcement personnel with recommendations or clear criteria regarding the use of force in peacetime. The lack of clear rules could also explain why the two police officers were thus able to act with considerable autonomy and take irresponsible initiatives, which would probably not have been the case had they received adequate training and instructions.

In those circumstances, the Court considered that Greece's responsibility was engaged in respect of the incident which threatened the applicant's life and which left him disabled. It therefore concluded that there had been a violation of Article 2 in this respect.

As to the alleged insufficiency of the investigation

The Court noted that there were glaring omissions in the conduct of the investigation, and attached great importance to the fact that there had been neither an expert analysis to identify the presence of pyrite on the protagonists' hands, nor a scene-of-crime reconstruction.

It was also surprising that, although the authorities had admitted that the applicant could easily have grabbed the police officer's weapon from the holster on his belt, there had been no analysis of this holster or supervision of the police officer's outfit in order to check whether he was wearing his weapon in line with the regulations. At the same time, there was no evidence in the case file that photographs had been taken after the incident, which could have provided further material for the investigation.

In those circumstances, the Court concluded that there had been a violation of Article 2 on account of the lack of effectiveness of the investigation conducted by the authorities and considered that no separate question arose under Article 13 of the Convention.

Article 14

The applicant alleged, in particular, that one of the police officers who had taken part in the operation had stated before the criminal court that "the majority of gypsies are criminals".

The Court considered that while their trivialisation meant that the statements made by a witness during the trial were clearly insulting for persons of Roma origin and were thus unacceptable, there had not been a violation of Article 14 taken together with Article 2.

Judges Loucaides and Kovler expressed their partially concurring opinions, which are annexed to the judgment.