

Celniku vs Greece

EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

CHAMBER JUDGMENT CELNIKU v. GREECE

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Celniku v. Greece* (application no. 21449/04).

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 shortcomings in the organisation of the police operation in which the applicants' brother died;
- **a violation of Article 2** on account of shortcomings in the inquiry into the death of the applicants' brother.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants jointly 4,010 euros (EUR) for pecuniary damage, EUR 20,000 for non-pecuniary damage and EUR 5,000 for costs and expenses. (The judgment is available only in French.)

1. Principal facts

The applicants, Mirela Celniku and her sister Reimonda Celniku, are Albanian nationals who were born in 1976 and 1974 respectively and live in Athens. Their brother, Gentjan Celniku, better known to the police by the nickname "the Chinaman", was fatally wounded at the age of 20 during an attempted police arrest.

On the afternoon of 21 November 2001 I.R., an off-duty police officer, was walking in Athens city centre when he was told by an informant that the man known to police as "the Chinaman" was in the vicinity of Amerikis Square. The man in question, Gentjan Celniku, was suspected of involvement in an incident in which other persons of Albanian origin had suffered serious injuries, and was reputed to carry a knife at all times.

Having been alerted to the situation by I.R., senior officer V., leading a group of three more police officers, arrived in Lefkosias Street near the café where the suspect and four other Albanian nationals were reported to be. After obtaining authorisation to apprehend the five individuals concerned and asking I.R. not to take part in the operation, V. and the three officers entered the café and ordered the suspects to raise

their arms in the air and lie down on the ground. Mr Celniku refused to comply and tried to slip his hand inside his raincoat. Believing his colleagues to be in danger, I.R. intervened, moving towards Mr Celniku with his firearm in his hand. The latter kicked him in the right hand and a shot went off which struck Mr Celniku in the head, killing him instantly.

In a statement made the following day, I.R. said that he had acted instinctively to protect his colleagues and that immediately after the fatal shot he had seen a knife in a pool of blood. Three of the police officers involved said that I.R. had found the knife after searching the victim's body; I.R. later acknowledged that this had been the case.

An administrative inquiry was started straight away to ascertain whether the use of force had been justified. In the course of the inquiry statements were taken from 18 persons, most of them eyewitnesses, and an autopsy was performed. In July 2003 the police disciplinary board decided that there were no grounds for taking disciplinary action against I.R. as the victim himself had been solely responsible for the fatal shot being fired. This decision was upheld in January 2004.

Meanwhile, criminal proceedings had been instituted against I.R. for unintentional homicide. In November 2003 he was acquitted on the ground that the fatal wounding had not resulted from negligence on his part.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 21 May 2004.

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

Loukis **Loucaides** (Cypriot), *President*,
Christos **Rozakis** (Greek),
Nina **Vajić** (Croatian),
Khanlar **Hajiyev** (Azerbaijani),
Dean **Spielmann** (Luxemburger),
Sverre Erik **Jebens** (Norwegian),
Giorgio **Malinverni** (Swiss), *judges*,

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

3. Summary of the judgment²

Complaints

The applicants alleged that the police officers seeking to arrest their brother had used excessive firepower which had resulted in his death and complained that no effective inquiry had been conducted into the facts in question. They further alleged that the events at issue had been the result of discriminatory attitudes towards persons of Albanian origin. They relied on Article 2 (right to life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination).

Decision of the Court

Article 2 of the Convention

As to Mr Celniku's death

The use of lethal force

The Court considered that there was no reason to question the facts as established by the Greek courts. It therefore took the view that the fatal shot had been triggered not by any deliberate action on the part of the police officer I.R. but by the sudden reaction of the victim, consisting in kicking the police officer's hand in which the weapon was held. Accordingly, the Court considered that, in the circumstances of the case, the use of lethal force was not attributable to the Greek State.

The police operation

The Court observed in particular that, in defiance of V.'s orders, I.R. had approached Mr Celniku with the hand in which he was holding the weapon outstretched, so that he was within arm's reach of the victim. He had thus of his own initiative laid himself open to the actions of the victim which had resulted in the fatal shot being fired.

In the Court's view, the fact that the situation had degenerated to such a degree was all the more inexcusable given that it was an operation planned by the police, which the officers concerned should have been able to prepare with care.

The Court was also mindful of the fact that at the relevant time the use of weapons by agents of the State was governed by legislation which was recognised to be obsolete and inadequate in a modern democratic society. The system in operation did not provide those responsible for applying the laws with clear guidelines and criteria concerning the use of force in peacetime. The lack of clear rules might also explain why I.R. had acted hastily, which he would probably not have done had he received the proper training.

In the circumstances, although the death of the victim was not in itself attributable to the Greek authorities, the way in which the police operation was conducted showed that the police had not taken appropriate care to ensure that any risk to the lives of Mr Celniku and the other persons present at the scene of the incident was kept to a minimum. They had therefore been negligent in their course of action. Accordingly, the Court held that there had been a violation of Article 2.

As to the inquiry into Mr Celniku's death

The Court noted that the authorities had shown their willingness to conduct an administrative inquiry in order to determine whether the use of force had been justified in the circumstances. However, there were problems as to the independence and thoroughness of the inquiry.

The Court observed first of all that the police officers in charge of the inquiry were attached to the Attiki police headquarters, as were the officers involved in the

incident. Hence, doubts could be raised as to the ability of the officers concerned to conduct an independent inquiry, as it was highly likely that they would have known the officers involved personally and have worked with them in the past, creating inevitable feelings of professional solidarity. In the Court's view, this was liable to undermine the independence of the inquiry and erode the confidence of the public and of those individuals with an interest in its being conducted objectively.

The Court was further struck by the fact that the police officers involved had not taken the proper steps to gather the evidence in the immediate aftermath of the incident. In the Court's view, I.R. had been the person least qualified to search the body of the victim, given that it was he who had fired the fatal shot and that he had, in principle, an interest in the victim's being found in possession of a weapon. Moreover, following the incident the police officers involved had not preserved the scene, thus preventing the inquiry from gathering important evidence.

In general terms, the Court noted the absence of clear rules and instructions on the procedures to be followed by police officers in such situations. This could explain why the officers involved in the incident had acted spontaneously without following a set procedure. In the circumstances the Court held that there had been a violation of Article 2 in the present case on account of the lack of an independent and effective inquiry. In view of that finding, it did not consider it necessary to examine whether there had been a violation of Article 13 (right to an effective remedy).

Article 14

The Court did not consider it established "beyond reasonable doubt" that the actions of the State agents in the instant case had been motivated by racial prejudice against persons of Albanian origin. It therefore declared the complaint under Article 14 inadmissible as being manifestly ill-founded.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Press contacts

Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)

Beverley Jacobs (telephone: 00 33 (0)3 90 21 54 21)

Tracey Turner-Tretz (telephone : 00 33 (0)3 88 41 35 30)

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.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation

or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

² This summary by the Registry does not bind the Court.