



Lack of legal assistance in police custody did not irremediably infringe the fairness of criminal proceedings, against a person whose conditions of detention amount to inhuman and degrading treatment

In today's **Grand Chamber** judgment¹ in the case of **Simeonovi v. Bulgaria** (application no. 21980/04), the European Court of Human Rights found:

- unanimously, that there had been a **violation of Article 3 (prohibition of inhuman and degrading treatment)** of the European Convention on Human Rights, and
- by twelve votes to five, that there had been **no violation of Article 6 §§ 1 and 3 (c) (right to a fair trial/right to legal assistance)**

The case concerned the absence of legal assistance for the first three days of the detention of Mr Simeonov, who was sentenced to life imprisonment, and the conditions of the detention and prison regime imposed on him.

The Court found in particular that Mr Simeonov's conditions of detention, in combination with the strict regime under which he was serving his sentence and the length of his period of imprisonment since 1999, had subjected him to an ordeal exceeding the suffering inherent in serving a prison sentence, which had amounted to inhuman and degrading treatment, reiterating its recommendations in paragraph 280 of the *Harakchiev and Tolumov v. Bulgaria* judgment².

The Court also found that Mr Simeonov's right to legal assistance had been restricted for the first three days of his police custody, but that that restriction had not irremediably infringed the criminal proceedings as a whole. In particular, the Court noted that no evidence capable of being used against Mr Simeonov had been obtained and included in the criminal file during that period; that Mr Simeonov, assisted by a lawyer of his own choosing, had voluntarily confessed two weeks after being charged, when he had been informed of his procedural rights, including the privilege against self-incrimination; that Mr Simeonov had actively participated in all stages of the criminal proceedings; that his conviction had not been based solely on his confession but also on a whole body of consistent evidence; that the case had been assessed at three judicial levels and that the domestic courts had provided adequate reasons for their decisions in both factual and legal terms and had properly examined the issue of respect for procedural rights.

Principal facts

The applicant, Lyuben Filipov Simeonov, is a Bulgarian national who was born in 1975. He is currently serving a prison sentence in Sofia.

On 3 October 1999 Mr Simeonov was arrested on suspicion of having committed armed robbery and two murders, aided by an accomplice. On 4 October 1999 he was placed in detention for 24 hours. The next day his detention was extended by three days. Mr Simeonov alleged that he had requested, in vain, the assistance of a lawyer during the first three days of his detention.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

² See *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, § 280, ECHR 2014.

On 14 June 2001 the court found Mr Simeonov guilty of armed robbery in a bureau de change in Burgas, accompanied by the murders of two persons, committed collectively with an accomplice, and the unlawful acquisition of a handgun and ammunition. The court sentenced him to whole-life imprisonment, the heaviest sentence available under the Bulgarian Criminal Code. Furthermore, the court ordered that Mr Simeonov be placed under the “special” prison regime. The Court of Appeal upheld that judgment, and the Court of Cassation dismissed Mr Simeonov’s appeal on points of law, and he was detained in the Burgas Pre-trial Detention Facility and subsequently transferred to Burgas Prison and then Sofia Prison, where he is still being detained.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Simeonov complained of his physical conditions of detention and his prison regime in the Burgas Pre-trial Detention Facility and in Burgas and Sofia Prisons

Relying on Article 6 § 3 (c) (right to legal assistance) in conjunction with Article 6 § 1 (right to a fair trial), he alleged that he had not been assisted by a lawyer for the first few days of his detention.

The application was lodged with the European Court of Human Rights on 8 June 2004.

In its Chamber [judgment](#) of 20 October 2015, the Court unanimously found that there had been a violation of Article 3 of the Convention on account of Mr Simeonov’s conditions of detention and the prison regime imposed on him. The Court also unanimously found no violation of Article 6 §§ 1 and 3 (c) concerning the lack of legal assistance for Mr Simeonov’s first few days of detention.

On 12 January 2016 the applicants requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 14 March 2016 the panel of the Grand Chamber accepted that request.

On 20 May 2016 the non-governmental organisation, the “Association for the prevention of torture”, based in Geneva (Switzerland), was given leave to submit written observations on the right to legal assistance. A hearing was held on 6 July 2016.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

András **Sajó** (Hungary), *President*,
Luis **López Guerra** (Spain),
Mirjana **Lazarova Trajkovska** (“the Former Yugoslav Republic of Macedonia”),
Angelika **Nußberger** (Germany),
Nebojša **Vučinić** (Montenegro),
André **Potocki** (France),
Paul **Lemmens** (Belgium),
Helena **Jäderblom** (Sweden),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),
Robert **Spano** (Iceland),
Jon Fridrik **Kjølbro** (Denmark),
Yonko **Grozev** (Bulgaria),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar*.

Decision of the Court

Article 3 (prohibition of inhuman and degrading treatment)

The Court noted that the Chamber had found a violation of Article 3 of the Convention and saw no reason to depart from its findings. It further observed that the last inspection report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) and the Statement published by the CPT in 2015 bore witness to the persistence of poor conditions of detention in Sofia Prison. The Court also agreed with the Chamber that Mr Simeonov's conditions of detention in combination with the strict regime under which he was serving his sentence and the length of his period of imprisonment (since 1999), had subjected him to an ordeal exceeding the suffering inherent in serving a prison sentence and amounted to inhuman and degrading treatment. **It therefore found a violation of Article 3 of the Convention.**

Article 6 §§ 1 and 3 (c) (right to legal assistance)

The Court first of all noted that Mr Simeonov's right to legal assistance had been restricted for the first three days of his police custody (from 3 to 6 October 1999).

The safeguards set out in Article 6 of the Convention – in particular, the right to assistance by a lawyer – became applicable as of the time of his arrest (3 October 1999). Mr Simeonov alleged that he had requested legal assistance, but none of the documents in the case file corroborates that affirmation, and at the material time Bulgarian law, which authorised access to a lawyer from the time of arrest, had not required requests for such access to be in writing. The Government submitted that Mr Simeonov had been informed of his right to legal assistance as of the time of his arrest, but the criminal file contains no written record on that subject. Moreover, the detention order, which mentioned Mr Simeonov's right to legal assistance had not been signed by the latter and there were no documents to show that it had been presented to him after his arrest; Mr Simeonov had therefore not been duly notified of that right, nor had he been verifiably informed of his procedural rights before being formally charged on 6 October 1999. Even supposing that Mr Simeonov had not made any explicit request for legal assistance during his custody, he cannot be deemed to have implicitly waived that right, since he had not been promptly informed of it after his arrest. Consequently, Mr Simeonov's right to legal assistance had been restricted.

The Court noted, however, that the fairness of the criminal proceedings taken as a whole had not been irremediably infringed by the absence of a lawyer during the custody from 3 to 6 October 1999.

Mr Simeonov had not mentioned the absence of a lawyer during his police custody before the Burgas Court of Appeal, and his appeal on points of law had merely referred to the absence of a lawyer on 4 October 1999 in passing, in the context of another plea seeking to secure the dismissal of evidence obtained in the presence of his officially assigned lawyer. Furthermore, the case file contained absolutely no evidence to the effect that Mr Simeonov had been formally or informally questioned during his custody. Also, during that three-day period no evidence capable of being used against Mr Simeonov had been obtained and included in the file. No statement had been taken from Mr Simeonov, and there was nothing in the case file to suggest that he had taken part in other investigative measures during that period, such as an identification parade or the taking of biological material. What is more, Mr Simeonov did not allege before the Court that the domestic courts had been in possession of evidence produced during the same period which they had used in the framework of his trial as grounds in order to convict him. The law and case-law of the domestic courts provided for the exclusion of any evidence obtained in breach of the rules of the Code of Criminal Procedure. In the case of Mr Simeonov, who was liable to a life sentence, legal assistance during interrogations would have been a *sine qua non* for the admissibility in evidence during the proceedings of any statement on his part. Mr Simeonov could even have benefited from his initial

silence had he not opted for voluntarily confessing on 21 October 1999 – two weeks before his formal indictment – while he was being assisted by a lawyer of his choice. In finding that the confession had been voluntary, the Court had regard to the fact that Mr Simeonov had already been questioned twice, on 6 and 12 October 1999, with the assistance of a lawyer, and had remained silent. During each of these interrogations, and during the confession of 21 October 1999, he had been informed of his procedural rights, and in particular of his privilege against self-incrimination. Moreover, at that time he had enjoyed the advice and assistance of a lawyer of his own choice. Nor was it alleged that only Mr Simeonov's confession on 21 October 1999 had been used as the basis for his conviction. Accordingly, no causal link had ever been posited, before the domestic courts or before the Court, between the absence of a lawyer from 3 to 6 October 1999 and the confession made by the applicant two weeks after the end of that period, in the presence of a lawyer of his choosing. **The absence of a lawyer during the police custody had in no way infringed Mr Simeonov's privilege against self-incrimination.**

Furthermore, Mr Simeonov had actively participated at all stages in the criminal proceedings, in particular obtaining evidence on his own behalf and contesting incriminating evidence. His conviction had not been based solely on his confession of 21 October 1999, which had been made in the presence of the lawyer whom he had himself chosen, but on a whole body of consistent evidence, including multiple witness statements, the findings of ballistics, accountants', technical, medical and psychiatric reports, as well as material and documentary evidence. The case had been assessed at three different judicial levels and all the domestic courts had properly considered the evidence gathered. Moreover, those courts had given adequate reasons for their decisions in factual and legal terms, and also properly assessed the issue of respect for procedural rights.

The Court therefore held that the Government had presented relevant and sufficient evidence to demonstrate that they had not irremediably infringed the fairness of the criminal proceedings taken as a whole on account of the lack of legal assistance during the police custody from 3 to 6 October 1999. **It therefore found that there had been no violation of Article 6 §§ 1 and 3 (c) of the Convention.**

[Article 46 \(binding force and execution of judgments\)](#)

As regards the finding of a violation of Article 3 of the Convention on account of Mr Simeonov's conditions of detention in combination with the strict regime under which he was serving his sentence and the length of his period of imprisonment, the Court considered it appropriate to reiterate its recommendations in paragraph 280 of the *Harakchiev and Tolumov v. Bulgaria* judgment³, which concerned, firstly, removing the automatic application of the special regime to life prisoners, and secondly, introducing provisions permitting imposition of that regime on the basis of an individual risk assessment.

[Article 41 \(just satisfaction\)](#)

The Court held, by 14 votes to three, that Bulgaria was to pay Mr Simeonov 8,000 euros (EUR) in respect of non-pecuniary damage and EUR 8,000 in respect of costs and expenses.

Separate opinions

Judges Sajó, Lazarova-Trajkovska and Vučinić expressed a partly dissenting opinion, joined by Judge Turković. Judge Serghides expressed a partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

³ See *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, § 280, ECHR 2014.

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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.