



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

SECOND SECTION

CASE OF PEERS v. GREECE

(Application no. 28524/95)

JUDGMENT

STRASBOURG

19 April 2001

In the case of Peers v. Greece,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr A.B. BAKA, *President*,

Mr G. BONELLO,

Mrs V. STRÁŽNICKÁ,

Mr P. LORENZEN,

Mr M. FISCHBACH,

Mr E. LEVITS, *judges*,

Mrs C.D. SPINELLIS, *ad hoc judge*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 5 October 2000 and 5 April 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court, in accordance with the provisions applicable prior to the entry into force of Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), by the European Commission of Human Rights (“the Commission”) on 11 September 1999 (Article 5 § 4 of Protocol No. 11 and former Articles 47 and 48 of the Convention).

2. The case originated in an application (no. 28524/95) against the Hellenic Republic lodged with the Commission under former Article 25 of the Convention by a United Kingdom national, Mr Donald Peers (“the applicant”), on 9 October 1994.

3. The applicant alleged, in particular, that the conditions of his detention at Koridallos Prison amounted to inhuman and degrading treatment. He also claimed that the failure of the prison authorities to provide for a special regime for remand prisoners amounted to a violation of the presumption of innocence. He further alleged that letters sent to him by the Commission’s Secretariat were opened by the prison administration.

4. The application was declared partly admissible by the Commission on 21 May 1998. On 22 June 1998 the Commission carried out a fact-finding visit at Koridallos Prison. In its report of 4 June 1999 (former Article 31 of the Convention) [*Note by the Registry*. The report is obtainable from the Registry], it expressed the opinion, by twenty-six votes to one, that there had been a violation of Article 3 as a result of the conditions of the applicant’s detention in the segregation unit of the Delta wing at Koridallos Prison. It also expressed the unanimous opinion that there had been no violation of Article 6 § 2 and that there had been a violation of Article 8.

5. Before the Court the applicant, who had been granted legal aid, was represented by his counsel. The Greek Government (“the Government”) were represented by their Agent, Mr E. Volanis, President of the State Legal Council.

6. On 20 September 1999 a panel of the Grand Chamber determined that the case should be decided by a Chamber constituted within one of the Sections of the Court (Rule 100 § 1 of the Rules of Court). Subsequently the application was allocated to the Second Section (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. Mr C.L. Rozakis, the judge elected in respect of Greece, who had taken part in the Commission’s examination of the case, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mrs C.D. Spinellis to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1).

7. A hearing took place in public in the Human Rights Building, Strasbourg, on 5 October 2000 (Rule 59 § 2).

There appeared before the Court:

(a) *for the Government*

Mr M. APESSOS, Senior Adviser, State Legal Council,	<i>Agent,</i>
Mr I. BAKOPOULOS, Adviser, State Legal Council,	<i>Counsel;</i>

(b) *for the applicant*

Mrs R. SPARTALI-ARETAKI, Lawyer,	<i>Counsel,</i>
Mr A. ARETAKIS, Lawyer,	<i>Adviser.</i>

The Court heard addresses by Mrs Spartali-Aretaki and Mr Apeessos.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Outline of events

8. On 19 August 1994 the applicant, who had been treated for heroin addiction in the United Kingdom, was arrested at Athens Airport for drug offences. He was transferred to the central police headquarters of Athens in Alexandras Avenue, where he was detained until 24 August 1994.

9. On 24 August 1994 the applicant was transferred to Koridallos Prison and was admitted in a comatose state to the prisoners' psychiatric hospital.

10. On 30 August 1994 he was discharged from the psychiatric hospital. The certificate of discharge described him as a drug user. He was immediately taken to Koridallos Prison proper.

11. The applicant was placed in the segregation unit of the "Delta" wing of the prison. Subsequently, he was transferred to the "Alpha" wing.

12. On 28 July 1995 the applicant was found guilty of drug offences by the three-member Court of Appeal (Τριμελές Εφετείο) of Athens, which, due to the nature of the charges, sat as a first-instance court. The court acknowledged that the applicant was a drug addict and sentenced him to thirteen years' imprisonment and a fine of 5,000,000 drachmas. The applicant appealed.

13. In November 1995 there was a riot in Koridallos Prison.

14. On 30 August 1996 Ms Vasiliki Fragathula, a social worker of Koridallos Prison, reported to the prison governor, *inter alia*, the following facts. The applicant, after his conviction, shared a cell with one other convict. Letters sent by the applicant were not opened. Letters sent to the applicant by the European Commission of Human Rights were opened by a prison officer in front of the applicant. Foreigners who did not speak Greek could not participate in the vocational training courses organised in Koridallos Prison. A programme for learning Greek had once been available in the prison library but was destroyed during the riot. However, it was the intention of the welfare office to replace it in due course. According to the Penitentiary Code, remand prisoners did not have the right to work. However, the applicant, after his conviction, started working as a cleaner. Almost immediately after his arrival at Koridallos Prison the applicant started being treated by Dr P., a psychiatrist. He continued to participate in the awareness and self-help therapeutic programmes for the foreign prisoners of two organisations, Drug Addicts Anonymous and Over 18. He was also individually treated by a psychologist who was a member of Drug Addicts Anonymous. After the applicant's arrival at Koridallos Prison, his case was followed by the prison's welfare office. It was true that no distinctions were made between remand prisoners and convicts.

15. In September 1996 the applicant was transferred from Koridallos to Tirintha Prison. According to a letter by the governor of Tirintha Prison dated 20 November 1996, this was done "to ensure better conditions of detention for the applicant". From Tirintha Prison the applicant was transferred at his request to Agias Prison in Canea.

16. In November 1997 a court of appeal upheld the applicant's conviction but reduced his sentence to nine years' imprisonment and ordered his expulsion from Greece.

17. On 2 June 1998 the applicant applied for release on probation. On 10 June 1998 a Chamber of the Canea First-Instance Criminal Court granted

his application. The applicant was released from prison and was transferred to the Canea deportation centre. From there he was taken to Piraeus and expelled from Greece immediately after his appearance before the Commission's delegates at Koridallos Prison on 22 June 1998.

B. Oral evidence before the Commission's delegates

18. The evidence of the applicant and the three witnesses who appeared before the delegates at Koridallos Prison on 22 June 1998 may be summarised as follows.

1. The applicant

(a) Conditions of detention in Koridallos prisoners' psychiatric hospital

19. The applicant was admitted to Koridallos prisoners' psychiatric hospital on 24 August 1994. Initially, he was detained in a single cell for three days. He slept all the time due to medication. It was another prisoner who told him how long he had been there. When he woke up, he was moved to a cell with eight to ten "very disturbed" persons. They slept on mattresses on the floor. It was hot, but the windows were open. Occasionally, the door would open and they would be allowed out to go to the toilet or have a shower or walk in the yard. Meals were served in plastic containers on the floor. He stayed for four to five days and nights in the second cell.

(b) Conditions of detention in the segregation unit of the Delta wing

20. Subsequently the applicant was taken to the prison proper. He asked to be kept somewhere quiet and he was immediately placed in the segregation unit of the Delta wing. At first, the applicant did not know that he was in a segregation unit.

21. The cell was very small and high. It had two doors and there were two beds. One could hardly walk between them. During the entire period of his stay in the segregation unit he was detained with another person, Mr Petros Papadimitriou. There was only one window in the roof which did not open and which was so dirty that no light could pass through. There was just one electric bulb which did not provide sufficient light for reading. There were no other windows apart from a peephole in one of the two doors, which could be opened. There was an Asian-type toilet in the cell. There was no screen or curtain separating the toilet from the rest of the cell. Sometimes the toilet would flush and sometimes not. There was only one shower in the unit, which contained nine cells with up to three prisoners in each. There was no sink in the cell.

22. It was August when the applicant was placed in the segregation unit. It was very hot. During the day the door of his cell would be open. The

segregation unit was unsupervised and “anything could happen”. However, the applicant had not been ill-treated by any particular person. There were two small high-walled yards, “ten steps forward, ten steps back”. At night the door of his cell would be locked. As there was no ventilation the cell became so hot that the applicant would wake up drenched. In order to have water in his cell, the applicant would fill a bottle from the tap near the shower and sometimes from the toilet flush.

23. After maybe two weeks in the segregation unit, the applicant was offered the possibility of going to the ordinary cells in the Delta wing. However, he had to turn this offer down because the Delta wing was for drug addicts and “he wanted to stay away from drugs”. There were no drug addicts in the segregation unit.

(c) Conditions of detention in the Alpha wing

24. The applicant did not remember exactly when he left the segregation unit – perhaps two or two and a half months later, at the end of October or the beginning of November. He was moved to the Alpha wing where mainly economic offenders were kept. Mr Papadimitriou was moved with him and they continued to share the same cell.

25. Alpha was the best wing in the prison. However, it was still dirty and overcrowded. There were three beds in each cell: two bunk beds, one on top of the other, and a third bed. Usually, there were three prisoners in each cell. There was a sink and an Asian-type toilet. There was a plastic screen on one side of the toilet, part of which was broken. Although one could not see the inmate using the toilet, one could smell and hear him. The cell had a window. Sometimes there was a table and a chair in the cell.

26. The doors of the cells were locked between 1 p.m. and 3 p.m. and between 8.30 p.m. and 8 a.m. This schedule differed by one hour between summer and winter. The cells were very noisy due to fellow inmates’ television and radio sets. The prisoners had no control over the light switches. In winter, the cells were very cold as they were heated for only two hours a day. Sometimes the applicant had to stay in bed under his blankets to keep warm. After the riot, several windows were broken and it was freezing in the prison. In the summer, the cells were unbearably hot, as there was no through-draught when the doors were shut. Sometimes the applicant had to wait until three or four o’clock in the morning before he could fall asleep. When the door of the cell was open, the situation improved but there was no ventilation in the wing in general. Occasionally, there were problems with the plumbing and the toilet would not always flush.

27. At one point, when the applicant was sharing his cell with only one other prisoner, three Chinese inmates were brought in for one night. They slept on two mattresses on the floor.

(d) Complaints concerning the entire period of the applicant's detention in Koridallos Prison

28. The only thing the applicant was ever given were blankets. He was not given any clothes, sheets, pillows, toiletries (including soap) or toilet paper. He had to buy toiletries and toilet paper from the canteen. Occasionally he did not have any money and had to ask other prisoners. The social services and certain charitable organisations would also help. However, there were times when he was left with no toilet paper, in particular when he had to use the toilet often, due to problems with his stomach. On these occasions, in order to keep clean, he had to use water from the Asian-type toilet. Despite all that, he managed "to keep himself clean". Eventually, he managed to get hold of sheets and a pillow, which he inherited from other prisoners. However, it took him a long time, perhaps a year.

29. There were ten showers – described by the applicant as pipes – in the basement for the 250 to 360 prisoners held in the wing. There was hot water for two hours a day or perhaps longer. There were no curtains and no windows. After the riot there was no hot water. In winter, the showers were used by the cats as toilets.

30. He had to wash his clothes himself and this was made difficult because of the shortage of hot water. He would dry his clothes by hanging them on the bars of his cell window.

31. Food was served in such a manner that the cats could play around with it. Before entering prison he had been a vegetarian but he had to change his eating habits as there were no vegetarian menus in Koridallos.

32. The applicant "lived in a vacuum". He could not communicate with the prison staff, who did not speak English. The social worker knew English. In order to see her, he had to make a request. He would see the social worker three times a week, usually for between two and five minutes. Ten minutes was the maximum.

33. There were no vocational activities, courses or library.

34. At first, the applicant was allowed only one telephone call a week, in the evening. However, the social worker subsequently arranged for him to be able to use the telephone in the morning.

2. Spiros Athanassopoulos

35. The witness was the governor of Koridallos Prison between 14 December 1994 and 15 September 1997.

36. The witness did not know of any improvements that had been made in the Alpha wing since the applicant's transfer from Koridallos Prison. There had been some improvements made to the segregation unit. Now, there were screens separating the toilets from the rest of the cell in the segregation unit, but he did not want to contradict the applicant in this

regard. It was possible that there had been no screen in his cell. There were sinks in the cells of the segregation unit.

37. It was as hot in the segregation unit as in the rest of the prison. In summer it could be hot. During the winter, there was central heating.

38. The prison administration provided inmates with pillows. However, it was possible that the applicant did not receive any because at times there were shortages. There was a problem with sheets, especially for foreign prisoners. The latter could get sheets from the welfare office, which had a stock built up from donations or acquisitions through grants from the Ministry of Justice. The prison administration did not provide prisoners with toiletries. Such items were provided by charitable organisations via the welfare office. Toilet paper could be obtained from the welfare office or another prisoner or the chief warden. It was more difficult to find sheets than toilet paper.

39. Food was not served in an unhygienic manner. While it was being transported, the pan was 60 to 70 cm from the floor, although the witness was not 100% sure about that.

40. It was possible that the applicant had slept in the cell with four other prisoners. Usually, each prisoner had his own bed. It was very rare that he did not. However, accommodating four prisoners in a cell had been known to happen.

41. There was no problem with the showers. However, those who had to wash their clothes in prison were faced with problems.

42. Prisoners communicated with the social workers whom they could see upon request either on the same day or the day after. Those who did not speak Greek could face problems. However, in the witness's experience, they managed to adapt. There was always somebody, a member of staff or another prisoner, who could speak English.

43. All announcements and notices were in Greek. Foreign prisoners were informed of their rights orally upon arrival. However, this was not done systematically. An information pamphlet in English entitled "Everyday life in the prison establishment" was distributed to newcomers in 1996 but the witness did not remember whether this was before or after the applicant had left Koridallos Prison.

3. Vasiliki Fragathula

44. The witness was the social worker of the Delta wing of Koridallos Prison. She met the applicant there and followed his case throughout his stay in prison.

45. On his arrival in Koridallos Prison proper (after his detention in the prisoners' psychiatric hospital), the applicant was placed in the segregation unit. This had been decided by the prison governor and the chief warden as a result of his condition – he had withdrawal symptoms. The applicant did not have advance knowledge of the conditions in the segregation unit.

Shortly afterwards, the applicant complained of the conditions there and the witness arranged for him to meet the governor, Mr Costaras. The latter gave instructions for the applicant to be moved to another wing. However, this would have been the Delta wing, which was for drug addicts. The applicant was aware of this. He had found out through his contacts with other inmates. He refused to go there. He considered that staying in the segregation unit would help him stay away from drugs. The witness would not confirm that there were drugs in the Delta wing. However, she accepted that “the Delta wing was problematic for someone who wanted to free himself from drugs”. In her view, the segregation unit was not appropriate for prisoners. However, the applicant, who was suffering from withdrawal symptoms, could not be moved to the Alpha wing immediately. This wing was reserved for persons convicted of economic offences and other prisoners whose conduct had been good. So the applicant had a choice between the segregation unit and the Delta wing. The witness did not advise the applicant to choose one or the other because she did not want to influence what she regarded as a purely personal choice. The applicant chose to remain in the segregation unit. He was subsequently moved to the Alpha wing, together with all the inmates of the segregation unit, when it was decided to accommodate in the segregation unit prisoners who were serving disciplinary terms.

46. The witness would communicate with the applicant in English. The applicant did not speak Greek and this exacerbated his adaptation problems at the beginning, since most of the prison staff did not speak English. However, several of the Greek prisoners spoke some elementary English. Gradually, the applicant managed, through his personal efforts, to establish a rudimentary level of communication with the prison staff in Greek. There were no information notices in English. The pamphlet to which Mr Athanassopoulos referred was distributed in Koridallos in 1997.

47. The welfare office had a storage room in the prison with toilet paper, razors, detergent, soap, etc. These were funded by the Ministry of Justice and charitable organisations. Destitute prisoners could get supplies from this storage room once a week. However, during the summer there were often shortages. The welfare office did not provide prisoners with sheets and blankets. These were provided to newcomers by the prison administration, but it was impossible to replace them. The witness did not know whether the applicant had received any sheets. The applicant would receive clothes, toiletries and toilet paper from the welfare office in so far as this was possible, given the restrictions with which it was faced. In the witness’s view, given the extended period of the applicant’s detention in Koridallos, it was possible that he had been confronted with shortages of toiletries and toilet paper. The applicant had also been given assistance by charitable organisations with which the witness had put him in touch.

4. Petros Papadimitriou

48. The witness was an inmate of Koridallos Prison. He spent one year in the same cell as the applicant, four months in the segregation unit of the Delta wing and eight months in the Alpha wing. The witness was in the segregation unit of his own free will because he was a new prisoner and wanted some peace and quiet. They were both moved to the Alpha wing, probably when the prison administration decided to accommodate in the segregation unit prisoners who were serving disciplinary terms.

49. The segregation unit of the Delta wing contained nine cells, each occupied by two or three prisoners. While in the segregation unit, the witness shared his cell with the applicant and nobody else. There were two beds with mattresses and blankets. They were not given sheets or pillows. The toilet had no curtain.

50. While he was in the segregation unit the applicant would often complain. As it was very hot and he had respiratory problems, he would wake up at two o'clock in the morning coughing. He would bang on the door because he could not breathe.

51. There were usually three prisoners in the cells in the Alpha wing. The witness could not remember more than three prisoners in his cell. He remembered one Chinese inmate sleeping in their cell but not three. He did not remember anybody sleeping on the floor. The toilet screen was always there and was not broken. The witness kept a cat in the cell.

52. As regards the conditions of detention in Koridallos Prison in general the witness stated the following. The food was bad and risked being contaminated by cats. It was easy to take a shower and one did not have to queue. However, there was not enough water and no curtains. He spoke to the applicant in English and sometimes in Greek. He would also act as a mediator for him. The prison administration would only provide soap. The welfare office would sometimes hand out certain things, but it was difficult. The witness would buy toiletries and toilet paper himself. The applicant would buy them whenever he had money. He would also ask the witness for toothpaste and toilet paper, which the witness would give him. Sometimes it was possible to find a pillow.

C. Inspection of Koridallos Prison

53. The delegates of the Commission visited the segregation unit of the Delta wing where the applicant had been detained in cell no. 9. The description given by the applicant was on the whole accurate. All the cells were approximately the same size. Cell no. 9 measured 2.27 by 3 m. Given that there was practically no window, the cell was claustrophobic. At the time of the delegates' visit, the prisoners were locked in their cells. Cells where two persons were held were very cramped. Prisoners were virtually

confined to their beds. There was no screen separating the toilet from the rest of the cell. The toilet was adjacent to the beds. Some prisoners had put up curtains themselves. The entire unit was very hot. Due to the lack of ventilation, the cells were unbearably hot, “like ovens”. The air was stale and a stench came out of the cells. The cells were all in a state of disrepair and they were very dirty. Some prisoners complained about rats in the cells. There was no sink in cell no. 9. There was a tap. According to the applicant, who accompanied the delegates during their inspection, the tap had recently been installed. On the doors of some cells there were signs saying “WC”. When asked, the prisoners said that the signs would be put up during the day when the cell doors were not locked to ensure that the cell-mate did not enter the cell while the toilet was being used. The applicant’s cell could be compared to a medieval oubliette. The general atmosphere was repulsive.

54. The delegates also visited a cell on the third floor of the Alpha wing where the applicant had been detained. According to the chief warden of Koridallos Prison, who accompanied the delegates during their inspection, Mr Papadimitriou was still detained in this cell. The cell measured approximately 4.5 by 2.5 m. The description by the applicant was again accurate, except that the toilet screen was not in disrepair. The cell had windows of an adequate size.

55. The delegates saw the shower area in the basement. It was reasonably clean, although the applicant claimed that during his time it had been much dirtier. Most shower cubicles had curtains. However, some did not.

56. In the prison storage room, there were small bags containing toilet paper and toiletries that were given to new prisoners. However, the delegates were told that these bags had arrived only very recently. There were no sheets. The inmate in charge claimed that they had all been distributed or that they were at the laundry. There was a cupboard which contained mainly soap.

57. The welfare office storage room was closed at the time. There was a sign indicating that each wing was served once a week. It was opened at the delegates’ request. It contained a lot of used clothes. The delegates were shown toilet paper and one sheet. There was a book showing that prisoners came to the room and were provided with various items, such as toiletries, shoes, etc.

58. The kitchen was quite spacious and clean. The trolleys on which food was transported, however, did not correspond to Mr Athanassopoulos’s description. They were rather low.

59. In one corner of a corridor outside the kitchen a cat had defecated. The delegates also had the opportunity of seeing the inmates queuing to use the telephones. The queues were rather long.

60. According to the chief warden, no prisoners’ location charts dating from the applicant’s detention in Koridallos Prison had been kept. Nor were

there books showing the movement of prisoners from one cell to another. The only books that had been kept indicated the last cell in which each prisoner had been kept before leaving Koridallos Prison.

D. Findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

61. On 29 November 1994 the CPT published a report following its visit to Greece in March 1993 [Koridallos Prison was also visited by the CPT in May 1997] which contains the following findings and recommendations concerning Koridallos Prison.

“...

91 ... Koridallos Prison for men was built to accommodate 480 prisoners in four separate blocks, each having 120 cells on three floors. On the first day of the delegation's visit, the establishment was holding 1410 prisoners, approximately 800 on remand and the remainder sentenced. The total prison staff complement was 170, of which some 110 were prison officers. Perimeter security was the responsibility of armed police.

...

95. In the following paragraphs, the CPT shall make a number of specific recommendations concerning the prison establishments visited by its delegation. However, it wishes to emphasise at the outset that the act of depriving someone of his liberty brings with it the responsibility for the State to detain him under conditions which respect the inherent dignity of the human person. The facts found during the course of the CPT's visit demonstrate that as a consequence of the present level of overcrowding in prisons, the Greek authorities are not in a position to fulfil that responsibility *vis-à-vis* many prisoners.

The CPT therefore recommends that a very high priority be given to measures to reduce overcrowding in the Greek prison system.

...

105. As already indicated (cf. paragraph 91), at the time of the delegation's visit to the Koridallos Prison for men the number of inmates amounted to almost three times the establishment's official capacity. A standard cell measured 9.5 m² and was equipped *inter alia* with a screened Asian-type toilet and a hand-basin. Originally designed for individual occupancy, the cells are just about large enough for two prisoners; with more than two, conditions become very cramped. In practice, only a handful of prisoners had their own cells; the majority of the cells were accommodating two or three prisoners, and a number were accommodating four. The level of overcrowding was somewhat lower in A wing (approximately 300 prisoners) than in B, C and D wings (each of which were accommodating 350 or more inmates).

The prisoner distribution chart indicated that three cells (one in C wing and two in D wing) were holding five prisoners. The delegation visited the relevant cell in

C wing, in which it found five prisoners of Indian origin; they claimed to have been held under such conditions for some six weeks.

106. Inevitably, the high level of overcrowding had extremely negative repercussions upon the conditions of detention: living space was very poor, ventilation inadequate, and cell cleanliness and hygiene wanting. In many cells prisoners were to all intents and purposes confined to their beds, there being no room for other furniture. In some of the most over crowded cells, there were more prisoners than beds. Further, the toilet and washing facilities in certain cells were in need of repair.

Despite the overcrowding, prisoners apparently did have ready access to the shower facilities located in the basement of each wing. However, some of the shower cubicles were in a poor state of repair and decoration.

107. The negative aspects of the overcrowding were mitigated to some extent by reasonable out-of-cell time. Between 8.30 to 11.30 and 14.30 to sunset, inmates were allowed to circulate freely and associate with other prisoners within their detention wing and its courtyard; the wing courtyards were of a good size. It must be stressed, however, that the free circulation of prisoners in their detention wings could have undesirable effects in the absence of proper control by prison staff; with the manning levels at the time of the delegation's visit (3 to 4 prison staff on duty during the day in a wing accommodating some 350 prisoners), it is difficult to see how such control could be guaranteed (cf. also paragraph 96).

108. Activities in any meaningful sense of the term were scarce. There were only 236 work places (i.e. 1 work place for 6 prisoners), practically all in the area of general services (kitchen, laundry, cleaning, maintenance, stores, etc.); no workshops were in operation. However, a printing and bookbinding vocational training centre, with places for 30 prisoners, was due to open in 1993. The shortage of work places was particularly resented by many sentenced prisoners, as it prevented them from taking advantage of the system of earning remission through work.

No educational classes were available and the prison library was both small and ill-equipped. Further, there was no prison gymnasium and, as far as the delegation could ascertain, no organised sporting activities. However, the exercise yards were sufficiently large for certain games (e.g. volleyball), and arrangements were in hand to provide a separate weight-training area in each of the yards (at the time of the visit, a few prisoners did weight training in the wing basements).

To sum up, the vast majority of prisoners at the Koridallos Prison for men (including a majority of the sentenced prisoners) were offered no work or educational activities, and possibilities for sport were very limited. Most prisoners spent their day walking around their detention wing or courtyard, talking with fellow prisoners, or watching television in their cell. Such a monotonous and purposeless existence is quite inconsistent with the objective of social rehabilitation set out in the Greek Code of basic rules for the treatment of prisoners (cf. paragraph 94).

109. As regards material conditions of detention at the Koridallos Prison for men, the CPT recommends:

– that immediate steps be taken to ensure that no more than three prisoners are held per cell;

- that serious efforts be made to reduce as soon as possible the occupancy rate to two prisoners per cell (Naturally, the long-term objective should be to have one prisoner per cell, save for specific situations when it is not appropriate for a prisoner to be left alone);

- that every prisoner be provided with his own bed and mattress;

- that shower cubicles, toilets and washing facilities be restored to a good state of repair and maintained in a hygienic condition.

As regards out-of-cell activities, the CPT recommends:

- that current efforts to augment the number of work and vocational training places be intensified;

- that a thorough examination of the means of improving the prison's activity programmes in general (including education, sport and recreational activities) be undertaken without delay and that fuller programmes be progressively introduced as overcrowding is brought down.

...

133. The segregation unit at Koridallos Men's Prison consisted of two groups of 10 cells, all of which were apparently used for both disciplinary confinement and other segregation purposes. The cells measured approximately 7 m²; they were equipped with a bed, but no other furniture (e.g. table or chair). There was adequate ventilation and artificial lighting; however, access to natural light was, at best, mediocre. Each cell possessed an asian toilet, and some cells had a wash basin. The adjacent exercise yards measured approximately 40 m². The whole unit required to be – and was being – redecorated.

134. No-one was being confined as a punishment at the time of the delegation's visit. A number of transvestite prisoners had been held in the unit for several months at their own request. Other prisoners were being held in the unit involuntarily, presumably under Rule 93 or 94 of the Code (the absence of a segregation unit register made it difficult to ascertain the precise grounds); certain of them appeared to have psychological or psychiatric problems.

The prisoners were allowed to move freely within the unit and exercise areas during much of the day, and they had TV sets and other personal possessions in their cells (though staff indicated that a prisoner undergoing disciplinary confinement would remain in his cell and would not be allowed personal possessions).

135. The conditions of detention in this segregation unit are on the whole acceptable for prisoners undergoing the disciplinary sanction of confinement in a special cell. However, the CPT considers that it would be desirable for the cells accommodating such prisoners to be fitted with a table and chair, if necessary fixed to the floor.

The CPT also recommends that all prisoners, including those confined to a special cell as a punishment, be allowed at least one hour of exercise in the open air everyday.

136. Conditions of detention in the unit are far less suitable for prisoners subject to segregation for non-disciplinary reasons, in particular if that measure is applied for a lengthy period.

As regards more particularly prisoners who are segregated because of personality disorders and/or for their own protection, the CPT invites the Greek authorities to explore the possibility of creating special units organised along community lines.

The unit is a totally unsuitable place in which to accommodate someone in need of psychiatric care. Neither the material environment nor the staff (ordinary prison officers) are appropriate. The CPT recommends that no such prisoner be placed in the unit. If, exceptionally, prisoners who are emotionally or psychologically disturbed have to be held temporarily in the segregation unit, they should be kept under close observation.

Further, the CPT recommends:

- that the cells in the unit used to accommodate prisoners segregated for a non-disciplinary reason be equipped in the same way as an ordinary prison cell;
- that the respective regimes applicable, on the one hand, to persons undergoing disciplinary confinement and, on the other hand, to persons held in the segregation unit for other reasons, be expressly laid down.”

II. RELEVANT DOMESTIC LAW

62. According to Article 51 §§ 2 and 3 of the Penitentiary Code, a prisoner’s correspondence may be controlled if this is required by reasons of security or if there is a risk of commission of especially serious crimes or a need to establish whether such crimes have been committed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

63. The applicant complained that the conditions of his detention in Koridallos Prison amounted to inhuman and degrading treatment. Before the Court his complaints focus on the conditions in the segregation unit of the Delta wing of the prison. The applicant relied on Article 3 of the Convention, which is worded as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

64. The applicant submitted that he never asked to be placed in the segregation unit. The prison administration decided to put him there on his

arrival in Koridallos Prison. One week later, he was given the possibility of going to the Delta wing proper but he did not agree because he wanted to keep away from drugs. The applicant alleged that the conditions in the segregation unit had not improved significantly between his detention there and the delegates' visit. He complained in particular that he had to spend a considerable part of each day confined to his bed in a cell with no ventilation and no window. He further complained that the prison administration did not provide inmates with sheets, pillows, toilet paper and toiletries. Although indigent prisoners like the applicant could address themselves to the prison's welfare office, it was admitted that their needs could not always be met. The fact that he could have obtained toiletries and toilet paper from his co-detainees does not absolve the respondent State from responsibility under the Convention. The applicant submitted that he ended up sleeping on a blanket with no sheets or pillow during the hottest period of the year. He also complained that he had to use the toilet in the presence of another inmate and be present while the toilet was being used by his cell-mate. The applicant claimed that he felt humiliated and distressed and that the conditions of his detention had had adverse physical and mental effects on him.

65. The Government first submitted that the applicant asked to be detained in the segregation unit. The prison authorities wanted to satisfy his request. However, because there were no cells available, he had to share a cell with another inmate. As a result, the problem with the toilet arose. The applicant could have moved to another part of the prison at any time if he so wished. It appears that the applicant never asked for such a transfer because, in the meantime, he had developed a friendly relationship with his cell-mate, Mr Papadimitriou. The special character of their relationship is also shown by the fact that they continued sharing a cell when they were both moved to the Alpha wing two months after the applicant's arrest.

66. Moreover, the Government disputed that the treatment complained of had attained the minimum level of severity required to fall within the scope of Article 3. They stressed that the conditions of detention complained of in no way denoted contempt or lack of respect for the applicant as a person. On the contrary, the prison authorities tried to alleviate the situation by allowing the applicant extra telephone calls. The applicant himself accepted that he was never left dirty while in the segregation unit. He could take a shower and had frequent contact with the prison psychiatrist. According to the Government, there was no evidence that the conditions of his detention had caused the applicant injury or any physical or mental suffering.

67. The Court recalls that, according to its case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the

treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 162).

68. Furthermore, in considering whether a treatment is “degrading” within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3 (see *Raninen v. Finland*, judgment of 16 December 1997, *Reports of Judgments and Decisions*, 1997-VIII, pp. 2821-22, § 55).

69. As regards the present case, the Court notes in the first place that, contrary to what the Government argue, the applicant was not placed in the segregation unit because he had so wanted himself. According to the testimony of Ms Fragathula, this was a measure decided by the prison governor and the chief warden and related to the applicant’s medical condition, more specifically to the fact that he had been suffering from withdrawal symptoms. According to the same witness, once the applicant became acquainted with the conditions of detention in the segregation unit, he asked for a transfer. He was then offered the possibility of going to the Delta wing, where drug addicts were being detained. Although Ms Fragathula would not expressly admit that there were drugs in the Delta wing, she stated that the “wing was problematic for someone who wanted to free himself from drugs”. The Court considers that this implies that there were drugs illegally circulating in the Delta wing, a cause for serious concern. In these circumstances, the Court considers that the applicant cannot be blamed for refusing to be moved from the segregation unit. The Court, therefore, considers that the applicant did not in any way consent to being detained in the segregation unit of the Delta wing.

70. Concerning the conditions of detention in the segregation unit, the Court has had regard to the Commission’s delegates’ findings and especially their findings concerning the size, lighting and ventilation of the applicant’s cell, that is, elements which would not have changed between the time of the applicant’s detention there and the delegates’ visit. As regards ventilation, the Court notes that the delegates’ findings do not correspond fully with those of the CPT, which visited Koridallos Prison in 1993 and submitted its report in 1994. However, the CPT’s inspection took place in March, whereas the delegates went to Koridallos Prison in June, a period of the year when the climatic conditions are closer to those of the period of which the applicant complains. Furthermore, the Court takes into account the fact that the delegates investigated the applicant’s complaints in depth, giving special attention, during their inspection, to the conditions in the very place where the applicant had been detained. In these

circumstances, the Court considers that the findings of the Commission's delegates are reliable.

71. The Court notes that the applicant accepts that the cell door was open during the day, when he could circulate freely in the segregation unit. Although the unit and its exercise yard were small, the limited possibility of movement enjoyed by the applicant must have given him some form of relief.

72. Nevertheless, the Court recalls that the applicant had to spend at least part of the evening and the entire night in his cell. Although the cell was designed for one person, the applicant had to share it with another inmate. This is one aspect in which the applicant's situation differed from the situation reviewed by the CPT in its 1994 report. Sharing the cell with another inmate meant that, for the best part of the period when the cell door was locked, the applicant was confined to his bed. Moreover, there was no ventilation in the cell, there being no opening other than a peephole in the door. The Court also notes that, during their visit to Koridallos, the delegates found that the cells in the segregation unit were exceedingly hot, although it was only June, a month when temperatures do not normally reach their peak in Greece. It is true that the delegates' visit took place in the afternoon, when the applicant would not normally be locked up in his cell. However, the Court recalls that the applicant was placed in the segregation unit during a period of the year when temperatures have the tendency to rise considerably in Greece, even in the evening and often at night. This was confirmed by Mr Papadimitriou, an inmate who shared the cell with the applicant and who testified that the latter was significantly physically affected by the heat and the lack of ventilation in the cell.

73. The Court also recalls that in the evening and at night when the cell door was locked the applicant had to use the Asian-type toilet in his cell. The toilet was not separated from the rest of the cell by a screen and the applicant was not the cell's only occupant.

74. In the light of the foregoing, the Court considers that in the present case there is no evidence that there was a positive intention of humiliating or debasing the applicant. However, the Court notes that, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

75. Indeed, in the present case, the fact remains that the competent authorities took no steps to improve the objectively unacceptable conditions of the applicant's detention. In the Court's view, this omission denotes lack of respect for the applicant. The Court takes into account, in particular, that, for at least two months, the applicant had to spend a considerable part of each 24-hour period practically confined to his bed in a cell with no ventilation and no window, which would at times become unbearably hot.

He also had to use the toilet in the presence of another inmate and be present while the toilet was being used by his cell-mate. The Court is not convinced by the Government's allegation that these conditions did not affect the applicant in a manner incompatible with Article 3. On the contrary, the Court is of the opinion that the prison conditions complained of diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance. In sum, the Court considers that the conditions of the applicant's detention in the segregation unit of the Delta wing of Koridallos Prison amounted to degrading treatment within the meaning of Article 3 of the Convention.

There has thus been a breach of this provision.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

76. The applicant complained that, despite the fact that he was a remand prisoner, he was subjected to the same regime as convicts. He argued that the failure of the Koridallos Prison authorities to provide for a special regime for remand prisoners amounts to a violation of the presumption of innocence. He relied on Article 6 § 2 of the Convention, which reads as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

77. The Government submitted that Article 6 § 2 could not be interpreted in this manner.

78. The Court recalls that the Convention contains no Article providing for separate treatment for convicted and accused persons in prisons. It cannot be said that Article 6 § 2 has been violated on the grounds adduced by the applicant.

There has accordingly been no violation of Article 6 § 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

79. The applicant complained that letters sent to him by the Commission's Secretariat were opened by the Koridallos Prison administration and not always in his presence. He relied on Article 8 of the Convention, which provides as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

80. The Government submitted that letters addressed to prisoners are always opened in front of them because this is required by law and is necessary to prevent criminal offences, such as the smuggling of drugs into the prison. Letters addressed to prisoners by the Convention organs cannot be exempted because the Commission’s or the Court’s envelopes can be forged by criminals.

81. The Court considers that it has not been established that letters from the Commission to the applicant were opened in his absence. However, the Government accept that letters from the Convention organs are always opened in front of the prisoner concerned. It follows that the letters that the Commission addressed to the applicant were also opened. There was, therefore, an interference with the applicant’s right to respect for his correspondence under Article 8 of the Convention which can be justified only if the conditions of the second paragraph of the provision are met.

82. In particular, if it is not to contravene Article 8 § 2, such interference must be “in accordance with the law”, pursue a legitimate aim and be necessary in a democratic society in order to achieve that aim (see *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, Series A no. 61, p. 32 § 84, and *Petra v. Romania*, judgment of 23 September 1998, *Reports* 1998-VII, p. 2853, § 36).

83. The interference had a legal basis, namely Article 51 §§ 2 and 3 of the Penitentiary Code, and the Court is satisfied that it pursued the legitimate aim of “the prevention of disorder or crime”.

84. As regards the necessity of the interference, the Court finds no compelling reasons for the monitoring of the relevant correspondence, whose confidentiality it was important to respect (see *Campbell v. the United Kingdom*, judgment of 25 March 1992, Series A no. 233, p. 22, § 62). Although the Government have alluded in general to the possibility of the Commission’s envelopes being forged in order to smuggle prohibited material into the prison, the Court considers, as the Convention organs have done on previous occasions, that this risk is so negligible that it must be discounted (*ibid.*). Accordingly, the interference complained of was not necessary in a democratic society within the meaning of Article 8 § 2.

There has consequently been a violation of Article 8 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

86. The applicant claimed 42,000,000 drachmas (GRD) in respect of non-pecuniary damage. He maintained that the violations of the Convention in his case, which had entailed serious intrusion into his physical and mental integrity, had caused him to suffer a substantial degree of anxiety and distress.

87. The Government considered that the finding of a violation of the Convention would constitute adequate satisfaction for any non-pecuniary damage sustained by the applicant. In any event, the Government considered that the amount claimed was too high and that a sum of GRD 2,000,000 would be reasonable.

88. The Court, bearing in mind its findings above with regard to the applicant's complaints, considers that he suffered some non-pecuniary damage as a result of his detention which cannot be compensated solely by the finding of a violation. Deciding on an equitable basis, the Court awards the applicant GRD 5,000,000 under this head.

B. Default interest

89. According to the information available to the Court, the statutory rate of interest applicable in Greece at the date of adoption of the present judgment is 6% per annum.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 3 of the Convention;
2. *Holds* unanimously that there has been no violation of Article 6 § 2 of the Convention;
3. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention;

4. *Holds* unanimously

(a) that the respondent State is to pay the applicant, within three months, GRD 5,000,000 (five million drachmas) in respect of non-pecuniary damage;

(b) that simple interest at an annual rate of 6% shall be payable from the expiry of the above-mentioned three months until settlement;

5. *Dismisses* unanimously the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 19 April 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH
Registrar

András BAKA
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Mrs Spinellis is annexed to this judgment.

A.B.B.
E.F.

PARTLY DISSENTING OPINION OF JUDGE SPINELLIS

1. I regret that I have found it necessary to part company with the majority of the Court on the question whether there was an interference with the applicant's right to respect for his correspondence under Article 8 of the Convention.

2. The applicant complains that his letters from the Commission's Secretariat were opened by the prison administration and not always in his presence [see paragraph 79 of the judgment].

3. The Government submitted that letters addressed to prisoners are always opened in front of them [see paragraph 80 of the judgment].

4. The Court considers, rightly according to my view, that it has not been established that letters from the Commission to the applicant were opened in his absence [see paragraph 81 of the judgment].

5. Article 51 §§ 2 and 3 of the Penitentiary Code of 1989 refers to inmates' correspondence [see paragraph 62 of the judgment]. Paragraph 3, which provides for punishment (according to Article 252 of the Criminal Code) of prison officers who lawfully interfere with "the right to respect for [the inmates'] correspondence" and who reveal to third parties what they have learned during the exercise of this duty, is irrelevant to the issues discussed in the present case. However, in paragraph 2 it is stated that "[t]he content of telegrams or letters is not controlled. If there are reasons of security or if there is a risk that especially serious crimes will be committed or a need to establish whether such crimes have been committed, the correspondence may be controlled upon the granting of permission by the judge responsible for the execution of sentences".

6. On the one hand, the applicant does not claim that there was an interference with his right to respect for his correspondence without the relevant permission from the judicial authorities. Moreover, the applicant had been a drug addict who, in spite of his treatment in the United Kingdom, had been in a comatose state on 24 August 1994 [see paragraphs 8 and 9 of the judgment], which suggests that he was still an addict. Furthermore, the applicant had been sentenced by both the first-instance court [see paragraph 12 of the judgment] and the court of appeal [see paragraph 16 of the judgment] to penalties appropriate for felonies (drug-related offences) [see paragraph 8 of the judgment]. Hence, the prison authorities could reasonably have believed that the applicant might have the irresistible impulse "to smuggle drugs into the prison" in envelopes of

the Commission or the Court “forged by criminals” [see paragraph 80 of the Court’s judgment. The possibility of forging envelopes of the Commission is also mentioned by the Government of the United Kingdom in the case of *Campbell v. the United Kingdom*], and thus they acted in order to prevent crime.

7. It has been established that the letters were opened but it has not been established that the letters were opened in the applicant’s absence. This case differs from *Campbell v. the United Kingdom* [judgment of 25 March 1992, Series A no. 233] where the Court stated that “there is no compelling reason why such letters should be opened. The risk, adverted to by the Government, of Commission stationery being forged in order to smuggle prohibited material or messages into prison, is so negligible that it must be discounted” [ibid., p. 22, § 62, second paragraph]. As already pointed out above, the applicant in the present case has been a drug addict and it is a commonplace that untreated drug addicts will do everything in order to get their drug. Therefore, whatever interference was caused by opening the letters in the applicant’s presence – without reading them (reading would have been almost impossible anyway since very few prison officers knew sufficient English, according to the applicant’s complaint [the applicant complained about lack of communication due to this fact; see paragraphs 32 and 46 of the Court’s judgment]) – was justified.

8. In summing up, I would like to stress that I share the view of the majority that the opening of prisoners’ letters constitutes a violation of their rights under Article 8 of the Convention, unless justified (a) by a law that is adequately accessible and foreseeable, (b) by a “pressing social need”, and (c) by being proportionate to the legitimate aim pursued by the national authorities. From all the above it follows that the opening of the letters (a) was in accordance with the national law, that is, the Penitentiary Code, Article 51 § 2 [see paragraph 62 of the Court’s judgment], (b) was effected for “the prevention of disorder or crime” (that is, smuggling drugs into prison), and (c) was “necessary in a democratic society” in the present case, contrary to the situation in *Campbell* and other older cases (see, for example, *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, Series A no. 61; *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1998, Series A no. 131; and *McCallum v. the United Kingdom*, judgment of 30 August 1990, Series A no. 183). In *Campbell* the possibility of “Commission stationery being forged in order to smuggle prohibited material ... into prison” [*Campbell*, cited above, p. 22, § 62, second paragraph] was negligible as *Campbell* was not an addict in an overcrowded prison but a “man of violence” [ibid., p. 8, § 8]. This conclusion is supported by both the facts of the present case and the case-law of this Court, which has recognised a certain but not unlimited margin of appreciation to the States Parties in the imposition of restrictions (see, in particular, *Silver and Others*, cited above, pp. 37-38, § 97) [see also the

partly dissenting opinions of Judges Sir John Freeland and Morenilla in *Campbell*].

9. For these reasons, I find that there has been no violation of Article 8.