

The Spanish authorities should have carried out a genuine investigation into allegations of police ill-treatment of a person held incommunicado in police custody

In today's Chamber judgment in the case of [Otamendi Egiguren v. Spain](#) (application no. 47303/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights (investigation).

The case concerned the incommunicado detention in police custody of a man suspected of links with the terrorist organisation ETA. His allegations of ill-treatment by police officers, in particular while he was in police custody, were disregarded by the Spanish authorities.

The Court considered that the investigation had not been thorough or effective enough to satisfy the requirements of Article 3. It also stressed the importance of improving the quality of forensic medical examinations of persons being held incommunicado, and the particularly vulnerable situation of those persons.

Principal facts

The applicant, Mr Martxelo Otamendi Egiguren, is a Spanish journalist who was born in 1957 and lives in Tolosa (Spain). At the material time he was the publication director of the Basque daily newspaper *Euskaldunon Egunkaria*.

On 20 February 2003 the applicant was arrested during the night in the course of an investigation into the offences of membership of and collaboration with the terrorist organisation ETA. He was placed in incommunicado detention in police custody.

In the days that followed Mr Otamendi Egiguren was examined on four occasions by a forensic doctor. In his reports the doctor noted, among other things, that Mr Otamendi Egiguren had complained that he had been forced to remain standing for long periods, had been threatened with torture and struck in the genitals in an attempt to intimidate him, and also that someone had pretended to shoot him in the temple. The doctor further observed that he had refused to be examined on each occasion, claiming not to have any traces of violence on his body.

On 25 February 2003 Mr Otamendi Egiguren was brought before an investigating judge. He claimed that he had been subjected to ill-treatment and, in particular, that he had been prevented from sleeping; that he had been forced to stand for two days; that he had been forced to do bending exercises and then to stand still for two hours with his

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

upper body bent over and his head down; that he had been the target of homophobic insults; that he had been undressed and forced to adopt a sexual pose; that a metal object had been held to his temple which had made a noise like a pistol being fired; that his head had twice been covered with a plastic bag; and, lastly, that he had been threatened with being killed. Mr Otamendi Egiguren was released the same day on bail of 30,000 euros.

On 27 February 2003, Mr Otamendi Egiguren requested the investigating judge to send the Madrid duty judge a copy of his statement complaining of his treatment. The request was refused on account of the confidential nature of the investigation. An appeal lodged by Mr Otamendi Egiguren against that decision was dismissed on the same grounds, and also because the transcript of his statement had not yet been prepared, making it difficult to determine in respect of which part of the statement the confidentiality requirement could possibly be waived.

On 25 March 2003, Mr Otamendi Egiguren lodged a complaint with the Madrid senior investigating judge. The investigating judge to whom the case had been assigned ordered the opening of an investigation, in the course of which Mr Otamendi Egiguren requested her to secure copies of his previous statements and a video recording of his interview with the Basque television channel EITB. He also requested that evidence be heard from his former cellmate.

Mr Otamendi Egiguren subsequently gave evidence to another investigating judge, to whom he again gave an account of the treatment to which he had allegedly been subjected by the police officers, both while in police custody and when he was being moved to Madrid. He said he would be able to recognise the voice of one of his assailants.

On 22 December 2003 the investigating judge heard evidence from the forensic doctor. The latter stated in substance that he had not found Mr Otamendi Egiguren to be particularly tired when he had visited him in police custody; on the contrary, the applicant had been perfectly in command of his faculties and had shown no apparent signs of exhaustion. The doctor reiterated that Mr Otamendi Egiguren had consistently refused to be examined. Claiming to have recorded his statements word-for-word in his report, he said it was his impression that the Mr Otamendi Egiguren's allegations of ill-treatment did not tally with what he himself had seen.

In an order of 16 February 2004, the Madrid investigating judge made a provisional discharge order and discontinued the proceedings. The judge considered that there was no evidence that the ill-treatment of which Mr Otamendi Egiguren complained had actually occurred and that examination of the other evidence he requested would not provide any additional information. The appeals lodged against that decision were dismissed on similar grounds. Mr Otamendi Egiguren's *amparo* appeal to the Constitutional Court was likewise declared inadmissible.

In a judgment of 12 April 2010, Mr Otamendi Egiguren was acquitted on the charge of membership of a terrorist group on the grounds, in particular, that "the prosecuting parties [had] not demonstrated that the accused had the slightest links with ETA". On the subject of the alleged ill-treatment, the court stated that "the judicial review of the conditions of the [applicant's] incommunicado detention in police custody [had been] neither sufficient nor effective".

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Otamendi Eiguren complained, in particular, of the lack of an effective investigation into his alleged ill-treatment while being held incommunicado in police custody.

The application was lodged with the European Court of Human Rights on 9 September 2008.

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

Josep **Casadevall** (Andorra), *President*,
Egbert **Myjer** (the Netherlands),
Corneliu **Bîrsan** (Romania),
Alvina **Gyulumyan** (Armenia),
Ján **Šikuta** (Slovakia),
Nona **Tsotsoria** (Georgia) and,
Luis **Aguiar de Luque** (), *ad hoc Judge*,

and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

Article 3

The Court reiterated that where an individual made a credible assertion that he or she had suffered treatment infringing Article 3 at the hands of the police, the State authorities had a duty to conduct an effective investigation in order to identify and punish those responsible.

The Court noted that Mr Otamendi Eiguren, who had been held incommunicado in police custody for five days, had on two occasions (first on 25 February 2003 and again on 25 March 2003) made specific and detailed allegations to the effect that he had been ill-treated in police custody. The Court therefore considered that Mr Otamendi Eiguren's claims were credible from the standpoint of Article 3, and confirmed that an effective investigation was required in such a case.

With regard to the investigation carried out, the Court observed that the first investigating judge had taken no action in response to the claims of ill-treatment which Mr Otamendi Eiguren had made when he appeared before him. As to the investigating judge who had ordered the investigation, she had merely examined the forensic doctor's reports and heard evidence from the latter. Mr Otamendi Eiguren had requested leave to give evidence in person and to have evidence heard from the officers implicated and from his former cellmate. However, those requests had been disregarded.

The Court therefore considered that the investigation carried out had not been thorough or effective enough to satisfy the requirements of Article 3 of the Convention. It noted that, despite the applicant's persistent allegations of ill-treatment, the proceedings had been discontinued solely on the basis of the forensic medical reports and the statements of the forensic doctor, without the applicant having been questioned in person. The additional evidence requested by the applicant, and especially the questioning of the officers supervising him while he was in police custody, might, however, have helped shed light on the events.

More generally, the Court stressed the importance of adopting the measures recommended by the European Committee for the Prevention of Torture and Inhuman or

Degrading Treatment or Punishment (CPT) with a view to improving the quality of forensic medical examinations of persons being held incommunicado. It considered that the vulnerable situation of persons in incommunicado detention called for appropriate judicial supervision measures to be taken, as provided for by the Code of Criminal Procedure, in order to prevent abuse and ensure detainees' physical safety.

Accordingly, the Court held that there had been a violation of Article 3 of the Convention in its procedural aspect (investigation).

Just satisfaction (Article 41)

The court held that Spain was to pay the applicant 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.