



The Spanish authorities should draw up a clear code of conduct for questioning individuals held incommunicado in police custody

The case [Beortegui Martinez v. Spain](#) (application no. 36286/14) concerned the alleged failure to investigate an allegation by Mr Beortegui Martinez that he was ill-treated by four *Guardia Civil* officers while detained incommunicado in police custody on suspicion of belonging to a terrorist organisation.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights on account of the **investigation conducted by the national authorities**, and

no violation of Article 3 as regards the applicant's **allegation of ill-treatment** during his arrest and in police custody.

The Court found in particular that there had not been a thorough and effective investigation into Mr Beortegui Martinez's allegations of ill-treatment during his incommunicado detention in police custody. As a result of the lack of a thorough and effective investigation by the national authorities, the Court did not have enough evidence to determine whether Mr Beortegui Martinez had been subjected to treatment attaining the minimum level of severity to fall within the scope of Article 3.

The Court also reiterated the importance of adopting the measures recommended by the European Committee for the Prevention of Torture (CPT) with a view to improving the quality of forensic medical examinations of individuals held incommunicado in police custody and urged the Spanish authorities to draw up a clear code of conduct for officers responsible for supervising such individuals as to the procedures for questioning them and for ensuring their physical integrity.

Principal facts

The applicant, Xabier Beortegui Martinez, is a Spanish national who was born in 1980 and lives in Pamplona (Spain).

On the night of 17 to 18 January 2011 Mr Beortegui Martinez was arrested at home by police officers in the context of a judicial investigation into a suspected offence of membership of EKIN, an organisation attached to the terrorist group ETA. His home was searched. During the journey by car to Madrid, Mr Beortegui Martinez, who was handcuffed, was allegedly subjected to threats and insults and was struck on the head, testicles and ribs by the four *Guardia Civil* officers accompanying him. On his arrival in Madrid he was taken to the *Guardia Civil* headquarters and placed in incommunicado police custody. According to his allegations, he was forced to wear a mask over his eyes, subjected to episodes of asphyxiation, touched indecently and threatened with the insertion of electrodes and a truncheon into his anus.

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.

On 18, 19, 20 and 21 January 2011 Mr Beortegui Martinez was examined by forensic specialists.

On 21 January 2011, at around 1 a.m., Mr Beortegui Martinez gave evidence in the presence of an officially appointed lawyer. At an unspecified time later that day he was allegedly given a statement consisting of 20 questions with 20 pre-written answers, which he had to learn by heart. He was then brought before the central investigating judge at the *Audiencia Nacional*. In his statement to the judge Mr Beortegui Martinez retracted the contents of the statement he had signed while in police custody. The judge did not order any investigative measures and Mr Beortegui Martinez was released.

On 16 May 2011 Mr Beortegui Martinez, assisted by two lawyers, filed a criminal complaint with the Pamplona duty judge, alleging that he had been subjected to ill-treatment while in incommunicado police custody. On 14 December 2011 he gave a statement to the Pamplona investigating judge and maintained his initial complaint. On 5 March 2012 the investigating judge made a provisional discharge order, finding that there was no evidence of the alleged ill-treatment. Mr Beortegui Martinez appealed. In a decision of 31 October 2012 the Navarre *Audiencia Provincial* noted that the gravity of the alleged offence warranted a thorough investigation but that this did not grant the applicant an unlimited right to have all evidence adduced as he wished. It upheld the discharge order. Mr Beortegui Martinez lodged an *amparo* appeal with the Constitutional Court, which declared it inadmissible.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), Mr Beortegui Martinez complained that there had been no effective investigation into his complaint that he had been subjected to ill-treatment while held incommunicado in police custody.

The application was lodged with the European Court of Human Rights on 7 May 2014.

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

Helena Jäderblom (Sweden), *President*,
Luis López Guerra (Spain),
Helen Keller (Switzerland),
Johannes Silvis (the Netherlands),
Branko Lubarda (Serbia),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Article 3

The Court noted that Mr Beortegui Martinez had been held incommunicado in police custody for three days, during which time he had been unable to inform a person of his choice about his detention, or to be assisted by a lawyer of his own choosing, as provided by the rules applicable to incommunicado detention in police custody. He had also allegedly been unable to confer with his officially appointed lawyer in private before giving his statement while in custody.

In the criminal complaint filed with the duty judge on 16 May 2011 Mr Beortegui Martinez had given a specific and detailed description of the ill-treatment to which he claimed to have been subjected while held incommunicado in police custody.

The seriousness of the offences forming the subject of his complaint had warranted a thorough investigation by the State, as the Navarre *Audiencia Provincial* had noted in its decision of 31 October 2012.

As regards the investigative steps taken by the national authorities, the Court observed that the Pamplona investigating judge had simply examined the reports by the forensic medical experts, the applicant's general practitioner and a psychologist who had examined him. However, Mr Beortegui Martinez had asked for a number of other evidence-gathering measures to be taken, namely: production of the various statements he had given while in incommunicado police custody; production of any security camera recordings at the premises where he had been detained; identification and examination by the judge of the *Guardia Civil* officers involved in taking him into custody and supervising him during his detention; an examination of the forensic medical experts who had examined him, and of the officially appointed lawyer; and a physical and psychological examination in order to establish the existence of any injuries or after-effects. His requests had not been taken into consideration by the Pamplona investigating judge.

As regards the time that had elapsed between Mr Beortegui Martinez's release and the filing of his complaint – three months and 25 days – the Court reiterated that the obligation to apply promptly to the domestic authorities had to be assessed in the light of the circumstances of the case. It noted that on 21 January 2011 Mr Beortegui Martinez had been brought before the central investigating judge at the *Audiencia Nacional*, whom he had informed of the ill-treatment to which he had allegedly been subjected during and after his transfer to Madrid. However, the central investigating judge had not ordered any investigative measures and had not referred the case to any other competent court. Bearing in mind the vulnerable position of Mr Beortegui Martinez following his detention and the fact that the court dealing with the accusations against him had not initiated an investigation of its own motion, it could not be concluded that the delay by Mr Beortegui Martinez in making another complaint about the ill-treatment had been such as to undermine the effectiveness of the investigation or cast doubt on the seriousness of his complaint.

The Court reiterated that where there were reasonable grounds to believe that acts of ill-treatment had been committed, the competent State authorities had a duty to initiate an investigation promptly of their own motion. The Court again stressed the importance of adopting the measures recommended by the European Committee for the Prevention of Torture (CPT) with a view to improving the quality of forensic medical examinations of individuals being held incommunicado in police custody. It also took note of the CPT's reports on its visits to Spain in 2007 and 2011 and the report by the Council of Europe Commissioner for Human Rights² and indicated that the Spanish authorities should draw up a clear code of conduct for officers responsible for supervising those held incommunicado as to the procedures for questioning them and for ensuring their physical integrity.

Having regard to the lack of a thorough and effective investigation into Mr Beortegui Martinez's arguable claims that he had been ill-treated while held incommunicado in police custody, the Court found that there had been a violation of Article 3 in its aspect relating to the investigation.

As regards the allegations of ill-treatment during detention, the Court was unable to establish from the evidence before it that Mr Beortegui Martinez had been subjected to treatment attaining the minimum level of severity to fall within the scope of the prohibition in Article 3. It pointed out that this inability was largely the result of the national authorities' failure to carry out a thorough and effective investigation after Mr Beortegui Martinez had filed his complaint, a shortcoming that had prompted the Court to find a violation of Article 3 in its procedural aspect. Accordingly, the Court was unable to find a substantive violation of Article 3 in respect of the ill-treatment to which the applicant claimed to have been subjected during his arrest and in police custody.

2. Reports of 25 March 2011 and 30 April 2013 by the CPT and report of 9 October 2013 by the Council of Europe Commissioner for Human Rights.

Article 41 (just satisfaction)

The Court held that Spain was to pay the applicant 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,500 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.