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

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The murder of the applicants' son by Georgian police and the lack of a proper investigation led to violations of the right to life

In today's **Chamber** judgment[1] in the case of **Vazagashvili and Shanava v. Georgia** (application no. 50375/07) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights under both its procedural and substantive limbs.

The case concerned the shooting of the applicants' son in a police operation and their complaint of the lack of an effective investigation.

The Court found in particular that a first investigation into the killing had been flawed as it had been carried out by the police officers involved in the shooting. The second investigation, which had led to convictions, had only taken place several years after the crime and had been based to some extent on investigative work carried out by the first applicant himself.

The Court particularly noted the fact that the first applicant's efforts to disclose police crime and corruption had ultimately led to him being murdered by a police officer, highlighting the consequence of the authorities' lack of diligence in pursuing the perpetrators of the original murder.

Principal facts

The applicants, Yuri Vazagashvili and Tsiala Shanava, Georgian nationals, were both born in 1953. Mr Vazagashvili was murdered in 2015. Ms Shanava lives in Tbilisi and has continued the application in her own name and that of her late husband.

The applicants' son, Z.V., 22 at the time, and his friend, A.Kh., 25, were shot by police while Z.V. was driving his car in May 2006. The police operation involved at least 50 officers, including senior officials from the criminal police unit of the Ministry of the Interior and masked officers of a riot police unit. They were armed with machine guns and they shot more than 70 bullets at Z.V.'s car, with some 40 bullets hitting their target. Another man, B.P., 22, was seriously injured but survived.

The police initially stated that Z.V. and his friends had been intercepted on their way to carry out a robbery but an investigation into excessive use of force was opened three days after the incident.

The applicants complained regularly to the Tbilisi city prosecutor that the investigation was not being conducted thoroughly and impartially. In April 2007 the prosecution authority discontinued the investigation for want of a criminal offence, basing the decision mainly on statements by officers who had taken part in the operation and on ballistics tests.

The applicants gathered their own evidence, talking with a former Interior Ministry official, the injured man, B.P., and independent eyewitnesses, who contradicted the police's version of events. The applicants asked the Chief Public Prosecutor to reopen the investigation, which he did by an order issued in December 2012. The applicants were not granted victim status in that process.

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.

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In October 2015 the Tbilisi City Court convicted five former senior officers of the Ministry of the Interior, including I.P., the ex-deputy head of the criminal police unit, of either aggravated murder, perverting the course of justice in a criminal case by fabrication of evidence, malfeasance by a public official or false arrest.

In particular, the court found that I.P. had had a personal grudge against A.Kh. and had organised a police operation to take his revenge. The police had fabricated evidence, such as the allegation that shots had been fired from the victims' car, which was the reason the police had given for opening fire themselves. Other criminal police unit officers had been involved. In particular, G.Ts. had approached the victims' car and had killed Z.V. and A.Kh. by shooting them in the head.

In January 2015 the first applicant was killed in an explosion caused by an improvised device planted at his son's grave, which he was visiting at the time. In November 2015 the Tbilisi City Court convicted a policeman, G.S., of the crime. The court established that the first applicant's non-governmental organisation, Save a Life, formed to highlight police criminality, had published an article in a national newspaper with a list of officers believed to have been implicated in various offences. G.S. had figured at the end of the list.

Complaints, procedure and composition of the Court

The applicants complained in particular under both the substantive and procedural limbs of Article 2 (right to life) of the Convention about the killing of their son by the police in May 2006 and of the absence of an adequate investigation into that crime.

The application was lodged with the European Court of Human Rights on 20 October 2007.

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

Angelika **Nußberger** (Germany), *President*,
Yonko **Grozev** (Bulgaria),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar.*

Decision of the Court

Article 2

Procedural limb

The Court took up the question of whether the applicants could still claim to be a victim of a violation of the Convention as several police officers had been convicted for the murder of the applicants' son and of perverting the course of justice. It joined that admissibility question to the merits of the case as being closely linked to the issue of the effectiveness of the investigation, which it then examined under the procedural limb of Article 2.

The Court highlighted a number of failings in the first investigation: firstly, the police officers who had carried out the operation in which the applicants' son had been killed had themselves carried out the initial investigative measures. Secondly, the Tbilisi city prosecutor's office had failed to give the applicants victim status, a lack of procedural standing that had prevented them from being able to appeal to a court against the prosecution decision to terminate the investigation.

Overall, the Tbilisi city prosecutor's office had manifestly lacked the requisite thoroughness, objectivity and integrity, as shown by the reopened investigation.

Although that investigation had led to convictions, the Court was not convinced it had provided sufficient redress. First of all, it had taken more than nine years from the killing to acknowledge the aggravated murder of the applicants' son. Coupled with the significant periods of total inactivity by the investigation authorities, that had clearly amounted to procrastinated justice. The Court reiterated that justice delayed was often justice denied.

Furthermore, the first applicant himself had borne the burden of the investigation, interviewing witnesses and collecting other evidence. Despite the existence of substantial evidence implicating the police officers in the unlawful use of the lethal force, it had still taken the domestic authorities almost three years to terminate the investigation and transfer the case for trial.

The Court also noted that it was because of the first applicant's activities in the case that he had been murdered. Indeed, by taking over an investigative role which was normally the responsibility of the authorities, he put himself at almost certain risk of retaliation.

Such a tragic development was a further clear example of the negative consequences of a lack of due diligence by authorities investigating life-endangering crimes, particularly where police corruption was involved.

The second investigation had also been tainted by the fact that the second applicant had not been granted victim status. That had undermined the possibility of seeking and obtaining adequate compensation for the damage which she and her late husband had sustained.

National courts had the prerogative in choosing penalties for ill-treatment and homicide, but the Court had to intervene where it saw a clear lack of proportion between the seriousness of acts committed by State agents and the punishment.

In this case, the trial court had initially handed down 16-year prison sentences for the two authors of the aggravated murder of the applicants' son, less than the permitted 20 years to life. The domestic court must also have known that the perpetrators would benefit from a reduction in their sentence under an amnesty, which is what happened.

The Court expressed regret that the legislature had apparently not given due consideration to the need to punish serious police misconduct with unbending stringency and reiterated that when an agent of the State, in particular a law-enforcement officer, was convicted of a crime that violated Article 2 of the Convention, the granting of an amnesty or pardon should not be permitted.

In addition, the two police officers found guilty of aggravated murder had not been banned from public service by the domestic courts, meaning they could potentially re-join the law-enforcement system after they had served their 12-year prison sentences. The Court emphasised that it would be wholly inappropriate and would send the wrong signal to the public if the perpetrators of such a crime could maintain their eligibility for holding public office in the future.

The Court concluded that the sentences given to the two police officers who had murdered the applicants' son and his friend, with malice aforethought, employing the law-enforcement machinery for that purpose, had not constituted fully adequate punishment for the crime committed.

Despite the eventual conviction of the five police officers, the criminal-law system as applied to the killing of Z.V. had proven to be far from rigorous. Owing to the initial lapses and prohibitive delays in the investigation, the applicants' inability to be sufficiently involved in the criminal proceedings and the domestic courts' failure to secure adequate punishment for the two State agents who committed double murder in aggravating circumstances, it had also not had a sufficiently dissuasive effect for the prevention of similar criminal acts in the future.

The Court thus concluded that the applicants had retained their victim status despite the convictions and that there had been a violation of the procedural limb of Article 2.

Substantive limb

The Court noted that the findings of the domestic courts had made it clear that the killing of Z.V. by State agents with malice aforethought had been attributable to the respondent State. There had therefore been a violation of the substantive limb of Article 2 of the Convention.

Other articles

Both applicants reiterated their complaints concerning the lack of an effective investigation under Articles 6 and 13 of the Convention. They also cited Articles 7 and 14 and Article 1 of Protocol No. 1 without providing any meaningful explanation. The second applicant separately complained that the prosecution authority had made her rewrite by hand the report on the post-mortem forensic examination of her son's body.

Having regard to the facts of the case, the parties' submissions and its findings under Article 2, the Court considered that it had examined the main legal questions raised by the application and concluded that there was no need to give a separate ruling on the applicants' other complaints.

Just satisfaction (Article 41)

The Court held that Georgia was to pay the second applicant 50,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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