



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

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**CHAMBER JUDGMENT
OGNYANOVA AND CHOBAN v. BULGARIA**

The European Court of Human Rights has today notified in writing its Chamber judgment^[1] in the case of ***Ognyanova and Choban v. Bulgaria*** (application no. [46317/99 \(/sites/eng/pages/search.aspx#{"appno": "46317/99"}\)](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{)).

The Court held unanimously that there had been:

- a **violation of Article 2** (right to life) of the European Convention on Human Rights in respect of Mr Stefanov's death;
- a **violation of Article 2** of the Convention in that the authorities failed to conduct an effective investigation into Mr Stefanov's death;
- a **violation of Article 3** (prohibition of inhuman or degrading treatment);
- a **violation of Article 5 § 1** (right to liberty and security);
- a **violation of Article 13** (right to an effective remedy); and,
- no violation of Article 14** (prohibition of discrimination).

Under Article 41 (just satisfaction), the Court awarded 20,000 euros (EUR) to Ms Ognyanova, and EUR 10,000 to Ms Choban for non-pecuniary damage and EUR 4,000, jointly, for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicants, Zoya Kirilova Ognyanova and Giulfere Yusein Choban, are Bulgarian nationals of Roma ethnic origin who live in the village of Dabovo, Bulgaria. They are Zahari Alexandrov Stefanov's de facto wife and mother.

On 4 June 1993 Mr Stefanov was arrested on suspicion of having taken part in numerous thefts and burglaries and taken into custody. The next day, while he was being interviewed, he fell from a third floor window of the police station Kazanluk where he was being detained. He was taken to hospital but died the next day.

The only eyewitnesses to the event were Lieutenant I.C., in whose office he was being questioned and Chief Sergeant H.B. and Mr D.O. According to their statements, Mr Stefanov, who was handcuffed, jumped out of the window in an effort to escape. There were several inconsistencies in Lieutenant I.C. and Mr D.O.'s statements as to whether they saw Mr Stefanov falling, or only saw him after he had already hit the ground.

Various measures were taken, including an autopsy and an on-site inspection which were carried out shortly after the events.

Numerous injuries were found on Mr Stefanov's body. The ensuing investigation concluded that he had voluntarily jumped out of the window and that all his injuries had been the result of his fall. The applicants contested those conclusions.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 17 November 1998 and declared admissible on 6 January 2005.

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

Christos **Rozakis** (Greek), **President**,
Loukis **Loucaides** (Cypriot),
Snejana **Botoucharova** (Bulgarian),
Elisabeth **Steiner** (Austrian),
Khanlar **Hajiyev** (Azerbaijani),
Dean **Spielmann** (Luxemburger),
Sverre Erik **Jebens** (Norwegian), **judges**,

and also Søren **Nielsen**, **Section Registrar**.

3. Summary of the judgment[2]

Complaints

The applicants alleged that Mr Stefanov had died as a result of his ill-treatment by the police while in custody and that the authorities had failed to conduct an effective investigation into the circumstances surrounding his death. They further alleged that Mr Stefanov's detention had been unlawful. Finally, they complained that they had not had effective remedies against the alleged violations of the Convention, and that the impugned events had been the result of discriminatory attitudes towards people of Roma ethnic origin such as Mr Stefanov.

The applicants relied on Articles 2, 3, 5 § 1, 13 and Article 14.

Decision of the Court

Article 2

Mr Stefanov's death

The Court found that it was unclear whether Mr Stefanov jumped from the window of his own accord, whether he was deliberately pushed, or forced into a situation where he had no other option but to jump. The Court found it highly improbable that he tried to escape, given that the window was 9.6 m. above ground level, that the ground was covered with concrete and iron grills, and that he was handcuffed. Furthermore, there was no reason to believe that he would have committed an unprovoked suicide, or that he was drunk.

The Court noted that there were inconsistencies in the authorities' version of the events leading up to Mr Stefanov's death. Furthermore, the Court found that the authorities' conclusion that all the injuries Mr Stefanov sustained were exclusively caused by his fall, without exploring other hypotheses as to their possible source, questionable.

In view of the circumstances of the case, the Court found that the Government had not fully accounted for Mr Stefanov's death and injuries during his detention and therefore held that there had been a violation of Article 2 in that respect.

Alleged inadequacy of the investigation

The Court expressed reservations about the credibility of the statements given by witnesses, some of whom might have been under pressure to corroborate the police's version of events. In addition, it noted that the authorities never asked Lieutenant I.C. to clarify the inconsistencies in his accounts of the events. Given that the authorities' conclusions were to a great extent based on the supposed sequence of the fall, that evidence was of crucial importance.

The Court noted serious omissions in the investigations. In particular, it noted the fact that the site of the incident had not been preserved in its original state prior to its inspection. Furthermore, there had been a lack of a detailed description of how Mr Stefanov's injuries had been sustained and the authorities made no effort to explore other hypotheses as to their possible source.

In sum, the Court found that the investigation lacked the requisite objectivity and thoroughness, a fact which undermined its ability to establish the cause of Mr Stefanov's death and injuries. It followed that there had been a violation of Bulgaria's obligation under Article 2 to conduct an effective investigation into Mr Stefanov's death.

Article 3

The Court found it unlikely that all of Mr Stefanov's injuries, spread about his torso, limbs and head, could have been solely the product of a fall. Furthermore, they were not properly accounted for in the expert medical reports. The Court therefore found that the Government had not provided a plausible explanation for Mr Stefanov's injuries and that those injuries were indicative of inhuman treatment. There had accordingly been a violation of Article 3.

The Court did not deem it necessary to make a separate finding under Article 3 in respect of the deficiencies in the investigation into the allegations of ill-treatment, having already dealt with that question under Article 2.

Article 5 § 1

The Court noted that, since the investigation did not establish the facts relating to Mr Stefanov's detention and did not gather any documents in that respect, it was not clear on the basis of which provisions of domestic law, if any, he was taken into custody.

In those circumstances, the Court concluded that Mr Stefanov's deprivation of liberty was unlawful and that there had therefore been a violation of Article 5.

Article 13

The Court found that since there had been no effective criminal investigation, the applicants were denied any effective remedy that might have led to the identification and punishment of those responsible for Mr Stefanov's ill-treatment and death, and consequently any award of compensation that might have existed. The Court therefore found that there had been a violation of Article 13.

Article 14

The Court observed that the materials in the case file contained no concrete indication that racist attitudes had played a role in the events of 4 and 5 June 1993. Nor had the applicants pointed to any such facts. It followed that there had been no violation of Article 14 taken together with Articles 2, 3, 5 § 1 and 13.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments.

[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

[2] This summary by the Registry does not bind the Court.