



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

EUROPEAN COURT OF HUMAN RIGHTS

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CHAMBER JUDGMENT IN THE CASE OF ANGUELOVA v. BULGARIA

The European Court of Human Rights has today notified in writing a judgment^[1] in the case of *Anguelova v. Bulgaria* (application no. [38361/97 \(/sites/eng/pages/search.aspx#{"appno":\["38361/97"\]}\)](/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

- the death of the applicant's son;
- the authorities' failure to provide timely medical care; and,
- Bulgaria's obligations to conduct an effective investigation;

unanimously, that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment or punishment);

unanimously, that there had been a **violation of Article 5** (right to liberty and security);

unanimously, that there had been a **violation of Article 13** (right to an effective remedy);

by six votes to one, that there had been **no violation of Article 14** (prohibition of discrimination).

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 19,050 euros (EUR) for non-pecuniary damage and EUR 3,500 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

Assya Anguelova is a Bulgarian national, born in 1959 and living in Razgrad.

The case concerned the death of her son, Anguel Zabchekov, aged 17, on 29 January 1996 while in police custody in Razgrad (Bulgaria), following his arrest for attempted theft.

During the late evening of 28 January 1996 Mr Zabchekov had been drinking alcohol with family and friends in a bar. They maintain he was in good health and uninjured when they last saw him between around 10.30 p.m. to just after 11.30 p.m.

Shortly after midnight Mr Zabchekov was seen hanging around cars “doing something” by people living in a neighbouring apartment block who then alerted an off-duty police officer, Sergeant Mutafov, who was in the area. Sergeant Mutafov chased Mr Zabchekov and claimed that Mr Zabchekov fell on his face several times while trying to run away. Mr Zabchekov was arrested and taken to the police station just before 1 a.m. Some time after 3 a.m. police officers at the station informed the officers responsible for the arrest - then on patrol duty - that Mr Zabchekov’s health was deteriorating. They drove back to the police station to assess the situation and then drove to the hospital, returning with a doctor and an ambulance. Mr Zabchekov was taken to the hospital where, at around 5 a.m., the hospital doctor confirmed that he was dead.

Criminal proceedings were opened to investigate the death. An autopsy carried out on 29 January 1996 established that he had died as the result of a skull fracture, which he had sustained approximately four to six hours prior to his death. A second report, based only on documentary evidence, was later submitted, however, which concluded that Mr Zabchekov’s injury must have taken place at least 10 hours before his death. On the basis of this report, the investigation was terminated, on the ground that there was no link between the actions of the police and Mr Zabchekov’s death. The applicant appealed unsuccessfully. An additional investigation was suspended on the ground that it was impossible to establish how the injuries had been inflicted.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 20 September 1997 and transferred to the Court on 1 November 1998. It was declared admissible on 6 June 2000.

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

Christos **Rozakis** (Greek), **President**,
Giovanni **Bonello** (Maltese),
Peer **Lorenzen** (Danish),
Nina **Vajić** (Croatian),
Snejana **Botoucharova** (Bulgarian),
Vladimiro **Zagrebelsky** (Italian),
Elisabeth **Steiner** (Austrian), **judges**,

and also Erik **Fribergh**, **Section Registrar**.

3. Summary of the judgment[2]

Complaints

The applicant alleged that her son died after being ill-treated by police officers, that the police failed to provide adequate medical treatment for his injuries, that the authorities failed to undertake an effective investigation, that her son’s detention was unlawful, that she did not have an effective remedy and that there had been discrimination on the basis of her son’s Roma (Gypsy) origin. She relied on Articles 2, 3, 5, 13 and 14 of the European Convention on Human Rights.

Decision of the Court

Article 2

Whether Mr Zabchekov died as a result of ill-treatment while in police custody

The Court noted that Mr Zabchekov died after having been detained for several hours in Razgrad police station and that the first forensic report considered that his skull injury had most likely been inflicted between four and six hours prior to his death, possibly at a time when he was in police custody, either

before or after he was taken to the police station.

The Court questioned the conclusion of the second forensic report that the injuries had occurred at least 10 hours before Mr Zabchekov's death. The report was based on a visual examination of photographs of the blood clot taken six hours after Mr Zabchekov's death. The report also departed in significant respects from the conclusions of the first report, which had been based on a direct observation of the corpse, without explaining why. If Mr Zabchekov had been injured before 7 p.m. on 28 January 1996, it would mean that he had gone out with friends and then decided to steal car parts while suffering from a skull fracture. The Court observed that this might appear unlikely, even if the so-called "lucid interval" between the injury and the death were taken into account. In particular, it was not disputed that Mr Zabchekov was able to run when Sergeant Mutafov attempted to apprehend him and was walking normally when brought to the police station. Furthermore, there were a number of other injuries to Mr Zabchekov's body which could have been the result of the same events that caused the skull fracture.

The Government's claim that Mr Zabchekov might have been injured by falling on the ground – as he was drunk and had a history of health problems - was not supported by forensic evidence, as the presence or absence of "*contre-coup* lesions" characteristic of falls was not recorded by the autopsy. Furthermore, the Court considered it significant that none of the witnesses who were in contact with the applicant's son before he was taken to the police station reported any complaint of an ailment on his part.

Regarding the use of handcuffs, according to the medical opinion submitted by the applicant, handcuffs might leave marks if they were too tight or the person was struggling or dragged. The autopsy found a very slight mark on Mr Zabchekov's left hand and severe bruising on his right hand. It was also reported that at some point he was handcuffed to a tree. It might appear unlikely, therefore, that the injury to his right wrist was the result of normal use of tight handcuffs. The other two possible explanations – that Mr Zabchekov was struggling or was dragged – might suggest that he had been ill-treated. Finally, the Court did not find the information about Mr Zabchekov's alleged illness reliable or particularly pertinent. The Government's proposed conclusion that Mr Zabchekov might have injured himself by falling was thus improbable when examined in the light of all the surrounding facts.

In assessing the evidence, the Court, moreover, attached significant weight to the police officers' suspect behaviour and the fact that the authorities accepted the credibility of their evidence. The Court noted for example that:

between 3 a.m. and 5 a.m. on 29 January 1996 the police delayed contact between Mr Zabchekov and a doctor and may have tried to control which doctor saw him;

the police told the hospital doctor that Mr Zabchekov had been taken to the police station in the same condition in which the doctor had seen him at about 5 a.m.;

the detention records were manipulated;

Mr Zabchekov was registered *post factum* as an "unidentified person" although he had been well known to the police officers as a suspect on theft charges.

Although these facts were important indications that required thorough investigation; such an investigation was not undertaken.

Having regard to all the relevant circumstances, the Court thus found implausible the Government's explanation of Mr Zabchekov's death, which was based on the conclusion of the second forensic report as to the timing of the injury and a supposition that the boy might have injured himself by falling on the ground. The Government had not offered any other explanation. The Court, therefore, found a violation of Article 2.

The alleged failure to provide timely medical care

The Court observed that the police delayed the provision of medical assistance to Mr Zabchekov which contributed in a decisive manner to his death. Instead of calling for an ambulance, the police officers who realised that Mr Zabchekov's health was deteriorating contacted the officers who had arrested him, who drove back to the station and then to the hospital with an ambulance, instead of calling for one. It was particularly significant, furthermore, that the case file contained no trace of criticism or disapproval of their actions. The first medical report and the expert whose opinion was submitted by the applicant found that the delay in providing medical assistance had been fatal.

The Court thus found that the behaviour of the police officers between 3 a.m. and 5 a.m. on 29 January 1996 and the lack of any reaction by the authorities constituted a violation of the State's obligation to protect the lives of those in custody. There had therefore been a violation of Article 2 § 1 in that respect

The alleged ineffective investigation

The Court noted a number of defects in the investigation, including:

the failure of the autopsy to record morphological data and the absence or presence of "*contre-coup* lesions" made it impossible to identify the object which might have caused the skull fracture;

police officers were never asked to explain why the detention register had been forged, why they had not called for an ambulance right away or why they had given apparently false information to the hospital doctor;

the investigation concentrated on the origin and timing of the skull injury and paid scant attention to the other traces left on the boy's body;

the testimony of the police officers was considered fully credible despite their suspect behaviour; notwithstanding the obvious contradiction between the two medical reports, the authorities accepted the conclusions of the second report without seeking to clarify the discrepancies;

the decisions of the prosecution authorities to end the investigation relied exclusively on the opinion in the second medical report about the timing of the injury, an opinion that had been based on a questionable analysis.

The Court found, therefore, that the investigation lacked objectivity and thoroughness, a fact which decisively undermined its ability to establish the cause of Mr Zabchekov's death and those responsible. The Court therefore found that there had been a violation of Article 2 § 1 concerning the failure to conduct an effective investigation into Mr Zabchekov's death.

Having found that the investigation was not sufficiently objective and thorough, the Court observed that it

did not need to rule on the applicant's additional allegation, that the inadequate investigation was the result of a general problem of lack of independence, impartiality and public accountability on the part of the authorities handling investigations of police ill-treatment.

Article 3

Noting that the Government had not provided a plausible explanation for the injuries to Mr Zabchekov's body and that those injuries were indicative of inhuman treatment beyond the threshold of severity permitted under Article 3, the Court held that there had been a violation of Article 3.

The Court did not find it necessary, however, to make a separate finding under Article 3 in respect of the deficiencies in the investigation, having already dealt with that question under Article 2.

Article 5

It was not disputed that Mr Zabchekov's detention was not based on a written order as required by section 35 of the National Police Act.

The Court noted the applicant's statement that, in an effort to conceal the very fact that her son had been detained, the first information to the family about his death had omitted any reference to his confinement. The Court also observed that Mr Zabchekov's deprivation of liberty was not recorded initially and that the register at the police station was later forged. The police officers' behaviour between 3 a.m. and 5 a.m. on 29 January 1996 was another element which might lead to a conclusion that there was an attempt to conceal the fact that the applicant's son had been detained. As that attempt was unsuccessful, however, the Court did not deal with the question of whether State responsibility for an unacknowledged detention arose.

The lack of a written order and of a proper record of Mr Zabchekov's detention was sufficient for the Court to find that his confinement for several hours on 29 January 1996 was in breach of domestic law and contrary to the requirements implicit in Article 5 for the proper recording of deprivations of liberty. There had, therefore, been a violation of Article 5 § 1.

Article 14

The Court found that, although the applicant's allegations of discrimination were based on serious arguments, it was unable to conclude that they had been proved beyond reasonable doubt. There had therefore been no violation of Article 14.

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 in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.

[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.