



## Death of a young man following a group fight not investigated effectively

In today's Chamber judgment in the case [Dimitrova and Others v. Bulgaria](#) (application no. 44862/04), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**A violation of Article 2 (right to life) and**

**No violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights.**

The case concerned the lack of an effective investigation into the death of a young man of Roma origin following a fight in which he was involved.

### Principal facts

The applicants are four Bulgarian nationals: Ms Raina Dimitrova, Ms Ekaterina Gerasimova, Mr Sedefcho Gerasimov and Mr Petar Gerasimov. They are the mother, wife and brothers of Mr Georgi Gerasimov, who was born in 1976 and died in 2003. The applicants are of Roma origin and live in Pernik.

In the afternoon of 30 May 2003, Georgi and three other people of Roma origin were digging coal in an abandoned open coal mine near Pernik. Mr B.I., who was someone to whom one of Georgi's companions apparently owed money, passed by on horseback. An argument erupted, following which B.I. left only to return accompanied by three friends in two cars. A fight broke out between the two groups who disagreed as to who had started it. After some time, Georgi's friends rushed to a nearby petrol station and asked the staff to call the police saying that a friend of theirs had been beaten up. The police arrived at the place of the incident, found only Georgi lying on the ground, seriously injured, and took him to hospital. He was admitted in hospital in a coma with a severe cerebral contusion and four wounds to the head. He died on 4 June 2003.

A criminal investigation was opened on the same day Georgi was found injured. A number of investigative steps were taken: an inspection of the scene was conducted, analyses of blood found in B.I.'s friends' cars were carried out and two wooden bats and a knife were seized from those cars. A post-mortem examination of Georgi's body concluded that he had died as a result of a severe cerebral trauma. Several wounds and bruises, as well as a fracture, were recorded on his head and body. In addition, witnesses were questioned; those included Georgi's companions, B.I. and his companions, and two employees of the petrol station from which the police was called.

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<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

The three companions of B.I. were briefly arrested - on 2 June 2003 - as the investigators suspected them of being accessories in the attempted murder of Mr Gerasimov and considered that they could abscond. However, the three were never charged or investigated any further. On the other hand, on 3 June 2003, B.I. was charged with attempted murder committed in an especially cruel manner and with extreme ferocity. He was detained on 5 June 2003 and was released on bail on 25 July 2003.

B.I. was further charged, on 10 December 2003, with causing Georgi's death by a disproportionate reaction to an attack. The prosecutor, in a decision of 25 May 2004, dropped the initial charge against him of attempted murder and retained only the second one of 10 December 2003. The prosecutor accepted the version presented by B.I. and his companions as more likely than that offered by Georgi's friends. The prosecutor then concluded that B.I. had been injured during a fight while defending himself and had hit Georgi on the head, only once, with a wooden bat.

The applicants submitted that no meaningful information had been provided to them about the progress of the investigation.

On an unspecified date, B.I. entered into a plea bargain with the prosecution. He confessed to killing Georgi Gerasimov in a disproportionate reaction to an attack and accepted a suspended three years' sentence of imprisonment. The court then approved the agreement and discontinued the criminal proceedings against him.

Apparently, the applicants only learned about the termination of the proceedings from publications in the local media. Georgi's mother asked on 20 June 2005 that the proceedings be reopened but was informed that that was not possible for failure to respect the required time-limit.

## Complaints, procedure and composition of the Court

Relying, in particular, on Article 2 and 14, the applicants complained that the Bulgarian authorities failed to carry out an impartial investigation into their relative's death.

The application was lodged with the European Court of Human Rights on 15 December 2004.

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

Peer **Lorenzen** (Denmark), *President*,  
Karel **Jungwiert** (the Czech Republic),  
Mark **Villiger** (Liechtenstein),  
Isabelle **Berro-Lefèvre** (Monaco),  
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),  
Zdravka **Kalaydjieva** (Bulgaria),  
Ganna **Yudkivska** (Ukraine), *Judges*,

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

## Decision of the Court

### Article 2

The Court recalled that in order to deter people from committing offences, States had a duty to adopt effective criminal legislation and to ensure that their law-enforcement agencies were capable of preventing, suppressing and sanctioning criminal offences. In

addition, when people died in suspicious circumstances, States had to conduct effective investigations even when there was no suggestion that the death had resulted from acts by State officials. Investigations had to be objective, thorough and timely. In order to ensure accountability in practice and to maintain public confidence in the authorities, investigations also had to allow for public scrutiny by involving the victim's next of kin.

The Bulgarian authorities had opened an investigation on the day Georgi had been fatally injured. Witnesses had been examined, expert reports had been drawn up and evidence collected from the scene. However, the Court found that the investigation had been ineffective, in particular, because of the following reasons. Crucial evidence collected during the investigation had been disregarded. In particular, the investigation had established four wounds on Georgi's head while the authorities had accepted that he had been only hit once as contended by the alleged culprit, B.I. In addition, Georgi's companions had alerted the police to the incident, while B.I., despite submitting he had acted in self-defence, had gone into hiding together with his friends and had never reported the alleged attack to the police. The investigation had also failed to explain why B.I. and his three companions had deliberately driven to the place where Georgi and his friends had been at the time. Consequently, the authorities had not carried out a thorough and objective analysis of the evidence collected during the investigation.

A number of other deficiencies in the investigation were identified. In particular, B.I.'s companions had never been investigated; the prosecutor's decision to drop the initial charges against B.I. had been based on the witness statements favourable to him which had never been verified. No attempt had been made to explain inconsistencies in B.I.'s submissions. The applicants had not been given the opportunity to effectively participate in the investigation; they had not even been formally notified of its outcome.

Consequently, the Bulgarian authorities had failed to investigate effectively Georgi Gerasimov's death. There had, therefore, been a violation of Article 2.

### Other articles

The Court held that there had been no violation of Article 14, as it could not establish that the Bulgarian authorities' failure to properly investigate Georgi's death had been the result of racial prejudice.

### Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Bulgaria was to pay to the mother and the wife of Georgi 10,000 euros (EUR) each, and to his brothers EUR 5,000 each in respect of non-pecuniary damage, as well as EUR 2,500 for costs and expenses.

*The judgment is available only in English.*

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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.