



Suspect of politician's assassination tortured by Bulgarian police

In today's Chamber judgment in the case of [Lenev v. Bulgaria](#) (application no. 41452/07), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

two violations of Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights on account of Mr Lenev's having been tortured and on account of the lack of an effective investigation;

a violation of Article 8 (right to respect for private and family life) on account of the potential secret surveillance of Mr Lenev; and,

two violations of Article 13 (right to an effective remedy) on account of the lack of effective remedies in respect of the complaints under Article 3 and in respect of the secret surveillance.

The Court further held that Bulgaria had not failed to fulfil its obligations under **Article 34 (right of individual petition)** and **Article 38 § 1 (a) (obligation to furnish necessary facilities for the examination of the case)**.

The case concerned in particular the allegations of a man - arrested on suspicion of taking part in the assassination of the former Prime Minister of Bulgaria, Andrey Lukanov - that he had been tortured by the police.

The Court found in particular that Mr Lenev's injuries had been characteristic of bodily harm inflicted intentionally for the purpose of obtaining a confession, and that the Bulgarian courts had failed to give a plausible explanation of the origin of those injuries.

Principal facts

The applicant, Yuriy Lenev, is a Bulgarian national who was born in 1958 and lives in Sofia.

On 1 June 1999, Mr Lenev was arrested on suspicion of taking part in the assassination of the former Prime Minister of Bulgaria, Andrey Lukanov, in October 1996. He was forced into a minivan and, handcuffed and hooded, was taken to a secret location outside Sofia to be interrogated. According to his submissions, he did not resist his arrest. He alleges that during the trip, the officers questioned him and hit him with solid objects; pressure was applied to his eyes and he lost consciousness several times. At night, he was held in a house, where he was further questioned and ill-treated. In particular, he alleges that objects were inserted under his fingernails. During the

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

interrogation, Mr Lenev confessed that he had taken part in a plot to assassinate the former Prime Minister.

On the following day, Mr Lenev was taken back to Sofia and charged with complicity to premeditated murder. He was examined by a doctor, who noted some injuries, in particular haematomas under the arms, on his wrists and legs, and open wounds on a wrist and finger. Following two further medical examinations on 23 and 26 July 1999 by a forensic specialist, further injuries were noted, in particular an injury to the parietal area of the skull and injuries to the fingers (a haematoma under a nail, a missing nail and swelling of a finger).

In the criminal proceedings against Mr Lenev, the prosecution sought to rely on recordings of his interrogation, which had been made without his knowledge and without a judicial warrant, judicial authorisation to carry out recordings having been given only one day after the interrogation. The trial court refused to admit the recordings in evidence, noting that they had been made secretly without a valid warrant.

During the first months after his arrest, Mr Lenev maintained his initial confession, as did his co-accused. Later they changed their position and stated that they had never been involved in the alleged assassination plot and that their confessions had been extracted under torture. In November 2003, the trial court, relying heavily on the confessions, convicted Mr Lenev, and his co-accused, as charged and sentenced them to life imprisonment. In June 2006, the court of appeal quashed the judgment and acquitted all accused, concluding that the confessions had been made under torture and should not be taken into account. The Supreme Court of Cassation upheld the acquittal in March 2007.

A criminal investigation in relation to Mr Lenev's allegations of ill-treatment was opened on 27 July 1999. Between January and May 2000 three police officers who had travelled with Mr Lenev in the minivan were charged with causing him light bodily harm. Subsequently, the proceedings were stayed a number of times and the prosecutor sent the case back for further investigation. The courts eventually acquitted the police officers in a final judgment of 30 July 2007, concluding that the officers' actions had constituted a lawful and appropriate use of force.

Complaints, procedure and composition of the Court

Relying on Article 3, Mr Lenev complained that he had been tortured by the police and that the ensuing investigation into his allegations had been inadequate. Relying on Article 8, he also complained that he had been secretly recorded while in custody and that there had been defects in the Bulgarian law and practice on secret surveillance. He further alleged that he had had no effective remedies with which to complain and obtain compensation for his ill-treatment or for being subjected to secret surveillance, in breach of Article 13. Lastly, he alleged that the authorities had not provided him or the European Court of Human Rights with certain documents concerning his case, in breach of Article 34 (right of individual petition) and Article 38 § 1 (a) (obligation to furnish necessary facilities for the examination of the case).

The application was lodged with the European Court of Human Rights on 12 September 2007.

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

Ineta **Ziemele** (Latvia), *President*,
David Thór **Björgvinsson** (Iceland),
Päivi **Hirvelä** (Finland),

Zdravka **Kalaydjieva** (Bulgaria),
Vincent A. **de Gaetano** (Malta),
Paul **Mahoney** (the United Kingdom),
Krzysztof **Wojtyczek** (Poland),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

Decision of the Court

Article 3

The Court observed that Mr Lenev's injuries recorded in the medical reports of June and July 1999 had been serious enough to fall under the remit of Article 3. The Bulgarian Government had not sought to argue that he had had any injuries before being taken into custody. The findings of the Bulgarian courts in the proceedings against the police officers suggested that some of the injuries might have been caused during the arrest.

However, the Court was not convinced that the injuries allegedly caused by the efforts to make Mr Lenev get into the van could be regarded as necessary. His injuries had been quite severe and widespread. The arrest operation had been planned in advance and had been carried out by special forces of the police; they could therefore have taken measures to minimise injuries. Moreover, while some injuries could have been the result of the arrest, others, for instance that to his head, appeared to have been caused by a blow with a blunt object. Neither the Government's submissions nor the findings of the Bulgarian courts had given a plausible explanation of the origin of certain other injuries, in particular those to his fingers and fingernails.

The Court observed that, when seen in their context, those injuries were characteristic of bodily harm inflicted intentionally for the purpose of obtaining a confession. It could not be overlooked that the criminal charges against Mr Lenev had rested to a large extent on his confession obtained while he was detained. After his arrest and during the transport to the place of detention, he had moreover been hooded. There was no indication that this had been done with the aim of preserving the anonymity of the police officers involved. Instead it had been designed to disorient Mr Lenev and prevent him from knowing where he was taken. Moreover, his long interrogation, during the night, had taken place in a secret place instead of a normal detention centre.

The Court therefore had little doubt that the ill-treatment which had caused the injuries to Mr Lenev's fingers and fingernails had been inflicted to break his resistance and make him confess. The Court concluded that this treatment had amounted to torture, in violation of Article 3.

The Court further found a violation of Article 3 on account of the deficiencies in the investigation of his allegations of ill-treatment. It noted in particular that, although Mr Lenev had been examined on the day after his arrest by a doctor who had recorded some of his injuries, there had not been a comprehensive recording of his injuries or an attempt to determine their cause using forensic methods until more than fifty days after the alleged ill-treatment. Moreover, the investigation had not accounted for all injuries and the courts had not sought to make any findings in respect of the motivation behind the ill-treatment. While in 2006 and 2007 the court of appeal and the Supreme Court of Cassation had found that Mr Lenev had been ill-treated and that his confession could therefore not be taken into account, the authorities investigating the allegations of ill-treatment by police officers had ignored those findings. Furthermore, there had been numerous delays in the investigation, which in total had lasted six years. Finally, there was no indication that any of the officers alleged to have ill-treated Mr Lenev had been suspended from their duties pending the investigation of the criminal charges.

Article 8

In a previous judgment², the Court had found that the Bulgarian law governing secret surveillance, as in force until 2007, partly failed to meet the requirement under Article 8 that an interference with the right to respect for private life be “in accordance with the law”. It had found that the procedure for authorising such surveillance was marked by a number of problems, in particular the lack of review by an independent body and the lack of a number of other procedural safeguards. As the legal framework at the time Mr Lenev lodged his complaint had been the same as the one applicable in the older case, the Court saw no reason to hold otherwise. It concluded that the interference with Mr Lenev’s right to respect for his private life had been unlawful and therefore in violation of Article 8.

Article 13

The Court found a violation of Article 13 in respect of Mr Lenev’s complaints under Article 3. It held in particular that the deficient investigation and the resulting conclusions of lawful use of force – in marked contrast to the finding of the courts dealing with the criminal charges against him that his confession had been obtained under ill-treatment – had excluded the possibility of obtaining compensation in respect of that ill-treatment in civil proceedings.

It also found a violation of Article 13 in respect of Mr Lenev’s complaints under Article 8, referring to the previous case in which it had found that in 2007 there had been no means under Bulgarian law for those subjected or suspecting of being subjected to secret surveillance to vindicate their rights. A change of the relevant provisions had only come into force after he had lodged his application with the Court.

Articles 34 and 38

The Court observed that Mr Lenev had been able to support his application with enough relevant documents for the Court to give notice to the Bulgarian Government of his complaints under Article 3. While the Government had not provided all medical documents relating to his injuries, they had provided copies of all court hearings in the proceedings against the police officers and Mr Lenev had been able to obtain copies of the relevant medical documents. The Court had therefore not been prevented from examining the case. Bulgaria had accordingly not failed to fulfil its obligations under Articles 34 and 38.

Just satisfaction (Article 41)

The court held that Bulgaria was to pay Mr Lenev 27,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.

The judgment is available only in English.

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² *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* (62540/00) of 28 June 2007

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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.