



Prisoner tortured to death: the authorities failed to investigate effectively

In today's Chamber judgment in the case of [Yuriy Illarionovich Shchokin v. Ukraine](#) (application no. 4299/03), which is not final¹, 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 on account of the death of Mr Shchokin's son during his imprisonment;

a violation of Article 2 (right to life) of the Convention as regards the investigation into the circumstances leading to the death of Mr Shchokin's son, as it had been conducted by the authorities without the requisite diligence;

a violation of Article 3 (prohibition of torture) on account of the torture to which Mr Shchokin's son had been subjected;

a violation of Article 3 (lack of effective investigation) on account of the insufficiency of the State's investigation into those acts of torture.

The case concerned the death of a prisoner, the applicant's son, following acts of torture inflicted on him by inmates, with the possible involvement of a prison officer, during his imprisonment in a penal colony. The Ukrainian authorities failed to guarantee the protection of the prisoner, who was under their responsibility. The perpetrators of the acts were not all identified and tried. In addition, there was no serious investigation into the facts.

Principal facts

The applicant, Yuri Shchokin, is a Ukrainian national who was born in 1940 and lives in Tokmak (Ukraine).

Mr Shchokin's son, Oleg Shchokin ("S.O."), who was serving a prison sentence, was subjected to acts of violence, including particularly cruel acts such as sexual assault, which led to his death. The acts were committed inside a duty office and in the washrooms and toilets, that is to say, in communal areas inside the prison, for several hours at a time.

The Ukrainian authorities opened an investigation which led to the identification of a number of inmates. Some of them were tried and given prison sentences and ordered to pay compensation for the non-pecuniary damage incurred by the applicant. However, the responsibility of the prison administration, and more generally the Ukrainian authorities, was not examined.

In addition, the investigation revealed the probable active involvement in the torture of a member of the colony's personnel. Proceedings were brought against the official by the Zaporijia regional prosecutor's office. He absconded and is still wanted by the authorities.

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

Complaints, procedure and composition of the Court

Relying in particular on Articles 2 (right to life) and 3 (prohibition of torture and lack of effective investigation) of the Convention, Mr Shchokin complained that his son died as a result of acts of torture, while he was being held in a penal colony, and that the perpetrators of those acts had not been identified and tried, without any serious investigation having been conducted into the facts. He also complained that he was unable to institute proceedings against the colony and the Ukrainian State, which had failed to provide protection for his son.

The application was lodged with the European Court of Human Rights on 22 January 2003.

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

Mark **Villiger** (Liechtenstein), *President*,
Angelika **Nußberger** (Germany),
Boštjan M. **Zupančič** (Slovenia),
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France),
Paul **Lemmens** (Belgium),
Aleš **Pejchal** (the Czech Republic),

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

Decision of the Court

Article 2

The Court reiterated that Article 2 of the Convention imposed an obligation on Contracting States not only to refrain from causing death “intentionally” or by a disproportionate “use of force”, but also to take any necessary measures to secure the protection of the lives of individuals within their jurisdiction.

The Court noted that the applicant’s son had died after being subjected, in a high-security prison, to acts of violence that were particularly cruel and lasted for several hours at a time. It found that the State authorities had failed in their duty to protect the life of S.O., who was placed under their supervision and was in a particularly vulnerable situation as a result of his detention and in view of the risk of reprisals against him after an attempt to escape. The Court thus held that there had been a violation of Article 2.

The Court further observed that the investigation which followed the death of S.O. had not sought to establish responsibility within the prison staff. The Court noted that no serious inquiries had been made by the Ukrainian authorities to ascertain how several people had been able to torture and rape S.O. over such a long period and in communal areas of the prison premises. This serious breach of the duty of safety had not given rise to any efforts to establish the responsibility of the prison administration, or more generally, of the Ukrainian State. The Court further observed that the national authorities had confined their examination to the personal responsibility of prisoners and that State responsibility had not been discussed or even mentioned.

Moreover, one of the officials of the prison administration, S.A., whose possible involvement had been pointed out at the beginning of the investigation, had absconded and had never been traced. The Court was of the view that the Government had failed to show that reasonable and sufficient measures had been taken to guarantee the appearance of that official before the judicial authorities. The Court further found that the Government had failed to show that there was any will on the part of the authorities to actually find S.A. or to take suitable measures to that end.

The investigation into the circumstances leading to the death of the applicant's son had not been conducted by the authorities with the necessary diligence. There had therefore been a second violation of Article 2 of the Convention.

Article 3

The Court observed that S.O. had received numerous blows, in particular from a truncheon, on many parts of his body. Those blows had caused serious injuries and haemorrhaging, with multiple bruising, grazing and rib fractures, leading to his death. The acts of violence had lasted a certain time and had caused him extreme agony. It had also been established that S.O. had been raped on two occasions. The Court was of the view that such acts had to be characterised as torture within the meaning of Article 3 of the Convention.

The Court noted that the questions concerning both the presumed involvement of a State official and the circumstances that led to such incidents inside a prison had not been addressed by an effective investigation. The Court's findings under Article 2 were also pertinent concerning the complaint of a violation of Article 3 of the Convention. The Court found that there had been a double violation of Article 3.

Just satisfaction (Article 41)

The court held that Ukraine was to pay the applicant 30,000 euros in respect of non-pecuniary damage.

The judgment is available only in French.

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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.