



A civilian in Chechnya detained and tortured to death, and ineffective investigation

In today's Chamber judgment in the case [Isayev and Others v. Russia](#) (application no. 43368/04), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

Two violations of Article 2 (right to life), two violations of Article 3 (prohibition of torture), a violation of Article 13 (right to an effective remedy) of the European Convention on Human Rights.

The case concerned the arrest, detention, torture and subsequent death of a civilian suspected of involvement in terrorist activities in the Chechen Republic.

Principal facts

The applicants are four Russian nationals, born between 1967 and 1981. They are two brothers and two sisters-in-law of Zelimkhan Isayev who died in May 2004. The applicants live in the village of Goy-Chu in the Chechen Republic.

According to the applicants, three of whom lived together with Zelimkhan Isayev, two vehicles arrived at their house in the evening of 9 May 2004 and a group of armed masked men burst into it. They searched the house and yard for arms without producing any warrant but found no arms in the house. They apprehended Zelimkhan Isayev who did not resist. Then the men took him outside into one of the vehicles and drove away with him. Immediately after the men left, the applicants informed the head of the local administration about it, as well as the district department of the interior.

On the afternoon of the following day, an investigator from the Federal Security Service (the FSB) arrived at the applicants' home with a search warrant and searched their house. The applicants submitted that they saw one of the servicemen place a grenade in Zelimkhan Isayev's bed.

Because of his poor state of health, Zelimkhan Isayev was transferred on 10 May 2004 from FSB detention premises to a temporary detention facility run by the police. On 11 May 2004, a doctor examined him but no transfer to a hospital was authorised. During a hearing before a judge deciding on the extension of his detention, Zelimkhan Isayev complained that he had incriminated himself because he had been tortured and showed the injuries on his body. Apparently, the judge did not react.

Zelimkhan Isayev was taken to the district hospital on 12 May 2004. His brothers visited him, secretly took pictures of his body bearing signs of ill-treatment, and he told them

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

how he had been ill-treated after his apprehension. In particular, he complained that he had been beaten, burnt with cigarettes, subjected to electric shocks and forced to drink some foul-smelling liquid. He had agreed to sign some documents which he had not read.

Zelimkhan Isayev was transferred to a better equipped hospital in Nazran on 16 May 2004 when his health deteriorated dramatically. He died there shortly after his arrival, at about 11.30 p.m.

A medical certificate was issued to Zelimkhan Isayev by the district hospital on 12 May 2004 and it mentioned a number of the injuries which the applicants alleged their brother had sustained in detention.

In July 2004, the applicants asked the prosecutor to open criminal proceedings against the FSB servicemen for torturing their brother. The prosecution repeatedly decided not to open criminal proceedings against the FSB officers as it found no grounds to do so.

Despite the Court's repeated requests, the Russian Government refused to produce any documents from the case file concerning the investigation of Zelimkhan Isayev's death referring to the incompatibility of such a step with national legislation.

The applicants submitted that they were intimidated by the head of the local village administration and by other authorities, as a result of which they did not dare challenge the decision not to open criminal proceedings against the FSB officers.

Complaints, procedure and composition of the Court

Relying in particular on Articles 2, 3 and 13, the applicants complained that their relative had been tortured to death by the authorities and that there had been no effective investigation into their related complaints, and no effective remedy to challenge that.

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

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

Nina **Vajić** (Croatia), *President*,
Anatoly **Kovler** (Russia),
Peer **Lorenzen** (Denmark),
George **Nicolaou** (Cyprus),
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece), *Judges*,

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

Decision of the Court

Admissibility: exhaustion of domestic remedy

The Court noted that, contrary to the Government's submissions, a civil action could not be regarded as an effective remedy in the context of claims related to the right to life, and therefore the applicants had not been required to pursue a civil action.

In addition, the applicants' failure to challenge the investigating authorities' acts or omissions, and in particular the prosecutor's refusals to open criminal proceedings, could

not be held against them. There had been no indication that the authorities had provided the applicants, in good time, or at all, with a copy of the decision not to open criminal proceedings. Therefore, they could not have effectively challenged that decision before the courts.

Further, the investigation had only been opened more than three years after the events, and was still pending. As the parties disputed its effectiveness, the Court examined together with the merits of the case the Government's submission that the applicants should have waited till the investigation's completion before applying to the Court.

Right to life and investigation (Article 2)

The Court noted that Zelimkhan Isayev had been in good health prior to his arrest in the evening of 9 May 2004. He had been transferred from one hospital to another, in which he died on 16 May 2004 from a number of serious injuries as attested in his death certificate. While the Government had submitted that Zelimkhan Isayev's injuries had been the result of him resisting his arrest, no evidence had been shown to support that. In addition, the Government had refused to provide any documents from the criminal file opened into the death of Zelimkhan Isayev, despite the Court's repeated requests. Therefore, given that no plausible or satisfactory explanation for the death of Zelimkhan Isayev had been provided, the authorities had been responsible for his death. There had, therefore, been a violation of Article 2.

The Court further observed that an investigation into the circumstances of Zelimkhan Isayev's death had only been opened more than three years after the events. A number of crucial investigative steps had never been taken: no examination of Zelimkhan Isayev's body had been done after his death and neither the FSB officers who had arrested him had been interviewed, or the State officials or the other detainees who had been in contact with him after his arrest. The applicants had not been granted victim status. Consequently, the investigation, which had started late, had been ongoing for several years without any tangible results. Moreover, because of the time which had elapsed since the events complained of, certain investigative measures that ought to have been carried out much earlier could no longer be usefully conducted. Consequently, the investigation had been ineffective, in violation of Article 2, and the applicants were not expected to have waited for its completion before complaining to the Court.

Prohibition of torture (Article 3)

The medical documents submitted to the Court showed that Zelimkhan Isayev had suffered physical pain during his detention. He had been ill-treated particularly cruelly and severely given that he had died from his injuries. The sequence of events had suggested that the pain and suffering had been inflicted on him intentionally, in order to force him to confess that he had links with paramilitary groups in the Chechen Republic. Therefore, Zelimkhan Isayev had been tortured, in violation of Article 3. In view of the inadequate investigation carried out into his ill-treatment, there had been another violation of Article 3.

Right to an effective remedy (Article 13)

The Court concluded that the applicants had not had an effective remedy in respect of their complaints related to Zelimkhan Isayev's torture and related death. As the criminal investigation into his ill-treatment and death had been ineffective, the effectiveness of any other remedy which might have existed had consequently been undermined. There had, therefore, been a violation of Article 13.

Just satisfaction (Article 41)

Under Article 41 (just satisfaction) of the Convention, the Court held that Russia was to pay the applicants jointly 78,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,481 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.