



No effective investigation carried out into the killing of two boys by a missile in Chechnya

In today's Chamber judgment in the case [Udayeva and Yusupova v. Russia](#) (application no. 36542/05), 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, as no effective investigation was carried out into the death of the applicants' sons; and

No violation of Article 2 (right to life), as regards the complaint that the authorities were responsible for the two boys' deaths.

The case concerned the complaints of two Chechen mothers about the killing of their sons in an explosion in Chechnya. The mothers claimed that the Russian authorities were responsible both for their sons' deaths and for the lack of an effective investigation into the tragic event.

Principal facts

The applicants, Zulikhan Udayeva and Zulpa Yusupova, are Russian nationals who were born in 1963 and 1960 respectively and live in the outskirts of Urus-Martan, Chechen Republic, Russia.

Their two sons were born in 1990 and 1988 and studied in the same school. In the afternoon of 17 October 2000, at around 4 p.m., while walking home from school along a road close to the town's cemetery, the boys were hit by a missile and died on the spot.

Several people living or passing at the time of the events nearby the place where the incident took place submitted that they first heard the sound of a missile, then an explosion, following which they saw clouds of black smoke coming from the road next to the cemetery. Other Urus-Martan residents told the applicants that at the time they had seen Russian military troops, who had been stationed at the town's outskirts, and had heard a projectile being launched from a tank and then explode not far away.

The Russian prosecution service opened an investigation into the boys' deaths on the same day. The crime scene was examined, but nothing was collected from it. Neither was a forensic analysis of the remains of the bodies and shell carried out. The applicants were granted victim status but were not kept informed of the investigation's progress. A number of witnesses were questioned. However, despite specific requests by the Court, the Russian Government did not disclose any documents from the case referring to the incompatibility of such a step with domestic legislation. The Government submitted that

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

they were examining a theory according to which the boys could have been killed as a result of "incorrect use" of artillery by the Russian military.

Complaints, procedure and composition of the Court

Relying on Articles 2 and 3 (prohibition of inhuman or degrading treatment), the applicants complained that their sons had been killed by the Russian military and that no effective investigation had been carried out into their deaths.

The application was lodged with the European Court of Human Rights on 12 October 2005.

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

Christos **Rozakis** (Greece), *President*,
Nina **Vajić** (Croatia),
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway), *Judges*,

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

Decision of the Court

Article 2 (investigation)

The Court observed that although the deaths of the applicants' sons had been investigated, the Russian authorities had not presented to it any of the documents in the investigation file. On the face of the information submitted by the Government during the proceedings before the Court and that provided by the applicants, the Court found a number of defects in the investigation. In particular, no evidence had been collected by the investigators despite the existence of fragments of the explosive device. Given that that had been an obvious, basic and crucial investigative step, its omission had demonstrated a lack of diligence on the part of the authorities. Not only had they not rectified those initial failures, but they had perpetuated the inadequacy of the investigation in its later stages. Thus, although the testimony provided by the town's residents had suggested that the missile had been launched from the direction in which Russian military troops had been stationed at the time, members of those military forces had not been questioned. Neither had any practical steps been pursued in order to verify the theory advanced by the Russian government that the boys could have been killed following a mistake by the military.

The Court concluded that the omissions in the investigation and the absence of explanations by the authorities about the failure to establish the very basic circumstances of the events, demonstrated a failure to carry out an effective investigation, in breach of Article 2.

Article 2 (responsibility for the explosion or for preventing it)

The Court noted that, in other earlier cases, it had found the Russian military responsible for deaths of civilians in the Chechen Republic as a result of different pieces of evidence submitted before it. That included evidence showing that the authorities had been aware of military operations being conducted in the area.

However, in the applicants' case, no persuasive evidence supporting their allegations had been presented. Likewise, there had been no indication that the authorities knew, or ought to have been aware at the time, of an immediate danger to the lives of the applicants and had failed to do everything necessary to prevent it. Consequently, the Court could not establish with the certainty required that Russian military forces had been involved in the deaths of the two boys. Accordingly, there had been no violation of Article 2 in connection with the applicants' deaths.

Article 3 (psychological suffering of the applicants)

While the Court did not doubt that the tragic deaths of the applicants' sons had caused the applicants profound suffering, given the sudden way in which the boys had died, the Court found that the applicants' rights under Article 3 had not been breached.

Other Articles

The Court rejected the applicants' complaints under the other Articles.

Article 41 (just satisfaction)

Under Article 41, the Court held that Russia was to pay each of the applicants 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 in total for costs and expenses to be paid directly to the applicants' legal representatives.

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.