



Shortcomings in the law-enforcement system contributed to police officer's shopping mall shooting spree

In today's **Chamber** judgment¹ in the case of [Gerasimenko and Others v. Russia](#) (application nos. 5821/10 and 65523/12) 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.

The case concerned a shooting spree carried out by a uniformed police officer that took place in and around a shopping centre in Moscow, in the early hours of 27 April 2009. The applicants were all wounded in the attack. They lodged claims for damages against the Russian State, arguing that the incident was made possible due to serious failures by the Government authorities. The claims were all dismissed by the domestic courts. The applicants complained to the European Court that the Government had failed in its obligation to safeguard their lives, and that they had been denied a remedy for this failure.

The Court found that failures by the national authorities had indeed contributed to the incident: most notably, the shooter's superiors had repeatedly failed to appropriately assess his personality (despite a history of mental and neurological disorders), and had provided him with access to ammunition. In these circumstances, the State had not complied with its obligation to safeguard lives, by ensuring the careful selection and supervision of its officers allowed to carry firearms.

Principal facts

The applicants, Ilya Gerasimenko, Luiza Salikhova, and Yelena Dudal, are Russian nationals who were born in 1990, 1989, and 1990 respectively and live in Moscow.

In the early hours of 27 April 2009, the chief of the Tsaritsino branch of the Moscow Department of the Interior, D.E., took a taxi to the Ostrov shopping centre on Shipilovskaya Street in Moscow. He was wearing a police uniform and was armed with a handgun. D.E. proceeded to carry out a number of random shootings outside and inside the shopping centre, killing two people and wounding several others. Mr Gerasimenko was shot in the face and body; Ms Salikhova was also wounded in the face; and Ms Dudal suffered a wound in the neck, as well as a fractured shoulder blade. A forensic psychological and psychiatric examination of D.E. established that he had developed emotional instability, excitability, and anxiety as a result of head injuries and conditions he had suffered as a child.

In February 2010 the Moscow City Court convicted D.E. of two murders, 22 counts of attempted murder, and the unlawful use of firearms. He was sentenced to life imprisonment, and stripped of his rank as major. The conviction and sentence were upheld on appeal in the Supreme Court of Russia.

On the day of D.E.'s conviction, the Moscow City Court also issued a special ruling relating to the shortcomings that formed the background to the attack. The court noted that, though D.E. had been

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.

treated for conditions related to mental disorders during his childhood, this information had (unlawfully) not been taken into account when he had been recruited to the police service and promoted. The court also found that, whilst holding the position of chief of the Tsaritsino branch of the Moscow Department of the Interior, D.E. had unlawfully obtained the cartridges which he had gone on to use in the attack from the stocks of the Department of the Interior. During the trial, the court had also been provided with information from the Department of the Interior, stating that the handgun used by D.E. had originally been stolen from one of its regional departments.

All three applicants brought separate civil proceedings against the State for damages. They were all unsuccessful.

Mr Gerasimenko and Ms Salikhova both claimed that they had suffered injuries as a result of the unlawful actions of a state official. This was rejected by the Nagatinskiy District Court of Moscow, on the grounds that D.E. had not been acting as a State official at the time of the attacks. In particular, the court noted that the attack had taken place outside of D.E.'s working hours and outside the territorial jurisdiction of the Tsaritsino police branch. The court dismissed Mr Gerasimenko's claim on 29 July 2009, and Ms Salikhova's claim on 23 September 2009. The Moscow City Court upheld the two judgments on 6 October 2009 and 1 December 2009, respectively.

Ms Dudal developed significant psychological problems after the attack, exacerbated whenever she saw somebody in a police uniform. Her claim against the Ministry of Finance argued that this damage had been caused by D.E.'s unlawful exercise of his powers. The claim was dismissed by the Tverskoy District Court of Moscow on 7 December 2012. The court held that the proceedings should have been brought against D.E. rather than the State, finding no evidence that the damage had been caused by the unlawful actions of a law-enforcement officer. The judgment was upheld by the Moscow City Court on 16 April 2012.

Complaints, procedure and composition of the Court

Relying in particular on Article 2 (right to life), the applicants complained that the Russian State had failed in its obligation to safeguard their lives, and that they had been denied a remedy for this failure. In particular, they claimed that the State had been responsible for the attack, because D.E. had worn a police uniform during the incident; both the gun and the ammunition had originated from the Department of the Interior; the State had accepted D.E. for police service despite his neurological history, providing him with access to weapons and firearms training; and because D.E. had been promoted to become the person in charge of controlling weapons.

The application was lodged with the European Court of Human Rights on 15 January 2010.

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

Luis **López Guerra** (Spain), *President*,
Helena **Jäderblom** (Sweden),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Branko **Lubarda** (Serbia),
Pere **Pastor Vilanova** (Andorra),
Alena **Poláčková** (Slovakia),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 2 (right to life)

The Court reiterated that States are expected to set high professional standards within their law-enforcement systems; that they must ensure that individuals recruited to such systems meet the requisite criteria; that police forces equipped with firearms should be selected with particular scrutiny; and that they should be given the necessary technical training.

In this case, two separate domestic institutions had found that there had been serious failings in taking the necessary measures in these areas. The special ruling issued by the Moscow City Court on 19 February 2010 had identified that D.E.'s history of mental and neurological disorders had (unlawfully) not been taken into account when he had been accepted by the police force and promoted. It also found that D.E. had unlawfully obtained the cartridges used in the shooting from the Department of Interior itself. Furthermore, a report of 17 September 2009 by the Investigative Committee at the Prosecutor's Office of the Russian Federation had noted that the Appraisal Board which had found D.E. fit for promotion had had a perfunctory attitude towards its duties. Furthermore, the report had found that the Ministry of Interior had failed to carry out explanatory work with its staff to respect the rule of law. Both the special ruling by the Moscow City Court and the Investigative Committee's report had concluded that the failures they had identified had contributed to D.E. committing the shooting, and advised that measures should be taken for their rectification. Moreover, the domestic courts had also found that the promotion of D.E. to the position of chief of the Tsaritsino branch had exacerbated his mental health issues.

D.E.'s guilt in the attempted murder of the applicants could not be denied. However, the Court found that the failures of the national authorities had contributed to D.E.'s offences: in particular, because his superiors had repeatedly failed to appropriately assess his personality (despite a history of mental and neurological disorders), and had provided him with access to ammunition.

Given these circumstances, the Court concluded that the State had failed to comply with its obligation under Article 2 to take appropriate steps to safeguard lives, by ensuring the careful selection and supervision of State officers allowed to carry firearms. There had therefore been a violation of Article 2 of the Convention.

Article 41 (Just satisfaction)

The Court held that Russia was to pay the applicants 12,000 euros (EUR) each in respect of non-pecuniary damage. It also held that Russia was to pay Ms Dudal EUR 2,000 in respect of 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.