



## A police operation to put down a riot in a prison used a disproportionate level of force

In today's **Chamber** judgment<sup>1</sup> in the case of [Kukhalashvili and Others v. Georgia](#) (applications nos. 8938/07 and 41891/07) 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 in both its procedural and substantive aspects.

The case concerned the death of the applicants' relatives during a police operation to quell a riot in a prison where they were being held.

The Court first of all found various failings in the authorities' investigation into the circumstances in which an anti-riot force had put down disturbances in the prison, when the applicants' relatives had been killed. For instance, the initial investigatory steps had been taken by the same institution, the prison department, which had ordered and executed the anti-riot measures.

The Court also found that while the law-enforcement officers might have been justified in deciding to use lethal force in the face of shots being fired by prisoners during the riot, the level of force used had not been absolutely necessary. That was shown, among other things, by the lack of proper planning of the law-enforcement response, the fact that the use of lethal force had been indiscriminate and excessive, and because the authorities had failed to provide adequate medical assistance to prisoners afterwards.

### Principal facts

The applicants, Sofio Kukhalashvili, Marina Gordadze and Rusudan Chitashvili, are three Georgian nationals who were born in 1977, 1956, and 1938 respectively and live in Georgia.

The first and second applicants are the sister and mother of Z.K. while the third applicant is the mother of A.B. Both men were prisoners in Tbilisi Prison no. 5 who died during a police anti-riot operation at the prison in March 2006. They were aged 23 and 29 respectively.

The anti-riot operation took place after disturbances when the authorities removed six alleged high-profile criminal bosses and their close associates from a prison hospital. The authorities' aim was to reduce the criminal bosses' alleged influence in the prison system but as they were removed by force disturbances broke out in two nearby prisons, Prison no. 1 and no. 5.

The authorities subsequently used an anti-riot squad to bring the disturbances in Prison no. 5, where the rioting was particularly bad, under control. The incident led to the death of seven inmates and the injury of 22 inmates and two prison officers.

The applicants subsequently obtained documents from prosecutors on the death of their relatives, showing that both had suffered gunshot wounds. Prosecutors stated separately to each family 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](http://www.coe.int/t/dghl/monitoring/execution).



lethal force had been used against Z.K. and A.B. "in a moment of extreme urgency". Prosecutors refused to give the applicants the status of civil parties in the cases of their relatives' death.

Information supplied by the Government to the Strasbourg Court shows, among other things, that the authorities carried out investigations into the riot and the use of force by the police.

Six prisoners – the alleged criminal bosses and their close associates – were ultimately charged as instigators of the riot and given prison sentences. The trial court established that inmates of Prison no. 5 had thrown pieces of brick and iron at prison officers and that the anti-riot squad had responded with rubber bullets. Inmates had then fired Makarov pistols and gas weapons, carrying on resisting until the intervention of prison officers and anti-riot forces.

Prosecutors also began separate cases concerning a possible abuse of power by the police and prisoner officers for opening fire during the riot and on possible murder related to the deaths of Z.K. and A.B. Some investigative measures were taken in the first case but it is not clear whether any were taken as regards Z.K. and A.B.

## Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) and Article 13 (right to an effective remedy), the applicants complained that the State was responsible for the death of their relatives and that the authorities had failed to carry out an effective investigation.

The applications were lodged with the European Court of Human Rights on 26 January and 14 August 2007.

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

Síofra O'Leary (Ireland), *President*,  
 Gabriele Kucsko-Stadlmayer (Austria),  
 Ganna Yudkivska (Ukraine),  
 André Potocki (France),  
 Mārtiņš Mits (Latvia),  
 Lado Chanturia (Georgia),  
 Angelika Nußberger (Germany),

and also Claudia Westerdiek, *Section Registrar*.

## Decision of the Court

### [Article 2 and Article 13](#)

#### *Obligation to investigate*

The Court first examined the applicants' complaints from the point of view of the State's duty to carry out an effective investigation into unlawful or suspicious deaths (the procedural aspect of Article 2), reiterating its case-law on that subject.

According to information provided by the Government, an investigation into the use of force by officers at the prison had not begun until June 2006, which for the Court was far too long a delay given the scale of the incident and the prospect that it would not be possible to recover important information after such a long time.

Furthermore, the authorities had initially refused to open a separate investigation into the alleged disproportionate use of force, assessing that that ground had already been covered by the investigatory steps in the criminal case against the six alleged riot organisers. However, that investigation had been carried out by the same body which had organised the anti-riot action, the



prisons department. Nor had that investigation examined the planning of the operation or the use of lethal or physical force resulting in prisoner deaths and injuries.

Even after the authorities had opened a separate criminal enquiry into the use of force in June 2006, the applicants had not been involved as victims, depriving them of major procedural rights. The participation of Z.K. and A.B.'s families and public scrutiny of the investigation had thus been virtually non-existent. Lastly, it had still not led to any conclusive findings, a prohibitive delay incompatible with the obligations of Article 2.

The Court concluded that the criminal investigation into the use of force by the law-enforcement officers appeared to have been ineffective, given its belated launch, its lack of independence and impartiality, the lack of involvement of the next of kin, and the prohibitive delays. There had thus been a violation of the procedural limb of Article 2. Given that conclusion, the Court found that no separate issue arose under Article 13.

### *Use of force*

The Court next examined whether the use of lethal force against the applicants' relatives had been legitimate (the substantive aspect of Article 2).

The Court had no direct information about the events at the prison and had to rely on domestic findings. However, the courts were still examining the use of force while no parliament inquiry had been carried out, which the Court found regrettable given the scale of the incident.

It was therefore the respondent Government's task to explain in a satisfactory and convincing manner the sequence of events and to produce solid evidence to refute the applicants' allegations of the disproportionate use of lethal power by State agents. If the Government failed to do so, the Court could draw strong inferences.

The Court could also draw on all the evidence at its disposal, including reports by human rights organisations, such as those produced by Amnesty International and Human Rights Watch in this case. The factual findings the Court reached had to be based on the standard of proof "beyond reasonable doubt".

Looking at the evidence to hand, the Court found that the conduct of the inmates who had barricaded themselves into Prison no. 5 and had fired at the law-enforcement officers during the disturbances showed certain signs of being an attempted uprising. The respondent State, confronted with the unlawful violence and the risk of an insurrection, could therefore resort to measures involving potentially lethal force, which could be reconcilable with the aims set out in Article 2 § 2 (a) and (c) of the Convention. However, the question remained whether the recourse to lethal force was "absolutely necessary", especially in the light of the number of people left dead or injured.

When assessing the proportionality of the use of lethal force, the Court noted that the authorities had been aware that it was possible that the six alleged criminal bosses and their associates would instigate troubles at the prison during their removal. However, the anti-riot squad had received no specific instructions or orders on the form and intensity of any lethal force that would keep the likelihood of casualties to a minimum.

Nor had the Government shown that the anti-riot squad had acted in a controlled and systematic manner with a clear chain of command. According to evidence collected by Human Rights Watch, the authorities had not even known exactly who was in charge of the anti-riot operation.

Apparently the authorities had also not thought of using tear gas or water cannons, which was apparently a consequence of the lack of strategic planning, and no sufficient consideration had been given to the possibility of easing the crisis by conducting negotiations with the barricaded prisoners. The authorities had furthermore failed to provide adequate medical assistance to inmates in Prison no. 5 after the anti-riot operation, although such arrangements should have been made.



The Court observed that there were credible reports, documented both by domestic and international observers, that numerous detainees had been ill-treated by special forces agents and even shot in their cells, despite the fact that they had no longer been putting up resistance.

Lastly, neither the domestic authorities nor the respondent Government had provided information about the individual fates of the applicants' two relatives, who had been killed during the operation.

The Court concluded that Z.K. and A.B. had died as a result of lethal force which, although pursuing legitimate aims under Article 2, could not be said to have been "absolutely necessary" within the meaning of that provision.

The Court reiterated that the anti-riot operation had not been conducted in a controlled and systematic manner and law-enforcement agents had not received clear orders and instructions aimed at minimising the risk of casualties. The authorities had not considered less violent means of dealing with the security incident, including the possibility of solving the crisis by negotiations.

The use of lethal force during the anti-riot operation had been indiscriminate and excessive and the authorities had failed to provide adequate medical assistance to those affected. They had also failed to account for the individual circumstances of the deaths of Z.K. and A.B.

The Court concluded that the anti-riot operation had resulted in a violation of Article 2 in its substantive aspect.

#### Just satisfaction (Article 41)

The Court held that Georgia was to pay 40,000 euros (EUR) jointly to the first and second applicants and EUR 32,000 to the third applicant in respect of non-pecuniary damage. It also held that Georgia was to pay EUR 5,400 to the first and second applicants jointly and EUR 3,400 to the third applicant 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.