



Heir entitled to more compensation for the torture and detention of his father

In today's Chamber judgment¹ in the case of [Selami and Others v. "the former Yugoslav Republic of Macedonia"](#) (application no. 78241/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 of the Convention (in its procedural aspect) of the European Convention on Human Rights, and

a violation of Article 5 § 5 of the Convention (right to compensation after unlawful detention).

The case concerned a family's complaint that the compensation awarded for the unlawful detention and ill-treatment of their husband and father was too low.

Mr S. Selami was arrested by the police in 2002. He was beaten during his detention, had brain surgery and was in a coma for two weeks. He began compensation proceedings in 2004, but died in 2011 during an appeal on the case. The fourth applicant, Mr Selami's son and sole heir, continued the claim on his behalf. The entire family, namely Mr Selami's widow and three children, also participated in the proceedings in their own name. The appeal eventually awarded a reduced level of compensation and dismissed the claim made by the family in their own name.

The Court first found that Mr Selami had clearly been the victim of torture and unlawful detention for Convention purposes. While three of the applicants lacked standing to bring a claim on Mr Selami's behalf, the fourth applicant qualified as an "indirect victim" because he had a strong moral interest in the case and the claims were transferable to him. The Court concluded that the domestic courts had not provided adequate redress for the torture and detention of Mr Selami and awarded just satisfaction for violations of his rights under Article 3 and Article 5 § 5 of the Convention.

Principal facts

The applicants, all Macedonian nationals, are respectively the widow and three children of the late Mr Selami. They are called Dževrije Selami ("the first applicant"), Nedžmije Aliu ("the second applicant"), Mesut Selami ("the third applicant") and Nedžmi Selami ("the fourth applicant").

Mr Selami was arrested in August 2002 on suspicion of involvement in the killing of two policemen. During his detention he was severely beaten and hospitalised with skull, neck and rib fractures. He required brain surgery and remained in a coma for two weeks.

He was subsequently indicted for membership of a terrorist group but in September 2003 the criminal proceedings were discontinued. Two months later he approached the Ministry of Justice for out-of-court damages for injuries allegedly inflicted by the police. He received no reply and in January 2004 he brought damages claims for unlawful detention and physical ill-treatment. In April 2010 the first-instance court awarded him the equivalent of 18,000 euros (EUR) in respect of non-pecuniary damage for unjustified detention. It dismissed the rest of his claim.

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.

Mr Selami and the family appealed, arguing that the court had not determined their claim in relation to the serious injuries. In August 2012 the Court of Appeal dismissed the appeal, but allowed a cross-appeal by the Solicitor General and reduced the damages to EUR 9,800. The award was aimed at including damages for the ill-treatment.

Mr Selami died in April 2011. In October 2012, the fourth applicant, Nedžmi Selami, was declared his sole heir, and he lodged a further appeal to the Supreme Court in his own name and on behalf of his late father. That appeal was dismissed in July 2013.

Complaints, procedure and composition of the Court

The applicants complained that Mr Selami's compensation in the domestic proceedings had been unreasonably low, given his unjustified detention and the serious injuries he had sustained. They also complained about the dismissal of the compensation claim which they had submitted in their own name.

The Court considered that the complaints should be examined under Article 3 and Article 5 § 5 (right to compensation after unlawful detention).

This application was lodged with the European Court of Human Rights on 6 December 2013.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Ksenija **Turković** (Croatia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** ("the former Yugoslav Republic of Macedonia"),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

The Court first categorised Mr Selami's treatment in terms of the European Convention. On the facts of the case, it noted that he had been ill-treated at the hands of the police in connection with his arrest and questioning and found that he had been a victim of torture, in violation of Article 3. The Court further established that his detention in August 2002 had been unlawful and in breach of Article 5.

It went on to consider whether Mr Selami's family had standing to complain on behalf of, respectively, their late husband and father and in their own name. The question was whether they could complain in their own name of a violation of their rights under Article 3, that is, whether they were "direct victims", and whether they could complain about Mr Selami's torture and unjustified detention under Articles 3 and 5, that is, whether they were "indirect victims".

It found on the first point that the family could not complain as direct victims of a violation of Article 3: Mr Selami had only been missing for two days and the family had not witnessed the brutality against him. Furthermore, no link could be established between the ill-treatment in 2002 and his death in 2011.

On the second point, the Court found that only the fourth applicant, Nedžmi Selami, had standing as an indirect victim. He was the late Mr Selami's sole heir, had taken his place in the domestic compensation proceedings after his death and had inherited the award of damages. Nedžmi Selami

had therefore demonstrated “a strong moral interest” in the State being held responsible for the violations, quite apart from the material interest linked with his entitlement to damages.

It also found that any general interest in proceeding with consideration of the first, second and third applicant’s application would be secured by dealing with the fourth applicant’s claim alone.

The Court dismissed the Government’s argument that Mr Selami should have initiated criminal proceedings which the family could then have continued after his death. The Court found that Mr Selami’s complaint had not been about the lack of an investigation into the allegations of ill-treatment under Article 3, but about the inadequacy of compensation. The State could not discharge itself from its “procedural obligation” by shifting responsibility for criminal investigative procedures onto the injured party, especially when the authorities themselves had been made aware of serious allegations worthy of investigation. There was also no evidence that criminal proceedings would have made any major difference to the award.

Turning to the merits of the case, the question for the Court was whether the national authorities, through their handling of the family’s civil complaint, had acknowledged the breaches of the Convention, and provided adequate redress. The Court noted that damages had been awarded for unjustified detention, and that the award purported to cover the admission of serious physical ill-treatment and bodily injury. Nevertheless, that acknowledgement had not included the earlier unauthorised detention during August 2002 and had contained no description, expressly or in substance, of the ill-treatment as “torture”. The damages had also been reduced significantly by the Court of Appeal.

Comparing the domestic compensation with its own awards for similar cases, the Court found that the sum offered for the violations could not be considered as appropriate redress and that the amount of EUR 9,800 had been unreasonably low.

The Court concluded, therefore, that there had been a violation of Nedžmi Selami’s rights under both Article 3 and Article 5 § 5.

Just satisfaction (Article 41)

The Court held that Nedžmi Selami had to be awarded the difference between the domestic compensation and the sum it would usually adjudge in such particularly serious cases. It accordingly awarded him EUR 20,000 in respect of non-pecuniary damage, plus any tax that was chargeable.

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.