



Failure to conduct an effective investigation and provide a satisfactory and convincing explanation

In today's Chamber judgment¹ in the case of [Lapshin v. Azerbaijan](#) (application no. 13527/18) the European Court of Human Rights held:

unanimously, that there had been a **violation of Article 2 – procedural aspect (right to life: obligation to conduct an effective investigation)** of the European Convention on Human Rights, and by 6 votes to 1, that there had been a **violation of Article 2 – substantive aspect (right to life)**.

The case concerned an incident during the applicant's imprisonment in Azerbaijan in 2017 for having crossed the State border outside the checkpoints during journeys to Nagorno-Karabakh, and the ensuing inquiry by the prosecutor's office into the incident. The authorities asserted that the incident had been a suicide attempt, while the applicant alleged it had been attempted murder.

The applicant was resuscitated and hospitalised in an intensive-care unit. The following day the applicant was pardoned by the President of Azerbaijan and, upon his discharge from hospital three days later, was expelled to Israel.

The Court found that the inquiry into the prison incident had been ineffective and in breach of the respondent State's procedural obligations under Article 2 of the Convention. It found that the respondent State had failed to satisfy the burden of proof resting on it to provide a satisfactory and convincing explanation as regards the incident which had put the applicant's life in danger. There had therefore been a violation of Article 2 under its substantive limb.

Principal facts

The applicant, Alexander Valeryevich Lapshin, is an Israeli, Russian and Ukrainian national who was born in 1976 and lives in Haifa (Israel).

According to the applicant, on 10 September 2017, he was attacked and beaten in his prison cell by a group of masked men, one of whom attempted to strangle him with his bare hands. He regained consciousness two days later in an intensive-care unit.

According to the Azerbaijani authorities, prison officers found the applicant hanging from a towel hook (a nail) in his in-cell sanitary facility, a shoulder strap from a bag around his neck. He was immediately given artificial respiration and then taken to hospital where he was admitted to a resuscitation unit.

The investigator of the District Prosecutor's Office found that the applicant had attempted to commit suicide in prison and that there were no elements of criminal responsibility involved. He declined to initiate a criminal case into the incident, referring to the inspection of the scene, the statements of witnesses (prison guards and medical staff) and documents from the prison files. The investigator's decision indicated that it should be served on the applicant, who should be

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.

advised of his right to appeal. There is, however, no evidence of any steps taken to serve the decision on the applicant.

Upon arrival in Israel four days after the incident, the applicant was admitted to a medical centre where he underwent physical and psychiatric examinations. The medical report noted that the applicant had visible signs of strangulation and multiple bruises and that there was no evidence of psychosis or affective disorders.

In addition, the applicant privately commissioned two medical expert reports. One of the reports, by a team of Russian doctors, concluded that the applicant had not tried to commit suicide by hanging as many physical signs of hanging were missing. According to the report, somebody or several persons had tried to strangle him and had made it look as if he had tried to hang himself. The other medical report, produced by a forensic expert, recorded that the applicant had sustained a number of non-self-inflicted blunt-force injuries to his face, body and arms. In addition, there were signs of manual strangulation and, as the injuries sustained were not consistent with attempted suicide, the assault could be classified as attempted murder.

On 1 February 2018 the applicant sent an email to the Deputy Prosecutor General of Azerbaijan, requesting information about the investigation and explaining that he was not able to travel to Azerbaijan to pursue his complaints as he was not allowed to enter the country. According to the applicant, as he received no reply to his email, he sent a letter to the Deputy Prosecutor General of Azerbaijan on 17 February 2018, requesting information on the course of the investigation and informing him that on 15 September 2017 he had voiced his allegations of attempted murder in interviews given to several Russian, Israeli, Armenian, Ukrainian, British and American media outlets. Despite proof of delivery, he did not receive a reply to his requests.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicant complained that an attempt had been made on his life, in prison, and that the domestic authorities had failed to investigate the circumstances of the case. He also complained of ill-treatment and humiliation during his transfer to and his stay in prison in Azerbaijan, and alleged that he had been kept in solitary confinement for a period of seven months.

The application was lodged with the European Court of Human Rights on 7 March 2018.

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

Síofra O'Leary (Ireland), *President*,
Mārtiņš Mits (Latvia),
Stéphanie Mourou-Vikström (Monaco),
Jovan Ilievski (North Macedonia),
Lado Chanturia (Georgia),
Arnfinn Bårdsen (Norway) and,
Ceyhun Qaracayev (Azerbaijan), *ad hoc Judge*,

and also Victor Soloveytchik, *Section Registrar*.

Decision of the Court

Article 2

The Court found that the medical and other evidence available clearly showed that the applicant's life had been in serious and imminent jeopardy and that his survival had been down to prompt

medical intervention. His situation had remained critical for several days and had required constant medical treatment, including resuscitation and intravenous feeding.

Procedural limb

The Court observed that there had been serious deficiencies and inconsistencies in the manner in which the inquiry had been conducted and in the investigator's findings closing the inquiry. As a consequence, many questions remained unanswered. In particular, a timely forensic examination could have enabled the reaching of crucial conclusions as to the existence, time and nature of the applicant's injuries. However, the applicant had not been examined by a forensic expert and no forensic assessment of his injuries had been carried out in Azerbaijan. Moreover, there was no indication that the investigator had sought to obtain the video surveillance recordings, which could have clarified who had entered the applicant's cell and what had actually happened on the day of the incident. In that connection, it noted that there had been serious inconsistencies in the prison guards' statements, which had not been clarified during the inquiry.

The Court noted that the inspection of the scene had found no bag in the applicant's cell from which he had allegedly taken the strap to try to commit suicide. The investigator had failed to consider and examine whether it would have been possible for the applicant to have had a strap in his prison cell given that such an object was considered as potentially dangerous and was normally not available to prisoners.

In the Court's view, it was difficult to accept on the basis of the evidence available that an adult of the applicant's stature could have hanged himself on a 3-cm-long wall nail 1.9 m off the ground using a 0.9-m-long bag strap. That should have been examined more thoroughly through, for example, a reconstruction of the event.

The Court therefore concluded that the inquiry into the incident in prison that had put the applicant's life at risk had been ineffective and in breach of the respondent State's procedural obligations under Article 2 of the Convention.

Substantive limb

The Court underlined that the evidence which the parties had submitted, and their diverging views on the circumstances of the incident, should have been examined in domestic proceedings. The role of the Court was not to serve as a first-instance tribunal of fact. Though the Court was not bound by the domestic findings and remained free to make its own appreciation in the light of all the material before it, it had to work on the relevant findings reached by the domestic authorities, or a lack thereof, and draw the necessary inferences.

It therefore sufficed for the Court to note that the applicant's allegation of attempted murder, with the alleged crime being disguised as attempted suicide, was plausible, despite certain inconsistencies in his recollection of the facts, which might be linked to the trauma suffered.

In addition, the Court noted that, even disregarding one of the medical reports commissioned by the applicant which the Government challenged as not having been prepared by forensic experts, the fact remained that both reports – one of which had been provided by a forensic expert, whose expertise had not been called into question by the Government despite their challenging the substance of the report – had come to the same conclusion, namely that the applicant had been a victim of attempted murder by strangulation.

The Court also noted that the Government's argument that the applicant had tried to commit suicide because he had been frustrated at not having received a planned visit from his wife and son – the latter having been taken ill –, was not convincing, especially as he had been expecting to be transferred from Azerbaijan to Israel for the rest of his prison sentence. It observed also that on the day following the incident – the day of the applicant's pardon by the President – in a telephone

conversation with the applicant's wife, the prison staff had not disclosed that he had allegedly attempted suicide and had been in a critical situation.

The Court was therefore not convinced that the incident had been a suicide attempt. The respondent State had failed to satisfy the burden of proof resting on it to provide a satisfactory and convincing explanation as regards the incident during which the applicant's life had been in danger. There had accordingly been a violation of Article 2 of the Convention under its substantive limb.

Article 3

Having regard to the facts of the case, the submissions of the parties and its findings under Article 2 of the Convention, the Court considered that it had examined the main legal questions raised in the application and that there was no need to give a separate ruling on the remaining complaints.

Just satisfaction (Article 41)

The Court held that Azerbaijan was to pay the applicant 30,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinion

Judge Qaracayev expressed a partly dissenting opinion. This opinion is annexed to the judgment.

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.