



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

ECHR 127 (2017)
13.04.2017

Serious failings in the response of the Russian authorities to the Beslan attack

The case concerned the September 2004 terrorist attack on a school in Beslan, North Ossetia (Russia). For over fifty hours heavily armed terrorists held captive over 1,000 people, the majority of them children. Following explosions, fire and an armed intervention, over 330 people lost their lives (including over 180 children) and over 750 people were injured. The case was brought by 409 Russian nationals who had either been taken hostage and/or injured in the incident, or are family members of those taken hostage, killed or injured. They made allegations of a range of failings by the Russian State in relation to the attack.

In today's **Chamber** judgment¹ in the case of [Tagayeva and Others v. Russia](#) (application nos. 26562/07, 14755/08, 49339/08, 49380/08, 51313/08, 21294/11 and 37096/11), the European Court of Human Rights made the following findings.

Unanimously, the Court held that there had been a **violation of Article 2 (right to life)** of the European Convention on Human Rights, arising from a failure to take preventive measures. The authorities had been in possession of sufficiently specific information of a planned terrorist attack in the area, linked to an educational institution. Nevertheless, not enough had been done to disrupt the terrorists meeting and preparing; insufficient steps had been taken to prevent them travelling on the day of the attack; security at the school had not been increased; and neither the school nor the public had been warned of the threat.

Unanimously, the Court found that there had been a **violation of the procedural obligation under Article 2**, primarily because the investigation had not been capable of leading to a determination of whether the force used by the State agents had or had not been justified in the circumstances.

By five votes to two, the Court held that there had been a **further violation of Article 2**, due to serious shortcomings in the planning and control of the security operation. The command structure of the operation had suffered from a lack of formal leadership, resulting in serious flaws in decision-making and coordination with other relevant agencies.

By five votes to two, the Court also found that there had been a **violation of Article 2** arising from the use of lethal force by security forces. In the absence of proper legal rules, powerful weapons such as tank cannon, grenade launchers and flame-throwers had been used on the school. This had contributed to the casualties among the hostages and had not been compatible with the requirement under Article 2 that lethal force be used "no more than [is] absolutely necessary."

Taking into account the compensation already afforded to the victims in Russia and various domestic procedures that had been aimed at establishing the circumstances of the events, the Court held, by six votes to one, that there had been **no violation of Article 13 (right to an effective remedy)**.

Under **Article 46 (binding force and implementation of judgments)**, the Court indicated the need for a variety of measures aimed at drawing lessons from the past, raising awareness of applicable legal and operational standards, and deterring similar violations in the future. It also held that the future requirements of the pending investigation into the incident must be determined with regard to the Court's conclusions about investigation's failures to date.

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.

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Principal facts

In the early hours of 1 September 2004 over thirty heavily armed terrorists crossed the administrative border between Ingushetia and North Ossetia. At 9 a.m. a ceremony to celebrate the start of the academic year began in a courtyard of school no.1 in Beslan. Minutes later, the terrorists surrounded the gathering and rounded up over 1,100 people into the school gymnasium (including around 800 children). The terrorists turned the school into an improvised stronghold and mined the gymnasium. They executed a number of hostages, refused to accept any offers aimed at alleviating the hostages' situation and, starting from 2 September, denied even drinking water to their victims. The security forces surrounded the premises. An operative headquarters (OH) was set up to command the operation and attempted to negotiate with the terrorists, who made political demands.

At 1 p.m. on September 3, two powerful explosions occurred in the gymnasium. Some hostages tried to escape through the hole in the wall and the terrorists fired on them. This prompted an exchange of gunfire with the security forces, which were then ordered to storm the building.

Many terrorists had survived the initial explosions. They rounded up some surviving hostages in the gymnasium (about 300 people) and forced them to other parts of the school. The dead, injured and shell-shocked remained in the gymnasium. Flames spread around the room and at about 3.30 p.m. the roof collapsed.

Meanwhile, the security forces had continued to engage the terrorists. Amid heavy fighting, special forces secured the premises and rescued the surviving hostages. Over 330 people had been killed and hundreds more were wounded. 12 servicemen were among the dead and over 50 were injured. One suspected terrorist was captured and all the others were killed.

There were a number of domestic investigations into the incident. In the first criminal investigation, no. 20/849, the actions of the officials were found to have been lawful and reasonable in the circumstances, and no causal link was found between their decisions and any negative consequences. This investigation is still pending. Additional sets of criminal proceedings were brought against the only surviving hostage-taker, Mr Kulayev (who in 2006 was sentenced to life imprisonment); officials of the Beslan police station (who were given amnesty in relation to negligence-related charges); and officials of the police in Ingushetia (who were acquitted of negligence-related charges). Groups of victims made civil claims against the Russian and North Ossetian Ministries of Interior, but they were unsuccessful.

Reports into the incident were produced by special commissions of the North Ossetian Parliament and the Russian Federal Assembly. A member of the latter, Mr Yuriy Savelyev, also produced a separate report disagreeing with the conclusions of his commission.

Victims of the terrorist attack were awarded various sums in compensation, including funds collected through a humanitarian response. A range of community-oriented measures were implemented in Beslan by the Russian Government in 2004 – 2010.

Complaints, procedure and composition of the Court

The applicants can be separated into two groups: "the first group of applicants", who were represented by lawyers from the EHRAC/Memorial Human Rights Centre; and "the second group of applicants", who were represented by lawyers practicing in Moscow.

Relying on Article 2 (right to life), all of the applicants maintained that the State had failed in its obligation to protect the victims from the known risk to life, and that there had been no effective investigation into the events. The first group of applicants also maintained that many aspects of the planning and control of the security operation had been deficient, and that the deaths had been the

result of an indiscriminate and disproportionate use of force by the authorities. The first group also complained of violations of Article 13 (right to an effective remedy).

The seven applications were lodged with the European Court of Human Rights between June 2007 and May 2011. The case was [communicated](#) to the Russian Government for observations on 10 April 2012. A hearing on the admissibility and merits took place at the Court on 14 October 2014. A Chamber [decision](#) on admissibility was delivered on 2 July 2015.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,
Mirjana **Lazarova Trajkovska** (“the Former Yugoslav Republic of Macedonia”),
Khanlar **Hajiyev** (Azerbaijan),
Julia **Laffranque** (Estonia),
Paulo **Pinto de Albuquerque** (Portugal),
Erik **Møse** (Norway),
Dmitry **Dedov** (Russia),

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

Decision of the Court

[Right to life - the obligation to protect life \(Article 2\)](#)

The Court found that, at least several days in advance, the authorities had had sufficiently specific information about a planned terrorist attack in the area, linked with the opening of the academic year in educational institutions, and likened to major attacks carried out in the past by Chechen separatists involving the taking of hostages in public locations and heavy casualties.

In the face of such a threat, it could be reasonably expected that some preventive and protective measures would cover all educational facilities in the area and include a range of other security steps. While certain security measures had been taken, in general the preventive measures in the present case could be characterised as inadequate. The security arrangement at the school had not been heightened; the local police had not taken sufficient measures to reduce the risks; no warning had been given to the school administration, or to the public attending the ceremony; and no single sufficiently high-level structure had been responsible for the handling of the situation. The authorities had therefore failed to take measures capable of preventing or minimising the known risk, in violation of Article 2.

[Right to life - the obligation to investigate \(Article 2\)](#)

The Court identified a number of serious shortcomings in the investigation into the attack. Firstly, there had been no proper examination of how the victims had died. The authorities had failed to conduct full forensic examinations of the majority of the victims (in order, for example, to identify and match external objects like bullets or shrapnel); and had failed to properly record the location of the vast majority of the hostages’ bodies. For one third of the victims, the exact cause of death had not been established. Secondly, the investigation had failed to properly secure and record other evidence before the site was irreparably altered by large machinery and the lifting of the security cordon on the day after the end of the rescue operation. This had caused irreparable harm to the subsequent analysis of the event.

Thirdly, the investigation had failed to adequately examine the use of lethal force by the authorities, despite the existence of a credible body of evidence pointing at the security forces’ use of weapons capable of causing indiscriminate harm to the people inside the building, such as grenade launchers, flame-throwers, and tank cannon. For example, it did not make a single inventory of the weapons

and ammunition that had been used, establish who had used them, and the time and place that they had been deployed. The lack of objective information had constituted a major failure to clarify this key aspect of the events and to create a ground for drawing conclusions about individual and collective responsibility.

Lastly, the investigating authorities and supervising courts had repeatedly refused to give the applicants access to some key expert reports concerning the use of lethal force by the security forces, and the origins of the first explosions in the gymnasium. The victims' inability to acquaint themselves with these findings and challenge their results appeared unjustifiable.

The Court concluded that there had been a breach of Article 2, since the investigation had not been "effective", as it had not been capable of leading to a determination of whether the force used by the State had been justified in the circumstances. It also noted that the public scrutiny aspect of the investigation had been breached by the victims' restricted access to it.

[Right to life - planning and control of the operation \(Article 2\)](#)

The Court held that the Russian authorities had failed to plan and conduct the rescue operation so as to ensure that the risk to life was minimised, in breach of Article 2. This failure had originated in the functioning of the OH, the body responsible for the operation. There were delays in setting it up and inconsistencies in determining its leadership and composition, and the lack of any records highlights the appearance of a void of formal responsibility.

This absence of formal leadership resulted in serious flaws in the decision-making process and coordination with other agencies. Among other things, it affected the authorities' ability to coordinate the medical, rescue and fire-fighting response. The Court could not avoid the conclusion that this lack of responsibility and coordination had contributed, to some extent, to the tragic outcome of the events.

[Right to life - use of lethal force \(Article 2\)](#)

Firstly, the Court concluded that the use of lethal force by security forces had contributed, to some extent, to the casualties among the hostages. The applicants had relied on a number of witness statements to argue that indiscriminate force had been used by the servicemen upon the building when the terrorists and hostages had been intermingled, and the investigation had failed to fully assess these allegations. Furthermore, the reports of both the North Ossetian Parliament and Mr Savelyev had pointed at the same conclusion. The investigation had failed to establish the circumstances of the use of lethal force and to fully assess these allegations. Presumptions can be drawn from the co-existence of an un rebutted body of evidence pointing to the use of indiscriminate weapons whilst both terrorists and hostages had been present, and the absence of proper fact-finding into the causes of death and circumstances of the use of arms.

The Court held that Russia had failed to set up an effective legal framework of safeguards against arbitrariness and the use of force, since the applicable legislation had failed to set the most important principles and constraints of the use of force in lawful anti-terrorist operations. Coupled with wide-ranging immunity for any harm caused in the course of anti-terrorist operations, this situation resulted in a dangerous gap in regulating life-threatening situations and bore a direct relevance on the Court's finding under this heading.

Combined with the lack of responsibility and co-ordination in the OH, this led to a situation where the decisions about the use of force had been left to the commanders in charge of the storming. However, there is very little evidence about their explanation for the use of lethal force. In view of the available information about the use of indiscriminate weapons, this absence of an explanation led the Court to find that the Government had not provided a "satisfactory and convincing explanation" that the lethal force used had been no more than what had been absolutely necessary. Furthermore, the Court came to the conclusion that, though the decision to resort to the use of

lethal force had been justified in the circumstances, such a massive use of explosive and indiscriminate weapons could not be regarded as absolutely necessary, and had violated Article 2.

[Right to an effective remedy \(Article 13\)](#)

The applicants had complained under Article 13 on two principal grounds: that they had had no means of obtaining compensation from individuals who had allegedly perpetrated unlawful acts; and that they had been denied access to the relevant information retained by the authorities.

In regard to the compensation, the Court noted that the applicants had received compensation from the State as victims of the terrorist attack, that they had also received compensation from a humanitarian effort, and that they had been granted procedural status in the criminal trial of Mr Kulayev (where civil damages could have been sought). The Court was unable to conclude that the lack of progress on some important aspects of criminal investigation no. 20/849 had precluded the applicants from obtaining compensation.

In regard to the complaint concerning access to information, the Court observed that the victims had had access to evidence from the criminal investigation no. 20/849, the trial of Mr Kulayev, and the two sets of criminal proceedings against police officers. The Court further noted the extensive and detailed studies by the commissions of the North Ossetian Parliament and the Federal Assembly, including the separate report by Mr Savelyev. These reports had ensured access to knowledge about the aspects of the serious human rights violations that would have otherwise remained inaccessible.

On the basis of the above, and in so far as the issues complained of have not been covered by the findings under the procedural aspect of Article 2, the Court found no breach of Article 13.

[Just satisfaction \(Article 41\)](#)

The Court held that Russia was to pay the applicants a total of 2,955,000 euros (EUR) in respect of non-pecuniary damage, and the applicants' representatives a total of EUR 88,000 in respect of costs. The individual awards to the applicants took account of the extent of their suffering and of the measures taken by Russia with the aim of compensating and rehabilitating the victims.

[Binding force and execution of judgments \(Article 46\)](#)

The Court indicated the need for a variety of measures aimed at drawing lessons from the past, raising awareness of applicable legal and operational standards, and deterring similar violations in the future. It also held that the future requirements of the pending investigation into the incident must be determined with regard to the Court's conclusions about investigation's failures to date.

Separate Opinions

There were two partly dissenting opinions: one by Judges Hajiyev and Dedov and the other by Judge Pinto de Albuquerque. The opinions are annexed to the judgment.

The judgment is available only in English.

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Press contacts

echrpres@echr.coe.int | tel.: +33 3 90 21 42 08

George Stafford (tel: + 33 3 90 21 41 71)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

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.