



Serious violations of the Convention may justify an award of just satisfaction, even in the absence of a properly made claim

In today's **Grand Chamber** judgment¹ in the case of [Nagmetov v. Russia](#) (application no. 35589/08) 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 under its substantive and procedural limbs, and,
- by fourteen votes to three, that the **respondent State was to pay the applicant 50,000 euros** in respect of non-pecuniary damage.

The case concerned the issue of whether an award of just satisfaction could be made in the absence of a properly made "claim".

The Court found in particular that where a "claim" had not been properly made in compliance with its Rules of Court, it remained empowered to afford, in a reasonable and restrained manner, just satisfaction on account of non-pecuniary damage arising in the exceptional circumstances of a given case.

The Court considered that the finding of a violation of the substantive and procedural limbs of Article 2 in this case would not constitute in itself sufficient just satisfaction. The gravity and impact of the violations in question and the overall context in which the breach occurred, in particular the lengthy and defective investigation of a death inflicted by an agent of the State, pleaded in favour of a just-satisfaction award.

The Court found no indication that the domestic law allowed adequate "reparation" to be sought and obtained within a reasonable time.

Thus, the Court concluded that the present case disclosed exceptional circumstances which called for a just-satisfaction award in respect of non-pecuniary damage, notwithstanding the absence of a properly made claim.

Principal facts

The applicant, Yarmet Uzerovich Nagmetov, is a Russian national who was born in 1949 and lives in Makhachkala (Republic of Dagestan, Russia).

On 25 April 2006 the applicant's son, Murad Nagmetov, took part in a public gathering of several hundred people in Makhachkala alleging corruption by local public officials. The gathering was dispersed by the authorities with the use of firearms. Murad Nagmetov died of injuries sustained by a tear-gas grenade. On the same day a criminal investigation into murder and the illegal handling of firearms was opened. In February 2007 the investigating authority suspended the investigation. In December 2009 the investigation was resumed and then suspended again on 16 January 2010. In February 2011 the acting prosecutor determined that the decision of 16 January 2010 was unlawful and ordered a resumption of the investigation. In particular, he noted that the investigation had not exhausted the measures aimed at establishing the circumstances of the crime, the collection of evidence or the identification of the rifle used to cause the victim's death. The prosecutor

1. Grand Chamber judgments are final (Article 44 of the Convention).

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considered that it would not have been impossible to identify this rifle, as alleged in an expert report, had cartridges of the relevant type been provided. Most recently, in April 2011, the investigation was once again suspended.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicant complained that his son Murad had died in circumstances disclosing an unlawful and excessive use of lethal force, and that no effective investigation had been carried out.

The application was lodged with the European Court of Human Rights on 11 July 2008. In its Chamber [judgment](#), delivered on 5 November 2015, the Court held, unanimously, that there had been a violation of Article 2 of the Convention under both its substantive and its procedural limbs.

On 4 February 2016 the Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 14 March 2016 the panel of the Grand Chamber accepted that request.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Luis **López Guerra** (Spain),
Angelika **Nußberger** (Germany),
Ledi **Bianku** (Albania),
Helen **Keller** (Switzerland),
Paul **Lemmens** (Belgium),
Valeriu **Griţco** (the Republic of Moldova),
Faris **Vehabović** (Bosnia and Herzegovina),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),
Branko **Lubarda** (Serbia),
Yonko **Grozev** (Bulgaria),
Síofra **O’Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein),
Armen **Harutyunyan** (Armenia),
Stéphanie **Mourou-Vikström** (Monaco),
Pauliine **Koskelo** (Finland),

and also Françoise **Elens-Passos**, *Deputy Registrar*.

Decision of the Court

Article 2

In its [judgment](#) of 5 November 2015, the Court had noted that it was acknowledged by the Russian Government that Murad Nagmetov had been killed in violation of the requirements of Article 2 of the Convention. In particular, the Government had stated that it was against Russian law to fire tear-gas grenades directly at a person. The Court had found no reason to disagree with that analysis. In addition, it had held that the authorities had not taken all the reasonable and practicable measures to identify the shooter and establish all the circumstances of the case.

The Grand Chamber endorsed the Chamber’s findings and held that there had been a violation of Article 2 of the Convention under its substantive and procedural limbs.

Just satisfaction (Article 41)

In its judgment of 5 November 2015, the Chamber had decided to award the applicant damages, although no “claim” for just satisfaction had been submitted in the appropriate manner. It had justified that decision by referring to the particular gravity of the violation of the Convention, the absence of any domestic compensation and the uncertain prospects of success in obtaining adequate compensation in a speedy manner after the Court’s judgment. It had therefore considered it appropriate and necessary to award the applicant 50,000 euros in respect of non-pecuniary damage.

For its part, the Grand Chamber noted firstly that the applicant had stated in the application form that he wished to obtain monetary compensation in relation to the violations of the Convention, including Article 2. In the light of the general principles and its established practice, the Court considered that the indication of a wish for eventual monetary compensation as expressed at the initial stage of the procedure before the Court did not amount to a “claim” within the meaning of Rule 60 of the Rules of Court, read together with Rule 71 § 1 in the context of the present case.

The Court noted that it was not specified in Article 41 of the Convention that the existence of a claim was a prerequisite for the Court to exercise its discretion. It had been the Court’s prevailing practice that it normally examined only the claims actually submitted to it, and would not of its own motion consider whether the applicant had sustained other damage. In a few rare cases, it had found it necessary to make a monetary award in respect of non-pecuniary damage, even where no such claim had been made or where the claim was belated. In other cases the Court had considered that a finding of a violation constituted sufficient just satisfaction and had accordingly dismissed the submitted claims.

Lastly, the Court emphasised that, in particular in respect of just satisfaction for non-pecuniary damage, its guiding principle was that of equity. This involved a certain flexibility and an objective consideration of what was just, fair and reasonable in all the circumstances of the case.

The Court reiterated that Article 41 conferred on it the competence to afford just satisfaction and allowed the Court discretion in deciding on this matter “if necessary”. Under that discretion, it could decide to award or to refuse monetary compensation. An applicant and his or her representative had to observe the formal and substantive requirements contained in the Rules on the matter of just satisfaction, at a risk of incurring adverse consequences for the applicant. A representative acted on behalf of the applicant who had appointed him or her. The representative was deemed to be acting in the applicant’s interest. This usually entailed that an applicant had to bear the adverse consequences that could arise from his or her representative’s conduct of a case before the Court. It followed that a representative’s failure to submit a claim for just satisfaction would, as a rule, entail that the Court would make no award.

The Court considered, however, that while it would normally not consider of its own motion the question of just satisfaction, neither the Convention nor the Protocols thereto precluded it from exercising its discretion under Article 41. The Court remained empowered to afford, in a reasonable and restrained manner, just satisfaction on account of non-pecuniary damage arising in the exceptional circumstances of a given case, where a claim had not been properly made in compliance with the Rules of Court. Where the Court might envisage a possibility of a just-satisfaction award in respect of non-pecuniary damage in the absence of a properly made claim, it had first to ascertain that a number of prerequisites had been met. The Court would therefore attach particular importance to indications unequivocally showing that an applicant had expressed a wish to obtain monetary compensation in addition to the recognition of the violation of the Convention. It was further necessary to ascertain that there was a causal link between the violation and the non-material harm arising from the violation of the Convention.

The Court would then examine whether there were compelling considerations in favour of making an award, despite the applicant's failure to comply with the requirements of Rule 60 of the Rules of Court. The Court would further ascertain whether there were reasonable prospects of obtaining adequate "reparation", in terms of Article 41 of the Convention, at the national level.

In the present case, the Court considered that Mr Nagmetov had sustained non-material harm arising from the violation of Article 2 of the Convention and that there was a causal link between the violation and the harm. The non-pecuniary damage existed on account of the moral suffering and distress sustained by him due to the unlawful and unjustified lethal use of firearms against his son and the incomplete investigation in this case.

Although Mr Nagmetov had unequivocally indicated that he wished and continued to wish to obtain monetary compensation in addition to the recognition of the violation of the Convention, the Court noted, that Mr Nagmetov's representative in the present case had submitted no claim for just satisfaction in the procedure before the Chamber. In the particular circumstances of the present case the Court was not inclined to conclude that Mr Nagmetov should bear the adverse consequences of such an omission by his representative.

Endorsing the Chamber's assessment, the Grand Chamber had concluded that the case disclosed particularly serious violations of the Convention. The Court considered that the finding of a violation of the substantive and procedural limbs of Article 2 in this case would not constitute in itself sufficient just satisfaction. The gravity and impact of the violations in question and the overall context in which the breach occurred, in particular the lengthy and defective investigation of a death inflicted by an agent of the State, pleaded in favour of a just-satisfaction award.

The Court noted that the applicant had not received any redress, such as a monetary compensation, in relation to the facts underlying the violations found. The Government had not suggested that Mr Nagmetov had available to him domestic remedies that offered reasonable prospects of reparation, in particular remedies that could be initiated after the Court's judgment finding a violation of the Convention, for claiming monetary compensation.

The documents in the case file showed that the criminal investigation had remained suspended since 2011, so that no definitive domestic decision had been taken as to the merits of Mr Nagmetov's criminal complaint. While it appeared that, following the Court's judgment, the application of the Code of Criminal Procedure could open a possibility of having the criminal investigation resumed, the Court noted that more than nine years had passed since the relevant events, which could compromise any eventual measure of "reparation". Against this background, the Court found no indication – and the Government had not argued otherwise – that the domestic law allowed adequate "reparation" to be sought and obtained within a reasonable time.

The Court held that the present case disclosed exceptional circumstances which called for a just-satisfaction award in respect of non-pecuniary damage, notwithstanding the absence of a properly made claim.

The Court held that Russia was to pay the applicant 50,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinion

Judges Nußberger and Lemmens expressed a joint concurring opinion. Judges Raimondi, O'Leary and Ranzoni expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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Press contacts

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

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

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

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

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

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.