



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

FIRST SECTION

CASE OF ABDURASHIDOVA v. RUSSIA

(Application no. 32968/05)

JUDGMENT

STRASBOURG

8 April 2010

FINAL

04/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Abdurashidova v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 March 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 32968/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Zulpa Abdurashidova (“the applicant”), on 22 July 2005.

2. The applicant was represented before the Court by lawyers of the International Protection Centre, an NGO registered in Moscow. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their new Representative, Mr G. Matyushkin.

3. On 22 April 2008 the Court decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application and to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

4. The Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1978. She lived in the village of Solnechnoye in the Khasavyurt district of Dagestan, Russian Federation. Currently she lives abroad after seeking asylum. The applicant is the mother of Summaya (also spelled Sumaya) Abdurashidova, born in 1998.

A. The events of 14 March 2005

1. *The applicant's account*

6. At about 5.30 a.m. on 14 March 2005 approximately fifty men in two APCs (armoured personnel carriers) and a white VAZ 2121 Niva car with the registration plate 008 26 arrived at the applicant's house in Solnechnoye.

7. The men were armed and equipped with portable radio sets. They neither introduced themselves nor produced any documents. The applicant thought that they were State servicemen. It appears that the servicemen arrived to apprehend the applicant's husband and two men who were staying in the house that night. The men broke into the applicant's house and opened gunfire. The applicant's husband shouted to the servicemen: "Do not shoot! There are children in the house." In spite of the warning the servicemen continued shooting. They took the applicant's husband outside; the applicant's three children remained in their rooms and the applicant was in the corridor.

8. During the shooting the applicant's two sons Bilal (born in 1997) and Ilyas (born in 2002) ran out from their bedrooms into the corridor. At some point Bilal ran out of his sister's bedroom, screaming that Summaya had been wounded and was bleeding. It appears that Summaya Abdurashidova had been hit by a fragment of a rifle grenade.

9. The applicant tried to go into her daughter's room, but the servicemen pushed her outside the house into the yard. When the applicant asked them to let her go inside, the servicemen forbade her under gun point. She was made to lie down on the ground with her hands behind her head.

10. When the shooting was over, their neighbour Mr I.I. went into the house and carried out the body of Summaya Abdurashidova.

11. As a result of the shooting the two men who were staying in the applicant's house were killed, and the applicant's husband was taken to the Department of the Interior of the Khasavyurt district ("the Khasavyurt ROVD").

12. After the shooting the applicant saw that her house, as well as her family possessions in it, had been damaged by the gunfire. In addition, the

family's identity documents, including passports and birth certificates, had been taken away by the servicemen.

13. The applicant submitted that after the shooting, the servicemen had taken away two plastic bags with the applicant's family documents and valuables, including the applicant's golden bracelet and two rings.

14. The applicant's description of the events of 14 March 2005 is based on several undated accounts provided by her to her representatives and on the letters which the applicant sent to the authorities. The applicant also submitted articles published in the newspaper "Druzhba" (*Дружба*) on 8 April 2005 and on 15 April 2005 and an article published in the newspaper "Niyso-Dagestan" (*Нийсо-Дажестан*) on 14 April 2005.

2. Information submitted by the Government

15. The Government submitted, with reference to the documents from the criminal investigation file (see below), that the two men who had been at the applicant's house on the night of 14 March 2005 had been suspected of the armed robbery of a woman and of an attack on a serviceman of the traffic police, Mr M.M., who had later died. The crimes had been committed by three persons on 31 December 2004, and on 1 January 2005 the Khasavyurt district prosecutor's office (the district prosecutor's office) opened a criminal investigation into the incident. The investigation was assigned file number 5111. It has been established that during the attack the criminals took hold of M.M.'s police identity document and his PM service pistol with a known serial number.

16. The police obtained information that two suspects, Mr S.Ya. and Mr R.Yu., had found refuge at the applicant's house and that they had stored weapons and armaments there, including the PM pistol. On 14 March 2005 the investigator of the district prosecutor's office decided to carry out an urgent search at the applicant's house with the aim of finding the two suspects and the weapons. Since the suspects could have been armed, the prosecutor had been assisted by servicemen of the Khasavyurt ROVD and of the special police force of Dagestan.

17. Upon arrival at the applicant's house, police officers Mr P.A. and Mr S.O. informed the applicant and her husband about the aim of their visit and suggested that they evacuate the building for their own safety. The applicant, her husband and their two sons Bilal and Ilyas came out of the house. Then the applicant informed the policemen that her daughter Summaya had remained in the house. Mr P.A. and Mr S.O. returned to the house in order to take the child out, but Mr S.Ya. and Mr R.Yu., who had taken refuge in the house, threw hand grenades at them. Both policemen were injured. Their colleagues, in order to cover them, opened gunfire and killed both suspects.

18. After the skirmish was over, the site was inspected by the investigator of the district prosecutor's office and by forensic and medical

experts, in the presence of two attesting witnesses. They discovered the bodies of Mr S.Ya. and Mr R.Yu. and of the applicant's daughter, Summaya Abdurashidova. In the room where the two fugitives had been hiding, they also found safety pins from hand grenades and a PM hand pistol with the serial number corresponding to the one stolen from M.M.

B. Reaction of the authorities to the events of 14 March 2005

1. The applicant's correspondence with the State authorities concerning the death of Summaya Abdurashidova

19. Shortly after the shooting had ended, experts from the Khasavyurt ROVD took pictures of Summaya Abdurashidova and wanted to take her body to the morgue for an autopsy. The applicant and her relatives refused to give their permission and wrote down an official statement of refusal.

20. From the beginning of her correspondence with the authorities the applicant was assisted by Mr B., head of the local human rights organisation Romashka (*Ромашка*). The applicant and Mr B. contacted various official bodies, including the Russian President, the Dagestan Government, the Khasavyurt district administration, the mass media and prosecutors' offices at different levels, describing the circumstances of Summaya Abdurashidova's killing and requesting an investigation into the crime. The applicant retained copies of a number of their letters and submitted them to the Court. The relevant information is summarised below.

21. On 16 March 2005 the applicant wrote to a number of the State authorities, including the district prosecutor's office, the Dagestan prosecutor's office and the Prosecutor General. She described the events of 14 March 2005 and requested an investigation into the death of her daughter and prosecution of the culprits. The applicant also complained that her property had been unlawfully destroyed during the special operation and requested compensation for the pecuniary and non-pecuniary damage caused by the actions of the servicemen.

22. In March or April 2005 the applicant informed the Dagestan prosecutor's office that servicemen of the Khasavyurt ROVD had participated in the special operation on 14 March 2005.

23. On 20 April 2005 the Dagestan prosecutor's office informed the applicant that her complaint about unlawful actions of servicemen of the Khasavyurt ROVD during her husband's apprehension had been forwarded to the district prosecutor's office for examination.

24. On 26 April 2005 the district State registry office (*ЗАГС*) issued a statement confirming the death of Summaya Abdurashidova on 14 March 2005.

25. On 26 April 2005 the Solnechnoye village administration issued a death certificate for Summaya Abdurashidova.

26. On 28 April 2005 the applicant again wrote to the authorities, including the district prosecutor's office, the Dagestan prosecutor's office and the Prosecutor General. In her letter she pointed out that on 16 March 2005 she had already complained about her daughter's killing, but the authorities had failed to initiate a criminal investigation into the death. She requested explanations concerning the reasons for the failure to initiate the investigation and to prosecute the perpetrators.

27. On 17 May and 30 June 2005 the Dagestan prosecutor's office informed the applicant that her complaint about the death of Summaya Abdurashidova had been forwarded to the district prosecutor's office for examination.

28. On 25 May 2005 the Khasavyurt District Court sentenced the applicant's husband to three months' imprisonment for harbouring two criminals. In its judgment the court stated, *inter alia*, that his "minor daughter Summaya had been killed in the course of a special operation aimed at apprehending the criminals who had been hiding in the house". The applicant's husband accepted his guilt and did not appeal against the sentence.

29. It appears that Mr B., who had assisted the applicant in the preparation of her complaints to the domestic authorities, was arrested in November 2005 on suspicion of illegal possession of weapons. Following allegations of torture and ensuing public pressure, he was released and acquitted. He left Russia in 2006 and sought asylum in another country.

2. The destruction of the applicant's property

30. On 15 March 2005 a commission of the administration of Solnechnoye, including the head of the administration, the chief accountant and the applicant's two neighbours, visited the applicant's house. They examined the scene and drew up the following report on damage:

"During the special operation on 14 March 2005 the house ... was practically destroyed; as a result of gunfire and explosions the windows and doors were blown out, the roof was damaged by shots, a powerful blast resulted in cracks in the walls and in the ceiling; the furniture in the living room and in the kitchen, the refrigerator and the TV set were rendered unusable."

According to the report, the applicant's house was uninhabitable and required major repairs. The report further estimated the cost of repairs at between 650,000 and 800,000 Russian roubles (RUB), without specifying additional details.

3. Information submitted by the Government

31. In response to a specific request from the Court, the Government submitted 26 pages of documents from the criminal investigation files mentioned above. Although this was not marked on many documents, it

appears that the Government submitted copies of the decisions to open the criminal proceedings in the cases assigned file numbers 5111, 51151 and 51153.

32. The Government submitted that on 14 March 2005 the district prosecutor's office had opened criminal investigation no. 51151 into the attack on the police officers and the unlawful purchase and storage of arms and ammunition. The investigation was opened in view of the wounding of two policemen, Mr P.A. and Mr S.O. The decision did not mention the suspects' and the applicant's daughter's deaths. The investigation obtained information that Mr S.Ya. and Mr R.Yu. had been involved with illegal armed groups and had fought against the authorities in Chechnya. Thus, on 14 March 2005, the district prosecutor's office opened a new investigation file concerning participation in illegal armed groups, which was assigned number 51153.

33. On 14 March 2005 the investigator of the district prosecutor's office, assisted by medical and forensic experts, in the presence of two witnesses, examined the body of Summaya Abdurashidova. They noted two large open wounds: one measuring 10 cm by 8 cm to the head and one measuring 10 cm by 6 cm to the upper part of the torso. The Government submitted a copy of the expert report. The experts also took photographs; however, as follows from subsequent documents and the Government's submissions, the photographs could not be developed because the film was defective.

34. On 21 March 2005 criminal investigation files nos. 51151 and 51153 were joined and assigned number 51151. The decision did not refer to the death of the applicant's daughter or to the deaths of the suspects.

35. No separate criminal investigation was opened into the applicant's daughter's death. The Government submitted that in the course of the investigation of file no. 51151 the authorities had established that Summaya Abdurashidova had died of splinter wounds caused by hand-grenade explosions. The police officers had not used grenades and had only employed hand guns. The forensic reports on the bodies of Mr S.Ya. and Mr R.Yu. concluded that they had died as a result of bullet wounds. Seeing that no autopsy had been carried out on the body of Summaya Abdurashidova owing to her relatives' refusal to submit it for such an examination, the investigation relied on the description of her body, which referred to splinter wounds. It concluded that her death had resulted from the explosion of hand grenades thrown by the suspected criminals.

36. On 2 April 2005 the criminal proceedings against Mr S.Ya. and Mr R.Yu. were terminated on account of their deaths. The investigation of criminal case no. 5111 continued.

37. On 26 April 2005 the district prosecutor's office took statements from two investigators, medical and forensic experts who had examined the child's body and two attesting witnesses. The Government submitted copies of their testimonies, except for the medical expert's statement and one

witness's statement. The forensic expert explained that he had taken photographs of the house, of two male bodies in the courtyard and of the girl's body in the neighbouring house. Once the film was developed, some photographs were spoiled because the film was defective. Thus, no photographs of the girl's body came out.

38. According to the Government, the medical expert stated that he had examined the girl's body in the neighbouring house and noted two large open wounds to the head and upper part of the torso. These wounds could have been caused by splinters from an explosive device. The body had then been transferred to the relatives, who had refused to submit it for an autopsy.

39. The investigator submitted that late at night on 14 March 2005 he had been alerted that the suspects in the murder of Inspector M.M. were hiding in the house of the imam of Solnechnoye. Early in the morning he went to the scene, accompanied by servicemen of the Khasavyurt ROVD and of the special police unit of Dagestan. They also invited two witnesses residing in Khasavyurt, Timur E. and Murat. Once at the house, the servicemen surrounded the house. After that the police ordered everyone to leave the house. A woman, a man and two children came out into the entry hall and the police led them outside the house. The woman said that another child remained in the house. Two servicemen of the special police unit entered the house and immediately afterwards there came the sound of explosions. Several policemen ran to the house and started to shoot in order to cover up their colleagues. The persons taking refuge in the house fired back and threw hand grenades, some of which exploded outside the house, and some inside the house. As soon as the two policemen were led out of the building, other servicemen shot at the doors and windows of the house with machine guns and automatic rifles. When the shooting from inside the house subsided, the policemen went in and brought out two male bodies. They said that there was a child's body in the house. A neighbour walked in and carried the body to the nearby house. Then the body was examined by the officials from the prosecutor's office, in the presence of two witnesses. They noted two large open splinter wounds – one to the front of the head and another near the shoulder blade. The investigator added that the police had not used hand grenades; they had fired from machine guns and automatic rifles. The investigator also answered a number of questions concerning the missing property and identity documents and the damage caused to the applicant's house. He stated that they had collected and seized two yellow rings and the applicant's passport. No other documents or valuables had been found or seized. As to the state of the house, the investigator specified that the window glazing, furniture and parts of the roof had been damaged. The walls had not been damaged. Some parts of the house were in any event unfinished and were not inhabitable. The state of

the house could be ascertained from the photographs taken immediately after the attack.

40. Another investigator, a member of the team working on M.M.'s murder, stated that he had arrived at the applicant's house at about 9 a.m. on 14 March 2005. There he was instructed to examine the child's body, together with the criminal and forensic experts. They noted two large wounds, caused by splinters from an explosive device. The mother of the child refused to submit the body for an autopsy and signed a document to that effect. After the body was examined, the relatives took it for burial. The criminal expert later informed the investigator that the film had been defective and no photographs could be developed.

41. The witness Marat G. stated that he and his friend Timur E. had been doing their morning jogging when the police asked them to be witnesses to a search in Solnechnoye. When the two men arrived at the house, it was surrounded by police. They saw a man, a woman and two children come out, accompanied by servicemen. The woman said that another child remained in the house. Two police officers went in and there followed several explosions. Then several more policemen ran to the house and the witnesses were taken away to a safe distance, from where they could not see the house. They could hear shots being fired and explosions. Once the shooting was over, the witnesses were invited by the investigator to be present during the search. In front of the house there were two male bodies. Someone brought out a child's body, which was taken to the neighbouring house. The investigator found and seized two yellow rings and a woman's passport. The investigator also noted and seized a number of safety pins from hand grenades and empty cartridges, as well as a hand pistol. The rooms were first inspected by a bomb expert and then by the investigators and witnesses. The house was partially damaged, but the load-bearing walls and the roof were intact. Some rooms were unfinished. The Government submitted a copy of Marat G.'s testimony and stated that Timur E. had made similar statements.

42. In their observations the Government extensively cited an undated statement by Mr A.A., the head of the criminal investigation department of the Khasavyurt ROVD, no copy of which has been submitted. According to the Government, Mr A.A. stated that the department had been tipped off about the location of the suspects in M.M.'s murder. Early in the morning on 14 March 2005 he had arrived at the applicant's house, accompanied by servicemen of the special police force. The servicemen surrounded the house. One serviceman of the special police force walked up to the house and knocked on the door. He was let inside. About one minute later he came out of the house, together with a man, a woman and two children. The woman said that a third child remained in the house. She wanted to return to the house, but was not allowed to. Two servicemen of the special police force went to the house in order to retrieve the child. As soon as they had

gone in, there came the sounds of explosions. Several more servicemen ran to the house to help their colleagues. They were shot at from inside the house and more grenades were thrown. The two wounded policemen were assisted in leaving the house, and the servicemen shot at the windows and doors of the house. The policemen were not equipped with grenades. When the shooting from inside the house subsided, several policemen went into the house. They found the bodies of two men and a girl. The male bodies were taken into the courtyard. A local resident took out the child's body and took it to the neighbouring house. Mr A.A. was told by his colleagues that the body had two large splinter wounds. An expert in explosives examined the house, following which an investigator conducted a search in the presence of two witnesses. Mr A.A. also stated that he had seen the seized pistol with the serial number corresponding to that taken from M.M. and a number of empty cartridges. The investigators put them in bags and sealed off the courtyard of the house.

43. The Government submitted a note dated 14 March 2005, in which Mrs Raisa Ya. stated that the family had refused to submit the body of Summaya Abdurashidova for an autopsy with the aim of establishing the cause of her death. The note stated that the family knew the cause of the child's death and that they wanted to proceed with the burial in accordance with religious rites.

44. The Government submitted an undated note signed by the applicant to the effect that she had received from the investigator of the district prosecutor's office two golden rings and her passport, which had been seized at her house on 14 March 2005.

45. The Government also submitted a number of letters sent by the district prosecutor's office to the applicant. On 4 April 2005 the investigator informed the applicant that the investigation had established that her daughter had died as a result of grenade explosions caused by S.Ya. and R.Yu. The criminal proceedings against the two men had been terminated on account of their deaths. Two rings had been returned to the applicant. She could seek compensation for other damage through the Khasavyurt District Court. The decisions of the investigators could be appealed against to a higher-ranking prosecutor or to a court.

46. From the documents submitted it does not appear that the investigators attempted to take statements from the applicant, her husband or their neighbours.

47. The Government stated that the investigation of criminal case file no. 5111 was in progress and that disclosure of other documents would be in violation of Article 161 of the Code of Criminal Procedure, since the files contained information of a military nature and personal data concerning the witnesses or other participants in the criminal proceedings.

C. Court proceedings brought by the applicant

48. On 14 June 2005 the applicant complained to the Khasavyurt District Court of Dagestan (“the district court”) about the destruction of her property during the special operation conducted on 14 March 2005 and the failure of the authorities to initiate criminal proceedings into the death of Summaya Abdurashidova. She sought a ruling obliging the district prosecutor's office to initiate an investigation into the crime and to prosecute the perpetrators.

49. On 2 August 2005 the district court refused to examine her complaint. It stated that the applicant was entitled to appeal against actions of the district prosecutor's office only within the course of an ongoing criminal investigation or that she could appeal against the authorities' refusal to initiate criminal proceedings. The court pointed out that she had failed to submit any evidence of an ongoing criminal investigation or of the authorities' refusal to initiate criminal proceedings.

50. The applicant did not appeal against that decision.

II. RELEVANT DOMESTIC LAW

51. For a summary of the relevant domestic law see *Akhmadova and Sadulayeva v. Russia* (no. 40464/02, §§ 67-69, 10 May 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

52. The applicant alleged that the authorities had breached both their negative and positive obligations under Article 2 in respect of her daughter. She also complained that no proper investigation had taken place. Article 2 reads:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

1. *The parties' submissions*

53. The Government contended that the complaint should be declared inadmissible for non-exhaustion of domestic remedies. They argued that the applicant had not used the normal recourse provided for by the domestic legislation. She had failed to appeal to a prosecutor's office or to a court against the decision to terminate the criminal proceedings against S.Ya. and R.Yu. In August 2005 her complaint to the district court had been left unexamined since she had failed to refer to the contested decision. They further argued that it had been open to the applicant to pursue civil proceedings.

54. The applicant contested that objection. She stated that the criminal investigation had proved to be ineffective and that her complaints to that end, including an application to the district court, had been futile. The applicant stressed that she had not been accorded any procedural status in the investigation allegedly relating to her daughter's death. The district prosecutor's office had not informed her of any procedural decisions and the district court had found the information contained in the letter of 4 April 2005 insufficient to review her complaint in substance. With reference to the Court's practice, she argued that she was not obliged to apply to civil courts in order to exhaust domestic remedies. Finally, she referred to the threats to herself and the alleged persecution of her lawyer B., as a result of which they had both left Russia and sought asylum abroad.

2. *The Court's assessment*

55. The Court notes that the Russian legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents, namely civil and criminal remedies.

56. As regards a civil action to obtain redress for damage sustained through the alleged illegal acts or unlawful conduct of State agents, the Court has already found in a number of similar cases that this procedure alone cannot be regarded as an effective remedy in the context of claims brought under Article 2 of the Convention (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 119-121, 24 February 2005, and *Estamirov and Others v. Russia*, no. 60272/00, § 77, 12 October 2006). In the light of the above, the Court confirms that the applicant was not obliged to pursue civil remedies. The Government's objection in this regard is thus dismissed.

57. As regards criminal-law remedies, the Court observes that under Russian law, parties to proceedings may challenge the progress of the criminal investigation before a supervising prosecutor or a judge. It is undisputed that the authorities were immediately aware of the applicant's

daughter's death and took some steps to investigate it. However, the applicant and members of her family were excluded from these proceedings. Contrary to the usual practice under national law, the deceased's family members were not granted the official status of victims in the criminal proceedings, a procedural role which would have entitled them to intervene during the course of the investigation. In March and April 2005 the applicant submitted a number of complaints to various authorities, including the prosecutor's office, but this did not prompt the investigators to correct the situation and to accord a procedural status to the applicant. The Government's memorandum does not contain any explanation of this omission. Thus, it is unclear how the applicant could have made use of these provisions.

58. Proof of the ineffectiveness of the domestic legal mechanisms in the present case is provided by the fact that on 2 August 2005 the district court refused to consider on the merits the applicant's complaint about the investigation, referring, in essence, to the absence of any procedural decisions taken upon her complaint. The Court is thus not persuaded that any further appeals by the applicant would have made any difference. The applicant must therefore be regarded as having complied with the requirement to exhaust the relevant criminal-law remedies.

59. Accordingly, the Court dismisses the Government's preliminary objection in respect of the complaints under Article 2.

60. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

61. The applicant maintained that her daughter had been killed by the agents of the State who had carried out a security operation at her home. She referred to her own statements describing the operation. She insisted that the armed police officers had stormed her house without a warning and fired shots in the rooms, as a result of which her daughter had been killed. The documents from the domestic investigation were inconclusive and did not rule out her version of the events. She further maintained that the positive obligation to protect the right to life had been violated, since the special operation had been planned and executed without proper consideration for the safety of the inhabitants of the house. Finally, the applicant insisted that no proper investigation into the death had taken place, since the only proceedings instituted by the district prosecutor's office had been aimed at solving the crimes allegedly committed by S.Ya. and R.Yu.

62. The Government denied all those allegations. Citing the documents of the domestic investigation, they argued that the death of Summaya Abdurashidova had been caused by splinters from explosive devices used by the two criminal suspects. The applicant and her family had refused to submit the girl's body for an autopsy which could have provided conclusive results as to the cause of death. As to their positive obligation, the Government emphasised that the applicant's husband had knowingly harboured two armed criminal suspects in his family home. He had later been found guilty of this crime. Two police officers had been wounded when they had tried to enter the house and take the girl out. The State servicemen had thus done everything possible to prevent any harm to the applicant and her family. Faced with violent resistance from the two men and in order to save the lives of the two officers who had entered the house, the police had been forced to open fire, as a result of which both suspects had been killed. As to the investigation, the Government contended that it had been in line with domestic law and the Convention requirements.

2. *The Court's assessment*

(a) **As to the responsibility of the respondent State for the death of Summaya Abdurashidova in the light of the substantive aspect of Article 2 of the Convention**

63. It was not disputed by the parties that the applicant's daughter had been killed during a security operation aimed at the apprehension of two armed criminal suspects at the applicant's house. It was further recognised that both the police and the two suspects had employed lethal force; as a result of the operation, both suspects were killed and two police officers were wounded. The question to decide in the present case is whether the State authorities were directly responsible for the death of the applicant's daughter, as the applicant alleged.

64. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances in which deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. In its extensive jurisprudence the Court has developed a number of general principles relating to the scope of the obligations under this provision, as well as to the establishment of facts in dispute, when confronted with allegations under Article 2 (for a summary of these, see *Bazorkina v. Russia*, no. 69481/01, §§ 103-109, 27 July 2006, and *Akpınar and Altun v. Turkey*, no. 56760/00, §§ 47-52, ECHR 2007-III). The Court also notes that the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

65. The Court reiterates that the evidentiary standard of proof required for the purposes of the Convention is proof “beyond reasonable doubt”, and

that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. The Court has also noted the difficulties for applicants to obtain the necessary evidence in support of allegations in cases where the respondent Government are in possession of the relevant documentation and fail to submit it. Where the applicant makes out a *prima facie* case and the Court is prevented from reaching factual conclusions owing to the lack of such documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments, issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II).

66. The Court notes that despite its requests for the entire investigation file concerning the death of the applicant's daughter, the Government produced only part of the documents. The Government referred to Article 161 of the Code of Criminal Procedure. In previous cases the Court has already found this explanation insufficient to justify the withholding of key information requested by it (see *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII).

67. The Court notes, however, that the investigation in the present case focused primarily on the actions of the two criminal suspects. From the outset of the proceedings the authorities considered that the girl's death had resulted from the explosions caused by the two men while they had resisted the police. It does not appear that any elements in the investigation conducted by the district prosecutor's office contained information which could have warranted different conclusions. Therefore, the main problem in the present case is not the Government's failure to disclose certain documents, but rather the quality of the investigation itself, which will be addressed below.

68. The Court notes that the applicant's allegation that the State servicemen were responsible for the death of Summaya Abdurashidova is based exclusively on her own statement. No other statements or evidence to support this assertion have been provided by the applicant to the Court or to the domestic investigation.

69. The description of the body drawn up on 14 March 2005 by a forensic expert and the statements collected on 26 April 2005 from two investigators, one attesting witness and the criminal expert who had examined the body indicated that the death had been caused by splinters from an explosive device (see paragraphs 33, 37 and 39-41 above). These documents and statements appear coherent and the Court does not discern any reasons to question their credibility. The investigation found that the

two criminal suspects had used hand grenades against the police officers; safety pins from grenades were found in the house. The police had used firearms and the two suspects' deaths had been caused by bullet wounds (see paragraph 39 above). There is no mention in any of the descriptions of the events that the security forces used explosive devices against the two suspects. The applicant did not allege this either. Thus, the domestic investigation concluded that the child's death had resulted from the actions of the two criminal suspects who had been killed during the operation. Although many aspects of the domestic investigation are open to criticism (see below), the Court cannot find its conclusions to be so faulty as to reject them altogether as “defying logic” or improbable (contrast *Beker v. Turkey*, no. 27866/03, §§ 51-52, 24 March 2009).

70. The Court further notes that pursuant to the decision taken by the applicant and her family, no autopsy of the body was conducted. In the note signed by the applicant's sister-in-law on 14 March 2005 the decision not to conduct an autopsy was justified by the fact that there was no need to establish the cause of death since the family was aware of it (see paragraph 43 above); therefore, it appears that the family accepted the forensic expert's conclusion that the death had resulted from splinter wounds. While fully appreciating that this choice was made under the influence of a shock following tragic and traumatic events, the Court notes that it resulted in the absence of a document which could have provided a complete and accurate record of injuries and an objective analysis of clinical findings, including the cause of death (see *Salman v. Turkey* [GC], no. 21986/93, §106, ECHR 2000-VII).

71. In such circumstances the Court finds that it has not been established to the required standard of proof “beyond reasonable doubt” that the security forces were directly responsible for the death of Summaya Abdurashidova.

72. Accordingly, the Court finds no direct State responsibility, and thus no violation of Article 2 of the Convention in this respect.

(b) The alleged failure to safeguard the right to life of Summaya Abdurashidova

73. The Court has not found it established that State agents were responsible for the death of the applicant's daughter. However, this does not necessarily preclude the responsibility of the Government under Article 2 of the Convention (see *Osmanoğlu v. Turkey*, no. 48804/99, § 71, 24 January 2008). According to the established case-law of the Court, the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). The State's obligation in this respect extends beyond its primary duty to secure

the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. Article 2 of the Convention may also imply a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII).

74. In this connection the Court reiterates that, in the light of the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life, therefore, can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman*, cited above, § 116).

75. In the light of the foregoing, the Court will have to determine whether the way in which the police operation was conducted showed that the police officers had taken appropriate care to ensure that any risk to the life of the applicant's daughter was kept to a minimum. In carrying out its assessment of the planning and control phase of the operation from the standpoint of Article 2 of the Convention, the Court must have particular regard to the context in which the incident occurred as well as to the way in which the situation developed (see *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 182, *Reports* 1997-VI).

76. Turning to the circumstances of the present case, the Court notes that its ability to evaluate the operation has been seriously hampered by the absence of any meaningful investigation into the police's conduct. Nevertheless, the Court will assess the organisation of the operation on the basis of the material available to it, in particular by relying on the relevant evidence submitted by the Government, which is not disputed by the applicant.

77. First of all, the Court notes that the operation was not spontaneous and the police had time to gather and bring to the applicant's house a significant number of well-equipped and trained servicemen. They arrived in the early hours of the morning and surrounded the house, without encountering any difficulties or resistance from the suspected criminals (see paragraphs 39 and 42 above). The prosecutor's office and the police

conducting the operation were aware of the danger posed by the two criminal suspects, as is demonstrated by the impressive scope of the security arrangements. They also had sufficient time and personnel for the adequate planning and execution of the search and apprehension, while bearing in mind the need to ensure the safety of the inhabitants of the house, including three small children. However, there is nothing in the documents reviewed by the Court to suggest that any serious consideration was devoted to this issue at the planning stage of the operation.

78. It further appears that once the operation had commenced, the police took steps to remove the applicant's family from the house. According to the Government, as the head of the criminal investigations department of the district police office stated, one member of the special police force was allowed into the house and was able to walk away unharmed with the applicant, her husband and their two children (see paragraph 42 above). Nevertheless, it remains entirely unclear why at that moment it was impossible to evacuate the applicant's daughter. In the absence of any explanations from the authorities, this has to be seen as a major failure of the operation, which subjected the child to an impermissibly high risk of injury or death.

79. The police officers should have been aware of the extreme vulnerability of a six-year-old girl, who would undoubtedly have been frightened and disoriented by the events. Once it became apparent that she had been left behind, ensuring her safety should have been the primary concern for the law-enforcement personnel. However, from the documents submitted by the Government, it does not appear that any precautions were taken with a view to safeguard the child's life. Instead, it appears that an exchange of fire was provoked by the sending of two officers of the special police force to enter the house by the main door. This led to the wounding of the two officers and the deaths of both suspects and Summaya Abdurashidova. While bearing in mind the limitations on the scope of its review as mentioned above, the Court finds that such conduct by the police could hardly be found to be compatible with the requirement to minimise the risk to life of persons in need of protection.

80. Finally, the Court is surprised by the lack of diligence displayed in the immediate aftermath of the skirmish. Thus, it is impossible to understand why a local resident was allowed on to the site before the investigators and emergency services. The Court will discuss the deficiencies of the investigation below; however, the control over security arrangements whereby a civilian was able to penetrate the police lines can be best described as seriously flawed.

81. In the light of the foregoing, and in so far as conclusions may be drawn from the material before it, the Court finds that the actions of the authorities in respect of the planning, control and execution of the operation were not sufficient to safeguard the life of Summaya Abdurashidova. The

authorities failed to take the reasonable measures available to them in order to prevent a real and immediate risk to the life of the applicant's daughter.

82. There has accordingly been a violation of the positive obligations arising under Article 2.

(c) The alleged inadequacy of the investigation

83. The Court has on many occasions stated that the obligation to protect the right to life under Article 2 of the Convention also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. It has developed a number of guiding principles to be followed for an investigation to comply with the Convention's requirements (for a summary of these principles see *Bazorkina*, cited above, §§ 117-119).

84. In the present case the investigation took some steps to establish the circumstances of Summaya Abdurashidova's death. The investigator and forensic and criminal experts drew up a description of the body and took photographs of it. Their statements were collected in April 2005. These measures were taken in the course of the proceedings conducted by the district prosecutor's office against the two men suspected of the murder of a police inspector and involvement in illegal armed groups.

85. However, no separate inquiry was initiated for the purpose of ascertaining the details of the applicant's daughter's death. Consequently, other important investigative steps have not been taken, such as questioning the other witnesses and ordering additional expert reports.

86. The Court is appalled by the fact that as a result of this failure the applicant was never accorded any procedural status, and was thus entirely excluded from the investigation concerning her daughter's death. The investigators in the present case blatantly ignored the requirements to safeguard the interests of the next of kin in the proceedings and to allow public scrutiny. What is even more disturbing is that this situation was not corrected when the applicant attempted to bring this failure to the attention of the district court, whose role in principle should be to act as a safeguard against the arbitrary exercise of powers by the investigating authorities (see, *mutatis mutandis*, *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003).

87. These factors resulted in the investigation's failure to examine all the circumstances of the girl's death, including the aspects of the police operation, as the positive obligations under Article 2 require.

88. In the light of the foregoing, the Court holds that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the death of Summaya Abdurashidova, in breach of Article 2 in its procedural aspect.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

89. The applicant relied on Article 3 of the Convention, submitting that as a result of her daughter's death and the State's failure to investigate it properly, she had endured mental suffering in breach of Article 3 of the Convention. Article 3 reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. The parties' submissions

90. The Government disagreed with these allegations and argued that it had not been established that the applicant's daughter's death had been caused by State agents. They also denied that there had been any deficiencies in the investigation.

91. The applicant maintained her submissions.

B. The Court's assessment

92. The Court would refer to its practice by which the application of Article 3 is usually not extended to the relatives of persons who have been killed by the authorities in violation of Article 2 (see *Yasin Ateş v. Turkey*, no. 30949/96, § 135, 31 May 2005) or to cases of unjustified use of lethal force by State agents (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 229, 24 February 2005), as opposed to the relatives of the victims of enforced disappearances. In such cases the Court would normally limit its findings to Article 2. In the present case the Court did not find that the applicant's daughter had been killed by State agents and considers that the grievances expressed by the applicant are covered by its above findings under the substantive and procedural headings of Article 2.

93. It therefore concludes that, even if this complaint were to be declared admissible, there is no need to examine it separately.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

94. The applicant further stated that her house and property had been damaged during the security operation on 14 March 2005. She invoked Article 1 of Protocol No. 1, which reads, in so far as relevant:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. ...”

A. The parties' submissions

95. First, the Government stressed that the applicant had failed to seek damages from the State or from third parties through civil proceedings, and therefore had failed to exhaust domestic remedies. The Government then contended that the damage to the house had been partly caused by the explosions of hand grenades employed by the two criminal suspects and that the State could therefore not be held responsible for it. They further argued that the documents obtained during the investigation demonstrated that some parts of the house had been unfinished and uninhabitable and that the load-bearing walls and roof had not suffered any significant damage. Furthermore, the valuables collected by the investigator during the search on 14 March 2005 had been returned to the applicant after she had signed for them. No other valuables or documents had been collected.

96. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

97. The Government argued that the applicant had failed to exhaust domestic remedies. As regards criminal-law remedies, the Court observes that the applicant alleged that the damage had been caused to her property during the security operation of 14 March 2005. The applicant raised the question of the damage to her property in her formal complaints to the authorities (paragraph 21). However, for the same reasons as noted above in respect of her complaint under Article 2, not only was no investigation conducted into this allegation, but the applicant was not accorded any procedural status. This deprived her of any possibility of participating in the proceedings or even of appealing effectively against their outcome. The Court refers to its conclusions in paragraph 58 above, and finds that the applicant exhausted domestic remedies in this respect.

98. Furthermore, in the absence of any domestic findings concerning the responsibility for the damage caused to the applicant's property, the Court is not persuaded that the court remedy referred to by the Government was accessible to the applicant and would have had any prospects of success (see *Betayev and Betayeva v. Russia*, no. 37315/03, § 112, 29 May 2008). The Government's objection concerning non-exhaustion of domestic remedies must therefore be dismissed.

99. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. *Merits*

100. The Court notes that the Government did not deny that the applicant's property had been damaged during the security operation on 14 March 2005. They disagreed about the extent to which the State authorities had been responsible for the losses and the amount of damage caused.

101. The Court observes that the applicant brought her complaint about the property to the attention of both the prosecutor's service and the district court. She also took steps to record her losses with the assistance of the local administration (paragraph 30 above). Unfortunately, as noted above, no steps were taken to verify these complaints and to establish the exact circumstances of the events. The Government did not disclose any documents from the domestic investigation which could shed light on the events either; and the witnesses' statements simply confirmed that the house and household items had been damaged. It also follows from these statements that the damage had been at least partly caused by the State agents who had stormed the house. Accordingly, the Court finds that there was an interference with the applicant's right to the protection of her property.

102. In the absence of any arguments from the Government as to the lawfulness and proportionality of this interference, the Court finds that there has been a violation of the applicant's right to protection of property guaranteed by Article 1 of Protocol No. 1 to the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

103. The applicant complained that she had been deprived of effective remedies in respect of the aforementioned violations, contrary to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. The parties' submissions

104. The Government contended that the applicant had had effective remedies at her disposal as required by Article 13 of the Convention and that the authorities had not prevented her from using them. The applicant had had an opportunity to challenge the acts or omissions of the investigating authorities in court pursuant to Article 125 of the Code of Criminal Procedure and had availed herself of it. They added that participants in criminal proceedings could also claim damages in civil

proceedings. In sum, the Government submitted that there had been no violation of Article 13.

105. The applicant reiterated the complaint.

B. The Court's assessment

1. Admissibility

106. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

107. The Court reiterates that in circumstances where, as here, a criminal investigation into the circumstances of a violent death has been ineffective and the effectiveness of any other remedy that might have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention (see *Khashiyev and Akayeva*, cited above, § 183, and *Medova v. Russia*, no. 25385/04, § 130, ECHR 2009-...(extracts)).

108. As to the applicants' complaint under Article 13 in conjunction with Article 1 of Protocol No. 1, the Court considers that in a situation where the authorities denied involvement in the alleged damage to the applicant's belongings and where the domestic investigation completely failed to examine the matter, the applicant did not have any effective domestic remedies in respect of the alleged violations of her property rights. Accordingly, there has been a violation on that account (see *Karimov and Others v. Russia*, no. 29851/05, § 150, 16 July 2009).

109. Consequently, there has been a violation of Article 13 in conjunction with Article 2 of the Convention and Article 1 of Protocol No. 1.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

110. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Pecuniary damage

111. Referring to the note of 15 March 2005 about the damage to the house (see paragraph 30 above), the applicant claimed 800,000 Russian roubles (RUB – 18,800 euros (EUR)) under this heading.

112. The Government disputed that the State bore responsibility for the damage caused and regarded these claims as unfounded.

113. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention. Furthermore, under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

114. The Court notes that the applicant submitted one report drawn up on 15 March 2005, confirming that her house and household items had suffered significant damage. However, in the absence of a more detailed breakdown of costs and of any other additional evidence concerning the value of the lost and damaged items, the Court is sceptical about accepting it as final evidence of the amount claimed. The Court nevertheless agrees that the applicant must have borne some costs in relation to the lost property, and that there is a clear causal connection between these and the violation of Article 1 of Protocol No. 1 found above, since the damage was at least partly caused by State agents.

115. In the light of the above considerations, the Court finds it appropriate to award an amount of EUR 8,000 to the applicant as compensation for the pecuniary losses sustained, plus any tax that may be chargeable on that amount.

B. Non-pecuniary damage

116. The applicant claimed EUR 300,000 in respect of non-pecuniary damage for the suffering she had endured as a result of the loss of her daughter and the failure to investigate it properly.

117. The Government found the amount claimed exaggerated.

118. The Court has found a violation of the positive obligation to protect the right to life of the applicant's daughter and a violation of the right to the peaceful enjoyment of property under Articles 2 and 13 of the Convention and Article 1 of Protocol No. 1. The Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards her EUR 60,000, plus any tax that may be chargeable on that amount.

C. Costs and expenses

119. The applicant was represented by two lawyers from the International Protection Centre. They submitted a breakdown of costs borne by them, which included fifty-six hours of research and drafting legal documents at a rate of EUR 60 per hour and EUR 120 of postal and stationary expenses. The aggregate claim in respect of costs and expenses related to legal representation amounted to EUR 3,480.

120. The Government did not dispute the reasonableness of and justification for the amounts claimed under this heading.

121. The Court has to establish first whether the costs and expenses indicated by the applicant's representatives were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

122. Having regard to the information submitted by the applicant, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicant's representatives.

123. As to whether the costs and expenses incurred for legal representation were necessary, the Court notes that this case was relatively complex and required a certain amount of research and preparation.

124. Having regard to the details of the claims submitted by the applicant, the Court awards her the amount of EUR 3,480 as claimed, together with any value-added tax that may be chargeable to her.

D. Default interest

125. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's objections as to non-exhaustion of domestic remedies in respect of the complaints under Article 2 of the Convention and Article 1 of Protocol No. 1;
2. *Declares* the complaints under Articles 2, 3 and 13 of the Convention and Article 1 of Protocol No. 1 admissible;
3. *Holds* that there has been no substantive violation of Article 2 of the Convention in respect of Summaya Abdurashidova;

4. *Holds* that there has been a violation of Article 2 of the Convention on account of the State's failure to comply with its positive obligation to protect the life of Summaya Abdurashidova;
5. *Holds* that there has been a violation of Article 2 of the Convention on account of the failure to conduct an effective investigation into the circumstances in which Summaya Abdurashidova died;
6. *Holds* that no separate issues arise under Article 3 of the Convention;
7. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
8. *Holds* that there has been a violation of Article 13 of the Convention in respect of the alleged violations of Article 2 of the Convention and of Article 1 of Protocol No. 1;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the applicant;
 - (ii) EUR 60,000 (sixty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;
 - (iii) EUR 3,480 (three thousand four hundred and eighty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into Russian roubles at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
10. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President