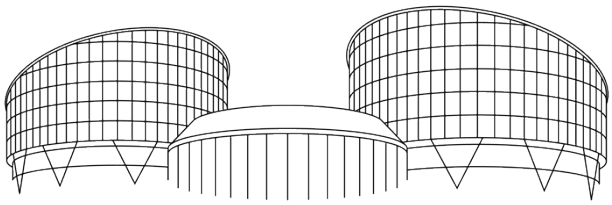

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KOROGODINA v. RUSSIA

(Application no. 33512/04)

JUDGMENT

STRASBOURG

30 September 2010

FINAL

30/12/2010

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

In the case of Korogodina 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 9 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 33512/04) 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 Lidiya Vasilyevna Korogodina ("the applicant"), on 28 July 2004.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the investigation into the circumstances of her son's death had been ineffective.

4. On 11 February 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1931 and lives in Orel.

A. Mr Korogodin's death

6. On 21 October 2000 the applicant called an ambulance for her son, who was forty-two years old at the time. He had a fever and was complaining of chest pains. The paramedic examined him, and, assuming that he was suffering from intercostal neuralgia, administered a pain-killing injection.

7. On 22 October 2000 Mr Korogodin was examined by a general practitioner, who believed him to be suffering from pyelonephritis and advised him to go to hospital. At the hospital Mr Korogodin underwent a medical examination including an ECG of his kidneys and liver and an X-ray of his lungs. The doctors who examined him confirmed the diagnosis of intercostal neuralgia. Mr Korogodin was discharged from hospital.

8. On 23 October 2000 the general practitioner examined Mr Korogodin again and diagnosed him with osteochondrosis. Subsequently, M., a doctor whom the applicant's family knew, examined Mr Korogodin, diagnosed him with pneumonia and urged him to go to hospital. Upon arrival at the Zheleznodorozhniy Hospital in Orel, Mr Korogodin was taken to an intensive care unit.

9. On 27 October 2000 Mr Korogodin died in hospital. According to the autopsy, the cause of his death was cardiovascular deficiency provoked by pneumonia and purulent pleurisy.

B. Criminal investigation into Mr Korogodin's death

10. On 24 November 2000 and 10 January 2001 the applicant asked the local prosecutor's office to open a criminal investigation into the matter, alleging that the doctors' negligent failure to diagnose her son correctly at the onset of his disease had caused his death.

11. In response to the applicant's complaints, the assistant prosecutor of the town of Orel, conducted an inquiry. Within its framework, the regional department of public health formed a commission which comprised specialists from the medical institutions where the applicant's son had undergone treatment. The commission questioned the doctors who had treated Mr Korogodin and concluded that the doctors had provided competent medical service.

12. On 21 January 2001 the applicant submitted Mr Korogodin's medical history file and X-ray examination results. An additional inquiry ensued. On 24 January 2001 the applicant lodged another complaint with the prosecutor's office.

13. On 6 March 2001 the assistant prosecutor refused to open a criminal investigation against the doctors for lack of *corpus delicti*. He noted that the death of the applicant's son had resulted from the rapid development of pneumonia coupled with weakened immunity. The assistant prosecutor

referred to the findings made by the commission set up by the regional department of public health. The applicant appealed to a superior prosecutor.

14. On 16 April 2001 the regional prosecutor in charge of the investigation quashed the decision of 6 March 2001 and ordered a criminal investigation into the matter. The prosecutor noted, in substance, that the commission had not been impartial. He referred to the commission's findings as inconclusive and contradictory.

15. On 7 May 2001 the applicant was recognised as a victim of the crime under investigation. She was advised of her rights, including the right to submit a civil claim against the hospital.

16. On 19 June 2001 the investigator commissioned a forensic medical expert report to determine whether Mr Korogodin had received proper medical treatment.

17. On 16 July 2001 the investigator found it impossible to identify those responsible and suspended the investigation into the matter. On 4 February 2002 the district prosecutor declared the decision of 16 July unlawful and quashed it.

18. On an unspecified date the forensic medical experts completed the report and submitted their findings to the prosecutor's office. The experts discerned no causal link between Mr Korogodin's death and the treatment administered.

19. On 11 March 2002 the investigator discontinued the criminal proceedings for lack of *corpus delicti*. He based his findings on the medical expert report and statements made by the doctors who had treated Mr Korogodin. The applicant appealed to a superior prosecutor.

20. On 29 March 2002 the town deputy prosecutor quashed the decision of 11 March 2002. The deputy prosecutor found that the experts had failed to examine the issue of whether the medical treatment that Mr Korogodin had undergone had been adequate. He referred to the experts' statement that a prompt diagnosis at an early stage of a severe disease could prevent a patient's death. He further noted that the medical expert, P., opined that the X-ray examination had not been properly conducted. Finally, the prosecutor indicated which steps the investigator should now take, including, but not limited to, examining the circumstances of the X-ray examination that Mr Korogodin had undergone.

21. On 7 May 2002 the investigator yet again discontinued the criminal proceedings for lack of *corpus delicti*.

22. On 19 June 2002 the regional prosecutor in charge of the investigation quashed the decision of 7 May 2002 owing to the investigator's failure to fully determine the circumstances of Mr Korogodin's death. In particular, the prosecutor noted that the investigator had failed to comply with the earlier instructions to examine the circumstances of the X-

ray examination. The prosecutor opined that a new comprehensive medical expert evaluation was necessary to elucidate the circumstances of the case.

23. On 7 August 2002 a new report was prepared by a forensic medical expert bureau in Kursk. The experts noted certain errors committed by the doctors prior to Mr Korogodin's committal to hospital. They further opined that he had received adequate treatment in hospital albeit that certain additional measures could have been taken by the hospital's personnel.

24. On 14 January 2003 the investigator found it impossible to identify those responsible and suspended the investigation into the matter.

25. On 21 April 2003 the inter-district prosecutor quashed the decision of 14 January 2003 as unsubstantiated. The investigation was resumed the next day.

26. On 21 May 2003 the inter-district prosecutor discontinued the criminal proceedings for lack of *corpus delicti*. His findings were based on witnesses' testimonies, including those provided by the applicant and the doctors who had treated Mr Korogodin, and the results of the medical expert reports. The prosecutor concluded that Mr Korogodin had not recovered from previous illnesses which had negatively affected his immune system and the rapid development of pneumonia could not have been prevented in the circumstances.

27. On 31 October 2003 the General Prosecutor's Office of Russia sent a letter to the Orel Regional Prosecutor noting that the investigation into Mr Korogodin's death had not been complete. It was further recommended that a new forensic medical evaluation be commissioned in order to reconcile the differences in the opinions contained in two earlier medical forensic expert reports.

28. On 18 November 2003 the regional deputy prosecutor quashed the decision of 21 May 2003.

29. On 24 December 2003 the investigator commissioned a new forensic medical expert report.

30. On 25 April 2005 the Russian Centre for Forensic Medical Expert Evaluations of the Federal Agency for Public Health and Social Development completed a comprehensive forensic medical expert report. The experts noted that Mr Korogodin had been wrongly diagnosed prior to his committal to hospital. They opined, nevertheless, that the errors in question had not been the cause of his death. Mr Korogodin had died as a result of the “severity, aggressiveness and rapid development of the disease”. Lastly, they did not discern that the doctors and paramedics at the medical institutions providing treatment to Mr Korogodin had failed to duly perform their professional duties.

31. On 6 July 2005 the investigator discontinued the criminal proceedings for lack of *corpus delicti* on the basis of the witnesses' testimonies and medical expert reports. The applicant appealed.

32. On 2 December 2005 the General Prosecutor's Office of Russia allowed the applicant's complaint and ordered the local prosecutor's office to resume the investigation into the matter.

33. On 12 December 2005 the regional deputy prosecutor found the investigation to be incomplete and quashed the decision of 6 July 2005.

34. On 11 January 2006 the investigator discontinued the proceedings for lack of *corpus delicti*. The investigator based his findings on statements made by twelve witnesses, including the applicant, the doctors who had treated Mr Korogodin, their superiors and the medical experts, and on medical documents, including three forensic medical expert reports. The applicant appealed.

35. Her complaints were dismissed by the Orel Regional Prosecutor's Office and the General Prosecutor's Office of Russia on 20 January and 11 October 2006 respectively.

C. Civil claims lodged by the applicant

1. Claim for compensation for damage against medical institutions

36. On 4 March 2004 the applicant brought a civil claim for damages against the medical institutions where her son had undergone medical treatment. She alleged, *inter alia*, that her son had died due to the doctors' failure to diagnose him correctly.

37. On 21 September 2004 the court commissioned a forensic medical expert report. The report was completed on 28 June 2006. The experts concluded that there was no causal link between the deficiencies in the medical treatment Mr Korogodin had received and his death. They further opined that the medical treatment had not caused any harm to Mr Korogodin's condition. His death had resulted from the pathological development of pneumonia.

38. On 17 April 2006 the Sovetskiy District Court of Orel dismissed the applicant's claims. The court found that the doctors' failure to diagnose Mr Korogodin correctly on 22 October 2000 and a delay in his committal to hospital had not had an adverse impact on his condition. The diagnostics methods and treatment employed by the doctors had been correct but could not have prevented Mr Korogodin's death. The court based its findings on the testimonies given by the applicant, the medical professionals involved in her son's treatment, the four forensic medical expert reports and the materials of the criminal investigation.

39. On 14 June 2006 the Orel Regional Court upheld the judgment of 17 April 2006 on appeal.

2. Claim for compensation for damage against the prosecutor's office

40. On 27 January 2004 the applicant sued the Orel Regional Prosecutor's Office for damage caused allegedly by the inadequate and lengthy investigation into her son's death.

41. On 20 May 2004 the Sovetskiy District Court of Orel dismissed the applicant's claims.

42. On 7 July 2004 the Orel Regional Court upheld the judgment of 20 May 2004 on appeal.

II. RELEVANT DOMESTIC LAW

A. Fundamental Principles of Legislation on Public Health Protection

43. The relevant provisions on liability provide as follows:

Article 66. Grounds for health damage compensation

Those liable for causing damage to persons' health shall pay the latter compensation for damage in the amount and pursuant to the procedure as set forth by legislation of the Russian Federation...

Article 68. Liability of medical professionals and pharmacists for infringement of persons' rights in the domain of public health

In the event of a violation of persons' rights in the domain of public health caused through the negligent failure of a medical professional or a pharmacist to carry out their professional duties and resulting in harm to health or death, compensation for damage shall be recovered in accordance with Article 66...

The compensation of the damage shall not excuse the medical professionals and pharmacists from disciplinary, administrative or criminal liability as provided for in [federal and regional] legislation.

B. The Civil Code

44. The general provisions on liability for damage read as follows:

Article 1064. General grounds for liability for causing harm

"1. Damage inflicted on a person or on the property of an individual... shall be compensated in full by the tortfeasor ...

2. The tortfeasor shall be released from liability to compensate the damage if he proves that the damage was inflicted through no fault of his own ..."

C. The Criminal Code

45. Article 109 § 2 of the Criminal Code provides that a person who negligently causes the death of another person through the failure to duly carry out his professional responsibilities, shall be criminally liable and may be sentenced to a restriction of liberty or imprisonment for up to three years with or without a forfeiture of the right to practise the profession during the said period.

D. Code of Criminal Procedure

46. If criminal proceedings are discontinued at the investigation stage, an aggrieved person who joined the proceedings as a civil party may lodge a separate civil claim unless the proceedings were discontinued on the ground that (a) the alleged offence had not been committed (*otsutstvie sobytiya prestupleniya*) or (b) the suspect had not been involved in its commission (Article 213 § 4 and Articles 24 § 1 (1) and 27 § 1 (1)).

47. If the defendant is acquitted by the trial court on the ground that (a) the alleged offence was not committed or (b) the defendant was not involved in its commission, the trial court will dismiss the civil claim. If the defendant is acquitted for lack of *corpus delicti* (Article 24 § 1 (2)), the trial court will disallow the civil claim but it may be lodged again in civil proceedings (Article 306 § 2).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

48. The applicant complained under Article 6 of the Convention that proceedings in relation to the investigation into her son's death had been unreasonably long. The Court will examine the complaint from the standpoint of Article 2 of the Convention, which, so far as it is relevant, provides as follows:

> "1. Everyone's right to life shall be protected by law..."

49. The Government contested that argument. They submitted that the Russian investigating and judicial authorities had conducted a thorough, comprehensive and objective investigation into the applicant's allegations concerning the cause of her son's death. The forensic experts, on whose findings the authorities had based their findings, had been independent and impartial and had presented their opinions after having reviewed all the

pertaining materials. As it had been established, the applicant's son had received due and proper medical treatment conducted by competent medical professionals and his death had not resulted from medical negligence. The investigation had been effective as required by Article 2 of the Convention.

50. The applicant maintained her complaint. She submitted that the case had not been of extreme complexity and that nothing had prevented the authorities from completing the investigation promptly.

A. Admissibility

51. 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

52. The general principles concerning the procedural obligation of the State under Article 2 of the Convention in the public health domain are well established in the Court's case-law and have been summarised as follows (see *Šilih v. Slovenia* [GC], no. 71463/01, 9 April 2009):

> "192. As the Court has held on several occasions, the procedural obligation of Article 2 requires the States to set up an effective independent judicial system so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable (see, among other authorities, [*Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I], and *Powell v. the United Kingdom*, (dec.), no. 45305/99, ECHR 2000-V).
>
> 193. The Court reiterates that this procedural obligation is not an obligation of result but of means only (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II).
>
> 194. Even if the Convention does not as such guarantee a right to have criminal proceedings instituted against third parties, the Court has said many times that the effective judicial system required by Article 2 may, and under certain circumstances must, include recourse to the criminal law. However, if the infringement of the right to life or to personal integrity is not caused intentionally, the procedural obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case ([see *Mastromatteo v. Italy* [GC], no. 37703/97, § 90, ECHR 2002-VIII]). In the specific sphere of medical negligence the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any responsibility of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and/or for the publication of the decision, to be obtained. Disciplinary measures may also be envisaged (*Calvelli and Ciglio*, cited above, § 51, and [*Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VIII]).

195. A requirement of promptness and reasonable expedition is implicit in this context. Even where there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Paul and Audrey Edwards*, cited above, § 72). The same applies to Article 2 cases concerning medical negligence. The State's obligation under Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice and that requires a prompt examination of the case without unnecessary delays (see *Calvelli and Ciglio*, cited above, § 53; *Lazzarini and Ghiacci v. Italy* (dec.), no. 53749/00, 7 November 2002; and [*Byrzykowski v. Poland*, no. 11562/05, § 117, 27 June 2006]).

196. Lastly, apart from the concern for the respect of the rights inherent in Article 2 of the Convention in each individual case, more general considerations also call for a prompt examination of cases concerning death in a hospital setting. Knowledge of the facts and of possible errors committed in the course of medical care are essential to enable the institutions concerned and medical staff to remedy the potential deficiencies and prevent similar errors. The prompt examination of such cases is therefore important for the safety of users of all health services (see *Byrzykowski*, cited above, § 117)."

53. Turning to the circumstances of the present case, the Court notes that the Russian legal system affords a possibility to initiate a criminal investigation and/or to bring a civil action for damages in a civil court in order to determine the cause of death of a patient in the care of the medical profession and to make those responsible accountable. Furthermore, the law provides for disciplinary and administrative liability of medical professionals (see paragraph 43-47 above). The Court is, therefore, satisfied that Russian legislation sets forth a sufficient legal framework offering remedies which, in theory, meet the requirements of Article 2 of the Convention. It is, however, necessary for the proper assessment of the applicant's complaint to ascertain whether or not those remedies operated effectively in practice.

54. In this connection, the Court observes that the applicant used two legal remedies with the aim of elucidating the circumstances of her son's death in hospital. She asked the local prosecutor's office to open a criminal investigation. Subsequently, she instituted civil proceedings for compensation of damage.

55. As regards the criminal proceedings, the applicant lodged an initial complaint with the prosecutor's office on 24 November 2000. Following the inquiry into the matter, the complaint was dismissed on 6 March 2001. The relevant decision was quashed and the criminal investigation was opened on 16 April 2001. It ended on 11 October 2006 with the general prosecutor's office decision to discontinue the proceedings for lack of *corpus delicti*.

56. The Court notes from the outset that the prosecuting authorities were particularly slow in instituting a criminal investigation into the circumstances of Mr Korogodin's death. The regional prosecutor opened a

criminal case only on 16 April 2001, that is, approximately five months after the applicant's initial complaint. Admittedly, the authorities required certain time to conduct a preliminary inquiry into the applicant's allegations. They questioned the doctors and studied Mr Korogodin's medical file. Nevertheless, the Court finds that the scope of the initial inquiry was not such as to justify the delay indicated. It follows, accordingly, that the beginning of the investigation was belated.

57. The Court accepts that the issue under investigation was of certain complexity and required substantial preparation. The Court does not lose sight that the prosecuting authorities had commissioned three forensic medical expert reports in order to establish the circumstances of the case. The experts' opinions varied to a certain extent and the authorities had to reconcile their findings. They questioned the applicant and all the doctors and paramedics who had provided medical service to Mr Korogodin. Nevertheless, having regard to the materials in its possession, the Court cannot ascertain that the authorities proceeded with reasonable expedition and that the complexity of the case alone suffices to explain such length.

58. In particular, the Court observes that, following the opening of the criminal case, the prosecuting authorities discontinued the investigation on six occasions. Each time, the applicant appealed and the supervising prosecutor quashed the relevant decision and reopened the investigation noting the investigator's or the subordinate prosecutor's failure to fully determine the circumstances of the case. The Court considers that such remittals of the case for re-examination disclose a serious deficiency of the criminal investigation which irreperably protracted the proceedings.

59. Lastly, the Court notes that approximately three and a half years after her son's death and while the criminal investigation was still pending, the applicant also brought an action for damages against the medical institutions. The relevant civil proceedings lasted from 4 March 2004 to 14 June 2006 and the case was reviewed by courts at two levels of jurisdiction. While the Court discerns no significant periods of inactivity on the part of the civil courts dealing with the matter, in the circumstances of the case, it does not consider it relevant or having any remedial effect on the lack of progress in the criminal proceedings instituted. In any event, it was for the applicant to select which legal remedy to pursue; consequently, even if it were correct that her choice has fallen on a remedy less suited than others to her particular circumstances, this would be of no moment (see, *mutatis mutandis*, *Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32).

60. Recalling that the investigation took almost six years, the foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities failed to respond to the applicant's complaint about medical negligence resulting in her son's death with the level of diligence required by Article 2 of the Convention. There has accordingly been a violation of Article 2 of the Convention under its procedural limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. Lastly, the applicant complained under Article 6 § 1 of the Convention that the civil proceedings concerning her claim for damages against the prosecutor's office had been unreasonably long. She further complained under Article 2 of Protocol No. 4 that she had incessantly had to lodge complaints to challenge the allegedly unlawful acts and omissions committed by the authorities in the course of the criminal investigation into her son's death and consideration of her civil claims.

62. However, having regard to all the material in its possession, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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. Damage

64. The applicant claimed 400 euros (EUR) and EUR 67,000 in respect of pecuniary and non-pecuniary damage respectively.

65. The Government opined that the applicant had suffered no violation of the rights set out in the Convention. In any event, they considered the applicant's claims excessive and unsubstantiated.

66. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court observes that it found that the investigation into her son's death had fallen short of the standards set forth in Article 2 of the Convention. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards her EUR 18,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

67. The applicant also claimed EUR 620 for the costs and expenses incurred before the domestic courts and the Court. She submitted copies of receipts to confirm photocopying, postal and funeral expenses, purchase of books and legal acts, her medical costs, including purchase of medicine and reading glasses, and legal fees and costs.

68. The Government contested the applicant's claims.

69. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 220 covering costs under all heads.

C. Default interest

70. 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. *Declares* the complaint concerning the authorities' failure to conduct an effective investigation into the death of the applicant's son admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable on the date of settlement:

(i) EUR 18,000 (eighteen thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

(ii) EUR 220 (two hundred and twenty euros), in respect of costs and expenses, plus any tax that may be chargeable;

(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President