



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

THIRD SECTION

CASE OF ZINATULLIN v. RUSSIA

(Application no. 10551/10)

JUDGMENT

Art 2 • Positive obligations (procedural) • Life-threatening injuries sustained by minor in unfinished building freely accessible from the side of local school • Unreasoned refusal to open criminal investigation • Amount of domestic award in respect of non-pecuniary damage insufficient to constitute appropriate redress

STRASBOURG

28 January 2020

FINAL

28/05/2020

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

In the case of Zinatullin v. Russia,

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

Paul Lemmens, *President*,

Georgios A. Serghides,

Paulo Pinto de Albuquerque,

Helen Keller,

Dmitry Dedov,

Alena Poláčková,

Lorraine Schembri Orland, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 17 December 2019,

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

PROCEDURE

1. The case originated in an application (no. 10551/10) 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, Mr Ramazan Rashitovich Zinatullin (“the applicant”), on 5 January 2010.

2. The applicant was represented initially by his mother Ms A.M. Zinatullina, and subsequently by Mr A.D. Begzi, a retired lawyer from Tolyatti who was granted leave by the President of the Section of the Court to represent the applicant. The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant, who had sustained serious injuries as a result of an accident in an unfinished building owned by the Tolyatti mayor’s office, complained that the authorities had refused to institute criminal proceedings against officials from the mayor’s office responsible for taking safety measures in respect of the unfinished building, and that the compensation awarded to him in civil proceedings had been inadequate.

4. On 8 September 2017 notice of the applicant’s complaints was given to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1993 and lives in Tolyatti, in the Samara region.

6. On 1 June 2008 the applicant was the victim of an accident at a construction site near his school in Tolyatti. He fell through a hole from the third to the second floor of an unfinished building onto a heap of broken bricks, thereby sustaining, among other damage, a serious craniocerebral injury resulting in a disability that will continue to require treatment.

7. On 11 June 2008 an investigator of the police department of the Avtozavodskoy district of Tolyatti declined to institute criminal proceedings into the accident, relying on a request lodged by the applicant's mother on 9 June 2008 for an inquiry into the accident to be discontinued. She stated that the accident had happened because of her son's own negligence, that she did not wish to have her son examined by forensic medical experts, and that she did not wish to lodge any claim. The investigator held that no crime had been committed against the applicant who had received injuries because of his own carelessness.

8. According to the applicant, it was only after he had undergone head and brain surgery and rehabilitation treatment and his mother's recovery from an illness that she herself had been suffering that his mother was able to appeal, with the help of a lawyer, against the decision of 11 June 2008.

9. On 7 October 2008 a deputy prosecutor of the Avtozavodskoy district of Tolyatti annulled the decision of 11 June 2008.

10. In the course of a pre-investigation inquiry an investigator of the Avtozavodskoy district police department established that the construction site had not been entirely closed off and had been freely accessible from the side of the local school. The construction work – which had been commissioned by the Tolyatti town mayor's office – had been on hold for lack of funding. The investigating authority found that there had been no elements of a crime in the actions of any officials from the mayor's office and other organisations, and that the accident had happened as a result of the victim's own negligence. It therefore declined, on 20 October 2008, to institute criminal proceedings in respect of the accident for absence of the occurrence of a crime.

11. The applicant's mother lodged complaints about the refusal to institute criminal proceedings with various authorities, including the Samara regional prosecutor's office, the Prosecutor General's office of the Russian Federation and the Avtozavodskoy District Court of Tolyatti. She argued that the building had not been guarded and closed off, and that the mayor's office had breached regulations for the "conservation" of unfinished buildings. At a hearing before the District Court prosecutor K. submitted that her complaint should be upheld. On 13 April 2009 the District Court upheld her complaint and declared the refusal of 20 October 2008 unlawful because it had not been established which organisation and specific officials had been responsible for the "conservation" of the unfinished building and why the elements of a crime had been missing in their actions. On 11 May 2009 the Avtozavodskoy district prosecutor's office annulled the refusal of

20 October 2008 to institute criminal proceedings and ordered an additional pre-investigation inquiry. On 6 July 2009 an investigator from the investigative committee of Tolyatti attached to the Samara regional prosecutor's office issued a similar refusal to institute criminal proceedings, stating that there was no cause-and-effect connection between (i) the actions (or failure to act) on the part of officials from the mayor's office and other organisations and (ii) damage to the applicant's health arising from his own negligence and imprudence. Therefore an obligatory element of the crime under Article 293 of the Criminal Code of the Russian Federation (official negligence) was missing.

12. The applicant's mother lodged a further complaint about the refusal to institute criminal proceedings, but to no avail. Initially lodged with the Civic Chamber of the Russian Federation, it was forwarded to the Children's Rights Ombudsman at the President of the Russian Federation, who forwarded it to the Children's Rights Ombudsman in the Samara region, who in turn forwarded it to the Samara regional prosecutor's office, which informed her that the complaint would be examined by the Tolyatti prosecutor's office (according to official letters to the applicant's mother of 1 June, 8 June, 25 June and 7 July 2010, respectively). An article concerning the accident and the authorities' refusal to institute criminal proceedings in respect of it was published in the local newspaper, *Ploshchad Svobody*.

13. The applicant, represented by his mother, brought a civil action for damages, seeking 1,000,000 roubles (RUB) by way of compensation for the non-pecuniary damage sustained by him. He argued that the unfinished building, which was situated near the school, in a residential area, had not been guarded and had been freely accessible.

14. On 14 October 2010 the Tsentralniy District Court of Tolyatti granted his action in part. It established that the accident had happened in an unfinished school building that had been the municipal property of the Tolyatti mayor's office since 1997. The right of economic control (*право хозяйственного ведения*) of that building had been transferred to a municipal enterprise, Invest-Proyekt, in 2007 for the purposes of the completion of the construction work. No construction work had been carried out since the transfer of the unfinished building – the state of completion of which was assessed at 54% – to Invest-Proyekt. Nor had any construction work been undertaken earlier, from the time of the transfer of the unfinished building to the municipal property in 1997. The Tolyatti mayor's office had denied any responsibility for the building and had argued at a hearing before the District Court that in the absence of ongoing construction work there had been no need for any protective measures. The District Court rejected those arguments, concluding that – under the Town Planning Code of the Russian Federation – during the period that the construction work had been on hold it had been the mayor's office, as owner of the unfinished building,

that had been responsible for taking all measures necessary to exclude threats to people's life and health. However, as had been established by the wording of the decision of 6 July 2009 not to institute criminal proceedings, the construction site had not been entirely closed off and had been freely accessible from one side of the school. The building had had no windows or doors. The Tolyatti mayor's office had failed to undertake, in line with the relevant regulations, any protection measures in respect of the unfinished building.

15. The Tsentralniy District Court of Tolyatti noted that the investigating authority's finding regarding the lack of a cause-and-effect connection between (i) the actions or (failure to act) on the part of officials from the mayor's office and other organisations and (ii) the damage to the applicant's health was relevant to its conclusion about the absence of the occurrence of a crime, but did not exclude civil-law responsibility. The District Court held that there had been a cause-and-effect connection between the failure of the mayor's office's to act – notably its failure to undertake measures to restrict access to the unfinished building – and the damage to the applicant's health. While Invest-Proyekt had also been responsible for the accident in so far as it had failed to obtain the necessary permits for construction work, it had been the responsibility of the mayor's office to exercise control over it, which it had not done. In so far as the mayor's office blamed the previous owner (from which it had received the unfinished building in the state in which it had been at the time of the accident), the mayor's office had been free to demand that the previous owner undertake protection measures for the "conservation" of the unfinished building, or to refuse to receive it without such measures being first put in place.

16. The court heard witnesses and established that after the accident the applicant had spent seventy days in a coma, with doctors estimating his chances of survival at 50%. He had been declared disabled and had been repeatedly hospitalised afterwards, and ongoing treatment and rehabilitation had been recommended. The court also took into account (i) the applicant's own negligence – that is to say his entering a dangerous place and not exercising caution despite a warning from a friend about the hole in the floor, and (ii) the applicant's mother's failure to exercise parental responsibility – given that she should have exercised more control over her minor son's activities, his visits to the construction site (of which she had been aware before the accident) and given her failure to prevent his visit to the construction site on the day of the accident (which had occurred at the weekend). The applicant argued that immediately before his fall he had been listening to music on headphones and had therefore not heard his friend's warning about the hole in the floor.

17. The court also heard prosecutor F. who considered that the applicant's claim should be granted in part. The court granted the

applicant's claim partially and ordered the Tolyatti mayor's office, which it ruled bore the primary responsibility for the accident, to pay the applicant RUB 25,000 and Invest-Proyekt to pay him RUB 15,000 in respect of non-pecuniary damage.

18. The applicant's mother appealed against that judgment, arguing that the amount of the compensation was inadequate. The mayor's office also appealed against the judgment, which it considered unlawful. Prosecutor N. stated at a hearing before the Samara Regional Court that the judgment should be upheld. On 9 December 2010 the Samara Regional Court upheld the judgment on appeal. It agreed with the first-instance court that those responsible for providing compensation in respect of non-pecuniary damage were the mayor's office, as the owner of an unfinished building that was a source of increased danger (*источник повышенной опасности*), and Invest-Proyekt, which had the right of economic control over the building. Their failure to act had led to the applicant suffering serious bodily harm and disability. The first-instance court had rightly ordered the mayor's office, which had been responsible for exercising control over its property, to pay the larger part of the compensation. From the time of the transfer of the unfinished building to the municipal property in 1997 no construction work had been undertaken. Nevertheless, protection measures for the "conservation" of the unfinished building, such as fencing and guarding the unfinished building, had not been undertaken. Despite its close proximity to a school, the unfinished building had been freely accessible from the side of the school.

19. The judgment was enforced in the part concerning the payment by the mayor's office. The remaining part has not been enforced owing to the fact that the municipal enterprise had gone into liquidation after the delivery of the judgment.

20. The applicant lodged an application for supervisory review of the judgments in the case. On 28 April 2011 a judge of the Supreme Court of the Russian Federation rejected his application, finding no grounds for supervisory review of the case by the Supreme Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

21. The applicant submitted that he was a victim of the failure by the Tolyatti mayor's office to take safety measures at the construction site; that failure had led to his being seriously injured and disabled at the age of fourteen. He complained that the authorities had failed to institute criminal proceedings regarding the accident, and the compensation awarded to him in the civil proceedings had been inadequate. The applicant relied on Article 2 of the Convention, which reads as follows:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally (...).”

A. The parties’ submissions

1. The Government

22. The Government contested the applicant’s argument. The pre-investigation inquiry had found that the harm to the applicant’s health had occurred through his own fault and negligence. The domestic courts had taken his gross negligence into account in assessing the degree of guilt of the victim and the tortfeasor and in determining the amount to be awarded in compensation. The applicant had been in a place dangerous for children’s games and sporting activities. His friend had warned him about the danger. He should have been able to understand the possible negative consequences of his imprudent behaviour. The Government furthermore stated that the applicant’s mother should have exercised more control over him and should have prevented his visiting an unfinished construction site. The Government argued that the Court should not act as a fourth-instance court, and that Article 2 should not be interpreted as guaranteeing a person an absolute level of safety within the context of any activity that could pose a danger to that person’s right to life – including when such a person exposed himself or herself to unreasonable danger and should therefore bear a certain degree of responsibility for any ensuing accident.

23. The Government furthermore stated that in the civil proceedings those responsible for the accident had been established and that their liability had been determined in view of (i) all the relevant circumstances and (ii) the conduct of the applicant and his mother. In so far as a criminal-law remedy was concerned, the Government noted that shortly after the accident the applicant’s mother had requested that the inquiry be discontinued. Furthermore, she had failed to appeal against the refusal of 6 July 2009 to institute criminal proceedings, despite the fact that her appeal against the previous refusal, of 20 October 2008, had been granted.

2. The applicant

24. The applicant maintained his complaint.

B. Admissibility

25. The Court reiterates that the first sentence of Article 2, which ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic values of the democratic societies making up the Council of Europe, requires the State not only to refrain from the “intentional” taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. This substantive positive obligation

entails a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. It applies in the context of any activity, whether public or not, in which the right to life may be at stake (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 134-35, 25 June 2019). This is the case, for example, in respect of the management of dangerous activities (see *Iliya Petrov v. Bulgaria*, no. 19202/03, §§ 54 and 56, 24 April 2012, which concerned a serious injury to an eleven-year-old child after he was accidentally electrocuted in an unsecured electrical substation; *Pereira Henriques v. Luxembourg*, no. 60255/00, §§ 54-63, 9 May 2006; *Kudra v. Croatia*, no. 13904/07, §§ 106-07, 18 December 2012, which concerned incidents on or near a construction site; and *Kolyadenko and Others v. Russia*, nos. 17423/05 and 5 others, § 158, 28 February 2012, which concerned industrial activities), within the context of emergency relief (see *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, §§ 158-59, ECHR 2008 (extracts)), or in respect of death in a public place (see *Banel v. Lithuania*, no. 14326/11, §§ 64-65 and 68, 18 June 2013, which concerned a thirteen-year-old boy's death from injuries sustained when part of a balcony broke off from a building and fell on him while he was out playing).

26. This substantive positive obligation also requires the State to make regulations compelling institutions, whether private or public, to adopt appropriate measures for the protection of people's lives. The regulatory measures in question must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks. The relevant regulations must also provide for appropriate procedures, taking into account the technical aspects of the activity in question, for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 89-90, ECHR 2004-XII, and *Budayeva and Others*, cited above, §§ 131-32).

27. In the context of activities carried out on construction sites, which may pose risks to human life due to their inherently hazardous nature, States are required to take such reasonable measures to ensure the safety of individuals as are necessary, including through regulations geared to the special features of the activity in question (see *Cevrioğlu v. Turkey*, no. 69546/12, § 57, 4 October 2016). In the absence of the necessary safety precautions, any construction site, especially one in a residential area, has the potential for life-endangering accidents that may impact not only professional construction workers, who are more familiar with the possible risks, but also the public at large, including vulnerable groups such as children, who may easily become subject to those risks (*ibid.*, § 67).

28. The substantive positive obligation at issue must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see *ibid.*, § 52; and *Nicolae Virgiliu Tănase*, cited above, § 136).

29. The Court further reiterates that the State's duty to safeguard the right to life must be considered to involve also the procedural positive obligation to have in place an effective independent judicial system capable of promptly establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (*ibid.*, § 137).

30. It is not disputed between the parties that the complaint falls to be examined under Article 2 of the Convention. Indeed, in view of the applicant's injuries (see paragraph 16 above) and the fact that they were sustained in an unfinished building, which could by its very nature be dangerous (especially for children), Article 2 is applicable (*ibid.*, §§ 144 and 146-50).

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

C. Merits

1. General principles

32. In cases concerning unintentional infliction of death and/or lives being put at risk unintentionally, the requirement to have in place an effective judicial system will be satisfied if the legal system affords victims (or their next-of-kin) a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any responsibility to be established and any appropriate civil redress to be obtained. Where agents of the State or members of certain professions are involved, disciplinary measures may also be envisaged (see *Nicolae Virgiliu Tănase*, cited above, § 159).

33. Although the Convention does not guarantee, as such, a right to have criminal proceedings instituted against third parties, even in cases of non-intentional interferences with the right to life or physical integrity there may be exceptional circumstances where an effective criminal investigation is necessary to satisfy the procedural obligation imposed by Article 2. Such circumstances can be present, for example, where a life was lost or put at risk because of the conduct of a public authority that goes beyond an error of judgment or carelessness. Where it is established that the negligence attributable to State officials or bodies on that account goes beyond an error of judgment or carelessness, in that the authorities in question – fully realising the likely consequences and disregarding the powers vested in them – failed to take measures that were necessary and sufficient to avert the risks inherent in a dangerous activity, the fact that those responsible for endangering life have not been charged with a criminal offence or

prosecuted may amount to a violation of Article 2, irrespective of any other types of remedy that individuals may exercise on their own initiative (see *Öneryıldız*, cited above, §§ 71 and 93, and *Oruk v. Turkey*, no. 33647/04, §§ 56-66, 4 February 2014).

34. The Court reiterates further that in cases “involving life-threatening injuries, as in the event of death”, as soon as the authorities become aware of the incident, they “must make all reasonable efforts given the practical realities of investigation work, including by having in place the necessary resources,” to ensure that on-site and other relevant evidence is collected promptly and with sufficient thoroughness so as to secure the evidence and to eliminate or minimise any risk of omissions that may later undermine the possibilities of establishing liability and of holding the person(s) responsible accountable. That responsibility lies with the authorities and cannot be left to the initiative of the victim or his or her next-of-kin. The obligation to collect evidence applies at least until such time as the nature of any liability is clarified and the authorities are satisfied that there are no grounds for conducting or continuing a criminal investigation (see *Nicolae Virgiliu Tănase*, cited above, §§ 161-62).

35. Once it has been established in such an initial investigation that a life-threatening injury has not been inflicted intentionally, a civil remedy is normally regarded as sufficient, save for cases involving exceptional circumstances where it is necessary to pursue an effective criminal investigation, as noted in paragraph 33 above (*ibid.*, §§ 163-64).

36. In the event that various legal remedies (civil as well as criminal) are available, the Court will consider whether such remedies as are provided for in law and applied in practice, could – taken together – be said to have constituted legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim. The choice of means for ensuring the positive obligations under Article 2 is in principle a matter that falls within the Contracting States’ margin of appreciation. There are different avenues for ensuring Convention rights, and even if the State has failed to apply one particular measure provided for by domestic law, it may still have fulfilled its positive duty by other means (*ibid.*, § 169).

37. The national courts should not under any circumstances be prepared to allow life endangering offences to go unpunished. This is essential for maintaining public confidence and ensuring adherence to the rule of law and for preventing any appearance of tolerance of or collusion in unlawful acts. The Court’s task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Article 2 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life are not undermined (see *Öneryıldız*, cited above, § 93).

2. The application of the general principles in the instant case

38. Given that the domestic courts in the civil proceedings established the cause-and-effect connection between the failure on the part of the Tolyatti mayor's office to take preventive measures in respect of the unfinished building aimed at protecting people's life and health and the applicant's accident, thereby acknowledging the State authorities' failure to fulfil the substantive positive obligation under Article 2 of the Convention to take reasonable measures to ensure the safety of individuals (see paragraphs 25-28 above), the Court will focus in the circumstances on examining whether the State has fulfilled its procedural positive obligation under Article 2 and provided the applicant with appropriate redress (see paragraphs 29 and 32-37 above). The Court observes that the applicant, aged fourteen at the time, sustained a serious craniocerebral injury leading to a disability as a result of falling through a hole from the third to the second floor of an unfinished building onto a heap of broken bricks.

39. The investigating authority carried out a pre-investigation inquiry into the accident and found that (i) the unfinished building in which the accident had taken place had been commissioned by the Tolyatti mayor's office, (ii) its construction had been suspended and (iii) it had not been entirely closed off and had been freely accessible from the side of the local school. On 20 October 2008 the investigating authority decided not to institute criminal proceedings, stating that no crime had been committed by any officials from the mayor's office and other organisations, and that the accident had happened because of the applicant's own negligence. On appeal by the applicant's mother, supported by the prosecutor, that decision was quashed by the Avtozavodskoy District Court of Tolyatti for the investigating authority's failure to establish which organisation and officials had been responsible for the safety of the unfinished building and to explain why it had found that no crime had been committed by them. However, on 6 July 2009 the investigating authority issued a similar refusal to institute criminal proceedings without rectifying the defects contained in its previous refusal (as established by the District Court). It stated – without providing any further explanations – that there was no cause-and-effect connection (which was an obligatory element of the crime of official negligence punishable under Article 293 of the Criminal Code) between (i) the actions or failure to act on the part of unspecified officials from the mayor's office and other organisations and (ii) damage to the applicant's health arising from his own negligence and imprudence.

40. It follows that the investigating authority made no attempt to establish identities of officials from the mayor's office and their responsibilities in relation to the safety of the unfinished building and to give reasons for its refusal to instigate criminal proceedings.

41. Such a response sits ill with the obligation to collect evidence, which “applies at least until such time as the nature of any liability is clarified and

the authorities are satisfied that there are no grounds for conducting or continuing a criminal investigation” (see paragraph 34 above). It further fails to elucidate the extent of any negligence on the part of officials from the mayor’s office in taking “measures that were necessary and sufficient to avert the risks inherent in a dangerous activity”, which may constitute exceptional circumstances where an effective criminal investigation is necessary to satisfy the procedural obligation imposed by Article 2 (see paragraph 33 above).

42. As regards the Government’s observations (see paragraph 23 above), the Court notes that after her initial request for the inquiry to be discontinued the applicant’s mother clearly pursued a criminal-law remedy (see paragraphs 8-9 and 11-12 above). Furthermore, she cannot be required to lodge a court appeal against the refusal to institute criminal proceedings of 6 July 2009, as the Government seem to suggest. The wording of that refusal reproduced in essence that of the previous refusal of 20 October 2008, which was appealed against by the applicant’s mother and declared unlawful by the Avtozavodskoy District Court of Tolyatti, as discussed above. It should also be noted that the responsibility to carry out an initial investigation (aimed at securing evidence and eliminating or minimising any risk of omissions that might later undermine the possibility of establishing liability and of holding to account the person(s) responsible) lay with the authorities and could not be left to the initiative of the victim or his or her next-of-kin (see paragraph 34 above).

43. The Court observes further that the applicant availed himself of the civil-law remedy. It was established in the civil proceedings (and not disputed between the parties) that the Tolyatti mayor’s office, as owner of the unfinished building, had been responsible under the domestic law – for as long as the construction work had been on hold – for taking measures aimed at protecting people’s life and health, in particular by closing off the unfinished building; it was also established that there had been a cause-and-effect connection between its failure to do so and the applicant’s sustaining grave bodily harm and disability. The civil courts found that the mayor’s office had disregarded its duty for a long period of time – since the transfer to it in 1997 of the unfinished building – until the applicant’s accident in 2008, despite the particular danger it had created for children, given its close proximity to the local school. The unfinished building (the state of completion of which at the time of its transfer to the municipal property in 1997 had been assessed at 54%) (i) had had no windows or doors, (ii) had presented such dangers as a heap of bricks and a hole between floors (iii) had not been guarded (iv) and had been readily accessible from the side of the school. Accordingly, the Tolyatti mayor’s office was held accountable for its failure to take safety measures, which had resulted in 2008 in applicant’s grave injury and disability. Invest-Proyekt was held accountable in so far as it had failed to obtain

construction permits. However, the domestic courts acknowledged the failure of the mayor's office to exercise control over Invest-Proyekt, and emphasised the primary responsibility of the mayor's office for the applicant's accident.

44. Having established the facts, as shown above, the domestic civil courts ordered the Tolyatti mayor's office to pay the applicant compensation in the amount of about 600 euros (EUR) in respect of non-pecuniary damage.

45. While noting that the domestic courts took into account the applicant's and his mother's negligence, the Court considers, in the circumstances of the case, that the amount of compensation is insufficient to constitute appropriate redress.

46. In sum, after establishing the immediate circumstances of the accident and, in particular, the link between the unfinished building and the Tolyatti mayor's office, the criminal-law remedy failed, in disregard of the position of the domestic court and the prosecutor's office (see paragraph 11 above), to give any reasons for its conclusion that there were no elements of the crime of official negligence in the actions of officials from the mayor's office. Those officials had never been identified and evidence concerning their responsibilities in relation to the safety of the unfinished building had not been collected. As a result, the refusal to conduct a criminal investigation had remained unreasoned, contrary to the task of the establishment of relevant facts and holding accountable those at fault. As regards the civil-law remedy, while it enabled the authority at fault to be held accountable, it fell short of providing the applicant with appropriate redress.

47. In view of the foregoing the Court finds that the criminal and civil remedies in the applicant's case, taken together, did not constitute an effective judicial response, consonant with the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life, as required by Article 2 of the Convention. There has therefore been a violation of that provision of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

48. The applicant also complained under Article 13 of the Convention in respect of the same facts as those examined above under Article 2 of the Convention, without elaborating on his complaint. Article 13 of the Convention reads as follows:

“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.”

49. The Government contested that argument.

50. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

51. Having regard to its finding under Article 2 (see paragraph 32 above), the Court considers that it is not necessary to examine separately whether, in this case, there has been a violation of Article 13.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 1,080,000 Russian roubles ((RUB) – about 14,600 euros (EUR)) in respect of pecuniary damage, calculated on the basis of the minimum statutory monthly wage in the Samara region (RUB 18,000) for a period of ten years following his attaining his majority, reduced by half to account for his mother’s responsibility in so far as she could be considered to have failed to prevent his exposure to the risk of the accident. The applicant stated that because of his disability he had not been successful in finding employment and thus earning money sufficient to support himself, to start a family and to help his retired mother. He also claimed EUR 7,000 in respect of non-pecuniary damage.

54. The Government contested the claim in respect of pecuniary damages, arguing that there were social benefits available for disabled persons, but without providing details concerning the applicant’s individual situation.

55. In view of the possibility to claim the pecuniary damages alleged in domestic proceedings, the Court rejects this claim. Taking into account the amount of the compensation awarded to the applicant in the domestic civil proceedings, and, by virtue of the *non ultra petita* principle, it grants the applicant’s claim in respect of non-pecuniary damage in its entirety.

B. Default interest

56. The Court considers it appropriate that the default interest rate 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 application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention;
3. *Holds* that there is no need to examine the complaint separately under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 January 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paul Lemmens
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) Joint concurring opinion of Judge Lemmens, Serghides and Pinto de Albuquerque;
- (b) Concurring opinion of Judge Dedov.

P.L.
J.S.P

JOINT CONCURRING OPINION OF JUDGES LEMMENS,
SERGHIDES AND PINTO DE ALBUQUERQUE

1. We fully subscribe to the finding that there has been a violation of Article 2 of the Convention.

Unlike the majority, however, we believe that this finding should not be limited to the State's procedural obligation under Article 2, but should extend to its substantive obligation as well.

2. We note that the applicant complained both of the failure by the Tolyatti mayor's office to impose the necessary safety measures (substantive obligation) and of the authorities' failure to institute criminal proceedings and to award him adequate redress (procedural obligation) (see paragraph 21 of the judgment).

The majority reiterate at length the principles relating to the State's substantive obligation in cases such as the present one, involving a life-endangering accident on premises that pose risks to human life due to their inherently hazardous nature (see paragraphs 25-28, in particular paragraph 27). These principles are mentioned in the context of examination of the admissibility of the complaint. We believe that it would have been more logical to set out the said principles in the context of examination of the merits of the complaint. We further note, as far as general principles are concerned, that in the part on the merits the majority refer only to principles relating to the procedural obligation (see paragraphs 32-37).

3. Be that as it may, when it comes to the application of these principles to the facts of the present case, the majority consider that, since the domestic courts acknowledged the State authorities' failure to fulfil their substantive obligation, they will focus on examining whether the State fulfilled its procedural obligation (see paragraph 38).

It is on this point that, respectfully, we disagree.

The effect of the majority's statement is that they leave open the question whether there has been a violation of the substantive limb of Article 2. Indeed, they neither confirm nor contradict the findings of the domestic courts in this respect. We believe that the Court should have examined the merits of the relevant complaint.

4. We see no justification for leaving open the question of the substantive violation.

In particular, it could not be argued that the applicant had lost his victim status in the light of the domestic courts' findings that the mayor's office had been negligent and thus that the State had failed to fulfil its substantive obligation. It is true that a decision or measure favourable to the applicant can deprive him of his status as a "victim" for the purposes of Article 34 of the Convention, but this is only the case where the national authorities have, first, acknowledged, either expressly or in substance, the breach of the Convention, and secondly, afforded redress for that breach (see, among

many other authorities, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-80, ECHR 2006-V; *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010; and *Murray v. the Netherlands* [GC], no. 10511/10, § 83, 26 April 2016). Only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of the application (see *Rooman v. Belgium* [GC], no. 18052/11, § 129, 31 January 2019).

In the present case, the majority themselves recognise that the amount of compensation awarded to the applicant in the civil proceedings “is insufficient to constitute appropriate redress” (see paragraph 45 of the judgment). The second condition is therefore not fulfilled, and the applicant can still claim to be the victim of a substantive violation of Article 2.

5. On the merits, we are of the opinion that there is no reason to disagree with the findings of the domestic courts with respect to the responsibility of the mayor’s office, which is an organ of the State.

6. We conclude, accordingly, that there has also been a violation of Article 2 in its substantive limb.

CONCURRING OPINION OF JUDGE DEDOV

The present case provides a good opportunity to reflect on the development of cases relating to an “effective judicial system”. This concept needs some clarification, if this development is not to be considered contradictory. For this purpose, I would like to compare the three cases of *Kotelnikov v. Russia* (no. 45104/05, 12 July 2016, *Nicolae Virgiliu Tănase v. Romania* ([GC], no. 41720/13, 25 June 2019) and the present (*Zinatullin*) case. The circumstances of each case were different, which creates a certain difficulty in identifying and applying general principles. In two cases (*Tănase* and *Zinatullin*) the criminal proceedings were discontinued on the grounds that not all the elements of an offence had been established, but the Court assessed those circumstances differently.

In the *Kotelnikov* case the criminal investigation successfully ended with court proceedings at two instances within a three-year period and the applicant, as a victim, seized the opportunity to bring a civil case; however, the Court has found that the system was not effective. The *Kotelnikov* judgment was designed to express one principal idea: the system cannot be effective, in that the limitation period takes effect even if the criminal case has been completed and the criminal charge has been brought to court for trial.

In the *Tănase* case the investigation did not achieve any tangible results after eight years, but the Court found no violation of Article 2 of the Convention, and added that the applicant could bring a civil case against identified persons (although without the opportunity to establish the degree of guilt of others who participated in the accident). In the present case the Court has found that the criminal-law remedy was not effective, in that it did not identify the persons responsible for the crime.

The *Tănase* judgment was adopted by the Grand Chamber and we must follow the approach taken in that judgment. Although it may seem that the issue of the effectiveness of the judicial system was limited to that of an effective investigation in *Tănase*, the Grand Chamber implicitly confirmed that the analysis should be broader and include several different criteria: the State’s positive obligations to establish safety rules (traffic regulations, for example); an effective investigation and trial in order to identify those responsible for the life-threatening injuries and to examine the issues of causal link and negligence; and the availability of civil action, preferably within the criminal proceedings.

The present case can be differentiated from the *Tănase* case with regard to the causal link and negligence issues. In the *Tănase* case the investigators concluded that the applicant’s car was moving at high speed and that the injuries were caused mainly by the applicant himself. In other words, the applicant created the substantive risk. In the present case the owner of the building did not comply with safety rules and left the construction site

freely accessible, creating the substantive risk of potential injuries. The fall was caused by the partial destruction of the unfinished building and the absence of barriers therein to prevent the fall. Thus, the behaviour of the child and his mother (they allegedly did not take care to avoid an accident) was not a decisive (sufficient) element for establishing a causal link and not a convincing reason for the national courts to discontinue criminal proceedings.