



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

FIRST SECTION

CASE OF BAGIROVA v. AZERBAIJAN

(Application no. 9375/20)

JUDGMENT

Art 2 (procedural and substantive) • Manifestly inadequate investigation into the killing of applicant's brother during an operation carried out by State agents in connection with his arrest • Not shown "beyond reasonable doubt" that use of force no more than absolutely necessary

Prepared by the Registry. Does not bind the Court.

STRASBOURG

10 October 2024

FINAL

10/01/2025

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

In the case of Bagirova v. Azerbaijan,

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

Ivana Jelić, *President*,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato,
Alain Chablais, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 9375/20) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Azerbaijani national, Ms Aynur Islam gizi Bagirova (*Aynur İslam qızı Bağırova* – “the applicant”), on 5 February 2020;

the decision to give notice to the Azerbaijani Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 17 September 2024,

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

INTRODUCTION

1. The application concerns the death of the applicant’s brother, a wanted person, who was killed during an operation carried out by agents of the State Security Service (“the SSS”) in connection with his arrest.

THE FACTS

2. The applicant was born in 1976 and lives in Ganja. She was represented by Mr J. Javadov, a lawyer based in Azerbaijan.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND INFORMATION

5. On 3 July 2018 the Head of the Ganja City Executive Authority and his bodyguard were shot by Y.S. in front of the executive authority’s building, as a result of which they were severely injured. The attack received widespread media coverage in the country.

6. Criminal proceedings were instituted in connection with the shooting, and Y.S. was arrested.

7. On 15 July 2018, within the framework of criminal case no. 180556037, the applicant's brother (A.B.) was charged, together with other persons, with numerous criminal offences, such as, *inter alia*, participation in murder by a group of persons, terrorism, illegal possession of weapons and usurpation of State power by force.

8. On the same date a search warrant was issued in respect of A.B., who was declared a wanted person.

II. DEATH OF A.B. AND THE ENSUING CRIMINAL INVESTIGATION

9. On an unspecified date, agents of the SSS received information that A.B. was hiding in a motel located on the outskirts of Baku.

10. At around 10.45 p.m. on 20 July 2018, agents of the SSS carried out an operation in order to arrest A.B. He was killed during the operation.

11. It appears from the documents in the case file that the prosecuting authorities were immediately informed of A.B.'s death, and a record of the inspection of the scene of the crime was drawn up and signed by the investigator in charge of the case. The record states that the inspection began at 11.30 p.m. on 20 July 2018 and ended at 2.20 p.m. on 21 July 2018. According to the record, A.B.'s body was lying on the floor in a room at the motel and there were four gunshot wounds to his body. There was also a bullet trace on the wall to the left of the entrance to the room; the bullet had pierced the ceiling of the room. A.B. had a pistol in his right hand and there was a silencer under his right foot. Five cartridge cases and thirteen unused cartridges were found at the crime scene. Various photographs were taken of the room, A.B.'s body, the pistol, the silencer, the cartridge cases and the unused cartridges.

12. On 21 July 2018 a record of the examination of the body was drawn up in the presence of a forensic expert.

13. On 21 July 2018 the investigator in charge of the case ordered a post-mortem examination of A.B.'s body, which was carried out on the same day. Report no. 114 showed that there were four gunshot wounds to A.B.'s body (two to his head, one to the right part of his body next to the costal margin, and one to the left part of his ribcage) and his death had resulted from a fractured skull, a partial expulsion of the brain and a cerebral haemorrhage as a result of the two gunshot wounds to the head. The report also indicated that all the shots had been fired at long range and that A.B. had been in a vertical position when he had sustained the gunshot wound to the right part of his body, next to the costal margin, and that he had been in a horizontal position when he had sustained the other gunshot wounds. According to the report, he had sustained the gunshot wound to the left part of his ribcage shortly after his death (*ölümündən bir qədər sonra*).

14. On 22 July 2018 the investigator questioned X.X., who was the owner and manager of the motel in which A.B. had been staying. She stated that since 17 July 2018 A.B. had been renting a bed in a room with four beds and that he had been sharing the room with V.B. At around 9 p.m. on 20 July 2018 an agent of the SSS had shown X.X. a photograph of A.B., asking her whether she knew that person. She had confirmed that she did, indicating the room in which A.B. had been staying. At around 11 p.m. the agents of the SSS had come to the yard of the motel and had gone directly to A.B.'s room. At the time X.X. had been in the yard. Two agents of the SSS had taken V.B. out of the room. At that moment, shooting had been heard.

15. On 23 July 2018 the investigator questioned V.B., who had been sharing the same room with A.B. in the motel. He stated that he had not known A.B. previously and that on 20 July 2018, when he had returned from work, A.B. had already been in the room. At around 11 p.m. three agents of the SSS had entered the room and two of them had taken V.B. out of the room. At that point A.B. was in his bed (*Həmin vaxt A.B. özünə aid çarpayıda olmuşdur*). Approximately one minute later V.B. had heard shooting. There had also been other agents of the SSS in the motel yard.

16. On 1 August 2018 the investigator questioned X.X.'s husband (I.X.), who made a statement similar to that made by X.X. (see paragraph 14 above).

17. On 18 August 2018 the investigator questioned the applicant, who stated that she had learned, from the media, of the death of her brother in an operation conducted by the SSS.

18. In the meantime, on 1 August 2018 the investigator ordered forensic ballistic and trace examinations of the pistol and silencer, the cartridge cases and unused cartridges, and the clothes that A.B. had been wearing on 20 July 2018, asking the experts various questions. However, the investigator did not enquire about the possible presence of fingerprints on the pistol and silencer. Moreover, it does not appear from the investigator's decision that the weapons used by the agents of the SSS were submitted for forensic examination.

19. Report no. 20655/20656/20657, dated 7 September 2018, concluded that the weapon in question was an MP 371 pistol, which had been subjected to modifications, and that one of the five cartridge cases found at the crime scene had been fired from that pistol.

20. On 24 October 2018 the investigator in charge of the case refused to institute criminal proceedings, finding that there had been no criminal element in the actions of the agents of the SSS. The relevant part of the decision reads as follows:

“Accordingly, it was established during the inquiry that at 10.45 p.m. on 20 July 2018, in the course of the operational search measures carried out by the agents of the SSS, A.B., born on ... in ..., registered at the address of ..., living at the address of ... on the basis of a daily rental, resisted by firing the pistol ... and was eliminated by a shot fired by the operational group in response.

As is indicated in the report dated 7 September 2018 issued by the Forensic Expertise Centre of the Ministry of Justice of the Republic of Azerbaijan, one cartridge of calibre 9x18 found at the crime scene was fired from the pistol, an MP 371 pistol which had been subjected to modifications, found in A.B.'s right hand during the inspection of the crime scene.

That proves that A.B. resisted by using a weapon.

For that reason, having regard to the lack of elements of any criminal act provided for by the criminal law of the Republic of Azerbaijan in the acts of the agents of the SSS, the institution of criminal proceedings in connection with the material collected must be rejected."

III. REMEDIES USED BY THE APPLICANT

21. On 27 June 2019 the applicant lodged a complaint against the investigator's decision of 24 October 2018 with the Binagadi District Court, arguing that her brother had been deliberately killed by the agents of the SSS and that the investigator had failed to carry out an effective investigation into his killing. In particular, she stated that the investigator had failed to identify and question the agents of the SSS who had participated in the operation and had killed her brother. She pointed out that as those individuals had not been questioned, it had not been possible to establish why and in what circumstances her brother had been killed. She also referred to the conclusions of forensic report no. 114, according to which A.B. had been in a horizontal position when he had sustained two gunshot wounds to the head causing his death and that he had sustained the gunshot wound to the left part of his ribcage after his death. In the applicant's view, those conclusions proved that A.B. had been killed deliberately, and not because he had resisted. In that connection, she noted that according to the witness statement made by V.B., there had been no resistance when the agents of the SSS had entered the room. The applicant also contended that the agents of the SSS should have arrested her brother and taken him out of the room and not V.B., who was the only witness to the events. Furthermore, the applicant contested the investigator's conclusions that A.B. had resisted by using a weapon, arguing that the investigation had failed to prove that the pistol found at the crime scene belonged to her brother. Lastly, she complained that the prosecuting authorities had failed to provide her with a copy of the decision of 24 October 2018 in a timely manner.

22. On 9 July 2019 the Binagadi District Court dismissed the applicant's complaint, without addressing the above-mentioned arguments raised in her complaint or providing any explanation in that connection.

23. On 25 July 2019 the applicant appealed against that decision. In particular, she complained that the Binagadi District Court had failed to examine her complaints concerning the investigator's decision of 24 October 2018 and that the court's decision had been a reproduction of the investigator's decision of 24 October 2018.

24. On 5 August 2019 the Baku Court of Appeal dismissed the applicant's appeal and upheld the Binagadi District Court's decision of 9 July 2019.

IV. FURTHER DEVELOPMENTS

25. It appears from the documents in the case file that in the course of the investigation of criminal case no. 180556037, on 25 October 2019 a prosecutor at the Serious Crimes Department of the Prosecutor General's Office questioned E.S. – an agent of the SSS who had participated in the operation during which the applicant's brother had been killed – as a witness. E.S. stated that after receiving the information that A.B., who was a wanted person, had been hiding at the given address, he had gone there together with some colleagues. They had shown a photograph of the wanted person to the owner of the building, who had confirmed A.B.'s presence there and had indicated the room in which he had been staying. According to E.S., when they had wanted to open the door to that room, A.B. began firing in his direction. At that point, they had identified themselves as agents of the SSS and had asked him to surrender. A.B. had become more aggressive and had continued firing at them, yelling anti-State and religious slogans and saying that he would not surrender. When he had attempted to attack them, he had been neutralised by the agents. They had immediately informed the prosecuting authorities of the incident.

26. On 20 November 2019 the applicant lodged a request with the Serious Crimes Department of the Prosecutor General's Office, asking for the institution of criminal proceedings in connection with A.B.'s death. She noted that E.S.'s statement clearly contradicted the statements made by V.B. and X.X. She also asked the prosecuting authorities to order forensic examinations in order to determine the possible presence of fingerprints belonging to A.B. and to the agents of the SSS on the pistol, the silencer and the cartridges.

27. On 22 November 2019 an investigator at the Serious Crimes Department of the Prosecutor General's Office dismissed the applicant's request, finding that by a decision of 24 October 2018 the prosecuting authorities had already refused to institute criminal proceedings in connection with A.B.'s death.

28. On 5 December 2019 the applicant contested the investigator's decision by lodging a complaint against it with the Nasimi District Court.

29. On 9 December 2019 the Nasimi District Court and on 10 January 2020 the Baku Court of Appeal refused to examine the applicant's complaint, finding that complaints of that kind should not be examined under the procedure for judicial review of the actions or decisions of the prosecuting authorities, as provided for by Article 449 of the Code of Criminal Procedure.

RELEVANT LEGAL FRAMEWORK

I. CRIMINAL CODE

30. Article 37.1 of the Criminal Code provides that causing harm to a person who has committed an offence, while that person is being arrested for the purposes of bringing him or her before the competent State authorities or preventing him or her from committing new offences, is not considered an offence provided that the use of all other means for that purpose have not produced the necessary results, and the limits of the measures necessary for that purpose were not exceeded. Under Article 37.2 of the Criminal Code, if the means and methods used for the arrest of a person who has committed an offence are manifestly disproportionate to the degree of public danger of the act committed and of the person who committed that act, as well as to the circumstances of the arrest, and unnecessarily cause obviously excessive harm to the person, this is considered to exceed the limit of the measures necessary for the arrest of the person. Exceeding the limit in that manner engages criminal liability only in the event of intentional harm.

31. Article 123.2 of the Criminal Code provides that intentional murder by exceeding the necessary limits for the arrest of a person who has committed an offence is punishable by correctional labour for a term of up to two years, or restriction of liberty for a term of up to three years, or imprisonment for a term of up to three years.

II. CODE OF CRIMINAL PROCEDURE

32. Under Articles 39.1.1 and 39.1.2 of the Code of Criminal Procedure (“the CCrP”), criminal proceedings may not be instituted or, if instituted, must be discontinued at any stage of the pre-trial proceedings if it is found that there is no criminal element in the act (*əməldə cinayət tərkihi olmadiqda*).

33. Under Articles 87.6 and 102.6 of the CCrP, a person recognised as a victim, or his or her representative, has various procedural rights within the framework of criminal proceedings. Articles 87.6.10 and 102.6.8 provide that a victim or his or her representative have the right to familiarise themselves with the criminal case file and to obtain copies of relevant documents following the termination of the preliminary investigation or the discontinuation of the criminal proceedings.

34. Chapter LII of the CCrP lays down the procedure by which parties to criminal proceedings may challenge the actions or decisions of prosecuting authorities before a court. In particular, Article 449.3.5 provides that a victim or counsel may challenge within the criminal proceedings the actions or decisions of prosecuting authorities concerning a refusal to institute criminal proceedings, or the suspension or termination of criminal proceedings. The judge examining the lawfulness of the prosecuting authorities’ actions or

decisions may quash them if he or she finds them to be unlawful (Article 451). The judge's decision may be challenged in an appellate court, in accordance with the procedure set out in Articles 452 and 453 of the CCrP.

III. RELEVANT INTERNATIONAL DOCUMENTS

35. The relevant part of the Code of Conduct for Law Enforcement Officials (adopted by United Nations General Assembly Resolution 34/169 of 17 November 1979) provides:

Article 3

“Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”

36. The relevant parts of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990) read:

“9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

37. Relying on Articles 2 and 13 of the Convention, the applicant complained that her brother had been deliberately killed by State agents and that the domestic authorities had failed to conduct an effective investigation into the circumstances surrounding his death. The Court considers that the present complaint falls to be examined solely under Article 2 of the Convention (see *Kalkan v. Turkey*, no. 37158/09, § 45, 10 May 2016; *Mustafayev v. Azerbaijan*, no. 47095/09, § 42, 4 May 2017; and *Yukhymovych v. Ukraine*, no. 11464/12, § 54, 17 December 2020). Article 2 provides as follows:

“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

38. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of her grievances because she had failed to bring the complaints made to the Court before the domestic authorities. In particular, according to the Government, the applicant’s appeal of 25 July 2019, lodged against the Binagadi District Court’s decision of 9 July 2019, had been only one and a half pages long and had not raised any specific complaints or arguments in respect of the alleged violations, but had merely stated in a general manner that the first-instance court had not properly examined her complaints.

39. The applicant maintained her complaints.

2. The Court’s assessment

40. The Court observes at the outset that the applicant duly challenged in the domestic courts the prosecuting authorities’ decision of 24 October 2018 concerning the refusal to institute criminal proceedings in connection with her brother’s death, and the Baku Court of Appeal’s decision of 5 August 2019 constitutes the final domestic decision which was not subject to further appeal under domestic law.

41. As regards the Government’s particular objection concerning the content of the applicant’s appeal of 25 July 2019, lodged against the Binagadi District Court’s decision dated 9 July 2019, the Court notes that the applicant clearly complained in her appeal dated 25 July 2019, albeit briefly, that the first-instance court had failed to examine the complaints that she had raised before the Binagadi District Court (see paragraph 23 above). Accordingly, the applicant raised the complaints subsequently made to the Court in the domestic courts.

42. The Court therefore finds that the applicant’s complaints cannot be rejected for non-exhaustion of domestic remedies. It considers that the complaints are neither manifestly ill-founded nor inadmissible on any other

grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The applicant maintained her complaint, submitting that her brother had been deliberately killed by agents of the SSS and that the domestic authorities had failed to conduct an effective investigation into the circumstances surrounding his death. Relying on the statements made by X.X., V.B. and I.X. during the investigation, she argued that the use of force had not been absolutely necessary for A.B.'s arrest since he had not shown armed resistance during his arrest. She noted that the investigator had not carried out any assessment in that regard and had failed to question the agents of the SSS participating in the operation. The applicant also drew attention to E.S.'s statement, which had clearly contradicted those made by X.X., V.B. and I.X., and there had been no attempt during the investigation to clarify that contradiction.

44. The applicant argued that the agents of the SSS had had an opportunity to arrest A.B. before he had entered the motel. She also alleged that the fact that the pistol had remained in A.B.'s hand when he had fallen to the floor was suspicious. In that connection, she pointed out that A.B. had been left-handed and that other people had also been killed during that period in the same manner by the security forces in Azerbaijan.

45. The Government contested the applicant's submissions. They submitted that the operation in question had been planned and carried out by the SSS with the sole aim of arresting A.B., who had been charged with numerous serious criminal offences and had been declared a wanted person. When the agents of the SSS had tried to arrest him, they had found themselves confronted by an armed man, who had fired at them. The intention of the agents of the SSS had been to protect themselves and to neutralise the imminent danger to their lives posed by A.B. They had acted in the honest belief that their own lives and physical integrity had been in danger because of the armed resistance to which they had been subjected. They had accordingly been entitled to use appropriate means to defend themselves.

46. The Government disputed the applicant's submissions concerning the possibility of arresting A.B. before he had gone to the motel, asserting that this was mere speculation. In the Government's view, the applicant's submission that A.B. had been left-handed was not supported by any evidence and the fact that the pistol had remained in A.B.'s hand when he had fallen to the floor was not suspicious. Furthermore, they submitted that the fact that certain other individuals had been killed as a result of offering armed resistance was irrelevant to the facts of the present case and did not prove the applicant's allegations.

47. Lastly, the Government submitted that the investigation had been effective and had complied with the procedural guarantees provided for by Article 2 of the Convention.

2. *The Court's assessment*

(a) **General principles**

48. The Court reiterates that the text of Article 2 of the Convention, read as a whole, demonstrates that it covers not only intentional killing but also situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The deliberate or intended use of lethal force is only one factor, however, to be taken into account in assessing its necessity. Any use of force must be no more than “absolutely necessary” for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c) of the second paragraph of Article 2. This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is “necessary in a democratic society” under paragraphs 2 of Articles 8 to 11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the permitted aims (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 148-49, Series A no. 324; *Wasilewska and Kałucka v. Poland*, nos. 28975/04 and 33406/04, § 42, 23 February 2010; and *Pârvu v. Romania*, no. 13326/18, § 72, 30 August 2022).

49. The use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, §§ 247-48, 30 March 2016, and *Ayvazyan v. Armenia*, no. 56717/08, § 74, 1 June 2017). To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others (see *Makaratzis v. Greece* [GC], no. 50385/99, § 66, ECHR 2004-XI, and *McCann and Others*, cited above, § 200).

50. The Court also reiterates that when it comes to the use of potentially lethal force by State agents, it is incumbent on the State to provide a plausible explanation of the events leading to an individual's death, in order to demonstrate that the force used by members of the security forces was justified, that it did not go beyond what was absolutely necessary, and that it was strictly proportionate to the achievement of one or more of the purposes specified in Article 2 § 2 of the Convention (see, among many other authorities, *Cangöz and Others v. Turkey*, no. 7469/06, § 106, 26 April 2016; *Mihdi Perinçek v. Turkey*, no. 54915/09, § 60, 29 May 2018; *Yukhymovych*,

cited above, § 75; *Pârvu*, cited above, § 72; and *Yengibaryan and Simonyan v. Armenia*, no. 2186/12, § 117, 20 June 2023).

51. In assessing evidence, the Court applies the standard of proof “beyond reasonable doubt”. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In all cases where the Court is unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence that can refute the applicant’s allegations. If the Government fail to do so, the Court may then draw strong inferences (see *Yukhymovych*, § 74, and *Yengibaryan and Simonyan*, §§ 117 and 119, both cited above).

52. The Court would also reiterate that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State’s general duty under Article 1 to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, 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 (see *McCann and Others*, cited above, §§ 161-63). In order to be “effective”, as this expression is to be understood in the context of Article 2 of the Convention, an investigation must be adequate. That is to say, it must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible. This is an obligation not of result, but of means. The authorities must take the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death, or identify the person or people responsible, will risk falling foul of this standard. Whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention (see, for example, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, §§ 172-74, 14 April 2015).

(b) Application of the general principles to the present case

53. The Court observes at the outset that it is undisputed by the parties that the death of the applicant’s brother resulted from the use of lethal force by the agents of the SSS. The matters in dispute are whether the use of force against him was justified in the circumstances of the case and whether the investigation into his killing was effective. Accordingly, the Government bear the burden of proving that the force used by the agents of the SSS was no more than absolutely necessary and was strictly proportionate to the achievement of the aims set out in the sub-paragraphs of Article 2 § 2 of the Convention (see the case-law cited in paragraph 50 above). In that connection, the Court considers it necessary to first address the procedural aspect of the complaint under Article 2 because the question whether the

investigation was capable of leading to the establishment of the facts, and to a determination that the force used was or was not justified in the circumstances, is relevant to the Court's assessment as to whether the Government have satisfactorily discharged their burden to justify the killing of the applicant's brother (see *Bişar Ayhan and Others v. Turkey*, nos. 42329/11 and 47319/11, § 51, 18 May 2021, and *Yengibaryan and Simonyan*, cited above, § 121).

(i) *Procedural limb*

54. The Court notes that a criminal inquiry was launched by the domestic authorities immediately after the death of the applicant's brother, and on 24 October 2018 the Binagadi District Prosecutor's Office declined to institute criminal proceedings in connection with his death.

55. However, the Court observes numerous serious shortcomings in the criminal investigation carried out by the domestic authorities.

56. Firstly, the prosecuting authorities failed to take all the reasonable steps available to them to secure the evidence concerning the death of the applicant's brother. In particular, it does not appear from the documents in the case file that during the investigation the pistol and the silencer which were allegedly found at the scene of the crime, in A.B.'s right hand and under his right foot respectively, were examined with a view to establishing whether they had his fingerprints on them. However, in the Court's view, a search for fingerprints on the pistol and the silencer should have been the logical starting-point for the investigation, given that it reached the conclusion that A.B. had resisted by using a weapon when the agents of the SSS had tried to arrest him (compare *Cangöz and Others*, § 135, and *Mihdi Perinçek*, § 69, both cited above).

57. Secondly, it does not appear from the documents in the case file that the weapons which were used by the agents of the SSS in the killing of the applicant's brother were subjected to any forensic examination in the course of the investigation. The forensic examination of those weapons could have led to the identification of the person or people responsible for A.B.'s death among the agents of the SSS who had participated in the operation. However, in the instant case no attempt to identify the person or people who had fired the fatal shots was made during the investigation and no explanation was provided for that failure.

58. Thirdly, the investigation failed to question any of the agents of the SSS who had participated in the operation during which A.B. had been killed. The Court notes that it has already found that the failure to promptly question the members of the security forces involved in a shooting constitutes not only a significant shortcoming in the adequacy of the investigation (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 330, ECHR 2007-II, and *Jaloud v. the Netherlands* [GC], no. 47708/08, §§ 207-08, ECHR 2014), but

also has negative repercussions on the establishment of the truth (see *Cangöz and Others*, § 128, and *Mihdi Perinçek*, § 73, both cited above).

59. The Court has also held that the failure to question members of the security forces in a timely manner may create an appearance of collusion between the judicial authorities and the police, and is also conducive to leading the relatives of the deceased – as well as the public in general – to form the opinion that members of the security forces operate in a vacuum in which they are not accountable to the judicial authorities for their actions (see *Bektaş and Özalp v. Turkey*, no. 10036/03, § 65, 20 April 2010; *Altın and Kılıç v. Turkey*, no. 15225/08, § 53, 6 September 2016; and *Machalikashvili and Others v. Georgia*, no. 32245/19, § 92, 19 January 2023).

60. In the present case, the failure to question the members of the security forces is a matter of particular concern, because the agents of the SSS involved in A.B.'s killing were not questioned at all in the course of the investigation concerning his death (compare *Ayvazyan*, cited above, § 81), and the domestic authorities failed to provide any explanation for such a serious omission. Moreover, the questioning of the agents of the SSS was all the more important in the instant case in the light of further developments within the framework of criminal case no. 180556037. In that connection, the Court cannot overlook the fact that when one of the agents of the SSS was subsequently questioned as a witness in criminal case no. 180556037, he presented his version of events, which was in direct contradiction with the statements made by X.X., V.B. and I.X. during the investigation (see paragraphs 14-16 and 25 above).

61. Fourthly, the investigation failed to carry out any assessment as regards the results of the post-mortem examination of A.B.'s body. In particular, although report no. 114 concluded that A.B. had been in a vertical position when he had sustained the gunshot wound to the right part of his body next to the costal margin, but had been in a horizontal position when he had sustained the remaining gunshot wounds, including those causing his death (see paragraph 13 above), the investigator did not address those findings and did not provide any explanation in that regard. The investigator also did not address the report's conclusions that A.B. had sustained the gunshot wound to the left part of his ribcage a short time after his death.

62. Fifthly, the Court is struck by the failure of the investigating authorities to address the crucial points for establishing the exact circumstances of A.B.'s killing. In particular, the investigator concluded that there had been no criminal element in the actions of the agents of the SSS because a pistol from which one cartridge had been fired had been found in A.B.'s right hand, thus proving that he had offered armed resistance (see paragraph 20 above). However, the investigator's decision did not provide any information as to who had fired first and whether the force used by the agents of the SSS had been proportionate. The investigator's conclusion also contradicted the statement of V.B., who did not refer to any armed resistance

by A.B. and stated that when three agents of the SSS had entered the room, A.B. had been in his bed (see paragraph 15 above). Furthermore, the investigator did not explore why the agents of the SSS had not arrested A.B. immediately after they entered the room, instead of taking V.B. out of the room.

63. In that connection, the Court notes that there is nothing in the investigator's decision allowing it to ascertain how the prosecuting authorities reached their conclusion. The prosecuting authorities did no more than describe various facts and the evidence collected, offering no explanation as to how those supported the decision of 24 October 2018.

64. Lastly, the Court is concerned that the domestic courts dismissed the applicant's complaint against the prosecuting authorities' decision of 24 October 2018, without making any attempts to address any of the failures in the investigation highlighted by the applicant in her complaint (see paragraphs 21-24 above).

65. In the light of the foregoing considerations the Court cannot but conclude that the domestic authorities failed to carry out an effective investigation into the circumstances surrounding the killing of the applicant's brother. It accordingly holds that there has been a violation of Article 2 of the Convention under its procedural limb.

(ii) *Substantive limb*

66. The Court reiterates that in the case of the use of lethal force by State agents, it is for the Government to provide a plausible explanation of the events leading to the death of a person and to prove that the force used by members of the security forces was justified, that it did not go beyond what was absolutely necessary, and that it was strictly proportionate to the achievement of one or more of the purposes specified in Article 2 § 2 of the Convention (see paragraph 50 above).

67. In the light of its above findings (see paragraphs 53-64 above), the Court finds that the investigation conducted at the domestic level was so manifestly inadequate and left so many obvious questions unanswered that it is not capable of establishing the true facts surrounding the killing and the Court is unable to rely on the conclusion reached at the end of that investigation (see *Gülbahar Özer and Others v. Turkey*, no. 44125/06, § 74, 2 July 2013; *Cangöz and Others*, cited above, § 138; *Mihdi Perinçek*, cited above, § 80; and *Yengibaryan and Simonyan*, cited above, § 137).

68. In these circumstances, the Court considers that the Government have failed to discharge the burden of proof incumbent on them to show beyond reasonable doubt that the killing of the applicant's brother resulted from a use of force that was no more than absolutely necessary to achieve one of the aims set out in Article 2 § 2 of the Convention (see *Cangöz and Others*, § 138; *Mihdi Perinçek*, § 80; *Bişar Ayhan and Others*, § 74; and *Yengibaryan and Simonyan*, § 138, all cited above).

69. There has accordingly been a violation of the substantive limb of Article 2 of the Convention in the present case.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

72. The Government contested the amount claimed as unsubstantiated and excessive.

73. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations, and that an award should therefore be made on that account. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 30,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

74. The applicant claimed EUR 4,500 for legal services incurred in the proceedings before the Court and the domestic courts. She submitted a contract entered into with her representative in support of her claim and asked that the award in respect of costs and expenses be paid directly into her representative's bank account.

75. The Government contested the applicant's claims, maintaining that they were unsubstantiated and excessive. They also submitted that the work carried out by the applicant's representative did not correspond to the amount claimed.

76. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the documents in its possession and the amount of work carried out by the applicant's representative, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads, plus any tax that may be chargeable to the applicant, to be paid directly into the bank account of the applicant's representative.

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 under its procedural limb;
3. *Holds* that there has been a violation of Article 2 of the Convention under its substantive limb;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account of the applicant's representative;
 - (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 10 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Ivana Jelić
President