



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

FIRST SECTION

CASE OF LEONIDIS v. GREECE

(Application no. 43326/05)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Leonidis v. Greece,

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

Nina Vajić, *President*,
Christos Rozakis,
Khanlar Hajiyeu,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 43326/05) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Greek national, Mr Grigorios Leonidis (“the applicant”), on 23 November 2005.

2. The applicant was represented by the Greek Helsinki Monitor. The Greek Government (“the Government”) were represented by their Agent’s delegates, Mr K. Georgiadis, Adviser at the State Legal Council, and Mr I. Bakopoulos, Legal Assistant at the State Legal Council.

3. The applicant contended that his son had been killed in circumstances in which resort to lethal force was not justified. He also complained that the authorities had failed to carry out an adequate, effective and prompt investigation into the incident.

4. On 14 September 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant, Mr Grigorios Leonidis, is a Greek national of Russian-Pontic origin who was born in 1952 and lives in Thessaloniki.

A. Circumstances surrounding the death of Nikolaos Leonidis as established by the domestic courts

6. In the early hours of 25 March 2000 the applicant's 18 year-old son, Nikolaos Leonidis, and two of his friends were in a district of the old town of Thessaloniki.

7. Plainclothes police officers G.A. and C.T., serving in the Ano Poli police station, were out on patrol duty in an unmarked police vehicle when they noticed the three young men on the street. The three men were not committing any offence, but G.A. noticed in his car mirror that one of them turned to look at the police car as it passed. Since several burglaries had been recently reported in that area, he decided to carry out an identity check. However, as he drove back towards them, the three men ran away.

8. The two police officers got out of the car and ran after them. The chase apparently continued for a minute. The three young men split up and ran off in different directions.

9. G.A. ran after Nikolaos Leonidis. As he approached him, Nikolaos Leonidis put his hand inside his jacket. Suspecting that the latter might take out a weapon, G.A. pulled out his own service revolver, a 357 magnum Smith and Wesson, which had no safety catch and was loaded. Holding the revolver in his right hand, with his finger on the trigger, he ordered Nikolaos Leonidis to stop. After running a few metres, Nikolaos Leonidis tired of the chase, lost his balance and tripped. That allowed G.A. to catch hold of him with his left hand. G.A. then pushed him against a car and immobilised him by forcing him to raise his hands and place them on the car roof while he was pointing his gun towards the sky.

10. Then, with his left hand G.A. twisted the young man's left wrist behind his back in order to handcuff him. At that point Nikolaos Leonidis jabbed him with his right elbow in the right side, causing him sharp pain. Reacting to the pain, G.A. bent forward, and while he was drawing himself back up, his revolver went off, firing a single shot in the lower part of Nikolaos Leonidis' right ear, instantly killing him.

11. C.T., who had in the meantime arrived close to the two men, was five metres away from the scene and partially witnessed the incident. From where he was standing, he was not able to see the shooting.

B. Criminal investigation into the killing

12. A few hours after the fatal shot police officers from the Ano Poli police station conducted a preliminary inquiry (*προανάκριση*) into the event. The police officers inspected the area and drafted an inspection report as well as a sketch plan. In addition, they took a statement from C.T. A few hours later, a crime scene reconstruction was conducted in the presence of the Public Prosecutor and a report was drawn up in this respect.

13. On the same day a forensic *post-mortem* examination was performed by a forensic medicine expert from the University of Thessaloniki. The

doctor indicated that the cause of death was a fracture of the cranium due to a gunshot wound and that the shot had been fired either at point-blank range or from a few centimetres distance. According to the report, the exact range was to be established after further examination in the criminal police laboratory.

14. The forensic medicine expert also examined G.A. According to the report, G.A. was diagnosed with “a contusion in the right hemithorax”.

15. On the same day, at around 1 p.m., the applicant was informed of the incident.

16. The following day, the Public Prosecutor of Thessaloniki instituted criminal proceedings against G.A. for wilful homicide, exceeding the limits of self-defence and unauthorised use of weapons. The applicant joined the proceedings as a civil party, claiming a specific amount by way of damages.

17. On the same day G.A. gave his statement before the investigating judge and he was set free after he had given a bank guarantee of EUR 1,467.

18. On 5 April 2000 the applicant gave a statement and asked the investigating judge to examine in detail the amount of pressure that needs to be put on the trigger in order to release the hammer and fire the gun as well as whether the use of the gun had been absolutely necessary after the victim’s arrest.

19. On 24 May 2000 the criminal police laboratory published the report on the range at which the bullet had been fired. According to the two experts, the sample of skin taken from the victim was too small to establish the exact range.

20. On 19 June 2000 the ballistic examination of the weapon was conducted. The report indicated that only one cartridge had been fired from G.A.’s weapon.

C. Criminal proceedings against police officer G.A.

21. Following the preliminary inquiry the case was referred to the Indictment Division of the Thessaloniki Criminal Court of First Instance, which on 29 March 2001 decided not to press charges against G.A., considering that Nikolaos Leonidis’ death had resulted from his sudden and violent assault on G.A. and the accidental discharge of the latter’s revolver that was its consequence (decision no. 513/2001).

22. On 3 April 2001 the applicant lodged an appeal. On 18 June 2001 the Indictment Division of the Thessaloniki Court of Appeal confirmed the dismissal of charges against G.A. (decision no. 895/2001). It stated, *inter alia*, that:

“The blow surprised the defendant, his body first bent forward and then backwards to the left, because of the pain and the surprise he felt, and his weapon, which was a revolver and did not have a safety catch, went off.

(...) [Nikolaos Leonidis’s death] was not the result of the defendant’s reckless behaviour, but of the victim’s violent and sudden assault and the discharge of the latter’s revolver that was its consequence. There is nothing to show that [G.A.], given

the circumstances and his knowledge and abilities, could have foreseen and avoided the death of the victim.”

23. On 9 July 2001 the applicant appealed to the Court of Cassation.

24. On 11 April 2003 the Court of Cassation overturned the decision appealed against and remitted the case to the Indictment Division of the Thessaloniki Court of Appeal for reconsideration (decision no. 1013/2003). It held that the reasoning given in the decision appealed against was ambiguous, contradictory and insufficient. In particular, it did not indicate how the trigger had been squeezed, although it implied that the discharge was connected to the victim’s violent movement. Furthermore, it did not make references to the forensic ballistics report.

25. On 20 June 2003 the Indictment Division of the Thessaloniki Court of Appeal overturned the dismissal of charges and committed the defendant for trial before the Katerini Assize Court. It stated, *inter alia*, that the victim had already been immobilised at the time he was shot and did not pose a threat to the defendant (decision no. 872/2003).

26. On 28 August 2003 the defendant appealed to the Court of Cassation.

27. On 23 December 2004 the Court of Cassation dismissed the defendant’s appeal (decision no. 2396/2004).

28. On 21 June 2005 the hearing before the Katerini Assize Court took place. The Katerini Assize Court heard evidence from the applicant, two other relatives of the victim, police officer C.T. and two other police officers, as well as from the defendant.

29. The Katerini Assize Court also heard statements from two experts the defendant had asked to be called. The first expert, a forensic medicine expert, who had read the *post mortem* examination, reached a conclusion supporting the defendant’s view. The second expert was a mathematician who put forward a theory on the trajectory of the bullet in support of the defendant’s view. The court also read out various documents, such as the results of the *post mortem* examination of the deceased, forensic medical reports, autopsy reports, photos and the crime scene reconstruction report.

30. On the same day the Katerini Assize Court published its judgment acquitting the defendant by four votes to three (judgment no. 47/2005). On the basis of the case-file and the evidence submitted the majority held in particular that:

“... the violent blow surprised the defendant, who felt pain and bent forward and then backwards to the left and his muscles were “contracted” because of the pain that the violent and unexpected hit had caused him (...),

... because of his reflex action the defendant involuntarily squeezed the trigger of his revolver, which was not equipped with a safety catch, and a bullet was fired (...)

... It is apparent that the defendant had not intended to kill the victim, as charged, since: 1) the gun went off against his will and it was the result of the involuntary reflex action of the muscles of his right arm as a response to the sudden and intense blow that he had received from the victim; 2) he did not know the victim and he had

no reason to hurt him, let alone to kill him; 3) if he had really wanted to kill Nikolaos Leonidis ..., he would have shot him during the chase and before his arrest; in any event there was no longer any reason to shoot him since he had already immobilised and arrested him ...; 4) only one bullet was fired from the gun ...; 5) from the trajectory of the bullet [according to the report of the mathematical expert], it appears that the hand that had fired the gun had not been steady ...; furthermore, it does not appear from the evidence that the defendant shot the victim in cold blood ... or that he acted in self-defence, since no attack was launched by the victim, who had already been immobilised ...”

31. Furthermore, the Katerini Assize Court examined the facts complained of under the provisions concerning reckless homicide. It concluded that:

“... on the night of 25 March 2000 [G.A.] carried out his duties in the most impeccable way possible. He pursued the deceased with professional consciousness, he did not fire his gun during the pursuit, although another in his place might have done so, and, most importantly, he arrested and immobilised the deceased holding his revolver in his right arm and pointing it to the sky, in order to avoid accidents... What followed, i.e. the death of Nikolaos Leonidis, was not the result of an intentional act of the defendant or the latter’s reckless behaviour, but of the victim’s violent and sudden assault that caused the reflex action of the defendant ... and the discharge of the revolver that the latter was holding in his right hand. The reflex action of the defendant was an instantaneous reaction of the nervous system, an automatic contraction of the body muscles (including those of the right arm) out of the defendant’s control, as a response to the pain suffered from the violent and sudden blow; since this contraction was not a voluntary action, it cannot be considered an *actus reus* and hence he [the defendant] cannot be considered criminally liable...”

32. The Katerini Assize Court reached the same conclusion as far as the charge of unauthorised use of weapons was concerned. In particular, it held:

“Consequently, since neither the death of the victim nor the use of the defendant’s gun can be considered as “acts” in the legal sense of the term, the objective element of the crimes that the defendant is being accused of has not been established and he should be declared innocent.”

33. Two of the minority judges, including the President of the Katerini Assize Court, considered that the defendant should have been declared guilty of reckless homicide and unauthorised use of weapons. They based their reasoning on the way revolvers function:

“... There is a slight time delay of 1 to 1.5 seconds between the moment the trigger is pulled and the moment the gun fires. This is the time the hammer needs to be cocked and released; the time the hammer needs to be cocked corresponds to the time the cylinder needs to rotate clockwise. When the hammer has already been cocked, it needs less pressure on the trigger to release the hammer and fire the gun. On the contrary, when the gun is in a hammer-down position, it needs more pressure on the trigger and more time to fire the gun, since in this case, the trigger first cocks the hammer (thus advancing the cylinder) and then releases the hammer at the rear of its travel, firing the round in the chamber. In the present case, it appears from the testimonies ... that ... with his left hand [G.A.] twisted the young man’s left wrist behind his back in order to handcuff him, while with his right hand he was holding the revolver, obviously with the hammer cocked, pressing against the victim’s right scapula. ... [Leonidis’s death] resulted from the defendant’s negligent conduct, since: 1) he should not have cocked the hammer of his gun, since in that case the trigger needs less pressure to fire the gun; 2) he should not have had his finger on the trigger

but on its protective frame; 3) he should not have been pressing the gun against the victim's scapula while he had his finger on the trigger and the hammer cocked. If the gun had been in a hammer-down position, even if the defendant had had his finger on the trigger, it would have been more difficult for the gun to go off, since it required more pressure on the trigger. ... the defendant had no intention to kill the victim ... he should have been declared guilty of reckless homicide and unauthorised use of weapons."

34. On 7 November 2005 the applicant, who did not have the right to appeal in cassation under domestic law, asked the Public Prosecutor to bring the case before the Court of Cassation. On 14 November 2005 the Prosecutor dismissed his request.

D. Administrative investigation into the incident

35. Shortly after the shooting, G.A. was declared free of duty for two days and he was later granted sick leave for a total period of 52 days. On 17 May 2000 he resumed his duties in Ano Poli. On 3 July 2000 he was transferred to an administrative post in the Thessaloniki General Police Directorate.

36. In the meantime, on 27 March 2000, two days after the fatal incident, the Thessaloniki police headquarters launched a Sworn Administrative Inquiry (*Ενορκή Διοικητική Εξέταση*, – SAI) in order to ascertain the exact circumstances in which Nikolaos Leonidis's death had occurred and whether police officer G.A. was guilty of any disciplinary offence. That investigation was assigned to an officer of the police department dealing with administrative investigations.

37. On 3 April 2001 the report on the findings of the SAI was issued. According to the report, the death of Nikolaos Leonidis was not the result of the police officer's reckless behaviour, but of the victim's violent and sudden assault and the discharge of the latter's revolver that was its consequence. The report concluded that, given the circumstances of the case, it was advisable not to institute disciplinary proceedings against G.A. In accordance with this recommendation, no disciplinary proceedings were instituted.

E. Civil proceedings before the administrative courts

38. In the meantime, while the case was pending before the penal courts, on 29 November 2002 the applicant brought an action against the State under section 105 of the Law introducing the Civil Code seeking compensation for damage sustained as a result of an unlawful act by a public authority, namely, his son's killing by police officer G.A.

39. On 31 January 2005, approximately five months prior to G.A.'s acquittal by the Katerini Assize Court, the Thessaloniki Administrative Court of First Instance allowed the applicant's claims in part (judgment no. 148/2005). It held *inter alia*:

“... The grounds set forth in Article 133 of Presidential Decree no. 141/1991, which authorises the use of firearms, do not apply under the circumstances of the present case, since [G.A.] had not been attacked by the victim ... nor was he acting in self-defence... The use of the firearm by the police officer in order to arrest the deceased was unlawful and resulted in the young man’s death. ... The police officer’s outline of events, according to which the firing was provoked by a ‘reflex action’ following the blow he had received from the victim – in the sense that he involuntarily pulled the trigger – cannot be accepted, because it is in contradiction with his own statement concerning an ‘unconscious instinctive reaction caused by the violent blow he had received’. In fact, that means that pulling the trigger was an instinctive reaction to the victim’s behaviour, which implies that [G.A.] acted without using his reason and without showing the prudence and discipline expected from a police officer with ten years of experience. ... thus, police officer G.A is 70 % responsible for Nikolaos Leonidis’s death since he used his firearm in violation of the applicable law...”

40. On 15 April 2005 the State appealed to the Thessaloniki Administrative Court of Appeal challenging the implementation of the substantive law and the assessment of the evidence. It referred subsequently, in a separate memorandum, that G.A. had been acquitted by the Katerini Assize Court on 21 June 2005.

41. On 19 May 2007 the Thessaloniki Administrative Court of Appeal rejected the appeal and awarded the applicant EUR 80,000 EUR for non-pecuniary damage (judgment no. 432/2007), considering *inter alia*:

“Even supposing that the use of the firearm by the police officer in order to arrest the deceased was not in breach of a specific provision, nevertheless it constituted unlawful conduct, since he failed to take those steps that are appropriate to his duties, that result from the relevant legislation, from common sense, from his scientific and professional education and experience and from the notion of good faith and aim at the protection of individual freedoms, namely the right to life and limb. Consequently, the appellant is responsible...”

II. RELEVANT DOMESTIC LAW AND PRACTICE

42. At the material time, the use of firearms by law-enforcement officials was regulated by Law no. 29/1943, which was enacted on 30 April 1943 when Greece was under German occupation. Section 1 of that statute listed a wide range of situations in which a police officer could use firearms (for example in order “to enforce the laws, decrees and decisions of the relevant authorities or to disperse public gatherings or suppress mutinies”), without being liable for the consequences. These provisions were modified by Article 133 of Presidential Decree no. 141/1991, which authorises the use of firearms in the situations set forth in Law no. 29/1943 “only when absolutely necessary and when all less extreme methods have been exhausted”. Law no. 29/1943 was criticised as “defective” and “vague” by the Public Prosecutor of the Supreme Court (see Opinion no. 12/1992). Senior Greek police officers and trade unions have called for this legislation to be updated. In a letter to the Minister of Public Order dated April 2001, the National Commission for Human Rights (NCHR), an advisory body to the government, expressed the view that new legislation which would

incorporate relevant international human rights law and guidelines was imperative (NCHR, 2001 Report, pp. 107-15). In February 2002 the Minister of Public Order announced that a new law would shortly be enacted, which would “safeguard citizens against the reckless use of police weapons, but also safeguard police officers who will be better informed as to when they can use them”.

43. On 24 July 2003 Law no. 3169/2003, which is entitled “Carrying and use of firearms by police officers, training of police officers in the use of firearms and other provisions”, came into force. Law no. 29/1943 was repealed (section 8). Further, in April 2004, the “Pocket Book on Human Rights for the Police”, which was prepared by the United Nations Centre for Human Rights, was translated into Greek with a view to its being distributed to Greek policemen.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 2 AND 6 OF THE CONVENTION

44. Relying on Articles 2 and 6 of the Convention, the applicant alleged that the police officer seeking to arrest his son had used excessive firepower which resulted in his death and complained that no effective inquiry had been conducted into the event that could lead to the punishment of the perpetrator.

45. The Court considers that the aforementioned complaints, as formulated by the applicant, only fall under the scope of Article 2 of the Convention and therefore should be examined from the standpoint of this provision, which reads 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

46. The Court notes that the applicant brought civil proceedings against the State in respect of his son's killing by police officer G.A and was successful in these proceedings, being awarded and receiving compensation for the non-pecuniary damage he had sustained in that respect (see paragraphs 38-41 above). However, the Court recalls that in cases of wilful ill-treatment or unlawful use of force resulting in death, the Court considers that the breach of Article 2 cannot be remedied exclusively through an award of compensation to the relatives of the victim. As it was pointed out in the *Nikolova and Velichkova* case, this is so because, if the authorities could confine their reaction to incidents of wilful police ill-treatment to the mere payment of compensation, while not doing enough in the prosecution and punishment of those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity and the general legal prohibitions of killing and torture and inhuman and degrading treatment, despite their fundamental importance, would be ineffective in practice. (see, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 55, 20 December 2007).

47. Therefore, the possibility of seeking and receiving compensation represents, in these cases, only one part of the measures necessary to provide redress for the alleged violations. The Court must, then, also examine the effectiveness of the criminal proceedings against the police officer in order to ascertain whether the applicant was afforded appropriate redress (*Nikolova and Velichkova*, cited above, § 56).

48. In these circumstances, the Court considers that the applicant may still claim to be a victim within the meaning of Article 34 of the Convention (see, *mutatis mutandis*, *Krastanov v. Bulgaria*, no. 50222/99, § 48, 30 September 2004).

49. Furthermore, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds.

B. Merits

1. The submissions of the parties

50. The applicant submitted that his son's death was the result of the unnecessary and disproportionate use of force by the police officer involved in the incident. Relying on previous case-law (*Makaratzis v. Greece*, *Celniku v. Greece*, and *Karagiannopoulos v. Greece*) he complained that the legislation on the use of weapons by agents of the State was obsolete and inadequate. The applicant also complained about the failure of investigating and prosecuting authorities to proceed with a prompt, independent, comprehensive and effective official investigation into his son's death.

51. The Government pointed out that, as it had been established by the domestic courts, police officer G.A. was trying to carry out a lawful arrest and did not deliberately shoot the applicant's son. The latter's unfortunate death had been the result of his own violent and sudden assault on the police officer that had caused the discharge of the revolver. According to the Government, G.A. had tried to minimise any risk and preserve the applicant's son's life. That was clearly demonstrated by the fact that the police officer was pointing his gun towards the sky. There had been no element of negligence or oversight in the way in which the operation was conducted.

52. The Government claimed that immediately after the incident a preliminary investigation had been launched and charges mandatorily brought against G.A. According to the Government, the investigation had been prompt and effective. In particular, the authorities had showed initiative and had produced medical, forensic and ballistic reports within a short period of time. In addition, the administrative inquiry into the incident had been independent, since it had been assigned to an officer of the police department dealing with administrative investigations. It concluded that both inquiries took into account the different elements produced and satisfied the requirements of Article 2 of the Convention.

2. The Court's assessment

a. Whether the death of the applicant's son amounted to a breach of the substantive requirements of Article 2 of the Convention

i. General principles

53. The Court reiterates that Article 2, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention and enshrines one of the basic values of the democratic societies making up the Council of Europe. The Court must subject allegations of breach of this provision to the most careful scrutiny. In cases concerning the use of force by State agents, it must take into consideration not only the actions of the agents of the State who actually administered the force but also all the surrounding circumstances including such matters as the relevant legal or regulatory framework in place and the planning and control of the actions under examination (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324; *Makaratzis v. Greece* [GC], no. 50385/99, §§ 57-59, ECHR 2004-XI; and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 93, ECHR 2005-VII).

54. As the text of Article 2 § 2 itself shows, the use of lethal force by State security forces may be justified in certain circumstances. However, any use of force must be no more than "absolutely necessary", that is to say it must be strictly proportionate in the circumstances. In view of the fundamental nature of the right to life, the circumstances in which deprivation of life may be justified must be strictly construed (see

Andronicou and Constantinou v. Cyprus, 9 October 1997, §§ 171, 181, 186, 192, and 193, *Reports* 1997-VI and *McKerr v. the United Kingdom*, no. 28883/95, §§ 108 et seq., ECHR 2001-III).

55. Accordingly, the legitimate aim of effecting a lawful arrest can only justify putting human life at risk in circumstances of absolute necessity. The Court considers that in principle there can be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if refraining from using lethal force may result in the opportunity to arrest the fugitive being lost (see *Makaratzis*, cited above, §§ 64-66).

56. In addition to setting out the circumstances when deprivation of life may be justified, Article 2 implies a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which law-enforcement officials may use force and firearms, in the light of the relevant international standards (see *Celniku v. Greece*, no. 21449/04, § 47, 5 July 2007 and *Karagiannopoulos v. Greece*, no. 27850/03, §§ 53-54, 21 June 2007).

57. Furthermore, law-enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms not only on the basis of the letter of the relevant regulations but also with due regard to the pre-eminence of respect for human life as a fundamental value (see *McCann and Others*, cited above, pp. 61-62, §§ 211-214; and *Nachova and Others*, cited above, § 97).

ii. Application of the above principles to the present case

58. In the present case, the Court notes firstly that it is undisputed between the parties that Nikolaos Leonidis was killed in the course of a spontaneous police operation by police officer G.A. The Court observes that a judicial determination of the facts took place in the criminal proceedings brought against the police officer. Even though certain facts remain unclear, the Court considers, in the light of all the material produced before it, that there is a sufficient factual and evidentiary basis on which to assess the case, taking as a starting point the findings of the national courts (see *Makaratzis v. Greece* [GC], no. 50385/99, § 47, ECHR 2004-XI; and *Perk and Others v. Turkey*, no. 50739/99, § 57, 28 March 2006).

59. According to the findings of the domestic courts, the fatal shot was triggered not by any deliberate action on the part of police officer G.A. but by the sudden reaction of the victim. Though the Court is not bound by the findings of domestic courts, in normal circumstances cogent elements are required for it to depart from the findings of fact reached by those courts (see *Klaas*, cited above, p. 18, § 30). In the present case and in view of the material provided, the Court sees no reason to question the fact as established by the Greek courts. Therefore, the Court takes the view that Nikolaos Leonidis's death was not the result of a deliberate action.

60. Nevertheless, in the light of the foregoing, the Court will have to determine whether the way in which the police operation was conducted

showed that the police officer had taken appropriate care to ensure that any risk to the life of the applicant's son was kept to a minimum.

61. In carrying out its assessment of the planning and control phase of the operation from the standpoint of Article 2 of the Convention, the Court must have particular regard to the context in which the incident occurred as well as to the way in which the situation developed (see *Andronicou and Constantinou v. Cyprus*, cited above, § 182).

62. The Court finds it established that the operation in question was a spontaneous chase decided on the spot by the two police officers and it was mounted with the aim of carrying out an identity check on the applicant's son and his friends. The latter were neither committing any offence nor being violent nor aggressive. In the Court's view, the mere fact that the applicant's son ran away when the two policemen approached him does not imply that he did so because he had committed an illegal act. This is even more so in the present case where it might not have been initially obvious to him that the two men were policemen. In this connexion, the Court recalls that the two policemen were in plain clothes and were in an unmarked vehicle.

63. The Court does not find it necessary, however, to establish whether there was initially a need to pull out a weapon during the chase, since it cannot substitute its own assessment of the situation for that of an officer who was required to react in the heat of the moment to avert an honestly perceived danger to his life (see *Huohvanainen v. Finland*, no. 57389/00, § 97, 13 March 2007). However, the Court considers that after he had immobilised the applicant's son, police officer G.A. had no reason to keep hold of his weapon, especially with his finger on the trigger. In fact, in the Court's view, the police officer should have put his weapon in its holster before handcuffing Nikolaos Leonidis who was not holding a weapon and was not in any way threatening the police officer's life or limb.

64. In this respect, the Court attaches particular importance to the views expressed by the minority judges of the Katerini Assize Court as to the negligent use of the weapon according to which the gun should not have been cocked, since in that case it needs less pressure on the trigger to fire the gun. In addition, the Court finds no reason to question the findings of the administrative courts which examined the applicant's civil claims and concluded that the use of the firearm by the police officer in order to arrest the deceased had been unlawful and that he had not shown the prudence and discipline expected from a police officer of his experience.

65. The Court is also mindful of the fact that at the relevant time the use of weapons by agents of the State was governed by legislation which was recognised to be obsolete and inadequate in a modern democratic society. The Court recalls that it has already held that the system in operation did not provide those responsible for applying the laws with clear guidelines and criteria concerning the use of force in peacetime (see *Makaratzis*, cited above, § 62, *Celniku v. Greece*, cited above, § 51 and *Karagiannopoulos v. Greece*, cited above, § 63). The lack of clear rules might also explain why

G.A. acted rather irresponsibly, which he would probably not have done had he received the proper training.

66. In the light of the above, the Court considers that, as far as its obligation under the first sentence of Article 2 § 1 to avoid real and immediate risk to life in hot-pursuit police operations, the respondent State had not, at the relevant time, done all that could be reasonably expected of it (see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], cited above, § 71).

Accordingly, there has been a violation of Article 2.

b. Whether the investigation into the incident was adequate and effective, as required by Article 2 of the Convention

i. General principles

67. 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 of the Convention 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 *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Anguelova v. Bulgaria*, no. 38361/97, § 137, ECHR 2002-IV). Since the true circumstances of the death in such cases are often, in practice, largely confined within the knowledge of State officials or authorities, the bringing of appropriate domestic proceedings, such as a criminal prosecution, disciplinary proceedings and proceedings for the exercise of remedies available to victims and their families, will be conditioned by an adequate official investigation, which must be independent and impartial (see *Makaratzis*, cited above, § 73).

68. The investigation must be capable, firstly, of ascertaining the circumstances in which the incident took place and, secondly, of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. A requirement of promptness and reasonable expedition is implicit in this context. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness (see *Kelly and Others v. the United Kingdom*, no. 30054/96, §§ 96-97, 4 May 2001).

ii. Application of the above principles to the present case

69. In the present case the Court recalls that three separate sets of proceedings were conducted in order to establish the facts of the case, to

identify those responsible and, if appropriate, secure the punishment of those concerned. The criminal investigation was conducted immediately and in the presence of the Public Prosecutor. Statements were taken by the latter from G.A. and C.T. A forensic post mortem examination was performed as well as a medical examination of G.A. On the basis of these preliminary steps, the Public Prosecutor decided the following day to institute criminal proceedings against G.A. for, *inter alia*, wilful homicide. The ensuing investigation was carried out by an investigating judge. Laboratory and ballistics reports were obtained in May and June 2000.

70. Parallel to the above criminal investigation the Thessaloniki police headquarters launched, on 27 March 2000, a Sworn Administrative Inquiry and assigned the investigation to a police officer from a different department. A report was concluded on 3 April 2001.

71. The police officer G.A. was brought to trial before the Katerini Assize Court which eventually acquitted him on 21 June 2005, on the grounds that no criminal offence had been committed. The Court has found no evidence in the present case which would indicate that the Assize Court's findings were reached other than on the basis of the assessment of the evidence produced. Furthermore, nothing suggests that the acquittal was caused by an investigation or evidence which the domestic courts found to be incomplete for the assessment of G.A.'s criminal liability.

72. Civil proceedings were instituted by the applicant against the State. On the basis of the same investigative measures the State was held liable for the death of the applicant's son by final judgment of 19 May 2007 and ordered to pay damages. Neither in these proceedings were there reasons to consider that the findings were reached due to an incomplete investigation.

73. Having regard to the above the Court is satisfied that the investigations made were capable of ascertaining the circumstances of the case, to identify those responsible and to punish where appropriate. Furthermore, the Court has found no reason to conclude that the investigation made was not prompt or otherwise undermined the effectiveness of the proceedings.

74. Accordingly the Court finds that there has been no violation of Article 2 of the Convention in respect of the respondent State's obligation to conduct an effective investigation into the circumstances of the incident which led to the death of the applicant's son.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage.

77. The Government argued that the non-pecuniary damage suffered by the applicant for the loss of his son had been entirely covered since the Thessaloniki Administrative Court of Appeal had awarded the applicant EUR 80,000 for non-pecuniary damage.

78. Having regard to the above, the Court considers that the finding of a violation of the Convention constitutes, in itself, sufficient just satisfaction within the meaning of Article 41 of the Convention.

B. Costs and expenses

79. The applicant who declared that he was being represented by Greek Helsinki Monitor free of charge claimed EUR 4,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. In this connection he submitted a bill of costs drawn up by a lawyer cooperating with Greek Helsinki Monitor for an amount of EUR 4,000.

80. The Government contested the amount. It argued that the applicant had been represented before the domestic courts by another lawyer and that the amount claimed had not been paid by the applicant but by a non-profit organisation.

81. According to the Court's settled case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were also reasonable as to quantum (see, for example, *Sahin v. Germany* [GC], no. 30943/96, § 105, ECHR 2003-VIII).

82. In the present case, the Court notes that the applicant was represented free of charge by Greek Helsinki Monitor. Regard being had to this, the Court considers it reasonable to reject the applicant's claims under this head.

FOR THESE REASONS, THE COURT

1. *Declares* the application admissible unanimously;
2. *Holds* unanimously that there has been a violation of Article 2 of the Convention on account of shortcomings in the police operation in which the applicant's son died;
3. *Holds* by 6 votes to 1 that there has been no violation of Article 2 of the Convention in respect of the respondent State's obligation to conduct an effective investigation into the circumstances of the incident which led to the death of the applicant's son;
4. *Holds* by 6 votes to 1 that the finding of a violation constitutes in itself sufficient just satisfaction;
5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Spielmann is annexed to this judgment.

N.V.
S.N.

PARTLY DISSENTING OPINION OF JUDGE SPIELMANN

(Translation)

I voted against points 3 and 4 of the operative part for the following reasons.

1. I do not share the majority view that there has been no violation of Article 2 of the Convention in respect of the respondent State's obligation to conduct an effective investigation into the circumstances of the incident which led to the death of the applicant's son.

2. I note that the authorities showed their willingness to conduct an investigation into the shooting. In that connection, two separate sets of proceedings were conducted: criminal proceedings and an administrative inquiry. However, I am not persuaded that those proceedings were sufficiently thorough and effective to meet the above requirements of Article 2.

3. I also note that there were glaring omissions in the conduct of the preliminary investigation. In particular, great importance should be attached to the fact that the criminal police laboratory was unable to determine the exact distance from which the bullet was fired, because of an omission in the collection of evidence. In fact, the sample of skin taken from the victim was not large enough, so the experts were unable to conduct an effective examination in that respect. Furthermore, it seems that no effort was made to identify and question the victim's two friends who were with him that night and might have witnessed the incident.

4. I am further struck by the fact that the ballistic report only concerned the number of bullets fired from G.A.'s revolver and did not mention anything about the functioning of a 357-magnum Smith and Wesson. In particular, it bore no indication as to the pressure needed in order to release the hammer and fire the gun, although the applicant had expressly invited the investigating judge to examine this issue. In this connection I regret that the question of the use of G.A.'s revolver was considered only by minority judges on the bench of the Katerini Assize Court.

5. Moreover, I cannot overlook the fact that during the hearing before the Katerini Assize Court, the forensic expert who conducted the *post-mortem* examination was not invited to analyse his report and express his views on the incident. On the contrary, the court heard evidence from another doctor who had never examined the victim, but had only read the *post-mortem* examination report and had been called by the defendant. I regret that the Katerini Assize Court attached great importance to the statement of this expert and based its conclusion on that and on the theory

concerning the trajectory of the bullet put forward by a mathematician called by the defendant.

6. I further observe that the police officers who rushed to the scene of the crime and conducted the preliminary inquiry were attached to the Ano Poli police station, as was the officer involved in the incident, thus calling into question the ability of the officers concerned to conduct an independent inquiry, as it was highly likely that they would have personally known the officer involved and might have worked with him in the past, creating inevitable feelings of professional solidarity. This is particularly so in the present case where the applicant was not able to participate in the first stages of the preliminary proceedings, namely the inspection of the area and the crime scene reconstruction, since he was not informed of the incident until ten hours later.

As the Court has held previously (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§ 325 and 337, ECHR 2007-...):

“for the investigation to be ‘effective’ ... it may generally be regarded as necessary for the persons responsible for it and carrying it out to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence.... What is at stake here is nothing less than public confidence in the state’s monopoly on the use of force.

...

The Court has had occasion to find a violation of Article 2 in its procedural aspect in that an investigation into a death in circumstances engaging the responsibility of a public authority was carried out by direct colleagues of the persons allegedly involved ... Supervision by another authority, however independent, has been found not to be a sufficient safeguard for the independence of the investigation ...”

7. Lastly, the Court has previously underlined the importance of the suspension from duty of the agent under investigation or on trial as well as his dismissal if he is convicted (see, *mutatis mutandis*, *Abdulsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004). In the present case, I regret that, after a short period of 52 days during which he was granted sick leave, police officer G.A. resumed his duties and a few months later he was transferred to an administrative post in the headquarters of the Thessaloniki Police Directorate.

8. In the light of the above-mentioned serious shortcomings in the investigations, I conclude that they were not effective. It is therefore my opinion that there has been a violation of Article 2 under its procedural aspect.

9. I also cannot share the view that the finding of a violation constitutes in itself sufficient just satisfaction.

10. In the present case, the Court found a violation of Article 2 of the Convention. Admittedly, the Thessaloniki Administrative Court of Appeal had found the State responsible and had already awarded damages. But the breach of Article 2, as found by this Court, cannot be remedied exclusively by an award of compensation previously granted by the domestic courts to the relatives of the victim. In my view, the claim of non-pecuniary damage presented by the applicant under Article 41 of the Convention is clearly distinguishable from the claim presented before the domestic courts. In other words, I find it contradictory to decide that the applicant can still claim to be a victim within the meaning of Article 34 of the Convention (paragraph 48) and then to hold that the finding of a violation of the Convention constitutes in itself sufficient just satisfaction within the meaning of Article 41 of the Convention.