



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

THIRD SECTION

CASE OF PISARI v. THE REPUBLIC OF MOLDOVA AND RUSSIA

(Application no. 42139/12)

JUDGMENT

STRASBOURG

21 April 2015

FINAL

19/10/2015

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

In the case of Pisari v. the Republic of Moldova and Russia,

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

Josep Casadevall, *President*,

Luis López Guerra,

Kristina Pardalos,

Johannes Silvis,

Valeriu Grițco,

Dmitry Dedov,

Iulia Antoanella Motoc, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 24 March 2015,

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

PROCEDURE

1. The case originated in an application (no. 42139/12) against the Republic of Moldova and Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Moldovan nationals, Mr Simion Pisari and Mrs Oxana Pisari (“the applicants”), on 1 July 2012.

2. The applicants were represented by Mr A. Postica, a lawyer practising in Chisinau. The Moldovan Government were represented by their Agent, Mr L. Apostol, and the Russian Government were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that Article 2 of the Convention had been breached as a result of the killing of their son and because they had not been involved in the criminal proceedings conducted by the Russian authorities.

4. On 25 October 2013 the complaint under Article 2 was communicated to the respondent Governments.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1970 and 1973 respectively and live in Pirita.

6. The present case concerns the circumstances surrounding the killing of the applicants' 18-year-old son, Vadim Pisari, by a Russian soldier, V.K., at a peacekeeping security checkpoint located on the territory of Moldova following the Transdniestrian armed conflict.

7. The facts concerning the historical background of the case, including the Transdniestrian armed conflict of 1991-92 and the subsequent events, are set out in *Ilaşcu, Ivanţoc, Leşco and Petrov-Popa v. Moldova and Russia* ([GC], no. 48787/99, §§ 28-183, ECHR 2004-VII), and in *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04, 8252/05 and 18454/06, §§ 8-42, ECHR 2012).

8. Vadim Pisari lived in Pirita, a village located on the left bank of the Dniester River but controlled by the Moldovan Constitutional Authorities. Early in the morning of 1 January 2012, after an all-night New Year's Eve party with his friends at which alcoholic drinks were consumed, Vadim Pisari, accompanied by a friend "passenger", took a car belonging to another friend of theirs for a joy ride. Since the car needed urgent refuelling, they decided to drive to a petrol station located on the right bank of the Dniester River in the town of Vadul lui Vodă. They were stopped at the exit from their village by a police patrol and Vadim Pisari was asked to open the boot of his car. The two young people were then allowed to continue on their way. In order to reach the petrol station they needed to cross a bridge over the Dniester River located approximately one kilometre from their village. Peacekeeping security checkpoints were located at both ends of the bridge ("the left checkpoint" and "the right checkpoint").

9. The checkpoints were controlled by peacekeeping military forces belonging to the Russian Federation, the Republic of Moldova and the self-proclaimed Republic of Transdniestria. At the time of the events, each checkpoint was manned by eight soldiers of whom four were Russians, two Moldovans and two Transdniestrians. The command of the left checkpoint was ensured by a Russian sergeant, V.K., who was the only one armed with a loaded machine gun at the time of the events. The command of the right checkpoint was also ensured by a Russian sergeant. At each checkpoint concrete blocks and metal barriers were placed on the road in such a way that cars would be forced to slow down in order to pass through them. Each checkpoint had barracks in which the soldiers took turns to rest, and armoured personnel carriers. The distance between the right and the left checkpoints was approximately 600 metres.

10. Vadim Pisari's car reached the left checkpoint at approximately 7.10 a.m. Three soldiers, including V.K., were guarding the road. The remaining soldiers were inside the barracks. When passing through the checkpoint, Vadim Pisari not only failed to stop but hit and ran over the "stop" sign and a barrier on which it was located and which was blocking half of the road, with the front right wing of his car. His passenger explained later that the windshield had been partly covered with ice, as the car's

heating system had not been functioning and the driver's visibility had been poor. V.K. ordered the driver to stop the car, but Vadim Pisari did not obey and continued on his way. V.K. immediately contacted the right checkpoint and asked the Russian sergeant in command to stop the approaching car. However, the car did not stop at the other checkpoint either. According to a soldier from that checkpoint, a special device consisting of several metal bars resembling a World War II Czech "hedgehog" was deployed in the middle of the road in order to stop the car, but the driver simply avoided it and continued on his way. Vadim Pisari's passenger, however, stated that nobody had attempted to stop the car at the right checkpoint.

11. Twenty minutes later, at approximately 7.30 a.m., after having refuelled the car, Vadim Pisari and his passenger drove back over the bridge. According to the passenger, initially they had hesitated to go back because of the incident with the stop sign at the left checkpoint. However, they decided to go after Vadim Pisari had assured the passenger that he would solve the problem and that everything would be alright. They passed unhindered through the right checkpoint. A soldier from that checkpoint confirmed later in his statements to the Moldovan police that nobody had attempted to stop the car when it had passed, but that they had immediately informed the left checkpoint about the approach of the car.

12. In his affidavit to the Moldovan police given on the same day, V.K. submitted that for the purpose of stopping the car, two hedgehogs had been deployed at the entry and exit of the checkpoint. Two other soldiers from the left checkpoint (one Moldovan and one Transdnestrian) submitted on the same day to the Moldovan police that only one hedgehog had been placed on the road. In his statements given to a Russian investigator on 6 January 2012, V.K. submitted that in addition to the two hedgehogs, two spike strips had also been deployed at the entry and exit of the left checkpoint, although they had not been long enough to cover the entire width of the road. Identical statements were made to a Russian investigator by the Transdnestrian soldier mentioned above and by another Russian soldier from the left checkpoint.

13. When Vadim Pisari approached the left checkpoint in the car, V.K. ordered him to stop. However, he accelerated and avoided the obstacle(s). According to V.K., the car drove towards him and he had to jump away in order to avoid being hit by it. V.K. made the same statement to the Russian investigators on 6 January 2012 but not in his affidavit to the Moldovan police given immediately after the incident. Similarly, the affidavits of the other two soldiers who had witnessed the incident, given immediately after the incident to the Moldovan police, did not mention that V.K. had risked being hit by the car.

V.K. then shouted to the car's driver to stop or he would shoot, and fired one shot in the air. The driver ignored his order and did not stop, but accelerated, so V.K. fired three single shots in the direction of the car,

aiming at its tyres. According to V.K., he had no intention of shooting the driver, but was merely trying to stop the car by shooting at its tyres. According to the applicants and to the Moldovan Government, another soldier from the left checkpoint who was close to the car was almost hit by one of V.K.'s bullets, which pierced his coat. Only one bullet appears to have hit the car, which continued for some thirty metres before stopping. The driver's door opened and Vadim Pisari fell to the ground on his back with his legs remaining inside the car. The passenger got out of the car and was ordered to lie on the ground. V.K. approached Vadim Pisari and saw that he was wounded in the back. He and his colleagues placed a bandage on the wound and called an ambulance, which arrived ten minutes later and took the victim to a hospital in Chisinau. Vadim Pisari died from his wound several hours later.

14. Shortly after the incident, the Moldovan police arrived and took written affidavits from the soldiers present at the left checkpoint and from one of the soldiers from the right checkpoint. They attempted to take the machine gun with which the victim had been shot, but the Russian military command refused to give it to them.

15. Shortly thereafter the Moldovan authorities instituted a criminal investigation into the circumstances of Vadim Pisari's killing. The Russian soldier who had shot the victim was immediately transferred by his military superiors to a military unit in Bryansk, the Russian Federation. The Russian Ministry of External Affairs announced that the Russian authorities would conduct a parallel investigation into the circumstances of the case.

16. On 2 January 2012 the military commanders of the joint peacekeeping forces from the Russian Federation, the Republic of Moldova and the so-called Republic of Transdniestria created a commission to investigate the incident of 1 January 2012. The commission was headed by a Russian colonel and comprised three other members from Moldova, the so-called Republic of Transdniestria and Ukraine. An undated report of the commission was presented to the Court by the Russian Government. However, as submitted by the Moldovan Government, it was not signed by the Moldovan member of the commission and therefore had no legal effect. According to the report, Vadim Pisari was responsible for a serious breach of the rules of conduct at checkpoints and for threatening the lives of the soldiers present and of the people in the adjacent localities. At the same time, the report cited as one of the reasons for the incident the lack of appropriate means for stopping vehicles at the checkpoint. As to the responsibility of V.K., the authors of the report stated that they preferred to abstain from reaching any conclusion; however, they provisionally found his actions consistent with the rules concerning the use of firearms.

17. On 14 January 2012 a senior Russian military officer of the western region, E.S. Kleimenov (старший офицер отдела СВ и БВС штаба западного ВО, капитан второго ранга), issued a report concerning the

incident of 1 January 2012. The report was provided to the Court by the Russian Government. It stated, *inter alia*, that V.K. had acted in accordance with the rules applicable in the circumstances when attempting to stop Vadim Pisari, who had represented a threat to the soldiers at the checkpoint. As to the reasons for the incident, the report cited a lack of sufficient equipment at the checkpoint for stopping cars without recourse to lethal force and the fact that the local population had been ill-informed about the rules of conduct at peacekeeping checkpoints.

18. On 10 January 2012 the Prosecutor General's Office of Moldova recognised the applicants' victim status within the criminal proceedings conducted by it. On 22 May 2012, it informed the applicants that it had issued an international search warrant for the Russian soldier suspected of having shot Vadim Pisari.

19. In the meantime, the Moldovan authorities questioned all the Moldovan soldiers who had been manning the left and right checkpoints at the time of the incident. They also conducted a forensic examination of the scene of the incident, the car driven by the victim, the victim's body and the bullet extracted from it. According to a forensic report dated 3 January 2012, the concentration of alcohol in Vadim Pisari's blood had been 0.7%, corresponding to light intoxication. Another medical report dated 4 January 2012 established that the concentration of alcohol in the victim's body had been 1.13%.

20. On 9 February 2012 the applicants wrote to the Prosecutor General's Office of the Russian Federation inquiring about the progress of the investigation conducted by the Russian authorities.

21. In a letter dated 30 March 2012 the Military Prosecutor's Office of the western region of the Russian Federation (Прокуратура Западного Военного Округа) informed the applicants, *inter alia*, that it had initiated an investigation in respect of the offence provided for by Article 109/1 of the Criminal Code of the Russian Federation, namely manslaughter. In another letter, the applicants' lawyer was informed that the suspect would not be extradited to Moldova because Russia could not extradite its own citizens.

22. The materials of the case file show that the Russian authorities questioned all the Russian soldiers present at both the right and left checkpoints at the time of the incident, as well as two Transdniestrian soldiers. All those questioned made statements similar to those made by V.K. before the Russian investigators (see paragraph 12 above). They stated that they had never experienced a similar incident at a checkpoint. In addition, in the course of the investigation the scene of the incident was examined, an investigative experiment with V.K. was conducted, a ballistic examination was carried out and V.K. was subjected to a psychiatric examination.

23. On 24 December 2012 the Prosecutor General's Office of Moldova informed the applicants that they had learnt from the Russian authorities that on 17 May 2012 the soldier suspected of having shot Vadim Pisari had been cleared of the accusations against him and that the proceedings had been terminated on the ground that the evidence had not disclosed the elements of an offence. The Russian authorities also emphasised that, being a Russian citizen, the suspect could not be prosecuted by the authorities of Moldova.

24. After learning that the Russian authorities had discontinued the criminal proceedings in respect of V.K., the applicants wrote to the Russian Prosecutor's Office and requested a copy of the decision adopted. They also requested to be recognised as victims in the case and asked how they could challenge the decision concerning the termination of the proceedings.

25. In March 2013 the applicants received a reply from the Russian authorities informing them that the proceedings had indeed been discontinued on 17 May 2012; however, a copy of that decision could not be sent to the victim's family because they had not been a party to the proceedings and had no procedural rights therein.

26. On 8 May 2013 the applicants wrote to the prosecutor at the next level in the Russian Federation requesting that the decision of 17 May 2012 be quashed and that the reopened proceedings be conducted with their involvement.

27. On 17 September 2013 the Military Prosecutor's Office of the western region of the Russian Federation wrote to the applicants informing them that their request had been dismissed because they did not have standing to appeal against the decision of 17 May 2012.

28. On 22 August 2013 the Moldovan Prosecutor's Office decided to discontinue the investigation into the circumstances of the case in view of the fact that all the investigative measures had been completed and that the suspect had absconded from the Moldovan authorities.

29. Neither the applicants nor the Moldovan authorities received a copy of the Russian authorities' decision terminating the criminal proceedings in respect of V.K.

II. RELEVANT DOMESTIC LAW AND PRACTICE

30. On 21 July 1992 the Presidents of the Russian Federation and the Republic of Moldova signed in Moscow an agreement putting an end to the military conflict in the Transdniestrian region of Moldova. Under the agreement, a security zone was created between the conflicting parties and a Joint Control Commission ("the JCC") was set up to monitor the implementation of the agreement in the security zone. The JCC's headquarters are in Tighina, a city controlled by the Transdniestrian "authorities". It is composed of representatives of Russia, the Republic of

Moldova and the self-proclaimed Republic of Transdniestria. It has at its disposal a peacekeeping force composed of soldiers from each of the parties, with a total of approximately 1,392 soldiers. Any decisions made by the JCC must have the consensus of all the parties. There are nineteen peacekeeping checkpoints in the security zone manned by soldiers from the peacekeeping forces.

31. On 6 October 2003 a military body of the JCC issued instructions to the commanders of the security checkpoints concerning, *inter alia*, the use of firearms. It stated that a firearm could be used for the purpose of stopping a vehicle that had ignored an order given by the peacekeeping forces if the lives of the soldiers were under threat, but only after a verbal warning followed by a shot in the air. If after that the driver failed to stop, the soldiers could use a firearm after pointing it to the ground or aiming at the vehicle's tyres. Soldiers using firearms were obliged to undertake all necessary measures to ensure the safety of persons nearby.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

32. The applicants complained that their son, Vadim Pisari, had been killed by State agents and that the domestic authorities had failed to carry out an effective investigation into his death. They relied on Article 2 of the Convention, which reads as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally 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

33. The Court notes from the outset that neither of the respondent Governments disputed their jurisdiction in relation to the facts of the case. The Russian Government did not object to the allegation that the killing of Vadim Pisari was attributable to them and also that the victim had been

under their jurisdiction. The Court reiterates in this context that in certain circumstances, the use of force by a State's agents operating outside its territory may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction (see *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 136, ECHR 2011; *Jaloud v. the Netherlands* [GC], no. 47708/08, § 139, 20 November 2014). This may include the exercise of extra-territorial jurisdiction by a Contracting State when, in accordance with custom, treaty or other agreement, its authorities carry out executive functions on the territory of another State (see *Al-Skeini*, cited above, §§ 135 and 149). In the present case, the checkpoint in question, situated in the security zone, was manned and commanded by Russian soldiers in accordance with the agreement putting an end to the military conflict in the Transdniestrian region of Moldova (see paragraphs 9 and 30-31 above). Against this background, the Court considers that, in the circumstances of the present case, Vadim Pisari was under the jurisdiction of the Russian Federation.

34. The Court further notes that in their observations on the admissibility and merits of the case, the applicants stated that they did not intend to pursue their application in respect of Moldova because they did not consider the Moldovan authorities responsible for the killing of their son and because they considered that the Moldovan authorities had done everything they reasonably could in order to investigate the circumstances of his killing.

35. The Court sees no reason not to accept the applicants' position and is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the complaints against the Republic of Moldova. It therefore considers it necessary to strike the part of the application directed against the Republic of Moldova out of the list in accordance with Article 37 § 1 (a) of the Convention.

36. Lastly, the Court considers that the rest of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

37. The applicants began by describing the context within which the incident had taken place. First, from the setting up of the peacekeeping forces until the incident of 1 January 2012, no soldier had ever come under attack from the local population or needed to make use of a firearm during service. Secondly, they submitted that the incident had taken place after

New Year's Eve, a night on which people in Moldova traditionally organised parties and often disturbed public order.

38. The applicants further argued that Vadim Pisari had been unarmed and had presented no danger either to the soldiers at the checkpoints or to the public in general. They argued that the degree of his intoxication must have been moderate since a police patrol which had stopped him as he was leaving his village had merely checked the boot of his car. In the applicants' opinion, sergeant V.K. should have announced to the Moldovan police that the victim's car had hit a stop sign at 7.10 a.m. and refrained from stopping the car, rather than attempting to stop it later by shooting at it. A police patrol had been located 1,000 metres away, at the entry to the victim's village, where he had been stopped earlier.

39. The peacekeeping checkpoints were under the command of the Russian military forces, so the Russian Government were responsible for the actions of the soldiers manning them. According to the applicants, the Russian Federation therefore bore responsibility for the actions of the Russian soldier, V.K.

40. Lastly, the applicants argued that the investigation carried out by the Russian authorities had not been effective. It had focused only on whether the instructions concerning the use of firearms had been respected, rather than on whether the use of a gun had been necessary in the circumstances. Moreover, the Russian authorities had failed to involve the victim's family in the investigation.

(b) The Russian Government

41. The Russian Government contended that V.K. had acted in accordance with the instructions of 6 October 2003 (see paragraph 31 above). He used the firearm because it had been impossible to stop the victim by other means, thus the use of force was absolutely necessary. The victim acted in a manifestly unlawful manner when passing through the checkpoints. The fact that his intentions were peaceful and that he did not pose any danger was not known to the soldiers. V.K. did not intend to kill Vadim Pisari but merely to shoot at the tyres of his car. Immediately after the incident the soldiers provided first aid to the victim and called an ambulance. The Russian authorities conducted a thorough investigation into the circumstances of the case and cleared V.K. of all charges by a decision of 17 May 2012.

(c) The Moldovan Government

42. The Moldovan Government referred to the Court's finding in *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, ECHR 2004-VII) and in *Catan and Others v. the Republic of Moldova and Russia* ([GC], nos. 43370/04, 8252/05 and 18454/06, ECHR 2012 (extracts)) to the effect that the Russian Federation had effective control over the territory of the

breakaway region of Transdniestria and decisive influence over its authorities. In this context the Moldovan Government argued that the Russian Federation also had decisive influence over the peacekeeping forces, whose joint command was located on the territory of Transdniestria – to which the Moldovan authorities did not have access – and whose head was always appointed by the Russian Federation.

43. The Moldovan Government submitted that they had requested repeatedly that the military peacekeeping force be replaced by an international mission of military and civilian observers under the aegis of the OSCE. However, that position was not supported by Russia or the breakaway region of Transdniestria.

44. The Moldovan Government expressed doubt in respect of the Russian authorities' finding that Vadim Pisari had represented a threat to the integrity of the soldiers manning the left checkpoint. In this connection, they stressed that the similar conduct of Vadim Pisari at the right checkpoint had not been judged as dangerous enough to require the use of lethal force. Moreover, the Moldovan Government pointed out that one of V.K.'s bullets had almost hit another soldier from the checkpoint, and stressed that it had been V.K.'s conduct which had represented a threat to the soldiers' integrity rather than that of Vadim Pisari. In any event, the Moldovan Government contended that the use of force had not been justified in the circumstances of the case as it had not been absolutely necessary.

45. Lastly, the Moldovan Government submitted that the Russian authorities had refused to collaborate with the Moldovan authorities in the process of investigating the circumstances of the case. The outcome of the investigation conducted by the Russians had been foreseeable in view of the statements made by different Russian officials about the case. The victim's family was not involved in any way in the proceedings and did not even receive a copy of the decision discharging V.K.

2. The Court's assessment

(a) General principles

46. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *Makaratzis v. Greece* [GC], no. 50385/99, § 56, ECHR 2004-XI).

47. The exceptions contained in paragraph 2 of Article 2 indicate that this provision extends to, but is not concerned exclusively with, intentional killing. The text of Article 2, read as a whole, demonstrates that paragraph 2 does not primarily define instances where it is permitted intentionally to kill an individual, but describes the situations where it is permitted to “use force” which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than “absolutely necessary” for the achievement of one of the purposes set out in subparagraphs (a), (b) or (c) (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 94, ECHR 2005-VII).

48. In this connection, the use of the term “absolutely necessary” in Article 2 § 2 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 paragraph 2 of Articles 8 to 11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the aims set out in subparagraphs 2 (a), (b) and (c) (see *McCann and Others*, cited above, § 149).

49. Furthermore, the Court has consistently held 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 a failure to use lethal force may result in the loss of an opportunity to arrest the fugitive (see *Juozaitienė and Bikulčius v. Lithuania*, nos. 70659/01 and 74371/01, § 72, 24 April 2008).

50. In keeping with the importance of this provision (Article 2) in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *McCann and Others*, cited above, § 150).

51. 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 *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).

52. 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, and *Anguelova*, cited above, § 139). Furthermore, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Anusca v. Moldova*, no. 24034/07, § 39, 18 May 2010).

(b) Application of these principles in the present case

53. Turning to the facts of the present case, the Court finds it clearly established that Vadim Pisari was killed by one of the machine-gun shots fired by V.K. The Court is satisfied that the purpose of the shooting in this case was to apprehend the driver of the car. Accordingly, the action of the Russian soldier was taken for the purpose of effecting a lawful arrest within the meaning of Article 2 § 2 (b) of the Convention. However, the Court has to examine whether the force used in pursuit of the above aim was “absolutely necessary” in the circumstances of the case. It notes the assertion of the Russian authorities that the firearm was used against the vehicle and not against the people in it. The Court sees no reason to doubt that V.K. had such an intention. Nevertheless, the Court will weigh the degree of risk posed by the use of a firearm against the danger posed by the fleeing driver and the urgent need to stop him.

54. The Court notes that V.K. fired three single shots from a machine gun in the direction of the vehicle driven by Vadim Pisari. It is not clear from the materials of the case from what distance the shots were fired and/or the mastery of V.K. in shooting with machine guns. However, the allegation that one of the bullets shot by V.K. pierced the coat of another soldier from the checkpoint who was not far from the car has not been disputed (see paragraph 13 above). This is sufficient for the Court to conclude that the use of a machine gun by V.K. posed a very serious risk not only for the life of Vadim Pisari but also for that of his passenger and even for that of the soldier who was almost hit by one of the bullets. The fact that only Vadim Pisari was hit by a bullet appears to have been a matter of chance.

55. Such a high degree of risk to life can only be justified if the firearm was used as a measure of last resort intended to avert a very clear and

imminent danger posed by the car driver in the event of his being allowed to escape. The Court will therefore next consider the kind of harm which the Russian soldier sought to avert.

56. The Court notes V.K.'s allegation that he had to jump away from the approaching car in order to avoid being run down by it. However, that submission – made for the first time before the Russian investigators on 6 January 2012 – was not supported by the statements which the two other soldiers present at the scene of the incident gave to the Moldovan police on the morning of the incident. More importantly, it was not consistent with V.K.'s initial affidavit written the same morning (see paragraph 13 above). Accordingly, the Court is not persuaded that V.K. risked being hit by the victim's car and, therefore, finds no obvious indication of danger posed by the car driver if allowed to escape. Even assuming that the actions of Vadim Pisari were potentially dangerous, the Court does not consider that the level of the threat required that he had to be stopped immediately by gunfire. Indeed, it appears from the facts of the case that at approximately one kilometre away from the left checkpoint on the road leading to the victim's village there was a police checkpoint which could have been alerted by V.K. (see paragraph 8 above).

57. The Court acknowledges that the soldiers from the checkpoints tried to use alternative methods to stop the car. However, the victim's car was able to pass three times through the left and right checkpoints, avoiding all the obstacles deployed on the road by the soldiers. The Court cannot but agree with the findings in the reports of the Russian military officials (see paragraphs 16 and 17 above) that the checkpoints were not furnished with appropriate equipment for immobilising vehicles without recourse to lethal force. It considers that the lack of such equipment cannot justify opening fire against vehicles that fail to comply with the rules of crossing security checkpoints without other very serious and compelling reasons.

58. In sum, having considered the degree of risk posed by the use of a firearm to the lives of the two occupants of the car and of another soldier from the left checkpoint, the danger posed by the fleeing driver and the urgent need to stop him, the available alternative means of stopping the car without recourse to lethal force, the lack of appropriate equipment at the checkpoint for immobilising cars and to the automatic recourse to lethal force and in the absence of an effective investigation which could have cast a different light on these matters (see below) the Court is not persuaded that the killing of Vadim Pisari constituted use of force which was no more than absolutely necessary for the purpose of effecting a lawful arrest within the meaning of Article 2 § 2 (b) of the Convention. Accordingly, the Court finds that there has been a breach of Article 2 of the Convention under its substantive head by the Russian Federation.

59. Lastly, the Court notes that the Russian authorities did not involve the applicants in the investigation of the circumstances of the killing of their

son. The applicants were not allowed to exercise any procedural rights and were not even informed about the discontinuation of the proceedings against V.K. The Court has stressed on many occasions that the involvement of the next of kin serves to ensure public accountability of the authorities and public scrutiny of their actions in such situations (see *Anguelova v. Bulgaria*, no. 38361/97, § 140, ECHR 2002-IV, and *Anusca* cited above, § 39). In this case, the applicants had a strong and legitimate interest in the investigation conducted by the Russian authorities, which would have been served by granting them the status they sought in the criminal proceedings against V.K. The Russian Government did not advance any arguments to explain why the applicants had been refused the status of victims in the criminal proceedings and had not been allowed to intervene in them. That fact alone is sufficient for the Court to conclude that there has been a violation of Article 2 of the Convention by the Russian Federation under its procedural head as well. The Court will refrain therefore from examining other aspects of the investigation conducted by the Russian authorities.

60. Accordingly, there has been a violation by the Russian Federation of both the substantive and procedural aspects of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicants claimed 85,000 euros (EUR) in respect of non-pecuniary damage. They made reference to the cases of *Inderbiyeva v. Russia* (no. 56765/08, 27 March 2012) and *Alpatu Israilova v. Russia* (no. 15438/05, 14 March 2013), in which the Court had awarded similar amounts of money.

63. The Russian Government contested the amount claimed by the applicants and reiterated their position that there had been no breach of the applicants' rights in the present case.

64. Having regard to the violations found above, the Court considers that an award for non-pecuniary damage is justified in this case. Deciding on an equitable basis and bearing in mind the specific circumstances of the present case, the Court awards the applicants EUR 35,000.

B. Costs and expenses

65. The applicants also claimed EUR 5,580 for the costs and expenses incurred before the Court.

66. The Russian Government contested the amount claimed by the applicants and argued that it was excessive.

67. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the amount claimed in full.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the part of the application directed against the Republic of Moldova out of its list of cases in accordance with Article 37 § 1 (a) of the Convention;
2. *Declares* the remainder of the application admissible;
3. *Holds* that there has been a substantive and a procedural violation of Article 2 of the Convention by the Russian Federation;
4. *Holds*
 - (a) that the Russian Federation is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 5,580 (five thousand five hundred and eighty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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 21 April 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Josep Casadevall
President

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

J.C.M.
J.S.P.

CONCURRING OPINION OF JUDGE MOTOC

(Translation)

I voted with the majority in this case; I consider, however, that the legal reasoning should be different. The question of jurisdiction should be expanded upon in the Court's judgment, notwithstanding the fact that the Russian Federation agreed to jurisdiction in this case, thus enabling the Court to avoid any reference to the historical context.

The analogy with *Al-Skeini and Others v. the United Kingdom* ([GC], no. 55721/07, ECHR 2011) and *Jaloud v. the Netherlands* ([GC], no. 47708/08, ECHR 2014) is limited to the fact that, in our case, as in the cases cited, the Russian authorities had exercised their executive powers in accordance with an international treaty. The analogy stops there. In fact, the judgment ought to set out the reasons why the Article 1 jurisdiction, enshrined in the cases referred to by the applicants (in particular, *Ilaşcu and Others v. Moldova and Russia* ([GC], no. 48787/99, ECHR 2004-VII) and *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, ECHR 2012 (extracts)), was not applicable in this case.

In addition, in quoting from *Jaloud* the Court ought also to have referred to the issue of attribution, as contained in paragraph 154 of that judgment:

d. Attribution

154. The Court reiterates that the test for establishing the existence of “jurisdiction” under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an internationally wrongful act under general international law (see *Catan*, cited above, § 115). Furthermore, in *Al-Skeini* the Court emphasised that “whenever the State through its agents exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section 1 of the Convention that are relevant to the situation of that individual. In this sense, therefore, the Convention rights can be ‘divided and tailored’ (compare *Banković*, cited above, § 75)”,

which had put forward a concept of the jurisdiction of the Court that was closer to the criteria established by International Law Commission, while also maintaining the features of the Court's *lex specialis* as these were enshrined in the *Catan* judgment.