

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

THIRD SECTION

CASE OF KHAYRULLINA v. RUSSIA

(Application no. 29729/09)

JUDGMENT

STRASBOURG

19 December 2017

FINAL

19/03/2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Khayrullina v. Russia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Georgios A. Serghides,
Jolien Schukking, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 28 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 29729/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Faniya Livgatovna Khayrullina ("the applicant"), on 20 May 2009.

2. The applicant was represented before the Court by Mr P. Chikov, a lawyer practising in Kazan. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant alleged, in particular, that her late husband had been unlawfully deprived of his liberty, had been ill-treated and had died in suspicious circumstances engaging the responsibility of the State under the Convention.

4. On 30 August 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957 and lives in Novyy, Tatarstan Republic, Russia.

A. Death of the applicant's husband in police custody

1. Relevant events

6. The domestic authorities opened a criminal investigation in relation to the murder of G. committed on 7 September 2002. The applicant's husband, Zhavdet Khayrullin, was identified in the course of the investigation as a possible eyewitness. A certain Mr V. was a suspect.

7. On 13 September 2002 the applicant's husband was taken to Tukayevskiy police station. The exact timing of this, various other circumstances, and the legal grounds and reasons for his detention were the subject of conflicting accounts at domestic level (see, for instance, paragraphs 8 and 23 below).

8. It is apparent from a copy of the police logbook submitted by the applicant that her late husband was taken to the police station by officers Ag. and Na. at around 1 p.m., according to the record, for the purpose of verifying his identity; this verification was completed and he was released at 1.30 p.m. It is also apparent from the evidential material that between 4.15 and 4.45 p.m. the applicant's husband was in an office, apparently on the fifth floor, where he was interviewed by investigator R. According to the material in the case file record, the applicant's husband stated during the interview that he and V. had left the house of victim G. after drinking vodka together. Subsequent to this interview, for unspecified reasons the applicant's husband was interviewed again, this time by field officer (*оперуполномоченный*) Kh., and made a written statement affirming that V. had punched G. during a quarrel. It appears that the applicant's husband was thereupon required to come for another interview on 14 September 2002.

9. On the same date, 13 September 2002, V. was taken to the police station and made a spontaneous confession regarding the murder. According to the applicant, V. heard the applicant's husband screaming (allegedly in pain) in the neighbouring room during the evening of 13 September 2002 (however, for V.'s amended statement in 2010, see paragraph 38 below).

10. According to the applicant, V. had been beaten up and ill-treated whilst at the police station, in particular by suffocation inflicted through the application of a gas mask.

11. According to the authorities, the applicant's husband left Kh.'s office at 8 p.m. and attempted to commit suicide on a balcony located on the fifth floor of the police station. The same evening he was found unconscious and was admitted to hospital.

2. Pre-investigation inquiry

12. On an unspecified date a pre-investigation inquiry was opened in relation to the above events (see also paragraph 16 below), apparently within the framework of the investigation into G.'s murder (see paragraph 6

above). According to the applicant, during this inquiry investigative measures were carried out by unspecified officers from Tukayevskiy police station.

13. Officer Kh. stated during the inquiry that he had collected a statement from the applicant's husband and had seen him leave his office at 8 p.m. Soon thereafter Kh. had left for home.

14. Ga., the deputy chief officer of the police station, stated that after hearing some noise and seeing officers on the fifth floor balcony, he had gone there and had seen Officers F., Va. and Kha. providing medical assistance to an unconscious man.

15. It also appears that Gar., another deputy chief officer, carried out an internal inquiry and concluded that no official had committed any offence.

16. On 21 September 2002, referring to the ongoing murder investigation into G.'s death (see paragraph 6 above), an assistant to the district prosecutor issued a decision not to initiate criminal proceedings against any officers on account of Mr Khayrullin's attempted suicide or incitement to suicide. Having summarised the above testimonies and referring to the conclusions of the internal inquiry, the assistant to the prosecutor concluded that no criminal offence had been committed.

17. This decision was annulled by the higher prosecutor and the inquiry was reassigned to another investigator.

18. On 13 December 2002 the applicant's husband died, apparently without ever regaining consciousness. On the same day the investigator commissioned a forensic medical examination of the victim's body. The expert was asked to clarify the cause of death, to identify any injuries and to specify their origin, in particular whether they had been sustained before death and whether they were linked to his subsequent death, and whether the victim could have continued to be active after the injuries.

19. According to the autopsy report issued on 17 January 2003, the victim died of asphyxia resulting from strangulation.

3. Criminal investigation

20. On 3 February 2003 the district prosecutor issued an order for the opening of a criminal investigation into an offence under Article 286 § 3 of the Criminal Code (actions committed by a public official manifestly outside the scope of his powers, causing significant damage to a person's rights and freedoms, and entailing serious consequences). In his order the prosecutor stated, *inter alia*, that "acting manifestly beyond the scope of their powers, unspecified officers unlawfully placed [the victim] in an interrogation room". The criminal investigation was opened against unspecified officers, and was then assigned to investigator R.

21. The investigator interviewed paramedic A., who stated that upon arrival at the police station he and his colleagues had been taken to a detention cell; one of the officers explained to him that during a routine

check of cells they had had difficulty opening the door of one of the cells and had discovered that it was blocked by the body of an unconscious detainee with a jacket tied around his neck; he had not seen any injuries on the visible part of the body, only on the neck. A similar statement was made by paramedics Zh. and Gi. A reanimation medical professional B. stated that the victim had had no other visible injuries.

22. The investigator also questioned the victim's son. The latter had received a telephone call from the victim on the evening of 13 September 2002 in which his father had told him that he was to be interviewed and would be let go next morning. On arriving at the police station the next day, he had been told that his father would be released in the afternoon.

23. Field officers Na. and Ag. told the investigator that, while on patrol checking permits for firearms, they had spotted the applicant's husband, who had looked suspicious. They had therefore taken him to the police station to check his identity; having checked it, this person had been allowed to leave the police station.

24. According to Officer F., the victim was found sitting on the floor with his back against the balcony bars, with one part of his jacket tied around his neck and the other attached to the balcony bars.

25. On 3 May 2003 investigator R. issued a decision discontinuing the criminal investigation for absence of any criminal event, while noting that "unidentified officers from the police station had manifestly exceeded their powers when placing [the victim] in an investigation room". Having listed the summaries of various testimonies mentioned above, the investigator concluded that the victim had attempted suicide.

26. On 20 June 2003 the district prosecutor ordered that the investigation was to be continued in order to examine the instructions relating to the placement of detainees in designated rooms or cells, to determine who exactly had placed the victim in the cell or investigation room, and who had opened the doors. It was also to deal with contradictory statements made by the officers Na. and Ag., on one hand, and by other officers and the victim's relatives on the other. It was also to properly examine the testimonies given by the paramedics, in particular as regards the place where the victim had been discovered.

27. It appears that the criminal investigation was reassigned to another investigator, I., who suspended it on 20 July 2003. On 22 July 2003 the regional deputy prosecutor issued an order requesting further investigation and on 23 July 2003 the acting district prosecutor quashed the suspension and ordered the investigation to be continued.

28. On 23 August 2003 investigator R. issued a decision discontinuing the criminal investigation in terms that were similar to the decision of 3 May 2003. On 12 September 2003 the district prosecutor stated that the requirements made on 22 July 2003 had not been complied with, and that the investigation must be continued.

29. On 12 October 2003 investigator I. issued a decision to discontinue the criminal investigation.

30. On 10 November 2003 the deputy regional prosecutor quashed this decision, finding that (i) it remained necessary to interview officer F. again and to give a more detailed assessment of the circumstances in which the victim's body had been discovered by this officer. In particular, it was important to clarify whether the officer had seen the victim in the state of strangulation, what was the body's position, where the "noose" had been and who had removed it, and (ii) it was necessary to interview V. who allegedly heard the victim screaming, to interview the victim's next of kin in relation to the circumstances in which the victim had been apprehended and taken to the police station, and in particular to interview the victim's wife, who had allegedly seen signs of bleeding around the victim's wrists resulting from the use of handcuffs.

31. A fresh discontinuation decision was issued by the investigator on 10 December 2003.

32. This decision was subsequently quashed and other similar decisions were issued and quashed on several occasions. For instance, on 10 December 2008 an investigator issued a decision to discontinue the criminal case, concluding that the applicant's husband had attempted to commit suicide.

33. On an unspecified date, the investigating officer asked expert Va., who had issued the report of 17 January 2003 (see paragraph 19 above) to express his opinion. Expert Va. stated that the constriction mark on the victim's neck could have been caused by soft pressure such a fabric jacket. Various types of mechanical asphyxia such as hanging or asphyxia in an enclosed space (by way of placing a gas mask a person's head) entail the same pathological process arising from a sudden insufficiency of oxygen inflow into blood and tissues.

34. On 28 January 2010 the investigator issued a decision to discontinue the criminal case because of the absence of a criminal event.

35. The applicant sought judicial review of the discontinuation decision. On 10 June 2010 the Tukayevskiy District Court of the Tatarstan Republic allowed her complaint. On 10 June 2010 the Regional Court upheld the judgment.

36. On 25 August 2010 the decision of 28 January 2010 was revoked and the investigation was resumed.

37. A new refusal was issued on 25 September 2010. It was quashed on 1 November 2010 because the circumstances in which the victim had been taken to the police station and possible reasons leading to the attempted suicide had not been clarified.

38. On 23 November 2010 the most recent discontinuation decision was issued, which read as follows:

"On 13 September 2002 Khayrullin was taken to the police station for questioning as a witness. During an interview he stated that he and V. had gone to G.'s home, where they had consumed vodka and had then left.

Khayrullin was then interviewed by field officer Kh. and stated that V. had struck several blows to G.'s face and had then run away. Khayrullin was required to attend a further interview and then left room no. 514 ...

It is apparent from the report of the medical expert that Khayrullin's death was caused by a post-strangulation condition which had been caused by the squeezing of the neck by some kind of noose; this condition had been aggravated by an impact adversely affecting brain function. The medical documents show no indication of any bodily injuries when he was admitted to the hospital.

Paramedics A., Zh. and Gi. stated during their interviews that no bodily injuries (except for a faint, non-continuous strangulation mark on his neck) had been identified on the victim's body when they attended to him in the police station.

Officer F. stated during his interview that around 11 p.m. on 13 September 2002 he had gone out to the balcony on the fifth floor for a smoke and had seen the victim sitting on the floor with his back to the railing; his neck had been encircled by a jacket, with a part of it being fixed to the railing. He had detached the jacket and had started to provide first aid to the victim. He had also alerted the duty-officers of the police station and had then helped to take the victim to the first floor. The victim had then been examined by a medical professional before being taken to hospital.

An investigative re-enactment was carried out on the basis of the above information. Medical expert Va. was interviewed in this connection and confirmed that it would have been possible for the hanging and the strangulation marks to have been created in the circumstances described by F.

Interviews were carried out with those police officers at the police station who had talked to the victim on 13 September 2002. They stated that ... the victim had been interviewed by the investigator; no questioning had been carried out prior to that ...

According to the expert reports and Va.'s statement during an interview, the strangulation mark could have been caused by the pressure of a soft "noose" such as might be left, for instance, by a jacket. Moreover, for other types of mechanical asphyxia, including hanging or asphyxia in a limited space (as by means of applying a gas mask) the same life-threatening pathological process occurs, which is caused by a sudden insufficiency of oxygen in the blood and tissues ...

Mrs Khayrullina stated that at 8 p.m. on 13 September 2002 she had received a telephone call from her husband who told her he would come home. His voice had been calm and cheerful.

Mr V. stated that around 8 p.m. he had been kept in one of the rooms on the fifth floor; he had heard the victim in a neighbouring room speaking indistinctly; there had been no screaming or any suspicious noise ...

In view of the above, all possible investigative measures have been completed ...

It is not possible to carry out expert examination of samples collected from the balcony or the jacket because [they] were lost ...

According to an additional medical report by an expert, a strangulation mark is produced by the pressure of some kind of "noose" on the neck; one can speak about the pressure by a soft "noose", for instance made by a jacket such as the one given to

the expert; in normal circumstances a gas mask the size of a person's head would not exert excessive pressure on the neck and would not leave a strangulation mark ...

According to a further expert report dated 13 September 2010, the absence of macroscopic indications of mechanical asphyxiation in the available material means the cause of death cannot be determined, in particular whether it could have resulted from asphyxia following a hanging or the blocking of the airflow by an object ...

Furthermore, there were four forensic reports dated 14 December 2002, 17 January 2003, 4 December 2003 and 5 December 2004. None of them indicated any other bodily injuries.

There is thus insufficient evidence to consider that any official of the police station abused his or her power or acted in a manner pushing the victim to attempt suicide.

The available medical documents do not specify whether the victim had any bodily injuries when admitted for treatment to the hospital."

B. Civil proceedings

39. The applicant brought civil proceedings claiming 1,500,000 Russian roubles (RUB) by way of compensation in connection with the unlawful arrest and detention of her late husband in the police station and his subsequent death following his ill-treatment at the police station.

40. By a judgment of 5 December 2008 the Novo-Savinovskiy District Court of Kazan awarded her RUB 250,000 (equivalent to 7,066 euros (EUR) at the material time) against the Federal Ministry of Finance. Retracing the procedural history of the pre-investigation inquiry and the criminal investigation, the court held as follows:

"The court has established that Mr Khayrullin's body was discovered at the police station after he had been taken there for questioning as a witness and that he had been unlawfully placed in an investigation room of the police station. The above has been confirmed by the investigating authority. As noted in the decision of 13 September 2002, unspecified officials of the police station had acted manifestly outside their powers when placing Mr Khayrullin in an investigation room.

On the same day Mr Khayrillin attempted to commit suicide by hanging himself in the investigation room.

In contrast to this finding, according to the decision of 10 December 2002 setting aside the refusal to prosecute, it was noted that the victim had been discovered on the balcony on the fifth floor. Neither of the above decisions contains any explanation about the change in the circumstances in which the victim had been discovered ... At the same time, the refusal to prosecute dated 10 December 2003 clearly indicates as an established fact that Mr Khayrullin had attempted suicide at the balcony of the fifth floor ...

It is apparent from the available material that a criminal investigation was opened under Article 286 of the Criminal Code in respect of unidentified officials; this legal classification has not been changed since 2002; the investigation is ongoing.

Since the investigation is ongoing, this court − dealing with a civil case as it is − has no competence to question whether the legal classification is appropriate or whether

there is a *corpus delicti*. However, this court finds it established that the damage to Mr Khayrullin's health was caused on the premises of the police station.

This conclusion is based on the facts established in the present case, irrespective of the prosecutor's office's findings regarding the place where the body was discovered; the circumstances relating to his presence in the police station (that is his being taken there for questioning as a witness) remain unchanged ...

The court therefore finds it established that on 13 September 2002 Mr Khayrullin sustained injuries in the police station, entailing his death ...

The court considers that the grave consequences (Mr Khayrullin's death) ensued as a result of unlawful actions on the part of public officials at the police station ...

As stated by the European Court in the case of Sheydayev v. Russia (application no. 65859/01, 7 December 2006), the national authorities are responsible for ensuring the physical inviolability of detained persons. Where a person was placed in custody in good health and had injuries when released, the national authorities must provide a plausible explanation for the injuries ...

The court accepts the claimant's argument that the harm was caused by unlawful actions on the part of public officials at the police station ... Thus, the court finds it appropriate to grant the claim in respect of non-pecuniary damage ...

The matters relating to the unlawful arrest and the ineffective investigation cannot form a basis for compensation in respect of non-pecuniary damage ... The court has not established that the mere arrest of Mr Khayrullin on 13 September 2002 entailed a violation of the claimant's non-material rights or interests; any eventual violation might relate to Mr Khayrullin ...

The court considers that the suspension and resumption of the criminal investigation are legitimate procedural actions and thus, even if multiple, do not entail a conclusion of unlawfulness on the part of public officials ... The prosecution period for the offence under Article 286 of the Criminal Code has not yet expired. The court dismisses the claimant's argument that non-pecuniary damage was caused by the ineffective investigation ..."

41. The Ministry of Finance and the applicant appealed. The applicant argued that the first-instance judgment's conclusion regarding her standing to seek compensation in relation to Mr Khayrullin's arrest contradicted the Court's case-law (*Imakayeva v. Russia*, no. 7615/02, ECHR 2006-XIII (extracts), and *Akhmadova and Sadulayeva v. Russia*, no. 40464/02, 10 May 2007). It was acceptable for the next of kin of a deceased person to lodge a complaint under Article 5 of the Convention about that person's deprivation of liberty; the Court has awarded next of kin just satisfaction in respect of non-pecuniary damage sustained in relation to such deprivation of liberty. Moreover, it was open to next of kin to lodge a complaint under Article 3 of the Convention on the basis of their own suffering in relation to events relating to a relative who had died or disappeared in suspicious circumstances engaging the responsibility of the State. The applicant also argued that the award of RUB 250,000 was manifestly insufficient in view of the first-instance court's findings relating to the responsibility of public officials in relation to Mr Khayrullin's death. At the same time, the trial

court did not adduce sufficient reasons for dismissing her monetary claim in relation to her argument about the ineffective investigation into her late husband's death.

42. On 22 January 2009 the Supreme Court of the Tatarstan Republic upheld the judgment. The appellate court held as follows:

> "When granting the claims in relation to the injuries sustained by the victim, the trial court rightly proceeded from the understanding that the injuries had been sustained in the police station on 13 September 2002 because the case file materials confirmed that public officials had committed actions exceeding their powers ...
>
> Thus, as a result of actions on the part of public officials, the claimant had sustained psychological suffering on account of the death of a person close to her ...
>
> When dismissing the remainder of the claim, the trial court rightly proceeded from the understanding that there was no evidence that the claimant had sustained psychological suffering on account of the ineffective investigation ... The investigation is ongoing; at present there is no criminal court judgment in respect of the officials at the police station. Moreover, their actions in relation to the arrest of the victim did not in any event impinge upon the claimant's non-material rights or interests."

43. The applicant received the judicial award on 20 April 2009.

II. RELEVANT DOMESTIC LAW

44. For a summary of domestic law in relation to procedure for a pre-investigation inquiry and procedure for a criminal investigation, see *Lyapin v. Russia*, no. 46956/09, §§ 99-102, 24 July 2014.

45. Article 150 of the Civil Code provides that the life and health, the personal dignity and personal liberty, the honour and good name, the business reputation, the immunity of private life, the personal and family secrecy, the right of free movement, the choice of a place of residence, the right to a name, copyright and other personal non-property rights and non-material values possessed by a Russian citizen since birth or by force of law, shall be inalienable and non-transferable in any other way. In the circumstances and in conformity with the procedure stipulated by the law, personal non-property rights and other non-material assets possessed by a deceased person may be exercised and protected by other persons, including the heirs of their legal owner.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

46. Referring to Articles 2, 3, 6 and 13 of the Convention, the applicant complained that her late husband had been physically ill-treated in the police station and that public officials had been responsible for his death. She argued that the domestic investigation had not been effective.

47. These complaints fall to be examined under Article 2 of the Convention, which read as follows:

Article 2

"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 ..."

A. The parties' submissions

48. The Government submitted that the applicant had been awarded compensation in respect of non-pecuniary damage sustained as a result of the investigation. In the Government's view, the civil court's judgment should be read as establishing that the applicant's husband had sustained injuries causing death while in the police station, and that his death had ensued owing to the unlawful action taken by unspecified officials at the police station. The Government concluded that the applicant no longer had standing to complain about the alleged violations of Article 2 or 3 of the Convention.

49. The applicant argued that the civil court had not acknowledged any specific violation relating to Article 2 or 3 of the Convention and had not made any award in relation to any such violation. In particular, the civil court did not conclude that the applicant's husband had been physically ill-treated by any officer at the police station and/or otherwise driven to commit suicide later on the same evening, or that the investigation into the above matters had been ineffective.

50. The applicant's argument appeared to be that her late husband had been ill-treated and had sustained serious injuries which had then been "disguised" to give the appearance of an attempted suicide.

B. The Court's assessment

1. Admissibility

51. There is no doubt that the applicant, the victim's wife, has standing to complain under Article 2 of the Convention (concerning a spouse, see

Salman v. Turkey [GC], no. 21986/93, § 91, ECHR 2000-VII, and, more recently, *Abubakarova and Midalishova v. Russia,* nos. 47222/07 and 47223/07, §§ 5 and 39, 31 January 2017).

52. The Government referred to the fact that in April 2009 the applicant had received compensation in an amount equivalent to about EUR 7,066 at the time. As to the procedural aspect of Article 2 of the Convention, it is noted that the civil courts explicitly dismissed the applicant's arguments supporting her monetary claim on the grounds of an ineffective investigation. As to the substantive aspect of Article 2, it is sufficient for the Court to observe that this amount is substantially less than it has awarded in similar cases (see *Nagmetov v. Russia* [GC], no. 35589/08, § 92, 30 March 2017; *Maslova v. Russia*, no. 15980/12, §§ 61-62 and 106, 14 February 2017; *Lykova v. Russia*, no. 68736/11, § 135, 22 December 2015; *Rudakov v. Russia*, no. 43239/04, §§ 71-73, 28 October 2010; and *Zelenin v. Russia*, no. 21120/07, § 79, 15 January 2015; see also paragraph 114 below). Given that − as established by the Court below − the investigation into the circumstances leading to the victim's death was ineffective and that the compensation awarded was insufficient, the applicant had and continues to have standing to complain about a breach of the substantive limb of Article 2 of the Convention (see *Nagmetov*, § 89, with further references). Accordingly, the Government's objection must be dismissed.

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

2. Merits

(a) Procedural aspect under Article 2 of the Convention

54. The obligation to carry out an effective investigation into allegations of treatment infringing Articles 2 and 3 suffered at the hands of State agents is well established in the Court's case-law (see, as a recent authority, *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, §§ 229-39, ECHR 2016; *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 182-85, ECHR 2012; and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 316-26, ECHR 2014 (extracts)).

55. The nature and degree of scrutiny needed to satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case and must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Armani Da Silva*, cited above, § 234). Where a suspicious death has been inflicted at the hands of a State agent, particularly stringent scrutiny must be applied by the relevant domestic authorities to the ensuing investigation (ibid.).

56. The Court observes that the applicant's late husband died following his detention at the police station. The applicant alleged that he had been ill-treated in the police station, specifically by way of suffocation caused by the application of a gas mask. Her allegation in relation to the ensuing events appears to be twofold: either one official or several officials were responsible for causing the death of her late husband or the ill-treatment, and/or some other actions on the part of the officer(s) drove the victim to attempt suicide. In the Court's view, the context of the present case and the applicant's allegations disclosed an "arguable" complaint and an investigation was therefore to be carried out in order to comply with the procedural obligation arising under Article 2 of the Convention.

57. The Court also notes that on an unspecified date (presumably shortly after the events) a pre-investigation inquiry was opened in relation to the tragic events of 13 September 2002. A decision to refuse institution of criminal proceedings was issued by an assistant to the local prosecutor on 21 September 2002. Importantly, it does not escape the Court's attention that a fully-fledged criminal investigation was not started until February 2003, almost five months after the events. Reiterating its position concerning the procedure for a pre-investigation inquiry under Russian criminal procedure at the time − as stated in *Lyapin v. Russia* (no. 46956/09, §§ 129-40, judgment of 24 July 2014) − the Court considers that serious health damage sustained while on the premises of a police station and, *a fortiori*, a suspicious death following such detention at a police station, clearly warranted a criminal investigation (see, in the same vein, *Fanziyeva v. Russia*, no. 41675/08, § 53, 18 June 2015) that was to be initiated without delay.

58. Although it appears that the pre-investigation inquiry was terminated by the issuing by the local prosecutor's office (whose independence the Court was given no reason to doubt) of a refusal to prosecute, the Court has no information explaining who specifically carried out the various measures relating to this inquiry and whether those officials were impartial and independent of the suspected perpetrators and the agency that they served (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-II; *Oğur v. Turkey* [GC], no. 21594/93, §§ 91 and 92, ECHR 1999-III; see also *A.A. v. Russia*, no. 49097/08, § 94, 17 January 2012, and *Davitidze v. Russia*, no. 8810/05, § 107, 30 May 2013).

59. Moreover, it is noted that after the criminal investigation had been opened in February 2003, it was assigned to investigator R., who had been in charge of G.'s murder case. This decision was not conducive to ensuring the efficiency of the investigation into the circumstances of Mr Khayrullin's death given that it was precisely R. who had interviewed him on the day of the tragic events on 13 September 2002 and in view of V.'s procedural status in the murder case and his initial statement relating to a possible ill-treatment of Mr Khayrullin (see paragraph 9 above; see also *Mikheyev*

v. Russia, no. 77617/01, §§ 115-16, 26 January 2006, and *Aleksey Borisov v. Russia*, no. 12008/06, § 59, 16 July 2015).

60. The Court further observes that, although the victim's removal from the possible crime scene was necessary in order to provide him with medical care, there is no indication that a crime scene inspection or similar measures were carried out. Nothing suggests that, following his admission to hospital in a state of unconsciousness, he was subjected to a prompt and proper examination to determine the circumstances in which he had sustained serious health damage while in a police station.

61. There is no indication that, following his urgent admission to the hospital, the victim underwent without delay any procedure which might have resulted in the adequate recording of the injuries on his body (see the investigator's findings in paragraph 38 above). It is unclear whether the paramedics who attended the victim in the police station conducted an adequate examination of the victim beyond the examination of the head and neck obviously dictated by the circumstances (see paragraph 21 above).

62. It appears that during the initial stages of the inquiry and throughout the subsequent criminal investigation the investigating authority limited their assessment of the medical evidence to the absence of visible injuries as could be observed by the medical professionals, including the paramedics, whose task was obviously not to carry out a forensic medical examination but to provide urgent medical care. The fact that the applicant's husband died three months after the events in question does not explain the absence of forensic reports in the preceding period.

63. Neither the expert reports nor the domestic decisions record an adequate assessment of the marks that were present on the victim's neck, in particular of the question of whether they were self-inflicted or inflicted by another person. The domestic decisions make no reference to any assessment of the victim's mental health and circumstances that could have driven him to attempt suicide.

64. Nothing suggests that it was ascertained whether any gas masks were found at the police station and whether any of them bore genetic traces that might belong to the victim even though this was an essential procedure given the suggestion of asphyxiation resulting from the application of a gas mask and the intentional suppression of air flow (see paragraph 38 above). It is further noted that, as mentioned in the recent discontinuation decision, no expert assessment could be conducted to ascertain the presence of traces of biological material on the victim's jacket since they had been lost.

65. Further to the findings in paragraph 57 above concerning the initial stage of the investigation, its subsequent considerable length is also noted. While the Court finds it conceivable that time might have been be necessary for additional investigative measures following instructions given by the supervising authority or the related court proceedings, in the present case the Court observes that on numerous occasions such instructions were not

complied with, and new suspension or discontinuation decisions were issued prematurely, prompting the supervising authority to quash them and require further investigation. In this context, the resulting length of the investigation − from September 2002 to November 2010 − should be imputed to the respondent State and contributed to the finding that the domestic proceedings had fallen short of the requirements of an "effective" investigation.

66. The Court considers that, in addition to these unjustified delays, the domestic authorities failed to take reasonable measures to preserve key evidence in the case. The Court reiterates in this connection that to be effective an investigation should be "capable of leading to" the identification and − if appropriate − punishment of those responsible (see *Armani Da Silva*, cited above, §§ 233, 243 and 257). Otherwise, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). Therefore, the loss of important evidence should have resulted in a prompt and thorough enquiry. In the circumstances relating to death following detention at a police station it was important to confirm or dispel any doubts as to the absence of bad faith on the part of any public officials in their handling of the evidence. However, the available decisions contain no reference to or assessment of any evidence as to the circumstances of the loss of important evidence. The Court has not been provided with convincing evidence that the Russian authorities took sufficient steps to secure the evidence concerning the incident and to investigate the loss of the evidence.

67. There is, moreover, no indication that the authorities made efforts to collect and assess any other tangible forensic evidence, for instance other pieces of the victim's clothes which might have revealed traces of blood (see paragraph 30 above) or other biological traces including those that may be provoked by the act of strangulation.

68. There has therefore been a violation of Article 2 of the Convention under its procedural aspect.

(b) Substantive aspect of Article 2 of the Convention

69. Allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. In assessing the evidence on which to base a decision as to whether or not there has been a violation of Article 3 of the Convention, it is appropriate to adopt the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Bouyid v. Belgium* [GC], no. 23380/09, § 82, ECHR 2015). The level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the

allegation made and the Convention right at stake (see *El-Masri*, cited above, § 151).

70. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention (see *Bouyid*, cited above, § 83). The burden of proof is then on the authorities (the Government before the Court) to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (ibid.). In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government (ibid.).

71. Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V, and, more recently, *Gäfgen v. Germany* [GC], no. 22978/05, § 92, ECHR 2010).

72. The above applies *a fortiori* in the context of injuries entailing the death of the victim.

73. It is also reiterated that in determining whether there has been a breach of Article 2 or 3 of the Convention, the responsibility of a State under the Convention arising from the acts of its organs, agents and servants is not to be confused with the domestic legal issues of individual criminal responsibility under examination in national proceedings (see *Golubeva v. Russia*, no. 1062/03, § 98, 17 December 2009, with further references).

74. Since the victim apparently never regained consciousness and therefore was unable to state own first-hand version of the events, the applicant only could put forward her own versions of the events (see paragraph 56 above) on the basis of her own understanding of the available information. At the same time, nothing suggests that the applicant was denied access to the victim during his stay in the hospital or could not request the recording of, or proceed by her own means to record, any injuries on her husband's body. It is also noted that her allegation relating to the alleged torture of V. (in particular, by application of a gas mask) was and remains unsubstantiated.

75. It is apparent from the available material that the investigating authority contemplated a version of events wherein a gas mask might have been used and that the related suffocation could have been a method of mistreatment or a possible cause of death. However, the available medical evidence and testimonies were interpreted as suggesting that the victim's body had no visible marks that might point to mistreatment. The main version of events presented by the authorities in the course of the investigation was an attempted suicide resulting, later on, in the victim's death.

76. The Court is not satisfied that the domestic authorities provided a plausible and convincing explanation substantiating the version of events suggesting an attempted suicide, or for discarding the version implicating public officials.

77. There is nothing in the available evidential material to show that the victim suffered from any illness or mental condition or was otherwise in a particularly vulnerable state of mind at any time before, during or immediately after his interviews in the police station on the relevant date. In fact, no such argument was even discussed in the domestic procedures.

78. At the same time, it is also relevant that there was no lawful basis for the victim's being taken to the police station and his detention there (see paragraph 99 below). Importantly, insufficient evidence was provided to substantiate that the victim was at liberty to leave the police station from about 8 p.m. (see paragraph 95 below). It is apparent from certain testimonies that the victim was locked up in a cell or an interrogation room.

79. While it is within purview of the domestic authorities to implement the security measures that they deem necessary, it appears that entry to the police station was subject to certain requirements and a logbook relating to visits was kept. The Government provided no information concerning the practical arrangements and security measures regarding a visitor's leaving the premises of the police station. It remains unexplained why, immediately after having been interviewed by the investigator in charge of the murder investigation, Mr Khayrullin was interviewed for a second time, this time by a field officer, during which he changed his testimony and incriminated V. (see paragraph 8 above). Moreover, as mentioned in the most recent discontinuation decision, some other, unnamed officers also had "talks" with Mr Khayrullin on the same day (see paragraph 38 above).

80. It is also surprising that after the end of the interview at around 8 p.m. Mr Khayrullin apparently chose to − and actually was able to − remain and move around within the police station and, strikingly, to gain access to a balcony, without any impediment or questions being asked, until the time when he was found, whether that was on the fifth floor balcony, in a cell or an interrogation room. It would be normal procedure to require that a visitor and, *a fortiori*, a person taken into the police station to be accompanied to and from the control point at the station's entrance.

81. It was never ascertained why V. substantially modified the statement he gave in the course of the pre-investigation inquiry and then during the criminal investigation (see paragraphs 9 and 38 above).

82. There is no indication that, following his urgent admission to the hospital, the applicant was swiftly subjected to a procedure which might have resulted in the adequate recording of injuries on his body (see the investigator's findings in paragraph 38 above). It is unclear whether the paramedics who attended the victim before that, in the police station, performed any adequate examination of the victim, except for the

examination of his head and neck obviously warranted by the circumstances (see paragraph 21 above).

83. Lastly, the Court has taken note of the civil court's finding as regards unlawful actions on the part of unnamed officials in relation to the victim's death.

84. The Court notes that there is very little direct evidence which would confirm ill-treatment at the hands of public officials. However, independently of those deficiencies, it remains the case that the applicant's husband was unlawfully detained at the police station on the evening of 13 September 2002 (see paragraphs 95-99 below) and that he died as a result of injuries incurred during that time for which no convincing explanation has been provided.

85. In view of the above considerations taken as a whole, the Court concludes that there are sufficient elements for engaging the State's responsibility under the substantive limb of Article 2 of the Convention in the present case; there has therefore been a violation of this Article on this account.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

86. The applicant complained that her late husband had been unlawfully taken to the police station and kept there, and that her claim for compensation on account of the above complaint had been turned down.

87. The applicant referred to Article 5 §§ 1 and 5 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. The parties' submissions

88. In their submissions relating to Articles 2 and 3 of the Convention, the Government submitted that the applicant's husband had been unlawfully deprived of his liberty. However, the applicant did not have standing to

claim and receive compensation on this account since − under Article 150 of the Civil Code − one's life, health, dignity and personal security were unalienable and non-transferable valuables. None of the applicant's own rights or freedoms had been violated as a result of her late husband's deprivation of liberty. Moreover, as the Government stated in their submissions in 2010, the investigation was still ongoing in 2008 and the complaint before the Court was thus premature.

89. The applicant maintained her complaints.

B. The Court's assessment

1. Admissibility

90. The Court observes that Mr Khayrullin was found unconscious on the premises of a police station whilst or after being unlawfully deprived of his liberty, as argued by the applicant. He died three months later, apparently without ever regaining consciousness. The applicant sought the institution of criminal proceedings to have the circumstances of her late husband's arrest and death clarified. Remaining dissatisfied with the outcome of the domestic proceedings and after the victim's death, the applicant lodged an application with this Court.

91. Where the death or disappearance of the direct victim in circumstances engaging the State's responsibility precedes the lodging of an application with this Court, any other person with a close link to the victim has standing to lodge such an application, in particular as regards Articles 2 and 3 of the Convention (see, as a recent example, *Lykova*, cited above, §§ 63-66, 22 December 2015). As to Article 5 of the Convention, the rights enshrined in it belong to the category of non-transferable rights (see *Sanles Sanles v. Spain* (dec.), no. 48335/99, ECHR 2000-XI, and *Tomaszewscy v. Poland*, no. 8933/05, § 77, 15 April 2014). However, a next of kin might exceptionally have standing to lodge a complaint under Article 5 § 1 of the Convention if connected to a complaint under Article 2 of the Convention relating to the victim's death or disappearance engaging the State's liability (see *Lykova*, cited above, §§ 63-66, with further references).

92. The Court considers that the circumstances of the present case are similar to those examined by the Court in *Lykova*, cited above. The Court concludes that the applicant has standing to lodge a complaint under Article 5 § 1 of the Convention. The Court also considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other grounds for declaring it inadmissible have been established. It must be therefore declared admissible.

93. As to the complaint under Article 5 § 5 of the Convention, the Court considers that its admissibility is closely linked to the merits of the issues

under Article 5 §§ 1 and 5. This matter should therefore be joined to the merits.

2. Merits

(a) Article 5 § 1 of the Convention

94. It appears to be common ground between the parties that the applicant's late husband was "deprived of his liberty" on 13 September 2002. There is *prima facie* concordant evidence capable of showing that he was indeed under the exclusive control of the authorities on the day of the events; he was not free to leave, particularly as investigative measures were underway (see *Creangă v. Romania* [GC], no. 29226/03, § 90, 23 February 2012).

95. In view of the above, it was incumbent on the Government to provide, with reference to satisfactory and convincing written evidence, a detailed hour-by-hour report of what happened on the premises in question and to account for the time spent there by Mr Khayrullin on 13 September 2002 (see *Creangă*, cited above, § 90, and *Kasparov v. Russia*, no. 53659/07, § 35, 11 October 2016). This was not done in the present case. The domestic authorities failed to establish, with reference to documentary evidence, the factual and legal background behind taking the victim to the police station, his detention there and his eventual release, if he was indeed released (see paragraphs 13 and 22 above). With the exception of Officer Kh.'s statement, there is no evidence confirming that Mr Khayrullin was at liberty to leave the police station at approximately 8 p.m.

96. In these circumstances, the Court considers that Mr Khayrullin remained deprived of his liberty throughout the evening of 13 September 2002 (compare *Boris Popov v. Russia*, no. 23284/04, § 75, 28 October 2010).

97. Nothing in the file, including the domestic court decisions in the compensation case and the Government's submissions before the Court, clarifies the question of the legal basis under Russian law for taking the victim to the police station, on the assumption that the action was indeed related to his being interviewed as a witness in a criminal investigation (see paragraph 38 above).

98. In particular, in so far as it was mentioned in the domestic proceedings (see paragraph 8 above) that the applicant's late husband had been taken to the police station in order to establish his identity, it remains unascertained what specific "obligation prescribed by law" he had failed to comply with for a deprivation of liberty to fall within the scope of Article 5 § 1(b) (see *Lykova*, cited above, § 81, and *Rozhkov v. Russia (no. 2)*, no. 38898/04, §§ 89-97, 31 January 2017).

99. In view of the above considerations, the Court concludes that Mr Khayrullin was deprived of his liberty in breach of Article 5 § 1 of the Convention.

(b) Article 5 § 5 of the Convention

100. The Court reiterates that Article 5 § 5 of the Convention is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 182, ECHR 2012). Normally, this possibility should be available to the direct victim of the alleged violation, that is to say the person who was deprived of liberty.

101. As to the applicant's standing under Article 5 § 5 of the Convention to seek compensation under the heading of non-pecuniary damage in relation to her late husband's deprivation of liberty, the Court admits that this matter is connected to but does not necessary arise from the above considerations regarding Article 5 § 1 (see paragraphs 90-92 above).

102. The Court reiterates, however, that the rationale for allowing another person to lodge before the Court an application raising issues of alleged arbitrariness or unlawfulness as regards deprivation of liberty of a deceased is related to the particular context of potential serious abuse of power by public officials. In such a situation the Convention aims to prevent agents of the State from abusing the rights of those within their control with virtual impunity (see *Labita*, cited above, § 131). Domestic legislation may provide for a variety of procedures to attain this aim of holding public officials accountable, namely criminal procedures, disciplinary proceedings or judicial-review procedures, civil proceedings for compensation on account of non-pecuniary and/or pecuniary damage or their combination.

103. By way of comparison, the Court reiterates that it is normally possible for family members or relatives of a deceased victim to lodge a complaint under Article 13 of the Convention in conjunction with its Article 2 on account of the alleged unavailability of a remedy affording monetary redress (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 148, ECHR 2004-XII, and *Sarbyanova-Pashaliyska and Pashaliyska v. Bulgaria*, no. 3524/14, § 52, 12 January 2017); they may also obtain just satisfaction under Article 41 of the Convention in respect of non-pecuniary damage sustained on account of the violation of Article 2 (see *Nagmetov*, cited above, § 92).

104. As regards specifically Article 5 of the Convention, the Court notes that in certain cases − for instance cases against Russia in relation to alleged abductions or suspicious disappearances of the applicants' relatives in North Caucasus (in circumstances engaging responsibility of the State under the Convention) − the Court has found violations of Article 5 of the Convention, in particular under its paragraph 1, and has made awards under Article 41 of the Convention to the victims' next of kin with reference to the

finding of a violation in respect of the victim under Article 2 of the Convention as well as, apparently, its Article 5 (see, for instance, *Dudayeva v. Russia*, no. 67437/09, §§ 104 and 116, 8 December 2015; *Islamova v. Russia*, no. 5713/11, §§ 72 and 83, 30 April 2015; and *Khava Aziyeva and Others v. Russia*, no. 30237/10, §§ 106 and 121, 23 April 2015; see also *Taş v. Turkey*, no. 24396/94, § 102, 14 November 2000).

105. In several previous cases the Court has accepted that a person who was not the direct victim of the alleged violation of Article 5 of the Convention, could have standing to lodge a complaint under Article 5 § 5 of the Convention in relation to the deprivation of liberty of a deceased victim (see also, *mutatis mutandis*, *Taş*, cited above, § 86; *Uçar v. Turkey*, no. 52392/99, §§ 121-23, 11 April 2006; and *Houtman and Meeus v. Belgium*, no. 22945/07, §§ 29-31 and 51, 17 March 2009).

106. In the Court's view, the availability of the possibility for next of kin to claim compensation derives from the rationale for granting them standing to raise issues relating to the lawfulness of the deceased victim's deprivation of liberty, and complements the array of possible remedies that may be available at national level in the particular circumstances of death following an allegedly unlawful or arbitrary deprivation of liberty. The Court reiterates that the right to compensation set forth in paragraph 5 presupposes that a violation of one of the other paragraphs has been established, either by a domestic authority or by the Court itself. This requirement is complied with in this case (see paragraph 99 above). Therefore, the Court concludes that the applicant had and still has standing before it to lodge a complaint under Article 5 § 5 of the Convention about the lack of compensation for the violation of Article 5 § 1 of the Convention. It is also noted that the civil court explicitly refused to deal with the applicant's compensation claim relating to the arbitrariness with which her late husband was taken to the police station and detained there.

107. In view of the above findings and given the particular context of the present case, the Court declares the applicant's complaint under Article 5 § 5 admissible, in particular as regards its compatibility *ratione personae*, and finds that there has been a violation of this Article.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

108. The applicant complained about a further separate violation of Article 3 of the Convention on account of her own suffering resulting from the authorities' failure to establish the circumstances of her late husband's death. Leaving aside the question of the applicant's standing (compare *Khadzhialiyev and Others v. Russia*, no. 3013/04, § 120 et seq., 6 November 2008, with further references) and in view of the Court's findings under Articles 2 and 5 of the Convention, it is not necessary to give a separate examination of the admissibility and merits of the present complaint.

109. The parties were also invited to make submissions as to whether in the circumstances of the case the national authorities had been under and had complied with the so-called positive obligation under Article 2 of the Convention to protect life, in particular by taking measures to prevent suicide (compare *Trapeznikova and Others v. Russia*, no. 45115/09, §§ 38-42, 1 December 2016, and *Fanziyeva*, cited above, §§ 55-60). However, noting the absence of any specific observations on this matter on the part of the Government and, more importantly, on the part of the applicant's representative, and having regard to the Court's other findings under Article 2 of the Convention, it is not necessary to proceed with the examination of the admissibility and merits of this matter.

110. Lastly, the Court has examined the remaining complaints relating to the arrest and the alleged ill-treatment of Mr V., as submitted by the applicant. These complaints are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

111. 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

112. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage on account of the violations under Articles 2 and 3 of the Convention and EUR 3,000 on account of lost income that would have been received by her late husband.

113. The Government contested the claims.

114. Having regard to the findings under the substantive and procedural limbs of Article 2 of the Convention and taking into account the compensation already paid at the domestic level, the Court awards the applicant EUR 43,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. It also awards EUR 3,000 in respect of pecuniary damage, plus any tax that may be chargeable (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 172, ECHR 2005-VII).

B. Costs and expenses

115. The applicant also claimed EUR 2,250 for the costs and expenses incurred before the domestic authorities and EUR 2,400 for those incurred before the Court.

116. The Government contested the claims.

117. 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 sum of EUR 2,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

118. 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. *Joins to the merits* the Government's arguments relating to the applicant's standing under Article 5 § 5 of the Convention and *dismisses* it;

2. *Declares* the complaints under Articles 2 and 5 admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 2 of the Convention under its substantive aspect;

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

5. *Holds* that it is not necessary to examine separately the remaining complaints under Articles 2 and 3 of the Convention;

6. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

7. *Holds* that there has been a violation of Article 5 § 5 of the Convention;

8. *Holds*

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

(i) EUR 43,000 (forty-three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(iii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 19 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Helena Jäderblom
President