

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

THIRD SECTION

# CASE OF KOTELNIKOV v. RUSSIA

*(Application no. 45104/05)*

JUDGMENT

STRASBOURG

12 July 2016

**FINAL**

12/10/2016

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



**In the case of Kotelnikov v. Russia,**

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

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 21 June 2016,

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

# PROCEDURE

1. The case originated in an application (no. 45104/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Mikhail Aleksandrovich Kotelnikov ("the applicant"), on 7 November 2005. He was granted leave by the President to represent himself in the proceedings before the Court.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged that the authorities had failed to meet their positive obligations to secure an effective investigation into a car accident, and that the compensation awarded to him in this regard was insufficient.

4. On 10 February 2011 the application was communicated to the Government under Article 3 of the Convention. On 10 March 2015 it was re-communicated under Articles 2 and 8 of the Convention.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and lives in Veshenskaya, a village in the Rostov Region.

## A. Car accident and initial inquiry

6. According to the applicant, on an unspecified date at the end of June 2002 he was sitting in a cafe. He saw P. there, a police officer and former schoolmate who was drunk and making indecent suggestions to a girl. The applicant, in his words, reprimanded P. for his behaviour, to which he replied with a vague threat.

7. Between about 10.30 and 11 p.m. on 9 July 2002 the applicant was hit by a car while on the pavement. The driver was P., who was accompanied by a passenger, Ms S.K. The accident took place in a recreational area in the centre of the village. As a result, the applicant suffered severe head and spinal injuries. P.'s car was also damaged. With the help of a passer-by, G., P. loaded the semi-conscious applicant into his car and drove him away from the scene of the accident.

8. At about 11 p.m. P. arrived with the applicant at a local hospital. The applicant was able to walk but was suffering from memory loss, was disoriented and did not understand what had just happened. His condition started to worsen; at about midnight he was transferred to the hospital's intensive care unit.

9. According to the applicant, having seen what he had done, P. called his father, the chief of the local tax police and former chief of the local traffic police. P.'s father called his acquaintances, A., a traffic police officer, and M., the head of the laboratory of the local hospital. He explained to them what had happened and asked if they would help protect his son. The Government did not comment on this allegation.

10. Shortly after the applicant's admission to the hospital A. arrived and spoke to the applicant. At 12.15 a.m. on 10 July 2002 he drew up a report stating that the applicant had fallen down the stairs of a nearby cafe and had injured himself. He made the applicant sign the report. No mention of the car accident was made. The report contained a handwritten entry, apparently in the applicant's own handwriting, which read: "Recorded from my words, I have read it". The report was then submitted to Sholokhovskiy police station, where the accident was logged in the daily accident record as "no. 2".

11. At 12.20 a.m. on 10 July 2002, M. arrived at the hospital in P.'s father's car and took samples of the applicant's blood. After testing them she concluded that his blood contained a high level of alcohol (1.9 per mille), which meant he had been drunk at the time of the accident. The applicant was unconscious when M. took the samples. She also took blood from P. The tests showed the presence of 0.4 per mille of alcohol in his blood (the then acceptable legal limit for driving a car). The applicant alleged that the results of the tests had been falsified by M. He referred to the testimony of two staff members of the hospital, who later testified that he had not been drunk. The applicant also pointed to inconsistencies in the

report by A. and the results of subsequent tests of the samples of his blood, which had revealed different levels of alcohol.

12. At about 1.15 a.m. the applicant's parents arrived at the hospital. According to the applicant, they did not smell any alcohol on him. Furthermore, the entries made by the hospital personnel about his condition and the nature of his injuries were incomplete. No mention of his spinal injury had thus been made, since the existence of such an injury would have gone against the story that he had fallen down the stairs. Furthermore, the hospital authorities had washed his t-shirt, which contained traces of his blood and could have confirmed his version of events.

13. In the meantime P. left the hospital and returned to the scene of the accident. According to the official examination report, the police examined the scene between 1 and 2 a.m. on 10 July 2002. P. took part in the examination, together with police officers from Sholokhovskiy police station. He signed the report, as did the attesting witnesses present. The applicant claimed that the examination had taken place much later in the day, during the afternoon.

14. According to the applicant, later that day P. drove his car to a garage, where it was quickly repaired and the broken windscreen replaced.

15. At 1.45 a.m. on 10 July 2002 the applicant's father arrived at Sholokhovskiy police station and tried to formally report the car accident. However, the officer on duty refused to accept it, referring to the earlier report by A. stating that the applicant had fallen down the stairs.

16. Between 2 and 3 a.m. doctors at the hospital made an encephalogram of the applicant's head and took samples of his spinal fluid.

17. At 10 a.m. a second test of the applicant's blood was carried out, which showed the presence of 0.2 per mille of alcohol. A further test of the same sample showed the presence of 0.1 per mille of alcohol.

18. The applicant's first operation took place at about 1.30 p.m. on 10 July 2002 and was carried out by Dr Zh, a surgeon from the hospital. His condition, however, remained very unstable and continued to worsen. His relatives suspected that when they had left the hospital, someone had tried to strangle him to death, because upon their return they had discovered marks on his neck. They also blamed the hospital authorities for their inaction in dealing with the applicant's case.

19. That day the police examined P.'s car. It appears from the report of the examination that the car had dents on the right side of the bonnet and on the front right windscreen support. The police did not mention the windscreen in their report. It is unclear whether the car was examined before or after it had been repaired.

20. At 9 a.m. on 13 July 2002 the local hospital requested the help of the Rostov City Hospital at the insistence of the applicant's relatives. A neurosurgeon arrived at about 3.30 p.m. and performed further surgery, which was more successful. The applicant started to recover. A few days

later he was transferred to the Rostov City Hospital for further treatment. In the years that followed he had to undergo a further two neurosurgical operations, but he never recovered completely; he lost the ability to work and started to suffer from repeated epileptic fits. He was registered as Category 2 disabled (where Category 1 corresponds to a severe disability preventing a person from working, and Category 3 corresponds to a less severe disability).

### B. Criminal investigation

21. According to the applicant, on 12 July 2002 the Sholokhovskiy district police informed the District Prosecutor about the incident on 9 July 2002. The Government did not comment.

22. On 16 July 2002 the Sholokhovskiy District Prosecutor's Office opened a criminal investigation into the accident (registered as case no. 2707168). The applicant alleged that the investigator in charge of the case, M., had been a schoolmate and close friend of P. He also alleged that the date the decision was taken to open an investigation was incorrect, as the case had in fact been opened on 18 July 2002.

23. On 17 July 2002 the investigator started questioning witnesses. G., who had been with the applicant on the night of 9 July and helped take him to the hospital, testified that the applicant had not been drinking that evening. He also testified that the applicant had been walking parallel to the road when the car had hit him. His account was confirmed by the testimony of several other witnesses. In contrast, some other witnesses testified that the applicant had suddenly moved in the direction of the car a second before the collision. Several witnesses had also noticed that the windscreen of the car of P. had been broken after the incident. It appears that the investigator identified and questioned more than twelve witnesses who had seen the accident or observed the events immediately afterwards. The investigator also questioned paramedics from the local hospital, some of whom testified that P. had probably been drunk. Others had not noticed anything of that kind.

24. On 19 July 2002 the investigator examined the car again. His report suggests that the car did not have any visible dents, but evidence of repair work was discovered on the front right windscreen support.

25. On 23 July 2002 the investigator questioned P. again. It appears that he was questioned as a witness. He claimed that the applicant had made a dangerous unexpected move in the direction of the car. He also denied that the car had sustained any damage to the windscreen or the front right windscreen support.

26. On 29 July 2002 the investigator examined the scene of the accident. It was established, amongst other things, that it had taken place in an area marked as a pedestrian zone. There was a road sign prohibiting cars from

access, although it was unclear whether it had been there on the night of the accident and had been visible.

27. On 29 July 2002 a forensic expert tested a sample of P.'s blood, obtained from him on 10 July 2002. The expert did not find any traces of alcohol. A similar test of a sample of the applicant's blood revealed the presence of 2.9 per mille of alcohol.

28. On 31 July 2002 the investigator conducted a reconstruction of the accident, in the presence of P. Neither the applicant nor his parents were notified or participated.

29. On 1 August 2002 a forensic expert drew up a report examining the nature of the applicant's injuries and making conclusions as to the speed and direction P.'s car had been travelling, the position of the applicant's body at the time of the accident, and other relevant factors.

30. On 2 August 2002 the investigator questioned P.'s father who explained, among other things, that the dent on the bonnet of the car was not related to the accident involving the applicant. P. testified that he had arranged for the car to be repaired a few days before the accident.

31. On 6 August 2002 the applicant's father complained to the Regional Prosecutor that the investigator M. had been leaking information about the investigation to P.'s father. He asked that the case be transferred to another investigator from a neighbouring district.

32. On 12 August 2002 the applicant's father submitted to the investigator in charge of the case a list of over a dozen witnesses who had seen the accident. He asked the investigator to summon and question them.

33. On 5 September 2002 the applicant was granted victim status in the investigation. On 6 and 25 September 2002 the investigator questioned him. The applicant testified, among other things, that he had not been drinking on the day of the accident. He also claimed that he had been walking straight when the car had hit him from behind.

34. On 9 September 2002 the investigator organised a reconstruction of the accident in the presence of the applicant, P. and G.

35. On 17 September 2002 the investigator questioned M. She denied falsifying the results of the blood test. The difference between the original and second blood tests could, in her words, be explained by a different testing method and the acceptable margin of error.

36. On an unspecified date experts examined the applicant's clothes in order to establish the mechanics of the injuries.

37. On 25 September 2002 P. was questioned again, this time as a suspect in the criminal case. He refused to give evidence.

38. On 27 September 2002 the investigator questioned an expert, who explained the difference between the results of the two tests of the blood samples taken from the applicant and P.

39. On 2 October 2002 the investigator questioned the applicant's father.

40. On 4 December 2002 a team of experts produced a report analysing the applicant's injuries and the mechanics of the accident. They answered twenty-two questions which had been formulated by the investigator.

41. On 10 January 2003 the applicant lodged a civil claim against P. in connection with the health problems he had suffered as a result of the accident.

42. On 19 January 2003 P. was ordered by the investigator not to leave the village without his consent.

43. On 14 February 2003 P. was formally charged under Article 264 § 1 of the Criminal Code for causing serious bodily harm by negligently breaching traffic regulations. He was questioned but denied his guilt.

44. On 24 March 2003 the investigator questioned the deputy head of Sholokhovskiy police station, Ch., who had been an eyewitness to the accident.

45. On 26 April 2003 a further reconstruction of the accident was carried out.

46. On 14 May 2003 the applicant obtained an expert report from the Volgograd Forensics Bureau, in which the events of 9 July 2002 were reconstructed on the basis of the material of the case file.

47. On 20 March 2003 the applicant was examined by medical experts.

48. On 15 April 2003 doctors examined X-ray images of the applicant's neck and drew up a report.

49. On 27 August 2003 P. started working at Sholokhovskiy police station as a district police officer. On 7 July 2003 two witnesses to the accident, S. and B., complained to the district prosecutor that pressure had been put on them by P. in connection with his criminal case.

50. On 22 November 2003 the investigator obtained another expert examination of the applicant's injuries and the mechanics of the accident.

51. On 24 December 2003 the prosecutor approved the indictment against P. By the end of the investigation, the case file was nine volumes and over three thousand pages long. The applicant was given access to the case material.

52. On 26 December 2003 the applicant brought proceedings to challenge the investigator's decision, as he was dissatisfied with the accident being classified as an Article 264 § 1 offence. He applied for an injunction requiring the investigator to instead charge P. under Article 111 § 2 (intent to cause serious bodily harm). On 29 January 2004 the Sholokhovskiy District Court dismissed his complaint; it held that the courts had no jurisdiction to review the decisions of the investigator in so far as they concerned the legal classification of a criminal charge, since such a decision did not interfere with the applicant's constitutional rights and freedoms.

53. On an unspecified date in early 2004 the investigation was completed, and the parties were given access to the case material. The

investigator's decision of 27 April 2004 stated that the applicant's father had studied it. According to him, he only had five-and-a-half hours to study the material, which consisted of four files, each three hundred pages long. During that time he was only able to read part of the material and copy one hundred and thirty pages. The last volume of the case file was incomplete and did not contain an index of documents. As a result, the applicant had to request additional time to examine the case file during the court proceedings. A handwritten inscription he had written indicating that he had not read all the material allegedly disappeared from the case file.

54. On 5 January 2004 the criminal case and indictment were forwarded to the Sholokhovskiy District Court for examination on the merits.

### C. Trial and judgments in P.'s case

55. On 12 February 2004 the Sholokhovskiy District Court ruled that the first hearing in the case would be held on 26 February 2004, and that there was no need to hold a preliminary hearing. The applicant objected, claiming that one was necessary.

56. The hearings in the case were held on 26 February, 11 June and 5 July 2004.

57. On 13 September 2004 the Sholokhovskiy District Court found P. guilty under Article 264 § 1 of the Criminal Code and sentenced him to eighteen months' imprisonment, although he was not required to serve his sentence owing to the expiry of the statutory limitation period for crimes of that category. As to the civil claim lodged by the applicant within the criminal proceedings, the court awarded him 50,000 Russian roubles (RUB) in respect of non-pecuniary damage. It also acknowledged that he had a right to compensation in respect of pecuniary damage but decided to transfer the matter to a civil court for examination because it was impossible to make a precise calculation within the criminal proceedings.

58. On 26 November 2004 P. was dismissed from service in the police at his own request.

59. On 28 December 2004 the Rostov Regional Court quashed the judgment of 13 September 2004 and remitted the case for fresh examination. In particular, it ordered the lower court to clarify whether the road sign could have been visible to P. on the night of the accident.

60. In the course of the second round of the trial the court examined documentary evidence in the case file and heard over twenty witnesses, including the applicant, P., M., the applicant's parents, several people who had seen the accident, police officers who had been involved in the initial inquiry, two expert witnesses, attesting witnesses and a number of hearsay witnesses.

61. On 8 April 2005 the Sholokhovskiy District Court found P. guilty under Article 264 § 1 of the Criminal Procedure Code. Its findings of fact

can be summarised as follows. The court found that P.'s car had been moving at 30 to 40 km/h. The car had entered the pedestrian zone, which had been marked by a road sign, and had hit the applicant from behind. He had been walking straight and had not contributed in any manner to the accident. P. had been able to avoid collision by manoeuvring or stopping his car, but for whatever reason he had not done so. He had applied the brakes a while after the collision. As a result of the collision, the applicant had received life-threatening injuries. No mention was made of P. or the applicant being drunk during the accident. The court was also unable to make any conclusive findings as to when the dents on P.'s car had been repaired, or whether or not the windscreen had been broken. It concluded that the injuries had been caused to the applicant by P.'s carelessness, but not deliberately. The court sentenced P. to eighteen months' imprisonment, although again he was not required to serve his sentence owing to the expiry of the statutory limitation period for crimes of a less serious nature. The court awarded the applicant RUB 50,000 in respect of non-pecuniary damage. As to compensation for pecuniary damage, the court referred the case to a civil court. The Sholokhovskiy District Court specified that although the applicant had produced contracts, receipts and other documents to support his claim for pecuniary damages, he had failed to explain the amounts claimed and the court was therefore unable to make a precise calculation.

62. Both parties appealed.

63. On 31 May 2005 the Rostov Regional Court amended the decision of the first-instance court. Confirming its conclusions as to the facts of the case and their legal classification, the court decided that P. could not be held guilty, owing to the expiry of the statutory limitation period. As a result, the judgment of the first-instance court was quashed in its entirety and the proceedings discontinued. The Rostov Regional Court's judgment did not make reference to the civil award made by the first-instance court.

### D. Civil proceedings

64. On an unspecified date the applicant brought civil proceedings against P. claiming compensation for health damage, moral suffering, loss of earning capacity and the inability to live a normal life. The applicant's relatives also lodged separate claims within the same proceedings. The applicant claimed compensation of RUB 1,118,307 for past medical expenses, 6,000 United States dollars (USD) for a year's loss of earnings, 100,000 euros (EUR) for future surgery and medical expenses, and EUR 2,000 a month for health damage. In addition, he claimed USD 100,000 in respect of non-pecuniary damage.

65. On 8 August 2005 the Sholokhovskiy District Court, at the applicant's request, ordered that the car belonging to P. be temporarily seized.

66. On 10 August 2005 the Sholokhovskiy District Court allowed the applicant's claims in part.

67. On 10 October 2005 the Rostov Regional Court quashed that decision and remitted the case for fresh examination.

68. Since all the judges working in the Sholokhovskiy District Court had participated in the earlier proceedings, the case was transferred to a court in an adjacent district, the Verkhnedonskoy District Court, situated 50 kilometres from the applicant's village. The applicant, who was a wheelchair user at the time, objected without success.

69. In those proceedings the plaintiffs (the applicant and his relatives) amended their claims. In particular, they claimed that damages should be paid by the State, because P. had been a police officer at the time of the events.

70. The applicant formulated his claims in respect of pecuniary damage as follows. The accident and resulting injuries had deprived him of the ability to work. Although the applicant, who was a qualified naval operator mechanic, had had no actual work at the time, he had been promised an offer of employment overseas on a cargo ship, and had been on a waiting list for a job. If he had accepted that job, his salary would have amounted to USD 2,500 per month. Consequently, he asked to be compensated the three years' salary he would have earned but for the accident (USD 82,500)[1]. Further, he asked for reimbursement of various medical expenses, including several operations and consultations in Rostov and Moscow, and legal costs related to his participation in the proceedings against P. (RUB 1,031,120). He also claimed reimbursement of his expenses related to a special diet he had to follow, and the personal assistance he had required during his periods of complete disability. Lastly, the applicant claimed that he still needed further surgery, which could only be done at a clinic in Germany because he had developed several brain cysts as a result of the previous operations (EUR 200,000). Lastly, he claimed compensation for his expenses for having to retrain in another field, which would enable him to work again (RUB 970,000).

71. As to non-pecuniary damages, the applicant claimed RUB 4,320,000 under this head, referring mostly to the same facts and the suffering caused by the accident, the subsequent surgery, his participation in the proceedings, and lost opportunities related to his disability.

72. The representative of the State claimed that the State could not be held responsible for the accident. In their words, liability would arise when

1. This is the final figure which was submitted by the applicant in the updated statement of claim of 2 May 2006.

two conditions were met: if the damage was caused in the course of realisation of the State's public functions, and if the State's acts were unlawful. Where damage was caused in the context of an economic activity, it should be compensated in the ordinary way, by the immediate wrongdoer. P. had injured the applicant while driving his own car, and had not been on duty at the time. He had therefore had to be the defendant in the civil proceedings, not the State.

73. On an unspecified date the court obtained (through the applicant or otherwise) a letter from an employment assistance agency, Panigo, dated 28 March 2003. It said that the agency had an opening for the applicant on an overseas voyage on a six-month contract basis, with a salary of USD 2,500. A letter from another shipping company, Valmars Ltd, which had the applicant's name on a waiting list for an offer of employment at the time of the accident, said that he could have earned USD 550 working as an operator mechanic on a ship in 2003. It also indicated that on overseas voyages on foreign ships, the pay of operator mechanics varied between USD 700 and 2,300.

74. On 5 June 2006 the Verkhnedonskoy District Court gave judgment in the civil case. The court's findings of fact were almost identical to the findings of the criminal court. It concluded that P. had been fully responsible for the injuries caused to the applicant. As to the amount of pecuniary damages, the court noted that the applicant had only been on a waiting list for future employment and had not received an actual job offer. At the time of the accident he had been unemployed. Moreover, it could be seen from the material in the case file that he could not have obtained a job as a naval operator mechanic on overseas voyages in 2002 owing to a lack of previous work experience and his poor English. Furthermore, the applicant had a chronic kidney problem, which would have prevented him from going overseas. As a result, the court calculated the applicant's loss of earnings as five times the minimum wage and took into consideration the "minimum subsistence level" which existed at the relevant time in the area where the applicant lived. The resulting amount for loss of earnings for the period under consideration was RUB 117,645 (approximately EUR 3,415). The court also ordered that the defendant pay him RUB 2,690 (approximately EUR 80) every month until the next expert examination of his health. The court also partially satisfied the applicant's claims concerning the reimbursement of his medical expenses (RUB 5,321) and his and his father's travel expenses connected to consultations in Moscow clinics (RUB 4,070) and the cost of those consultations (RUB 23,265). The part of the applicant's claim related to his special diet, treatments, legal and postal expenses and so forth were dismissed by the court as unnecessary, unsubstantiated, or not actually incurred. In particular, the court held that further treatment in Germany had not been proven necessary by the plaintiff.

75. The court ordered P. to pay non-pecuniary damages, dismissing the claims against the State. The court fixed the amount of compensation referring to, *inter alia*, the defendant's financial situation, at RUB 50,000 (approximately EUR 1,460). The overall amount to be recovered from P. was RUB 200,301 (approximately EUR 5,850). The court dismissed the claims of the applicant's relatives as unsubstantiated.

76. The applicant lodged an appeal, but it appears to have been dismissed by the Rostov Regional Court on 12[1] July 2006.

77. The amount of compensation awarded by the Verkhnedonskoy District Court was paid in full by 2008.

### E. Other legal proceedings instituted by the applicant and his relatives

78. According to the applicant, during the trial P. made repeated death threats towards him and other members of his family. As a result of that stressful situation, the health of some his relatives worsened and they have since died. The applicant asked the prosecutor to initiate criminal proceedings against P. in respect of the death threats but his request was refused for lack of evidence. The applicant tried to challenge the refusals in the courts but to no avail.

79. The applicant also sought to initiate a criminal investigation into the alleged falsification of the results of the blood tests by M. However, the prosecutor decided not to open a case, a decision which was upheld by the courts.

80. The applicant tried to initiate a criminal investigation into the actions of the surgeon Dr Zh., but the investigator did not find any grounds on which to prosecute him.

## II. RELEVANT DOMESTIC LAW

81. Under Article 44 § 2 of the Code of Criminal Procedure, a person who has suffered pecuniary or non-pecuniary damage as a result of a crime may bring a civil claim against the alleged perpetrator within the criminal proceedings against him or her. Under Article 309, the court examining a criminal case must decide any civil claim lodged by a civil plaintiff (or plaintiffs) against the criminal defendant; however, if there is a need to "carry out additional calculations" which may require an adjournment of the case, the court may "acknowledge the right of the civil plaintiff to compensation" and transfer the case in the part concerning civil damages to a civil court for further consideration.

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1. The date on the copy of the decision by the Rostov Regional Court is not clearly visible.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

82. The applicant complained that the authorities had failed to meet their positive obligations and conduct an effective investigation into the car accident. He also complained that the compensation awarded in his favour had been insufficient. He relied on Articles 2, 3 and 8 of the Convention. The Court will examine the complaint under Article 2, which reads in so far as relevant:

> "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

#### *1. The Government*

83. The Government contested that argument. They stressed that the investigation had been opened seven days after the accident and that within the months that followed, all the necessary investigative measures had been carried out. The suspect had been charged and brought to trial. Although the case against him had eventually been discontinued owing to the expiry of the limitation period, his guilt had been established and the domestic courts had found that he had caused bodily harm to the applicant by negligent driving. The authorities had thus complied with their obligation to conduct an effective investigation.

84. As to the compensation claim, the Government restated the reasons contained in the Verkhnedonskoy District Court's judgment of 5 June 2006. They submitted that the court had carefully examined the evidence before it and had satisfied only those claims concerning pecuniary damage which had been confirmed by receipts, bills and so forth, and which had been necessarily incurred given the applicant's state of health and medical needs. The amount of non-pecuniary damages (RUB 50,000) corresponded to the usual practice of the Russian courts in such types of cases. The court had taken into account not only the moral suffering of the plaintiff and his state of health after the accident, but also the defendant's material circumstances. The decision-making process had been flawless and the plaintiff had had ample opportunity to present his case.

85. The Government also expressed the view that the complaint fell to be examined under Article 3, rather than Articles 2 or 8 of the Convention. With reference to *Mikheyev v. Russia*, no. 77617/01, 26 January 2006, they argued that complaints concerning grave injuries suffered by applicants in various circumstances had been examined by the Court under Article 3.

*2. The applicant*

86. The applicant argued that the legal classification of the actions of P. – a breach of traffic regulations – was wrong. The accident had taken place in a pedestrian zone where no cars had been allowed. It therefore had not been a traffic accident, but rather a deliberate attempt to kill or injure the applicant as revenge for an incident which had taken place two weeks earlier in a cafe, when he had reprimanded P. for his inappropriate behaviour. The applicant insisted that the accident should have been examined under Article 111 of the Criminal Code, which governed intent to cause serious bodily harm.

87. The applicant further argued that P. should have been regarded as a representative of the public authorities and that he had used his car as a "tool" of the crime. Under the law, it is the obligation of every police officer to prevent crimes and administrative offences, even when off duty. P.'s behaviour had been contrary to that obligation, and therefore imputable to the State.

88. The applicant described the surgery he had undergone and claimed that the medical staff overseeing his care had been unprofessional and their actions even deliberately dangerous. He implied that they had been influenced by P.'s father and had attempted to kill him in hospital after the accident in order to help P. escape liability.

89. The applicant also pointed to various defects in the investigative process. In the days following the accident the police had refused to open a case, referring to a report by police officer A. stating that the applicant had fallen down the stairs. M., the head of the laboratory of the local hospital, had falsified the results of the blood alcohol test; the applicant had not in fact been drunk, whereas P. had. The case had not been opened until 18 July 2002, and the questioning of witnesses had only started on 19 July 2002. The perpetrator, P., had not been questioned until 23 July 2002, and then only as a witness. He had not been questioned as a suspect until 25 September 2002. The applicant had been questioned for the first time on 5 or 6 September 2002. P. had not been formally charged until 14 February 2003. It was the applicant's father who had found the eyewitnesses to the accident and informed the police about them, although they had not taken any steps to identify them. The applicant had had to lodge numerous complaints in order to speed up the proceedings and urge the prosecution authorities to question witnesses and conduct other investigative measures to help establish the truth. The case had not been particularly complex, but the investigative authorities had deliberately multiplied investigative measures and had protracted the proceedings excessively in order to relieve P. of criminal liability. The judge in the case had also delayed the beginning of the trial. During the trial the prosecutor, instead of trying to obtain a conviction, had played the role of P.'s advocate. The judge had been a

friend of P.'s father and had done everything to protect his son, the defendant.

90. The applicant argued that although his civil claim against P. had been lodged on 10 January 2003, it had not been examined until June 2006 when the Verkhnedonskoy District Court had awarded him compensation. The amount had been ridiculously low and had covered only a fraction of the pecuniary damage related to loss of earning capacity, medical expenses and so forth. The applicant relied on a letter from the employment assistance agency Panigo, which had offered him employment on a ship with a salary of USD 2,500 per month. He also argued that Russian doctors had not made any substantial progress in treating his many illnesses related to the accident and he had therefore needed treatment in Germany or Israel, but the courts had refused to recover the cost of that treatment from the defendant. It transpires from the applicant's submissions that his disability status had at some point been reviewed and that he was registered as Category 3 disabled. In 2008 he underwent surgery for stomach cancer which, according to him, developed because of the medication he had to take for the injuries he had suffered in the accident.

## B. Admissibility

91. The Court notes that 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.

## C. Merits

### *1. The scope of the application*

92. Before turning to the merits, the Court has to define the scope of the issues raised in the present application.

#### (a) Whether P. acted as a representative of the State

93. The applicant argued that P. had acted as a representative of the State. The Court reiterates that whether a person is an agent of the State for the purposes of the Convention is defined on the basis of a multitude of criteria, one of them being functional (see *Kotov v. Russia* [GC], no. 54522/00, §§ 92 et seq., 3 April 2012). The Court notes that although P. worked for the police, there is nothing to suggest that at the time of the accident he was performing any service-related functions. The accident happened when he was off duty and driving his own car on private business. He did not use any special powers, weapons, tools or information conferred on him in connection with his position (see, by contrast, *Đurđević*

*v. Croatia*, no. 52442/09, § 75, ECHR 2011 (extracts); and *Sašo Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 49382/06, §§ 48-52, ECHR 2012 (extracts)). In the circumstances of the present case, therefore, the Court considers that P. acted as an ordinary private individual not vested with any official powers.

**(b) Whether P. acted deliberately**

94. As to the applicant's allegation that P. had acted deliberately, the Court observes that the domestic courts found otherwise. The Court reiterates that it is not its task to substitute itself for the domestic courts and conduct a fresh assessment of evidence (see *Communist Party of Russia and Others v. Russia*, no. 29400/05, § 122, 19 June 2012). The conclusions of the domestic courts in the present case were based on a reasonable assessment of evidence, and the applicant's suggestion that the accident might have been connected to an earlier conflict between him and P. remained speculative. The present case should therefore be distinguished from cases concerning deliberate criminal acts by private individuals (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 144, ECHR 2014 (extracts); *C.A.S. and C.S. v. Romania*, no. 26692/05, §§ 68 et seq., 20 March 2012; and *Šečić v. Croatia*, no. 40116/02, § 53, 31 May 2007).

**(c) The applicable provision of the Convention**

95. On the basis of the foregoing the Court concludes that the present case concerns the negligent behaviour of a private individual which resulted in serious bodily harm.

96. The Court reiterates that Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see, for example, *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions 1998‑III*, and *Paul and Audrey Edwards v.* theUnited *Kingdom*, no. 46477/99, § 54, ECHR 2002-II). This positive obligation entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. In particular, the obligation indisputably applies in the context of designing a legislative framework for road traffic safety (see, for example, *Rajkowska v. Poland* (dec.), no. 37393/02, 27 November 2007; *Al Fayed v. France* (dec.), no. 38501/02, §§ 73-78, 27 September 2007; *Railean v. Moldova*, no. 23401/04, § 30, 5 January 2010; and *Anna Todorova*, cited above, § 72).

97. The Court further notes that Article 2 of the Convention may also be applicable when there has been no loss of life, however, the circumstances of the case and the nature of inflicted injuries indicate that the applicant's life was in serious danger (see *Krivova v. Ukraine*, no. 25732/05, § 45,

9 November 2010; *Igor Shevchenko v. Ukraine*, no. 22737/04, § 42, 12 January 2012; and *Makaratzis v. Greece* [GC], no. 50385/99, § 49, ECHR 2004-XI).

98. In the case at hand, as a result of the car accident the applicant suffered serious injuries which required several surgical interventions and, according to the domestic classification, resulted in him being registered as Category 2 disabled (later changed to Category 3). In such circumstances, the Court considers that the traffic accident placed the applicant's life in serious danger, and thus Article 2 of the Convention is applicable to the present case.

**(d) The scope of the State's obligations**

99. The Court held that in cases where negligence by a private individual resulted in the victim's death States were required to set up an effective independent judicial system so that the cause of death could be determined and those responsible made accountable (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, §§ 49 et seq., ECHR 2002-I).

100. The Court will then assess in every particular case whether the procedures available to the applicant satisfied the State's obligation under Article 2 of the Convention to provide an effective judicial system (see *Byrzykowski v. Poland*, no. 11562/05, §§ 106-107, 27 June 2006). If the infringement of the right to life is not intentional, the State may meet its obligation by affording victims a civil-law remedy, either alone or in conjunction with a criminal-law one, enabling any responsibility of the individuals concerned to be established and any appropriate civil redress, such as an order for damages, to be obtained (see, among other authorities, *Anna Todorova v. Bulgaria*, no. 23302/03, § 73, 24 May 2011).

101. In cases of fatal traffic accidents or those resulting in serious injuries, the Court has applied the same approach requiring States to provide "an effective judicial system" (see *Rajkowska v. Poland* (dec.), no. 37393/02, 27 November 2007, and *Igor Shevchenko*, cited above, § 56). In the Court's view, it is also applicable in the present case.

*2. The State's compliance with its obligations*

102. Having established the scope of the State's obligations, the Court has to next examine whether the authorities complied with those obligations in the present case.

103. It further observes that it was open to the applicant to initiate a criminal investigation into the events of the case and seek compensation for the injuries caused. The applicant availed himself of the criminal law remedy and also sought compensation within the criminal proceedings as such a possibility was provided by the domestic law.

104. The Court takes note of the applicant's grievances concerning the conduct of the investigation. It notes, in particular, that the first police report

of 10 July 2002 did not even mention the car accident and stated that the applicant had fallen down the stairs of a nearby cafe and had injured himself (see paragraph 10 above). It further notes that the authorities failed to ensure that the car in question was inspected before it had been repaired by the owner (see paragraphs 14, 19, 24, 30 and 61 above). Furthermore, while the investigation was opened on 16 July 2002, the applicant was granted victim status on 5 September 2002 (see paragraph 33 above) and could not participate in the investigative actions that had taken place before that date, including the first reconstruction of the accident on 31 July 2002 (see paragraph 28 above).

105. At the same time the Court notes a large number of investigative steps taken by the authorities who, despite the drawbacks mentioned above, seemed to have established the circumstances of the accident. However, the investigation was eventually discontinued by the Rostov Regional Court on 31 May 2005 because of expiry of the statutory limitation period.

106. Accordingly, the Court finds that the domestic authorities first unduly delayed the institution of the criminal proceedings. Then the conduct of the investigation in a relatively simple case was excessively long with the result that the proceedings were discontinued for the expiry of the statutory limitation period, whereas no fault could be attributed to the applicant for the procrastination of the proceedings. In the Court's view, the criminal proceedings can thus hardly be regarded as effective for the purposes of Article 2 (see *Demir v. Turkey* (dec.), no. 34885/06, § 73, 13 November 2012; *Koceski v. the Former Yugoslav Republic of Macedonia* (dec.), no. 41107/07, § 26, 22 October 2013; and *V.V.G. v. the former Yugoslav Republic of Macedonia* (dec.), no. 55569/08, § 43, 20 January 2015).

107. The applicant brought a civil claim for compensation within the criminal proceedings in accordance with Article 44 § 2 of the Code of Criminal Procedure. After one round of first-instance and appeal examination, on 8 April 2005 the Sholokhovskiy District Court awarded the applicant a certain amount in respect of non-pecuniary damage and referred the part of the case related to pecuniary damage to a civil court. However, on 31 May 2005 the Rostov Regional Court quashed that decision on appeal and discontinued the proceedings in their entirety on account of the expiry of the statutory limitation period in respect of the offence.

108. After three years of criminal and civil proceedings that were to no avail, the applicant resubmitted his claim before a civil court. It was examined twice at two levels of jurisdiction and, by a final decision of 12 July 2006, the Rostov Regional Court partially allowed the applicant's claim for damages.

109. The Court notes that the applicant was eventually awarded an amount of compensation which he contested as being too low. The Court reiterates that the amount of compensation afforded to an applicant for damage caused is an important indicator for assessing whether the breach of

the Convention has been redressed (see *Shilbergs v. Russia*, no. 20075/03, § 72, 17 December 2009).

110. Although the Court does not find it necessary to specifically reassess the amount of compensation awarded by the domestic courts in the present case, it considers that the way the authorities handled this case, which brought the criminal proceedings to a halt, compromised the effectiveness of the domestic legal process as a whole. The Court considers that the discontinuation of the criminal proceedings due to reasons beyond the applicant's control were in breach of the State's obligations under Article 2 of the Convention.

111. The respondent State therefore failed to comply with its procedural obligations under Article 2 of the Convention. Accordingly there has been a violation of this provision of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. 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

113. The applicant claimed damages on behalf of himself and his parents. The Court observes that Article 41, except in certain specific cases mostly related to complaints being brought on behalf of a deceased person under Article 2 of the Convention, provides for the payment of just satisfaction to only the direct victim of the violation. It follows that the Court will only consider claims which have been lodged in the name of the applicant himself.

114. The applicant claimed 827,272 euros (EUR) in respect of pecuniary and non-pecuniary damage, including the actual expenses related to his treatment as well as lost earnings and compensation for his suffering and health damage. The calculation submitted by him was based solely on the amount of his lost earnings.

115. The Government considered the applicant's claim in respect of lost earnings unsubstantiated and speculative; in any event, the overall amount claimed in respect of pecuniary and non-pecuniary damage was excessive.

116. The Court reiterates that the violation found in the present case concerns the State's failure to ensure that the proceedings against the perpetrator, a private individual, were conducted efficiently. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. In so far as the applicant's

claim under Article 41 relates to non-pecuniary damage, the Court is prepared to accept that by protracting the proceedings, the authorities caused the applicant moral distress, which was exacerbated by his poor health. In view of these considerations and taking into account the amount awarded to the applicant for non-pecuniary damage in domestic proceedings, the Court awards the applicant, on an equitable basis, EUR 8,540 for non-pecuniary damage, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

117. The applicant did not claim reimbursement of any costs or expenses, so the Court does not award anything under this head.

### 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. *Declares* the application admissible;

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

3. *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, EUR 8,540 (eight thousand five hundred and forty euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 12 July 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Fatoş Aracı<br>Deputy Registrar | Luis López Guerra<br>President |