CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 62006/00
by Claire Susan Elisabeth ROMIJN
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 3 March 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mrs A. GYULUMYAN,
Ms R. JAEGER,
Mr E. MYJER, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged on 26 July 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Claire Susan Elisabeth Romijn, is a Netherlands national, who was born in 1952 and lives in Rotterdam (Netherlands). She is represented before the Court by Mr L. de Leon, a lawyer practising in Utrecht.

The applicant was the ex-wife and current unmarried cohabiting partner of one Mr Roberto Claret de Pool (hereinafter Mr R.C. de Pool). Mr R.C. de Pool was born on 30 January 1956. He died on 23 September 1998 from a

gunshot wound sustained in a shooting incident involving police officers, in the course of which the applicant herself was wounded.

The facts of the case, as submitted by the applicant and as apparent from documents submitted by her, may be summarised as follows.

A. The incident on 23 September 1998

The Public Prosecutor (*officier van justitie*) of the Regional Court (*arrondissementsrechtbank*) of The Hague ordered Mr R.C. de Pool arrested on drugs charges. With the permission of the Chief Public Prosecutor (*hoofdofficier van justitie*) it was decided that Mr R.C. de Pool should be arrested without warning in his home in the town of Spijkenisse by a police arresting team. The reason was that Mr R.C. de Pool was believed to be in possession of a firearm.

The arrest was planned for 23 September 1998. It was intended that Mr R.C. de Pool's house would be searched once Mr R.C. de Pool was held.

The commander and members of the arresting team, all members of the Rotterdam-Rijnmond police force, were briefed on 22 September 1998. They were provided with information concerning the suspect and shown plans and photographs of the house where he was to be arrested. They were further told that Mr R.C. de Pool's elder son, Mr Roberto Timothy de Pool (born on 3 August 1981, sometimes referred to as Robertino), was also believed to possess a firearm.

The arresting team commander had the choice between a fast arresting procedure and a slower procedure. The fast procedure involved forcing an entry as quickly as possible and gaining control of all rooms in the building, pistols remaining holstered; only when a pair of police officers entered the room which they were detailed to clear would the first officer, and only the first officer, draw his pistol. The slower procedure involved the use of bulletproof shields. It might, depending on the circumstances, involve entering the building with pistols drawn. If the faster procedure was used but difficulties were encountered, the slower procedure was resorted to. The arresting team commander chose the fast procedure.

About one hour before the operation was to take place police officers undertook a final reconnaissance. It was established that the light was on in the hallway on the ground floor; the front door was locked and in addition bolted at the top but not at the bottom.

The arresting team were dressed in dark blue overalls, bulletproof vests bearing the word “police” in large black letters on a light-coloured reflecting background and bulletproof helmets with visors. They were equipped with electric torches and the standard police issue Walther P5 pistol. The pistols were loaded with standard police issue Action 3 ammunition.

The arresting team was comprised of nine police officers. Their names have been withheld from the public and they are referred to by code numbers.

The team was divided into pairs, each detailed to search a particular part of the house, leaving one member who would guard the back of the house. The first pair to enter the house would consist of Police Officers 0308 and 0207, who would then proceed to the back bedroom on the first floor where Mr R.C. de Pool was expected to be.

Shortly after the team arrived outside the De Pool home the commander was informed that there was light at the back of the house. However, this did not lead him to decide to use the slower procedure.

At approximately 5 a.m. the front door of the house was stove in with a steel battering ram. This seems to have taken three blows. The arresting team shouted "police, police" (*politie, politie*) in a loud voice.

Police Officers 0308 and 0207 entered the house and stormed up the stairs, Police Officer 0308 leading. He had his hand on the butt of his pistol and the holster open, ready as instructed to draw once he had reached the room which he was appointed to clear. Shining his torch up the stairs he saw a man and a woman standing on the landing.

Police Officer 0308 states that he saw the man – whom he recognised as Mr R.C. de Pool, the suspect he had come to arrest – holding a silver-coloured object in his hand, and that he (i.e. Police Officer 0308) then drew his service pistol. He saw Mr R.C. de Pool push the woman aside and stretch the arm holding the silver-coloured object towards him. At this point Police Officer 0308 identified the silver-coloured object as a firearm. There being no time to take cover, Police Officer 0308 fired.

Police Officer 0207 too states that he saw Mr R.C. de Pool holding an object that looked like a firearm.

The arresting team members, when questioned afterwards, all stated that only two shots were fired. The applicant states that it is possible, even likely, that up to four shots were fired.

One bullet struck Mr R.C. de Pool in the right side of the chest, running towards the left side and slightly towards the head, perforating the right chest cavity, the midriff, the right lobe of the liver, the spine (tenth thoracic vertebra), the left chest cavity and the lower lobes of both lungs and causing death by massive internal bleeding. The bullet was afterwards found in subcutaneous muscle on the left side towards the back, outside the chest cavity.

Another bullet penetrated the applicant's left arm.

In accordance with instructions previously given for an eventuality such as this, Police Officer 0308 called for a bulletproof shield, which was given him. He crouched behind it on the stairs, pointing his service pistol towards the landing. The police officers then ordered everyone upstairs to come down with their hands up.

The first to come down was the younger son of Mr R.C. de Pool and the applicant, Philip Frederik Dominic de Pool (born on 16 March 1989), followed by their elder son, Roberto Timothy de Pool and their daughter, Ms Marie Claire de Pool (born on 15 March 1977). The applicant followed. The two women indicated in loud tones that Mr R.C. de Pool was upstairs wounded.

Another person found in the house was Mr R.C. de Pool's brother, Mr Giovanni Adelberto de Pool. He had been sleeping on the settee, in the lounge on the ground floor. He had witnessed the police officers breaking down the door and entering the house.

Two members of the arresting team, Police Officers 0308 and 0305, then went upstairs. They found Mr R.C. de Pool slumped in the bathroom and obviously severely injured but they did not find any weapon. Police Officer 0308 asked for an ambulance to be called, which was done. The police officers made an attempt to bandage the gunshot entry wound and staunch the bleeding.

According to the ambulance journey form, the call was received at 5.07 a.m.; the ambulance – based in Spijkenisse – set off at 5.09 a.m. and reached the address given (which was about two kilometers distant) some four minutes later; and the ambulance crew reached the patient at 5.14 a.m., after having been shown upstairs by the police officers present. They found Mr R.C. de Pool being supported upright by police officers but unresponsive. Attempts were made to revive Mr R.C. de Pool, including by heart massage and by applying a saline drip to counter shock, but these were unsuccessful. Life was found to be already extinct.

A second ambulance was called for the applicant. Its journey form states that the order to move was received at 5.10 a.m. This ambulance, which had to come from the neighbouring town of Brielle, set off at 5.13 a.m. and reached the applicant at 5.24 a.m. It set off with the applicant at 5.50 a.m. and reached the Zuiderziekenhuis hospital in Rotterdam at 6.07 a.m. The applicant was found to have sustained a gunshot wound to the left arm; treatment administered by the ambulance crew was to dress the wound and apply an intravenous drip of fentanyl (a powerful pain killer).

The remaining members of the De Pool family were taken to Spijkenisse police station. The arresting team were relieved by police belonging to the regular Rotterdam-Rijnmond force.

Later, the house was searched under the supervision and authority of an investigating judge. The search yielded several firearms and some live ammunition. One of the weapons found was a small silver and black automatic pistol bearing traces of blood later identified as that of Mr R.C. de Pool. It had been lying on top of a wardrobe located on the landing, close to where Mr R.C. de Pool had been wounded. It had been loaded with five live rounds and ready to fire.

The members of the arresting team all handed in their service weapons to officers of the Rotterdam-Rijnmond police force. It was later recorded that, of the nine police pistols, six were loaded with the regulation nine rounds; one – that issued to Police Officer 0308 – held only seven rounds; and two held eight rounds instead of the normal nine.

B. The police investigation

1. Involvement of the State Criminal Investigation Department

Later on 23 September 1998 the Rotterdam Public Prosecutor requested the State Criminal Investigation Department (*Rijksrecherche*), a police force nominally answerable directly to the Minister of Justice and placed under the primary collective responsibility of the Procurators General to the Courts of Appeal whose duties included investigating cases of police firearms use with possible criminal-law implications, to investigate the events surrounding the death of Mr R.C. de Pool and the wounding of the applicant.

The State Criminal Investigation Department officers to whom the investigation was entrusted were two detective chief inspectors (*hoofdinspecteurs van politie*), Messrs Adrianus Luijken and Joachim Frits Gonsior. Their official record states that they were at Spijkenisse police station, being informed by Inspector Van Leeuwen of the local police force, by 9.30 a.m. They investigated the De Pool residence later that morning, at around 10.30.

2. Statements taken by police officers

a. The neighbours

In the course of 23 September 1998 police officers of the Rotterdam-Rijnmond police force took statements from six residents of houses adjacent to the De Pool residence.

All had been woken by the noise. All but one described hearing shouts of "police, police" and the noise of the front door being stove in. Some described hearing shots, although the number of shots claimed to have been heard varied: only one claimed to have heard two shots, two claimed to have heard three, and one estimated the number of shots at three to five.

b. The arresting team

The nine members of the arresting team were questioned by Detective Chief Inspectors Luijken and Gonsior on various dates between 28 September and 7 October 1998. The last to be questioned was Police Officer 0308; he was heard under caution as a suspect.

The members of the arresting team made detailed and largely consistent statements describing the preparation and execution of the arrest operation.

Those who were inside the house at the time of the shooting describe hearing Police Officer 0308 call out that there is a silver-coloured (according to one account: a chrome-coloured) pistol. None describe hearing more than two shots fired.

Several members of the arresting team describe attending a discussion or debriefing at Spijkenisse police station after withdrawing from the scene of the incident.

c. The ambulance crew

The crew of the first ambulance – a driver and a nurse – were questioned by Detective Chief Inspectors Luijken and Gonsior on 15 and 19 October 1998 respectively. They described the members of the arresting team taking them into the bathroom where they had found Mr R.C. de Pool being attended to by two police officers. Mr R.C. de Pool had been handcuffed and sitting in a slumped position. He had been unresponsive.

There had been a bullet entry wound but no exit wound. There had been no pupil reflex and no blood pressure. The heart monitor had shown a post-mortal pattern. Attempts to revive the patient, by heart massage and by applying a saline intravenous drip, had come to nought.

d. The applicant

i. First statement

The applicant was questioned in her capacity of complainant (*aangeefster*) on 13 October 1998 by Detective Chief Inspectors Luijken and Gonsior.

The applicant had married Mr R.C. de Pool in 1979 on the island of Curaçao (Netherlands Antilles). She had divorced him in 1986 but the relationship had been resumed as a non-marital one in 1988. She and Mr de Pool had three children, Marie Claire de Pool, Roberto Timothy de Pool and Philip Frederik Dominic de Pool. The family had moved from Curaçao to the Netherlands in 1991 and had settled in the town of Spijkenisse. Cohabitation between the applicant and Mr R.C. de Pool had been intermittent and Mr R.C. de Pool had served several prison sentences.

During the night of 23 September 1998 the applicant had been asleep in bed, in the same bedroom as Mr R.C. de Pool. She had been woken up by a sound of banging and breaking glass which she had identified as coming from the front door. After leaving her bed, she had stood on the landing, calling out: “Who is there? What is happening?” several times. Mr R.C. de Pool had been standing next to her. She had heard, and then seen, a person coming up the stairs in the dark. This person had been dressed in black and wearing a helmet; as far as she could remember, this person had not had a

torch. This person had started shooting immediately from halfway up the stairs. She had heard four shots in rapid succession and seen the muzzle flashes, which had been directed towards Mr R.C. de Pool and herself. She estimated the time that elapsed between the sound of banging and the shooting at between five and ten seconds.

The children had appeared as three more persons dressed in black and wearing helmets had come upstairs. It was then that the applicant had first seen the word "police" printed in large letters on the clothing of the first of these persons, and understood that they were officers of the law; however, she still did not understand why they had fired at her.

The applicant had been led downstairs. She had repeatedly asked for medical assistance for herself and Mr R.C. de Pool. The first ambulance had been very slow in arriving. Its crew had gone upstairs.

When the second ambulance arrived, the applicant had been laid out on a stretcher, carried to the ambulance and given emergency treatment, after which she had been taken to a hospital in Rotterdam.

At the hospital she had received further treatment and been informed that Mr R.C. de Pool was dead.

The following day, 24 September 1994, she had discharged herself from hospital after consulting with the doctor who had treated her. She and Marie Claire had been taken under police escort to view Mr R.C. de Pool's body at the undertakers' – no one else had been given permission to see it – and the body had been transferred to her custody for disposal.

The body of Mr R.C. de Pool had been transferred to Curaçao on 27 September 1998 and buried there two days later.

The applicant had been told while still in hospital that firearms had been found during a search of the house. She had not at any time seen one in the hands of Mr R.C. de Pool; as to any other firearms, she did not wish to make any statement without having seen her lawyer.

She had come to the conclusion that the police officer concerned had deliberately fired at her with intent to cause her grievous bodily harm or kill her. She had not given him any cause to use violence. In fact, she had intended to reason with him. She had not had any idea that the persons who had broken into her house were police officers; she had thought that she was being murdered. She had suspected that these persons were a gang of criminals dressed in police uniforms. She had not at any time heard them call out "Police, police", either before the shots were fired or afterwards.

The applicant had not been shown an arrest or search warrant. She therefore wished to make a criminal complaint of murder or manslaughter and causing grievous bodily harm against the person who had fired, and also of theft committed in the course of the search; after all, she was not a suspect.

She also wished to know what had happened in the bathroom from the moment when Mr R.C. de Pool was left alone there with the police officers.

Upon her return in her house, she had found much blood on the floor of the bathroom, traces of blood on the walls, the rail of the shower curtain torn down and the shower curtain, all bloody, folded up in the corner. She had also found a towel covered in blood.

The applicant herself was still in pain from her wound, which was also causing her difficulties in her daily life. The two elder children had gone to Curaçao to recover, the youngest was staying with family in order not to miss school.

ii. Second statement

The applicant was questioned a second time, this time by Detective Chief Inspector Gonsior in the presence of Detective Chief Inspector Van Buren, a police officer also assigned to the State Criminal Investigation Department, on 15 December 1998.

The applicant repeated that at the time of the shooting incident she had not seen a firearm on the landing or in the immediate vicinity of Mr R.C. de Pool. She did not know how it was that a firearm had been found in her house. Nor could she account for the presence of blood, presumably Mr R.C. de Pool's, on the weapon. She declined to say anything further on this subject.

e. Ms Marie Claire de Pool

i. Ms Marie Claire de Pool, first statement

Ms Marie Claire de Pool, the daughter of the applicant and Mr R.C. de Pool, was questioned on 23 September 1998 at 11.50 a.m. by Detective Chief Inspectors Luijken and Gonsior.

The previous night she had been asleep in her bedroom. She had been woken up at around 5 a.m. by a loud banging sound. Shortly afterwards she had heard a large number of reports in rapid succession. She had got out of bed and opened the door of her bedroom. She had seen her mother (the applicant) lying on the landing right in front of the stairs leading downwards and her father lying in the shower, which was about two meters away from the stairs. Her father had initially been lying face down, but had turned onto his back and looked in her direction. He had then closed his eyes and turned his head.

Ms Marie Claire de Pool had been on her knees next to her father in the shower supporting him. She had however quickly been dragged away by two of the persons in blue and taken downstairs. During the short time when she had been with her father he had not spoken, he had been unresponsive. The light in the shower had been on.

Ms Marie Claire de Pool remembered hearing three or more shots fired in quick succession.

Ms Marie Claire de Pool was left with questions about the need for the police to force their way into the house and fire at her parents. She was not aware that her father did anything illegal. She was angry about the time taken by the ambulance to arrive. She knew nothing about firearms found in the house.

ii. Ms Marie Claire de Pool, second statement

Detective Chief Inspectors Luijken and Gonsior questioned Ms Marie Claire de Pool a second time on 3 November 1998.

She supplemented her earlier statement with further detail.

Ms Marie Claire de Pool had not seen or handled any firearms in the course of the incident but she was used to the presence of firearms in the house. Her father had always carried one, and had often given one in her safekeeping. The previous day, 22 September 1998, she and her father had gone out together and she had been carrying what she described as a small type of pistol. At her father's request she had shown the pistol to a waiter in a restaurant.

iii. Ms Marie Claire de Pool, third statement

Ms Marie Claire de Pool was questioned a third time on 15 December 1998, this time by Detective Chief Inspectors Gonsior and Van Burink.

She did not remember the waiter to whom she had shown the pistol on 22 September 1998. She recognised firearms on photographs which were shown her as weapons which she had seen in the house; they might have belonged to her late father or her brother. However, these pictures did not show the pistol which she had shown to the waiter.

She did not know whose pistol it was which was found on top of the first-floor wardrobe, nor could she explain how it had come to be there.

f. Mr Giovanni Adelberto de Pool

Mr Giovanni Adelberto de Pool, brother of Mr R.C. de Pool, was questioned on Curaçao by Detective Chief Inspector Gonsior in the presence of Detective (*landsrechercheur*) Edson Kenaro Kirindongo who was assigned to the Curaçao Procurator General's Department (*parket van de Procureur-Generaal in Curaçao*).

On the night of 22 and 23 September 1998 he had been sleeping on the settee in the lounge of his brother's house in Spijkenisse. Before going to sleep he had bolted the outside door.

He had been woken up by two or three loud bangs against the front door. He had jumped up from the settee. He had seen several individuals crawl into the house through the opening left by the broken pane in the lower panel of the front door. He remembered four persons dressed in black wearing headgear. He had called out: “Who are you?” but received no

answer. These persons had moved towards the staircase in a crouched position. Having reached the staircase, they had then stood up and pointed pistols upstairs. He had taken them for armed robbers and fearing for his life had not dared to act. Up to this point the events had taken a minute at most.

The first of these persons, whom Mr Giovanni Adelberto de Pool remembered as a fat man, had pointed his pistol up the stairs. Mr Giovanni Adelberto de Pool had concentrated on him because the others had gone upstairs. Mr Giovanni Adelberto de Pool had heard three or four loud reports which he had taken to be pistol shots. He had moved to a better vantage point from which to see what was happening and had heard Ms Marie Claire de Pool and Roberto Timothy de Pool shout: "You lot are bastards" (*Jullie zijn gemeen*).

At almost the same moment he had heard the persons in black shout: "Come downstairs". The time taken by these events up to this point was no more than two minutes at most.

The fat man had then turned towards Mr Giovanni Adelberto de Pool. It was only now that Mr Giovanni Adelberto de Pool had been able to read the word "police" on his black clothing.

Afterwards Mr Giovanni Adelberto de Pool and Mr Robert de Pool had been taken to the police station, where the handcuffs had been removed, and kept there for an hour. Mr Giovanni Adelberto de Pool had then been allowed to leave but not to return to his brother's house, which was being searched.

Upon being released, at approximately 6.00 a.m., Mr Giovanni Adelberto de Pool had telephoned relatives in Curaçao from a public telephone box and told them what had happened. He had not then been informed that his brother was dead.

Detective Chief Inspector showed Mr Giovanni Adelberto de Pool a photograph of a revolver which had been found in Roberto Timothy de Pool's room. Mr Giovanni Adelberto de Pool stated that he had seen a weapon rather like that in Roberto Timothy de Pool's room but had never seen his brother with a firearm.

g. Mr Roberto Timothy de Pool

Mr Roberto Timothy de Pool was questioned on Curaçao by Detective Chief Inspector Gonsior in the presence of Detective Kirindongo on 1 December 1998.

On the night of 22 and 23 September 1998 Mr Roberto Timothy de Pool had been asleep in his room in the attic of the house. He had been woken up by a loud bang and shouting. His first thought had been that Ms Marie Claire de Pool was having an epileptic fit.

He had dashed downstairs. While still on the stairs he had heard a number of reports – he did not remember how many. Arriving on the first-floor landing, he had seen Ms Marie Claire de Pool come out of her

bedroom. He had also seen his parents standing on the landing. Both were injured, his mother in the left arm and his father in the right-hand side of his chest. His father's injury had bled less than his mother's. His father had stood in the door opening of the bathroom, supporting himself against the door posts. He had seen his father sink to the floor, sit down and lie back slowly on the floor of the bathroom. Ms Marie Claire de Pool had gone up to him and knelt by his side, holding him in a sort of embrace.

Looking downstairs, Mr Roberto Timothy de Pool had seen two objects which he described as screens with spyholes which were marked "police". Behind these screens there had been at least two persons armed with pistols which they had kept aimed at the first floor landing. He had then realised that there were police officers in the house and that the reports which he had heard in relation to his parents' injuries must have been pistol shots.

He had then heard shouts of "Police, come downstairs". This was the first time that he had heard these persons identify themselves as police.

The whole incident had taken only several seconds up to this point.

Immediately afterwards Mr Roberto Timothy de Pool and Mr Giovanni Adelberto de Pool had been taken to the police station. Mr Roberto Timothy de Pool had been asked whose the firearms were which had been found in his bedroom. He had denied all knowledge. He had then been formally arrested. An hour later he had asked after his family. A police officer called Mr L. had said to him bluntly: "Well my lad, I'll tell you in telegramese. Your father has died. So whose are the guns?" (*Jongen, ik zal het in telegramstijl vertellen. Jouw vader is overleden en van wie zijn de wapens?*)

Mr Roberto Timothy de Pool had not seen his father or any other member of the family with a firearm; nor had he seen one at all, or wielded one himself during the incident.

He admitted that he had had three firearms in his bedroom: one UZI submachine gun which was out of order, one .38" calibre revolver and one small .25" pistol. He did not, however, recognise the silver-coloured pistol of which he was shown a photograph and had no idea whose it might be.

h. Police Sergeant René George Arnoldus Smulders

Police Sergeant Smulders of the Haaglanden police force was questioned on 16 November 1998 by Detective Chief Inspector Luijken.

On 23 September 1998 Sergeant Smulders had been the co-ordinator of a search team involved in a search of the house inhabited by the De Pool family. Shortly before 5 a.m. the arresting team commander had telephoned him to tell him that an entry was about to be made; at 5 a.m. precisely the arresting team commander had called again to say that the team were entering the house. Shortly afterwards Sergeant Smulders had been told that there had been a shooting incident.

The search took place, later than planned, at 8 a.m. that day, under the supervision of Investigating Judge Silvis.

Sergeant Smulders had found a small silver-coloured pistol bearing traces of blood on top of a wardrobe located on the landing.

3. Other official documents

Other documents relating to the investigation of the case include, among others, the following:

a. Official record of the seizure of police firearms

This official record is dated 23 September 1998. It was drawn up and signed by Police Officer 0102. Although the name of this police officer – a police sergeant – is not disclosed, this code number does not correspond to any officer known to have participated directly in the attempt to arrest Mr R.C. de Pool, all of whom have different code numbers.

It is stated that Police Officer 0102 collected the firearms used by the members of the arresting team who had attended the incident. These were all Walther P5 pistols. Their serial numbers and the number of the police officers to whom each weapon had been issued are all recorded. It is further recorded that the weapons were all labelled and packaged. In consultation with the State Criminal Investigation Department, they were handed to the local head of the criminal investigation unit (*Chef Recherche*), a member of the Rotterdam-Rijnmond police force.

b. Reports relating the seizure of the body of Mr R.C. de Pool

An official report dated 24 September 1998 by Police Sergeant Reinder Jan Koning and Police Officer (*agent*) Gerard Johannes van der Kooy, both of the Rotterdam-Rijnmond police force, states that these two officers seized the body of Mr R.C. de Pool on Wednesday 23 September 1998 at 5.45 a.m., immediately after the police doctor had pronounced Mr R.C. de Pool dead. The body was taken to the Forensic Laboratory in Rijswijk by a firm of undertakers.

Two other police officers of the Rotterdam-Rijnmond police force, Police Officer Jacoba Carolina van der Waal and Senior Police Officer Irma van der Heijdt, witnessed the autopsy, which commenced at noon on the same day. Afterwards, the pathologist, Dr R. Visser, informed them of his provisional findings. These were that Mr R.C. de Pool had been shot through the chest, which had caused, among other things, perforation of the lungs and the liver, attended by massive internal bleeding. Death would have been caused by organ damage and blood loss. No other, or additional, cause of death was apparent. The same firm of undertakers had then taken the body to a mortuary in Rotterdam. These two police officers officially recorded these events on 24 September 1998.

A separate record by Police Officer Van der Waal, also dated 24 September 1998, gives an account of the seizure of a bullet and a pair of shorts taken from the body.

An official record by Police Inspector Jan Jacobus van Leeuwen, of the Rotterdam-Rijnmond police force, and Officer van der Kooij, also dated 24 September 1998, states that the body of Mr R.C. de Pool was found by members of the arresting team on 23 September 1998 at around 5 a.m., in his home where he was presumed to have died. The probable cause of death is given as "Shooting incident at time of arrest" (*Schietincident bij aanhouding*). The body had been examined by the police doctor, Dr J.F. van Geenhuizen. It had then been seized, on the orders of the public prosecutor, and entrusted to Dr R. Visser for autopsy. Afterwards, the body had been identified as that of Mr R.C. de Pool by the applicant and by Ms Marie Claire de Pool.

An official record by Police Inspector Jan Jacobus van Leeuwen and Police Officer Van der Kooij dated 25 September 1998 gives a summary and an overview of the other official records. It records in addition that the pair of shorts taken from the body of Mr R.C. de Pool was destroyed after consultation with the applicant.

c. Provisional autopsy report

This is a document written by hand on the letterhead of the Laboratory for Forensic Pathology (*Laboratorium voor gerechtelijke pathologie*), headed "R.C. de Pool, born 30-01-1956", dated 23 September 1998 and bearing an illegible signature.

It notes one gunshot entry wound in the right side of the chest, the path of the bullet running towards the left side and slightly towards the head, perforating the right chest cavity, the midriff, the right lobe of the liver, the spine (tenth thoracic vertebra), the left chest cavity and the lower lobes of both lungs. A bullet was found in subcutaneous muscle on the left side towards the back, outside the chest cavity. In the left chest cavity 1,000 cubic centimeters (cc) of blood and air was found, and in the right chest cavity 850 cc of blood.

Bloody fluid was found in the respiratory system and, in lesser quantity, in the abdominal cavity.

Skin lacerations were found on both wrists, superficial skin damage was found on the forehead and the inside of the right upper arm and elbow, and perforations that looked like needle marks were found on both arms.

Tissue would be preserved for further testing.

It is concluded that a single shot caused the above internal injuries, which in themselves were sufficient to explain the death of the subject. There was no pathological abnormality that might have been a contributory factor.

d. Coroner's report

This report relates the results of an external examination of the body of Mr R.C. de Pool. It is dated 25 September 1998 and signed by J.F. van Geenhuizen, coroner (*lijkschouwer*) of the municipality of Rotterdam, who is also mentioned in the file as the police doctor.

Dr van Geenhuizen examined the body at 6.15 a.m. on 23 September 1998 in the bathroom of the house, lying on its back. There was blood on the floor and walls of the bathroom and on the landing. The body was covered in blood. Rigor mortis had not yet set in; the body still had some residual warmth.

A round opening in the skin was found in the right flank, close by the ninth rib, about one-half or three-quarters of a centimeter in size, identifiable as a gunshot entry wound. An exit wound was not noted. On the left half of the chest "crackling" was noticeable over a considerable surface, consistent with a subcutaneous accumulation of air caused by internal pulmonary injury. No other external injury was found, albeit that there was still a pair of handcuffs attached to the left wrist.

It is mentioned that Mr R.C. de Pool was hit by a bullet during a police raid in his home at approximately 5 a.m. It is concluded that his death was not natural and was probably caused by internal bleeding due to a gunshot wound. The time of death was approximately 5.15 a.m.

e. Official record of identification of the body of Mr R.C. de Pool

An official record dated 24 September 1998 and signed by Inspector Van Leeuwen and Police Officer Van der Kooij states that after the autopsy the body was shown to the applicant and Ms Marie Claire de Pool, who identified it as that of Mr R.C. de Pool.

f. Official record of the seizure of spent ammunition

An official report dated 24 September 1998 by Police Sergeant Koning and Police Officer Van der Kooy states that one spent cartridge was found in the lounge of the De Pool residence, close by the door to the hallway, and another at the foot of the staircase. A spent bullet was found lying on the bed in the master bedroom on the first floor. All these items were seized. On the orders of Police Inspector Van Leeuwen they were handed over to forensic experts of the Rotterdam-Rijnmond police force. A separate document, signed by Police Officer Van der Kooy and appended to this official record, states that there is no known owner of these items.

g. Official record of the seizure of a firearm

An official report dated 24 September 1998 by Police Sergeant Koning states that at on 23 September 1998 at 8.50, while the house search was in process, the investigating judge seized a pistol. The weapon is described as

a Beretta 6.35 mm calibre pistol, with a silver-coloured casing and a black receiver. It had been loaded with four live rounds in the magazine and one chambered. On the orders of Police Inspector Van Leeuwen it was handed over to forensic experts of the Rotterdam-Rijnmond police force.

h. Official record of house search

This official record, dated 8 October and signed by Investigating Judge J. Silvis and Registrar (*griffier*) K. Broere, relates the search by the former on 23 September 1998 of the house inhabited by Mr R.C. de Pool. It mentions that in view of the urgency of the search the authority of the Regional Court had to be dispensed with. The police officers who participated or attended – and who included Police Sergeant Smulders (see below) and Detective Chief Inspectors Luijken and Gonsior – are mentioned by name.

The search began at 8.04 and ended at 10.45 a.m., after which the investigating judge and the persons assisting him left the house.

The objects found and seized included, among others:

An automatic firearm, calibre 9 mm, a 6 mm calibre firearm and a .38" calibre revolver, found in the bedroom of Mr Roberto Timothy de Pool, as well as several rounds of live ammunition;

One blood-spattered black and silver pistol, found on some bags located on top of a wardrobe on the landing;

Seventeen rounds of live ammunition and a canister of tear gas, found in the back bedroom;

One more pistol, 9x19 mm calibre, found on a shelf in a cupboard underneath the stairs.

i. Official record of technical investigations *in situ*

This report dated 23 September 1998 by four technical detectives of the Rotterdam-Rijnmond police force, Robert de Haan, Marinus Cornelis Bos, Cornelis Wilhelm Bruins and Willem Frederik de Planqué, relates various technical investigative measures. Thus, in the original – the photocopy submitted to the Court does not contain usable illustrations – it contains photographs and diagrams showing the damage to the front door of the house, the locations of Mr R.C. de Pool's body, the two spent cartridges, the spent bullet, the black and silver pistol and various blood stains. It also states that traces of blood found in the house and on the black and silver pistol have been secured for DNA testing.

The eight Walther P5 service weapons used by the members of the arresting team were also handed to these detectives.

It is mentioned that the body was identified as that of Mr R.C. de Pool by its fingerprints.

j. Official report of examination of the spent ammunition and the police service weapons

In a report dated 28 September 1998, two ballistics experts holding the rank of police sergeant and belonging to the Rotterdam-Rijnmond police force, Dirk Groeneveld and Hans Dirk van Noordennen, relate their examination of the two spent cartridges, the spent bullet found in the De Pool residence and the bullet taken from the body of Mr R.C. de Pool.

The bullets were identified as 9 mm parabellum, type Action 3. The cartridges were identified as 9 mm parabellum; the markings showed that they are standard police issue.

The nine pistols handed in are all identified as standard police issue Walther P5. Six of these were found to be loaded with nine live rounds, two contained eight live rounds and one contained only seven rounds. The ammunition was all standard police issue (Dynamit Nobel, Action 3).

Microscopic examination showed that the cartridges and most probably the bullets also had been fired from the pistol which had been found to contain only seven rounds – the pistol reported by Police Officer 0102 (see above) to have been taken from Police Officer 0308. This pistol was found to be in working order.

k. Official record of examination of the small black and silver pistol

This report, also dated 28 September 1998, is also by the two ballistics experts Groeneveld and Van Noordennen.

The pistol is described as a Beretta Bantam 6.35 mm calibre single-action semi-automatic in working order. It had not been fired recently. It bore traces of blood but no fingerprints usable for identification.

The weapon had been delivered for examination loaded with four rounds in the magazine and one chambered. The safety catch was in the "fire" position.

l. Official record of findings by Police Sergeant René George Arnoldus Smulders

This document, dated 30 September 1998, relates that there were two wardrobes on the landing of the house. There were suitcases, bags and clothes piled on top of them. Sergeant Smulders took down a large black bag from one of them; as he did so, a small shiny firearm fell from on top of this bag onto the landing behind him. There were spots of blood on it. Sergeant Smulders secured this weapon for the police technical experts. The investigating judge seized it.

m. Statement by Chief Inspector Wennekendonk

In a statement made on oath and dated 12 October 1998, Chief Inspector Bernardus Gerardus Wennekendonk, commander of the Rotterdam-Rijnmond arresting team, declares that Police Officer 0308 joined the

Rotterdam-Rijnmond arresting team on 1 September 1995. After finishing basic arresting team training he joined one of the sections on 1 January 1996 as a team member. Throughout 1996 he was assigned a mentor, after which he began to function independently.

From 1 January 1998 until 22 September 1998 Police Officer 0308 spent forty-two hours on marksmanship and firearms training; he passed the marksmanship test on 28 July 1998. During the same period he spent ninety-four hours in arrest procedure training and exercises and 204 hours on physical training.

Sports and firearms instructors had informed Chief Inspector Wennekendonk that Police Officer 0308's physical and arrest procedure skills were excellent and that he was a good marksman.

n. Report of DNA testing

A report by the forensic expert A. Kloosterman, dated 23 November 1998, states that the DNA profile of blood found on a firearm presented for examination corresponded to the DNA profile of Mr R.C. de Pool. The chance of another person chosen at random being found to possess the same DNA profile was stated to be many times smaller than one in a million. The blood sample taken from the firearm contained an admixture of a relatively small quantity of cellular material from another, unnamed, individual.

4. Medical information concerning the applicant

A letter from the physiotherapist Dr P.J. Janssens, dated 11 December 1998, states that the applicant has sustained injuries including damage to nerve tissue as a result of her bullet wound requiring her to do mobility excercises up to, but not beyond, her pain threshold in order to regain the use of her hand once the nerves have healed.

C. Proceedings brought by the applicant

On 10 August 1999 the Rotterdam public prosecutor wrote to the applicant's then counsel informing him that a preliminary judicial investigation had been undertaken by an investigating judge based on a manslaughter charge against Police Officer 0308. The information which this investigation had yielded had persuaded the public prosecutor that no fault could be found with either the decision to deploy an arresting team or the preparation of the arrest operation. The public prosecutor's letter further contained the following passage:

> "I consider it likely that Police Officer 0308 went up the stairs and was there confronted with a pistol aimed at him by Mr R.C. de Pool and then, in a reflex, fired twice in the direction of Mr R.C. de Pool. The location of the injury found on Mr R.C. de Pool is consistent with the position of someone who has turned to the right and is

holding his arm outstretched in the direction of the staircase. The same applies to the injury found on Ms C.S.E. Romijn. The fact that Mr R.C. de Pool's and Ms C.S.E. Romijn's blood was found on a firearm makes it likely that this weapon was handled by Mr R.C. de Pool."

The letter went on to express the opinion that the finding of a trial court would most probably be that Police Officer 0308 had acted in self-defence. It would therefore serve no reasonable purpose to bring a prosecution.

A subsequent exchange of letters made it clear that the public prosecutor considered Police Officer 0308 entitled to claim self-defence in respect of both the death of Mr R.C. de Pool and the wounding of the applicant.

On 1 September 1999 the applicant, through her counsel, lodged two separate complaints about the failure to bring a prosecution with the Court of Appeal (*gerechtshof*) of The Hague. The first addressed the grievous bodily harm caused to the applicant herself. The second addressed the death of Mr R.C. de Pool. Both named Police Officer 0308 and named him as the suspect to be prosecuted.

In a report dated 27 September 1999 the Chief Public Prosecutor came to the same conclusions as the public prosecutor. This document mentions that the incident was re-enacted (*reconstructie*) seven times and recorded on video tape, with the active involvement of the applicant, Police Officers 0207, 0107, 0308 (the suspect) and 0309 and three investigators; it gives a detailed reconstruction by the Chief Public Prosecutor of the probable course of events.

On 19 November 1999 the Advocate General to the Court of Appeal submitted an advisory opinion recommending that the applicant's complaint be dismissed.

On 21 January 2000 the applicant, now represented by different counsel, lodged additional submissions to the effect that it was open to doubt that Mr R.C. de Pool had in fact pointed a pistol at Police Officer 0308 and arguing in addition that Police Officer 0308 might have done more to avoid causing casualties.

A hearing was held *in camera* on 23 February 2000. Police Officer 0308 was not summoned to attend.

The Court of Appeal gave its decision, dismissing the applicant's complaint, on 23 March 2000. Its reasoning included the following:

"7. It appears from the file that [Mr R.C. de Pool's] arrest by an arresting team, permission for which was given by the Acting Chief Public Prosecutor, was indicated because R.C. de Pool posed a firearms hazard.

The decision to deploy the arresting team was arrived at in a correct fashion and the arresting team acted in accordance with the procedures laid down for arresting a person who poses a firearms hazard otherwise than *in flagrante delicto*.

8. Briefly, what happened was this. Police Officer 0308 was the first member of the arresting team to enter the house, calling out 'Police, police', and was confronted on the stairs by the applicant and R.C. de Pool.

Police Officer 0308 has stated that in the light of his torch he saw a silver-coloured object in the hands of R.C. de Pool, upon which he took his pistol out of its holster. Police Officer 0308 saw R.C. de Pool push the woman (the applicant) aside and extend the shiny object in his direction in a flowing movement. In that movement Police Officer 0308 saw that it was a firearm. At that moment Police Officer 0308 fired, which led to the results already mentioned. Afterwards, a firearm apparently belonging to R.C. de Pool was in fact found. For the remainder, the Court of Appeal refers to the extensive statement of fact in the advisory opinion of the Rotterdam Chief Public Prosecutor, dated 27 September 1999, which the Court of Appeal finds convincing.

8.1. The Court of Appeal is of the opinion that – taking all circumstances into account – a sufficiently credible case has been made out that [Police Officer 0308] could successfully claim self-defence (*noodweer*) or excusable violence in excess of self-defence needs (*noodweer-exces*). ...”

COMPLAINTS

The applicant complains, relying on Article 2 of the Convention, that the death of Mr R.C. de Pool resulted from the use of force going beyond what was “absolutely necessary” for one of the purposes mentioned in the second paragraph of that Article. She alleges that other, less dangerous arrest procedures could have been used and denies that Mr R.C. de Pool was in fact armed.

Relying on the same Article, she complains that the need for lethal force was never properly established by a judicial authority since Police Officer 0308 was not prosecuted.

Relying on Article 3 of the Convention, the applicant complains that, in the circumstances, the shooting of Mr R.C. de Pool and herself constitutes “inhuman treatment” if not “torture”. She alleges in addition that the police officers constituting the arresting team prolonged their suffering unnecessarily by not summoning ambulances immediately. She also complains that the police investigation into the incident was deficient.

Relying on Article 5 of the Convention, the applicant alleges that, by firing indiscriminately in the direction of a supposed danger and wounding her, Police Officer 0308 violated her right to “security of person”.

Finally, relying on Article 13 of the Convention, the applicant complains of the absence of any procedure involving subjecting Police Officer 0308 to an examination at a public hearing.

THE LAW

A. The Court's approach to the facts

The application relates to an incident in which shots were fired by a police officer causing injuries to Mr R.C. de Pool and the applicant. Mr R.C. de Pool died of his wound. The applicant had to undergo curative treatment.

The applicant imputes responsibility for these events to the respondent State. She also makes complaints going to the respondent authorities' investigation into the incident and the ensuing proceedings. She alleges facts and states suppositions which the Court must consider in its initial examination of the case.

The Court is ill-equipped to indulge in fact-finding in cases of this nature, especially so long after the events complained of. It notes, however, that an investigation was begun immediately after the incident under the authority and responsibility of the State Criminal Investigation Department, a specialised police force with its own chain of command. This investigation, the results of which are summarised above, appears to have been thorough and comprehensive and the resulting findings are recorded in considerable detail. It comprised the hearing of witnesses including police officers involved in the matter, the applicant herself and her surviving family and neighbours, as well as the collection of technical evidence.

The Court will base its examination of the case on the factual information which it gleans from the official documents submitted, qualified as necessary by the materials submitted by the applicant.

B. Article 2 of the Convention

Article 2 of the Convention provides as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

1. The death of Mr R.C. de Pool

a. As to whether the use of lethal force could have been avoided

The applicant argues that the police could have acted in ways better designed to minimise the need for lethal action. In particular, they might have asked Mr R.C. de Pool to report at the police station, or they might have arrested him in the street. Even allowing, for the sake of argument, that it was unavoidable to arrest him in his home, the arresting team could have resorted to the slower arrest procedure which in the applicant's submission would have been safer.

In cases of this nature the Court's sole concern must be to evaluate whether in the circumstances the planning and control of the operation show that the authorities had taken appropriate care to ensure that any risk to life were minimised and that they were not negligent in their choice of action. It does not therefore consider it appropriate to discuss with the benefit of hindsight the merits of alternative tactics (see *Andronicou and Constantinou v. Cyprus*, judgment of 9 October 1997, *Reports of Judgments and Decisions* 1997-VI, p. 2102, § 181).

The Court notes at the outset that the applicant does not claim that Mr R.C. de Pool was not reasonably suspected of serious offences. It then notes that arrangements had been made to have Mr R.C. de Pool's home searched by an investigating judge: the Court finds it obvious that the competent domestic authorities were concerned to deny Mr R.C. de Pool himself or an accomplice the chance to hide or destroy evidence of criminal activity. No issue can therefore be taken with the decision to arrest Mr R.C. de Pool without warning.

Furthermore, intelligence available to the competent domestic authorities indicated that Mr R.C. de Pool was armed and dangerous, and that so too was Mr Roberto Timothy de Pool. If the assessment of this intelligence is accepted as correct – which, in retrospect, it must be, considering the way Mr R.C. de Pool actually reacted and the quantity of weaponry that was subsequently found – then it follows that the ensuing decision to make use of a specialised arresting team, composed of experienced police officers specially trained and equipped, to arrest Mr R.C. de Pool in his home cannot be dismissed as unreasonable (compare, *mutatis mutandis*, *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 35, § 92).

As regards the tactics resorted to, the arresting team commander had to choose between two arrest procedures: a fast one, aimed at overcoming Mr R.C. de Pool before he had a chance to put up any resistance, and a slower one, which would have involved police officers equipped with bulletproof shields cornering him with weapons drawn. The Court is satisfied that the procedure chosen by the arresting team commander was

intended to minimise any risk to human life including that of Mr R.C. de Pool himself and was, in principle, appropriate to the situation. It finds support for this finding in the fact, which the applicant does not dispute, that Police Officer 0308 only drew his service weapon after seeing Mr R.C. de Pool standing at the top of the stairs holding a silver-coloured object in his hand.

In the light of the above considerations, the Court is not prepared to find fault with the choices made in planning the operation.

b. As to whether Mr R.C. de Pool pointed a firearm at Police Officer 0308

The applicant observes that no firearm was found lying anywhere near the body, and also relies on her own and her children's statements that Mr R.C. de Pool did not have a firearm about him at the time of the incident. The shiny object seen by Police Officer 0308 might, in her submission, well have been Mr R.C. de Pool's diamond ring. It is true that a small black and silver-coloured pistol fell off the top of a wardrobe located on the landing, but it bore no fingerprints usable for identification; the bloodstains found on it could be explained by its having fallen into a pool of blood lying on the landing. The applicant goes on to argue that it is unlikely that someone as badly wounded as Mr R.C. de Pool could have hidden the pistol on top of the wardrobe.

The Court notes, firstly, that one of the bullets fired in the direction of Mr R.C. de Pool struck him in the chest, on the right side. It perforated his right chest cavity, his midriff, the right lobe of his liver, his spine (tenth thoracic vertebra), his left chest cavity and the lower lobes of both lungs, and came to rest in subcutaneous muscle close by his back. These injuries are consistent with Mr R.C. de Pool's being shot while raising a pistol against Police Officer 0308.

Secondly, the object pointed downstairs by Mr R.C. de Pool was recognised as a firearm not only by Police Officer 0308 but also by the team member immediately behind him, Police Officer 0207. The applicant has not suggested any explanation why Mr R.C. de Pool would have brandished a diamond ring in their direction rather than a firearm. No diamond ring is mentioned anywhere in the documents submitted by the applicant, apart from the application form where this suggestion is made apparently for the first time: significantly, the official records mention no objects taken from the body of Mr R.C. de Pool other than a pair of shorts and the bullet that killed him.

Thirdly, although the Beretta pistol was not immediately found near the body, an alternative explanation to that suggested by the applicant occurs to the Court. In particular, it would appear that there was a period of up to several minutes after the shooting during which Police Officer 0308 crouched low behind a bulletproof shield while the arresting team repeatedly ordered the occupants of the house to surrender. It is hardly

inconceivable that during this time, one of the members of the family – if not Mr R.C. de Pool himself, then perhaps Mr Roberto Timothy de Pool, Ms Marie Claire de Pool or the applicant – might have picked up the pistol, wiped off any fingerprints and hidden it on top of the wardrobe before coming downstairs. In the Court's opinion, this explanation stands up to comparison with that profferred by the applicant.

Finally, although in the domestic proceedings the applicant consistently refused to make any statement about the presence of firearms in her house, the Court is struck by Mr R.C. de Pool's openness about his possession of them: Ms Marie Claire de Pool stated to the police that the day before the incident he had actually asked her to show off a pistol to someone outside his family. Moreover, Mr Roberto Timothy de Pool kept several firearms in his room; a pistol was found under the stairs; and live ammunition was found in the very bedroom which the applicant shared with Mr R.C. de Pool.

In the circumstances as set out above, the Court is not persuaded by the applicant's suggestion that Mr R.C. de Pool did not point a firearm downstairs in the direction of Police Officer 0308.

c. As to whether the use of force was "strictly necessary"

The applicant states that Police Officer 0308 deliberately killed Mr R.C. de Pool and that the necessity for so doing has never been shown.

The Court has held that the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and the lives of others (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 58–59, § 200). From this it must follow, *a fortiori*, that the incidental use of lethal force in an operation mounted in pursuit of one of the said aims does not violate Article 2 of the Convention if the assessment that a threat to life exists actually turns out to be correct.

Turning to the facts of the case, the Court points to its findings above, from which it follows that Police Officer 0308 was entitled to consider his life threatened by Mr R.C. de Pool. Moreover, as the applicant does not deny, the pistol found hidden on top of the wardrobe – which the Court accepts was the weapon which Mr R.C. de Pool raised against Police Officer 0308 – was loaded with five live rounds of ammunition, one of which was chambered, and the safety catch was off.

Finally, the Court accepts that Police Officer 0308 was highly trained in arrest procedures and the use of his service weapon. It is not possible to find

that in the circumstances – which, for Police Officer 0308, were characterised by an extremely urgent need to draw his service weapon and fire, in poor light conditions – anything could reasonably have been done to secure a different outcome.

The Court considers therefore that the use of lethal force did not exceed what was "absolutely necessary" for the purposes of effecting the arrest of Mr R.C. de Pool and protecting the life of Police Officer 0308.

d. As to whether insufficient effort was made to save Mr R.C. de Pool's life

The applicant argues that too much time was lost before an ambulance was called for Mr R.C. de Pool; if the ambulance had arrived sooner, he might have been saved.

In her submission, it is implausible that the front door of the house was stove in in a matter of seconds and the shots fell a few seconds after that. According to the statements made in the domestic investigation by the members of the arresting team, it would have taken no more than four or five seconds in all for Mr R.C. de Pool and herself to get out of bed and make their way to the landing where they were shot.

In addition, one neighbour stated that she had heard shooting at 4.45 a.m., not 5 a.m. as the arresting team claim, and the applicant's daughter stated that when she was taken into the lounge the clock stood at 4.50 a.m.

The ambulance records show that the ambulance was called at 5.07 a.m.

The Court observes that the arresting team members reported a light at the back of the house. The applicant neither denies the accuracy of this report nor explains it away.

Be that as it may, whether or not one accepts the arresting team members' version of events as accurate down to the second, there is nothing inherently impossible about the suggestion that Mr R.C. de Pool and the applicant might have woken up, got up and stood in the doorway of their bedroom, Mr R.C. de Pool armed with a pistol, all in a matter of a few seconds.

Nor is it necessarily the case that the statement of the neighbour, and much less that of the applicant's daughter, are based on an accurate reading or recollection of the time. It is worth noting in this connection that the applicant's suggestions as to the length of time taken up by the events complained of is contradicted not only by official documents but also by Mr Giovanni Adelberto de Pool, who estimates that the fatal shots fell within no more than two minutes after the police officers made their entry.

In any event, even if one accepts the applicant's allegations as accurate, the time between the shooting and the arrival of the ambulance would have been approximately thirty minutes not fifteen minutes. Given the nature of the injuries sustained by Mr R.C. de Pool – massive damage to vital organs, severe internal bleeding – and the distance to the nearest appropriate hospital (the ambulance carrying the applicant took seventeen minutes to

arrive there), the Court cannot proceed on the assumption that Mr R.C. de Pool could have been saved.

2. The subsequent investigation and ensuing proceedings

a. Reliability of the results of the investigation

The applicant raises complaints under Article 3 of the Convention about the investigation following the incident. The Court considers it appropriate to examine these complaints in relation to Article 2 rather than Article 3.

She argues that the statements made by the members of the arresting team are very similar to one another. Thus, all agree that only two shots were fired. It is significant that a debriefing was held after the incident and that the arresting team members were questioned only five days later.

The applicant further notes that, according to official records, of the nine service pistols handed in by the members of the arresting team, one (that issued to Police Officer 0308) held seven rounds and two more held eight rounds – one down from the regulation nine. This, in her submission, suggests that four rounds were fired; either two other police officers fired one round each, or Police Officer 0308 fired four and received cartridges from two other police officers to make up seven.

The Court has repeatedly held that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see, as a recent authority, *Aktaş v. Turkey*, no. 24351/94, § 299, ECHR 2003-V (extracts)).

The Court will first consider the applicant's allegation that more shots were fired than were officially reported.

Whatever the explanation for the fact that two police officers handed in their weapons one cartridge short, the accuracy of the applicant's version of events cannot be verified. Thus, if in fact four shots were fired then only two bullets are accounted for. One was recovered from the body of Mr R.C. de Pool and the other was found in the bedroom. The remaining two have not been reported found and are not mentioned by the applicant either; presumably, therefore, they injured no one and did not strike any objects inside the house. Consequently, even if it should be the case that four shots were fired and not two, this in itself will make little difference to the nature of the substantive case before the Court.

The Court finds that the statements of the members of the arresting team, as recorded, contain nothing that contradicts the other information available to the Court, the accuracy of which the applicant either does not deny or does not disprove.

In the circumstances of the present case, whatever misgivings may remain in the applicant's mind as regards the debriefing which was apparently held immediately after the incident and the five days which were allowed to pass before the arresting team members were questioned, the Court is not disposed in the present case to find that the authorities' establishment of the facts fell short of the standards required by Article 2 of the Convention.

b. The failure to prosecute Police Officer 0308

The applicant complains, firstly, about the decision of the public prosecutor not to bring a prosecution against Police Officer 0308, and secondly, about the scope of the review of the Court of Appeal, which essentially went no further than to find that the public proecutor's decision not to prosecute was not unreasonable. In her submission Police Officer 0308 ought to have been put on trial so that a court might properly consider the merits of her allegations of violation of the Convention.

On the facts of the present case, as set out above, the Court takes the view that the public prosecutor and the Court of Appeal did not act unreasonably in sparing Police Officer 0308 a trial. It would be perverse to construe Article 2 or any other Article of the Convention as requiring a criminal prosecution even in circumstances where it is apparent that the individual prosecuted is entitled to claim self-defence.

3. Conclusion

No violation of Article 2 of the Convention can be established either as regards the circumstances of Mr R.C. de Pool's death or as regards the subsequent investigation and ensuing proceedings.

It follows that the applicant's complaints under this Article are manifestly ill-founded.

C. Articles 3 and 5 of the Convention

Articles 3 and 5 of the Convention, in relevant part, provide as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 5

"1. Everyone has the right to ... security of person. ..."

The applicant complains under Article 3 that both Mr R.C. de Pool and she herself suffered extreme and unnecessary pain after being shot by Police Officer 0308. She repeats the argument, outlined above, that too much time was lost in calling an ambulance for her.

Relying on Article 5 of the Convention, the applicant also alleges that Police Officer 0308 caused her unnecessary suffering by firing at random in the general direction of a perceived danger without taking careful aim to avoid hitting her. The Court will consider this complaint under Article 3 as being the Article of the Convention appropriate to it, rather than Article 5.

Turning first to the complaint that ambulances were not called speedily enough, the Court first points out that it cannot find it established that the police operation began any earlier than 5.00 a.m. The ambulance journey forms show that the ambulance called to collect Mr R.C. de Pool was called out at 5.07 a.m. and set off two minutes later, and the ambulance called for the applicant – which had to come from another town – was called at 5.10 a.m. and set off at 5.13 a.m. Given that in the meantime the police officers had to ensure their own safety and establish the need for medical assistance, it cannot be said that the suffering of the applicant and Mr R.C. de Pool was needlessly prolonged.

Inasmuch as the applicant alleges that Police Officer 0308 wounded her unnecessarily by not taking careful aim, the Court refers to its findings above from which it appears that Police Officer 0308 was in fact a competent marksman forced to act in adverse conditions.

It follows that the applicant's complaints under this Article also are manifestly ill-founded.

D. Article 13 of the Convention

Article 13 of the Convention provides as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

In the applicant's submission, the failure of the public prosecutor to prosecute Police Officer 0308 and the subsequent refusal of the Court of Appeal to order any prosecution show that an "effective remedy" as required by this Article was not available to her.

The Court, leaving aside its findings that the applicant's claims under "substantive" provisions of the Convention are manifestly ill-founded and consequently not "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131,

pp. 23-24, § 57), refers to what it has already stated above in relation to the decision not to bring any prosecution.

For these reasons, the Court unanimously

Declares the application inadmissible.

Mark VILLIGER
Deputy Registrar

Boštjan M. ZUPANČIČ
President