



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

## FIRST SECTION

Applications nos 5821/10 and 65523/12  
Ilya Mikhaylovich GERASIMENKO and Luiza Aleksandrovna  
SALIKHOVA against Russia  
and Yelena Anatolyevna DUDAL against Russia  
lodged on 15 January 2010 and 6 October 2012 respectively

### STATEMENT OF FACTS

The applicants in the first case, Mr Ilya Mikhaylovich Gerasimenko (the first applicant) and Mr Luiza Aleksandrovna Salikhova (the second applicant), are Russian nationals, who were born in 1990 and 1989 respectively and live in Moscow. They are represented before the Court by Mr I.L. Trunov and Ms L.K. Ayvar, lawyers practising in Moscow.

The applicant in the second case, Ms Yelena Anatolyevna Dudal (the third applicant), is a Russian national, who was born in 1990 and lives in Moscow. She is represented before the Court by Ms I. Khrunova, a lawyer practising in Kazan.

#### **A. The circumstances of the case**

The facts of the case, as submitted by the applicants, may be summarised as follows.

##### *1. Background events*

Major D.E., born in 1977, served in the police.

On 28 November 2008 he was promoted to the position of the Head of the Tsaritsino Department of the Interior of Moscow.

In the evening of 26 April 2009 Major D.E. had his birthday party. Shortly after having returned home from the party, he left again.

Between 12:30 a.m. and 1.20 a.m. on 27 April 2009 Major D.E., the Head of the Tsaritsino Department of the Interior of Moscow, drove in a taxi to the shopping centre “Ostrov” at Shipilovskaya Street, Moscow. He was wearing police uniform and was armed with a handgun.

First he had made several gunshots at the driver, E., who died of the wounds in the hospital.

After Major D.E. had gotten out of the car, he walked between apartment blocks. Near one of them he saw two persons whom he did not know, Ms S. and Mr K. Having said nothing, he opened fire and caused Ms S. three wounds and Mr K. two wounds. In a while he saw Mr L. and, also without saying a word, shot at him. However, Mr L. managed to run away.

Major D.E. then walked towards the shopping centre “Ostrov”. As it is open for twenty-four hours a day, there are always people in the shopping centre. Major D.E. opened fire at a group of people who were near the entrance of the shopping centre, having made at least two shots at the first applicant, at least one shot at the second applicant and at least one shot at the third applicant. One more person, Ms B., was wounded.

Major D.E. entered the shopping centre where he approached Mr T. and Ms P. Without saying a word, he shot Mr T. in the head. After Mr T. had fallen down, Major D.E. took Ms P. by the arm, pointed the gun at her head and, holding her as a hostage, continued moving through the shopping centre. Eventually Ms P. managed to break free and run away.

When he was passing a checkout counter, Major D.E. shot at cashier Ms T., who was killed instantly.

The staff and customers of the shopping centre tried to hide from Major D.E.. Some of them used the fire exit and found themselves in the backyard of the shopping centre. Major D.E. followed them and, threatening with the gun, demanded all the women who were hiding behind some boxes to step forward. One of the women, Ms F., trying to protect her pregnant daughter who was hiding together with her, obeyed and approached Major D.E.. He then pointed the gun at her head and pushed her towards a wall. He was apparently going to shoot her, but was distracted by a police unit that arrived at the scene. The police demanded that he let the people go and surrender. Major D.E. started shooting at the police, and Ms F. could escape as well as other people that were hiding in the backyard. Major D.E. was subsequently apprehended by police.

In the course of the events Major D.E. killed two and wounded seven persons.

The first applicant was wounded in the head and body. He had a bullet entrance hole in the parotic region with the exit in the nasal region, brain concussion and a fracture of the walls of the right maxillary sinus and of the lower jaw. He also had a penetrating wound of the lumbar region, rupture of the spleen, penetrating wound of the liver and diaphragm ligaments and a foreign body in mediastinum.

The second applicant was wounded in the head. She had a perforating wound of the left buccal region and of the floor of the mouth with a fracture of the lower jaw.

The third applicant had a cervical nonpenetrating wound on the left, fracture of the left shoulder-blade and a foreign body in the neck muscles.

## *2. Criminal proceedings against Major D.E.*

On 27 April 2009 criminal proceedings were instituted against Major D.E. on the counts of murder of two persons and attempted murder of twenty-six persons near and in the shopping centre “Ostrov”.

On 5 May 2009 Major D.E. was dismissed from the police with effect from 27 April 2009.

On 7 May 2009 the first applicant was granted victim status in the criminal proceedings.

On 14 May 2009 Major D.E.'s mother was questioned. She submitted, in particular, that as a child he had had head injuries. At the age of eleven-twelve years old he suffered from strong headaches and throughout his school years he was supervised by a neuropathologist. After the seventh grade he was transferred to a different school because of frequent conflicts with his schoolmates. After the ninth grade he was exempted from school exams upon a medical recommendation.

Between 25 June and 23 July 2009 forensic psychological-psychiatric examination of Major D.E. was conducted by three psychiatrists and a psychologist. According to the conclusions set out in report no. 514 of 23 July 2009, Major D.E. did not suffer from any mental disorder, but had accentuated personality. The perinatal pathology and head injuries led to development of emotional instability, excitability, anxiety and demonstrative behaviour. This explained the difficulties of his adaptation to school and his behavioural deviations, which required psychiatric aid. At the time of committing the imputed offence Major D.E. did not suffer from a temporary psychiatric disorder, as follows from the lack of evidence of his being in a psychotic state accompanied by delirium or hallucinations. He was able to understand the meaning of his actions and control them. He was neither a drug addict nor an alcoholic, although at the time of the events he was in the state of alcohol intoxication of medium degree, as confirmed by medical expert examination.

The psychologist who participated in the forensic examination also stated that after his promotion in December 2008 until the time of the events Major D.E. was in a subjectively complex situation. This included the increased volume of work and management of a new team. Such Major D.E.'s qualities as perfectionism, high demands to himself and others, the need to control all areas of professional activity, intolerance of undue diligence or insufficient competence of his colleagues required, in the given situation, complete mobilisation of his physical and personal resources. At the same time he was not as enthusiastic about his new job as he had been about his previous job. Significant limitation of his independence and permanent accountability coupled with the lack of satisfaction from his work led to emotional tension. Major D.E. repeatedly wished to leave his job, but felt responsibility for his duties and his subordinates. He felt exhausted and asked for leave, which his superiors did not grant him at the time. Complicated relationship with his wife constituted another source of frustration. Furthermore, the news of his direct supervisor leaving his job constituted an additional traumatic factor having caused atypical for Major D.E. feeling of confusion. The evening before the events Major D.E. had his birthday party which he organised wishing to relax in the company of his family and friends. However, in the morning he was busy at work and, having left for the party, was expecting to be called back and, therefore, was in the state of emotional tension. The fact of his wife and her father being late for the party and the subsequent strained conversation with her, coupled with the work-related anxiety and the feeling that the party did not go as planned, amplified the accumulated emotional

tension and exhaustion. However, at the time of committing the imputed offence Major D.E. was not in the affective state.

In October 2009 (the exact date is illegible) the second applicant was granted victim status in the criminal proceedings.

On unspecified date the third applicant was also granted victim status in the criminal proceedings.

On 19 February 2010 the Moscow City Court convicted Major D.E. of murder of two persons, attempted murder, including attempted murder of law enforcement officials, and unlawful use of firearms and sentenced him to life imprisonment. The court also stripped him of the rank of major.

Being questioned in the court room Major D.E. pleaded partially guilty. He submitted that he had no recollection of the events and could not explain where and how he had come in possession of the handgun and cartridges either. However, he did recognise himself on the footage of the CCTV at the shopping centre and therefore admitted that he had killed a man and tortured a woman, although he could not explain why he had done so. He pleaded not guilty as regard all other counts of charges.

The court questioned numerous witnesses who confirmed the account of the events given in the preceding paragraphs. In particular, Major D.E.'s wife submitted that having returned from his birthday party he had behaved strangely. After he had left, she called his parents and they started searching for him. Police officers F. and Ya., who had apprehended Major D.E. at the shopping centre "Ostrov", submitted that when they had asked him why he had done this, he had responded that "one should live one's life in such a way so that one would not wish to live it one more time". According to police officer Ya., Major D.E. also said that if he had a machine gun "this would have been more fun" and, in response to the question where he had gotten firearms, he responded that, being police officers, they should know.

The court also noted that Major D.E. had a handgun Makarov ShI 3192 made in 1968 and at least 33 cartridges, although he did not have a licence to carry firearms. It further referred to the information provided by the Tula Cartridge Factory on 26 August 2009 to the effect that the cartridges used by Major D.E. had been manufactured at the factory in 2002 and 2004 and were supplied, in particular, to the Moscow Directorate of the Interior. There were no instances of theft of cartridges reported. The court also referred to the information provided by the Moscow Directorate of the Interior to the effect that the handgun used by Major D.E. had been reported as stolen from the arms storage of the North Caucasus Directorate of the Interior of the Rostov Region. It also referred to the judgment of the Proletarskiy District Court of Rostov-on-Don of 19 March 2001 convicting two officials of theft of 128 handguns from the arms storage of the North Caucasus Directorate of the Interior in the period between June 1998 and April-May 2000, which included the handgun used by Major D.E.

On 8 June 2010 the Supreme Court of Russia upheld the judgment on appeal.

### *3. Recommendation of the Investigative Committee to the Ministry of the Interior*

On 17 September 2009 investigator M. of the Investigative Committee at the Prosecutor's Office of the Russian Federation addressed the Minister of

the Interior with a recommendation on measures to be taken with a view to rectify the circumstances that had been conducive to the crime. The recommendation noted that according to the forensic psychiatric examination Major D.E. had been found to be of sound mind. However, since his childhood he had been supervised by a neuropathologist on account of psycho-emotional instability, which was not taken into account by the military medical commission which found Major D.E. fit to serve in the police. In the course of the psychological examination of Major D.E. it was found that one of the reasons for the psychologically traumatic situation for him had been his promotion to the position of the Head of the Tsaritsino Department of the Interior. He was not as interested and enthusiastic about his new duties as he had been about his previous work in the criminal police. Significant limitation of his independence and permanent accountability together with the lack of satisfaction from his work led to emotional tension.

The recommendation went on to say that on 14 November 2008 Major D.E. had been subject to appraisal, as a result of which the Appraisal Board held that he corresponded to the office he held and found his promotion possible. However, the investigation established that Major D.E. had not been fit for the position of the Head of the Department of the Interior due to his moral and professional qualities. In particular, he had poor knowledge of police service in the domain of public security and was irritable with his subordinates. Therefore, the Appraisal Board had a very perfunctory attitude to its duties, and the appraisal did not correspond to its goals set by the applicable regulations. Undue performance of their duties by the staff members of the human resources services of the agencies of the interior, their perfunctory attitude towards recruitment and promotion of staff led to persons unfit due to their personal and professional qualities being promoted to senior positions. Furthermore, the Ministry of the Interior failed to conduct the explanatory work with its staff to ensure the respect for the rule of law, whereas its functioning was precisely based on the principles of respect for human rights and humanism. The actions of Major D.E. thus discredited the police.

The recommendation concluded that the above failures on the part of the agencies of the interior contributed to Major D.E.'s having committed serious crimes and advised to envisage measures aimed at their rectification.

#### *4. Special ruling of the Moscow City Court*

On 19 February 2010, the date when Major D.E. was convicted, the Moscow City Court also issued a special ruling. It stated that in the course of the trial it had been established that in his childhood Major D.E. had been treated with respect to conditions related to mental disorders and disorders of central nervous system in medical institutions of agencies of the interior. However, such circumstances were not taken into account when Major D.E. was accepted to serve in the police and subsequently promoted to the position of the Head of the Tsaritsino Department of the Interior, although the relevant medical data was available at the institutions that provide medical care to the staff of the agencies of the interior. Therefore, there was a breach of Section 19 of the Law on Police, Articles 130 and 131 of the

Order of the Ministry of the Interior of 14 July 2004 and Article 9.7 of the Order of the Ministry of the Interior of 14 December 1999.

Furthermore, the court noted that in the course of the trial it had been established that when committing the offence Major D.E. had used cartridges that had been manufactured in the Tula Cartridge Factory and supplied, in particular, to the Moscow Directorate of the Interior. According to the information submitted by the factory, no instances of theft of cartridges were reported. The court thus concluded that, while holding the office of the Head of the Tsaritsino Department of the Interior, Major D.E. obtained the cartridges in breach of the order of storage of firearms established by the Order of the Ministry of the Interior no. 13 of 12 January 2009 and later used them for committing particularly grave offences.

Having regard to the irregularities in the functioning of the Ministry of the Interior which contributed to the offences committed by Major D.E., the court ruled to draw the attention of the Minister of the Interior to the said irregularities and to invite him to take measures aimed at their rectification.

*5. Proceedings for damages against Major D.E.*

It appears that the first and second applicants sued Major D.E. for damages. Apparently, the first applicant was awarded approximately 370,000 roubles (RUB) and the second applicant was awarded approximately RUB 270,000.

*6. Proceedings for damages against the State brought by the first and second applicants*

On unspecified date the first and second applicants instituted proceedings for damages against the Ministry of the Finance, the Federal Treasury and the Moscow Department of the Finance arguing that they had suffered injuries as a result of unlawful actions of a State official. Major D.E. participated in the proceedings as a third party.

On 29 July 2009 the Nagatinskiy District Court of Moscow dismissed the first applicant's claim. The court stated that under Articles 52 and 53 of the Constitution and Articles 1064 § 1 and 1069 of the Civil Code the State is liable for unlawful actions of a State official performed in the course of fulfilling the latter's duties. However, if a State official causes damages as a result of its activity unrelated to fulfilling the duties of the State service, the State official would be liable under Articles 1064 § 1 of the Civil Code. The court found that in the case at hand Major D.E.'s unlawful actions that caused damage to the first applicant took place between 12:30 a.m. and 1.20 a.m. at the shopping centre "Ostrov", that is outside Major D.E.'s office hours and outside the territorial jurisdiction of the Tsaritsino Department of the Interior. Therefore, they were unrelated to his duties as a State official. The fact that at the relevant time he held the position of the Head of the Tsaritsino Department of the Interior and had the rank of major did not constitute the ground for the State's liability under Article 1069 of the Civil Code, as it had been established that Major D.E. had caused damages as a result of activity unrelated to the duties of his service. The court also dismissed the first applicant's arguments that the State should be

held liable for the damages because (i) at the time of the events Major D.E. was dressed in police uniform; (ii) he used cartridges that belonged to the Tsaritsino Department of the Interior; (iii) under Section 18 of the Law on Police a police officer carries out his or her duties irrespective of the time, place or his or her position; and (iv) Major D.E. was dismissed from service on the ground of having discredited the police. The court held that under Section 18 of the Law on Police as a general rule a police officer carries out his or her duties taking into account his or her position, the duty hours and his or her whereabouts. Exceptions to this rule are provided in Section 18 §§ 3 and 4 and concern instances where a police officer must take urgent measures to provide assistance to victims of offences, save lives, prevent committing a crime or apprehend a person suspected of having committed an offence. In these cases a police officer must perform his or her duties irrespective of his or her position, duty hours and whereabouts. However, this was not the situation at hand and, therefore, Major D.E. was not acting in the exercise of his State duties, and there were no ground to hold the State liable for his actions. The fact that he was wearing police uniform and used cartridges that belonged to the Tsaritsino Department of the Interior had no bearing. The fact that Major D.E. was dismissed for having discredited the police meant that his actions were incompatible with the status of a police officer, but not that he had performed the actions that had caused damage to the first applicant in the course of exercising his duties.

On 6 October 2009 the Moscow City Court upheld the judgment. It noted that there was no evidence that would unequivocally confirm that the actions in question had been performed by Major D.E. in the course of exercise of his duties of a civil servant.

On 23 September 2009 the Nagatinskiy District Court of Moscow dismissed the second applicant's claim. The court's reasoning was identical to that in the judgment of 29 July 2009 concerning the first applicant's claim.

On 1 December 2009 the Moscow City Court upheld the judgment. Similar to its decision of 6 October 2009, it noted that there was no evidence that would unequivocally confirm that the actions in question had been performed by Major D.E. in the course of exercising his duties of a civil servant.

Subsequently, having regard to the Special Ruling of the Moscow City Court of 19 February 2010, the first and second applicants applied with requests to reopen the civil proceedings due to the newly discovered circumstances.

On 9 April 2010 the Nagatinskiy District Court dismissed their requests in two separate rulings. It held that there were no significant new circumstances that would warrant the reopening of the proceedings. It is not clear whether the applicants appealed.

#### *7. Proceedings for damages against the State brought by the third applicant*

On 15 November 2010 the third applicant underwent a polygraph test purposed to establish her perception of police officers following the events of 27 April 2009. According to the results of the test, 27 April 2009 the

third applicant took Major D.E. for a police officer and, as a result of the events, developed feelings of fear and apprehension towards police officers.

Between 19 November and 5 December 2010 a psychological expert examination was conducted with a view to establish how the fact that at the time of the events Major D.E. had been wearing police uniform had affected the third applicant's psychological state. According to the results of the examination, police uniform affects a person's behaviour as in general people tend to display loyalty and obedience towards symbols of authority due to the latter's legitimacy and conventionality and their fear of reprisals in case of their refusal to obey. The fact that the perpetrator was wearing police uniform undoubtedly affected the third applicant's behaviour and psychological state having limited her possibility to choose a behavioural pattern aimed at protecting her life and health. At the time of the examination the third applicant felt uncontrolled fear of officials wearing police uniform. When she saw one she felt anxiety, apprehension and panic. There was a direct connection between the events and the third applicant's psychological state characterized by depression, emotional tension, instability, prevailing of negative emotions, tendency to avoid new experiences, pessimistic outlook on life and change of moral values.

On 29 September 2011 the third applicant instituted proceedings for damages against the Ministry of Finance. She argued that damages had been caused as a result of unlawful exercise of his powers by a police officer. She relied, in particular, on the following: (i) Major D.E. had used firearms that he had obtained in the course of his service in the police; (ii) any judicial decision recovering damages from Major D.E. would remain unenforced since, being convicted to life imprisonment, he would have no sources of income and, therefore, no assets to recover the judgment debt from; (iii) the polygraph test had proven that at the night of the events the third applicant had taken Major D.E. for a police officer; (iv) according to the results of the psychological expert examination, the fact that Major D.E. was wearing police uniform affected the third applicant having rendered her defence difficult.

On 7 December 2012 the Tverskoy District Court of Moscow dismissed the claim. Having relied on Articles 150, 151, 1064 § 1 and 1069 of the Civil Code and having referred to Major D.E.'s conviction, the court found no evidence that damage was caused to the third applicant by unlawful actions of a law-enforcement officer. The court found that the claim was brought against a wrong defendant and that it should have been brought against Major D.E. It dismissed the claimant's argument that any judgment against Major D.E. would remain unenforced as being speculative. The third applicant's reference to the fact that Major D.E. had used cartridges that had belonged to the Moscow Directorate of the Interior was also dismissed as "being based on wrong assessment of the facts established by the court". The court also stated that the third applicant's personal perception of the perpetrator dressed in military uniform did not constitute the ground for granting the claim. It further noted that the third applicant's reference to the Court's case law constituted arbitrary interpretation of irrelevant judicial decisions.

On 16 April 2012 the Moscow City Court upheld the judgment on appeal.



## **B. Relevant domestic law**

### *1. Constitution*

#### **Article 52**

“Rights of victims of crimes and of abuse of powers are protected by the law. The State provided to the victims access to court and compensation of damages.”

#### **Article 53**

“Everyone has a right to compensation by the State of damage, caused by unlawful actions (or omissions) of State authorities or of their officials.”

### *2. Civil Code*

Under Article 150 § 1 non-pecuniary assets include, in particular, life, health and personal inviolability. Under Article 150 § 2 non-pecuniary assets are protected in accordance with the Code and other laws.

Article 151 provides that if a person suffered non-pecuniary damage (such as physical or moral suffering) as a result of actions violating his or her non-pecuniary rights or infringing on his or her non-pecuniary assets, the court may order the tortfeasor to provide pecuniary compensation for the damage caused.

Under Article 164 § 1 damage caused to a person or property is subject to compensation in full by the person who caused it. The law may impose the obligation to pay compensation on a person who is not the tortfeasor.

Article 1069 provides that damage caused to a person or a legal entity as a result of unlawful actions or omissions of State agencies, agencies of local self-government or of their officials is subject to compensation. The compensation is to be paid from the treasury of the Russian Federation, the treasury of a constituent unit of the Russian Federation or the treasury of a municipal entity respectively.

Under Article 1070 § 1 damage caused to an individual as a result of unlawful conviction, unlawful institution of criminal proceedings, unlawful application of a preventive measure in the form of placement in custody or an undertaking not to leave the place of residence, or an unlawful administrative penalty in the form of detention or community service shall be compensated in full, irrespective of the fault of the officials or agencies, from the treasury of the Russian Federation or, in instances provided for by law, from the treasury of a constituent unit of the Russian Federation or the treasury of a municipal entity. Article 1070 § 2 further provides that damage sustained by an individual as a result of unlawful actions of investigating and prosecuting agencies which did not entail consequences set out in paragraph 1 shall be compensated on the grounds and according to the procedure provided in Article 1069.

### *3. Law on Police*

Section 3 of the Law on Police no. 1026-I of 18 April 1991, in force until 1 March 2011, provided that the functioning of the police was based on principles of respect for human rights and liberties, the rule of law, humanism and publicity.

Section 4 provided that the police acted on the basis of the Constitution, the Law on Police, other federal laws and international treaties of the Russian Federation as well as on the basis of Constitutions and laws of constituent units of the Russian Federation adopted within their powers.

Section 18 provided that a police officer fulfilled the duties and enjoyed the rights of the police, provided by the Law on Police, within his or her competence in accordance with the office held. A police officer within the territory of the Russian Federation, irrespective of the office held, his or her whereabouts and time, had the following duties:

- to provide first aid and other types of assistance to victims of crimes, administrative offences or accidents, as well as to individuals in a helpless or other state, that posed danger to their lives;

- should individuals address him or her with information on events threatening personal or public security, or in case he or she directly discovered such events, he or she should take measures to save people, prevent or repress the offence, apprehend the person suspected of having committed the offence, to secure the scene of the events and to inform the nearest police department accordingly.

In order to fulfil the above duties the police officer could use the rights of the police provided in the Law on Police.

Under Section 19 individuals not younger than eighteen and not older than thirty-five years old who have secondary-level education and who are capable due to their personal and business qualities, physical training and state of health to fulfil duties of police officers may be accepted for service in the police irrespective of their gender, race, ethnic origin, language, property status or official capacity, place of residence, religious and other convictions and membership in public organisations.

#### *4. Letter of the Supreme Court on Certain Aspects of Judicial Practice in Civil Cases*

In the Letter published in the Bulletin of the Supreme Court no. 10 of 1997 the Supreme Court stated that when civil claims for damages were brought against the State under Articles 1069 and 1070 of the Civil Code, the Ministry of Finance should act as the defendant on behalf of the State treasury. In the decisions it should be stated that the amount due was to be recovered from the treasury of the Russian Federation, and not from the property and monetary assets transferred under the operative management of the Ministry of Finance acting in the capacity of a federal executive agency.

#### *5. Orders of the Ministry of the Interior*

Instruction on the conduct of military-medical expert examination in the agencies of the interior of the Russian Federation and in the troops of the Ministry of the Interior of the Russian Federation, adopted by the Order of the Ministry of the Interior of 14 July 2004, in force until 14 July 2010, provided that expert examination of individuals who applied for service in the agencies of the interior was to be conducted by the following medical experts: a surgeon, a physician, a neurologist, a psychiatrist, an ophthalmologist, an otolaryngologist, a dentist and a dermatovenerologist

(Article 130). Prior to the expert examination the military-medical expert commission had to request medical institutions according to the applicant's place of residence, studies, work or service, to provide information, in particular, on his or her having been placed under supervision with respect to mental disorders, drug addiction, alcohol addiction, addiction to inhalants, abuse of drugs or other toxic substances (Article 131 and 131.1).

Article 9.7 of the Instruction on the order of implementation of the Regulation on service in the agencies of the interior of the Russian Federation, adopted by the Order of the Ministry of the Interior of 14 December 1999, in wording valid until 7 May 2012, provided that appraisal of staff was to be conducted in writing. It should fully and objectively reflect the staff member's knowledge and skills and his or her compliance with the requirements of the position held, in particular:

- professional qualification, ability to attain operative goals in accordance with the position held;
- quality and timeliness of fulfilling the duties of service;
- the level of intellectual and cultural development, including the breadth of outlook, creative activity and erudition;
- operational, physical and emotionally-volitional fitness to attain operative goals and to take justified risk; the degree of self-control in extreme situations and self-possession in relations with other people.

After the appraisal the staff member would be given recommendations on improvement of his or her service and rectification of any shortcomings. The text of the appraisal was to be concluded by the assessment of the staff member's correspondence to the position held, the possibility of promotion or the necessity of downgrading.

By Order no. 13 on the Organisation of supply, storage, control, distribution and security of weapon and ammunition in the agencies of the interior of the Russian Federation of 12 January 2009 the Ministry of the Interior adopted the Instruction on the organisation of supply, storage, control, distribution and security of weapon and ammunition in the agencies of the interior of the Russian Federation.

## COMPLAINTS

1. The first and second applicants complain under Article 2 of the Convention that the State failed to protect their lives having accepted Major D.E. for police service despite his being unfit for it.

2. The first and second applicants also rely on Article 6 of the Convention complaining about the dismissal of their claim for damages against the State. They argue that, the offence being the result of the State's negligence, the State must be liable for it.

3. The third applicant complains under Article 2 of the Convention, firstly, that the State authorities failed in their duty to set high professional standards within their law-enforcement systems and ensure that the persons serving in these systems meet the requisite criteria. In particular, having failed to take into account the information about Major D.E. long standing neurological and psychiatric issues, the authorities accepted him for service

in the police and provided him with access to firearms and with firearms training. Secondly, she argues that the State failed to provide her with a remedy that would enable her to obtain redress for the damages suffered. According to the applicant, in the present case the State is liable for damages caused by Major D.E. as it was the State's omission that enabled him to commit the offence. In the applicant's view, her complaint falls under Article 2 as Major D.E. tried to kill her, and in the domestic proceedings he was tried for attempted murder. However, should the Court decide otherwise, she asks to examine her complaint under Article 3 of the Convention.

### **QUESTIONS TO THE PARTIES**

1. The Government are requested to provide the text of the Instruction on the organisation of supply, storage, control, distribution and security of weapons and ammunition in the agencies of the interior of the Russian Federation adopted by the Order of the Ministry of the Interior no. 13 of 12 January 2009.

2. The Government are requested to inform the Court on how Major D.E. came in possession of the handgun Makarov ShI 3192 made in 1968, which had been reported as stolen from the arms storage of the North Caucasus Directorate of the Interior of the Rostov Region, as well as of the cartridges. The Government are requested to submit the relevant materials of the domestic investigation conducted into the offence committed by Major D.E. on 27 April 2009.

3. The parties are requested to provide the Court with all the relevant court decisions concerning the proceedings for damages instituted by the applicants against Major D.E.

4. Did the circumstances in which the applicants were wounded by Major D.E. engage the State's responsibility under Article 2 of the Convention? If so, was there a breach of the above provision? (See *Durđević v. Croatia*, no. 52442/09, §§ 75, ECHR 2011 (extracts); *Sašo Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 49382/06, §§ 48-52, ECHR 2012 (extracts); and *Gorovenky and Bugara v. Ukraine*, nos. 36146/05 and 42418/05, § 38, 12 January 2012)

5. Did the applicants have at their disposal an effective domestic remedy for their complaints under Article 2, as required by Article 13 of the Convention? In particular, did the dismissal of their claim for damages against the Ministry of Finance comply with the requirements of the above provision?