



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

FIRST SECTION

**CASE OF SHCHIBORSHCH AND KUZMINA v. RUSSIA**

*(Application no. 5269/08)*

JUDGMENT

*This version was rectified on 28 February 2014  
under Rule 81 of the Rules of Court*

STRASBOURG

16 January 2014

**FINAL**

**02/06/2014**

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



**In the case of Shchiborshch and Kuzmina v. Russia,**

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

Isabelle Berro-Lefèvre, *President*,  
Mirjana Lazarova Trajkovska,  
Julia Laffranque,  
Linos-Alexandre Sicilianos,  
Erik Møse,  
Ksenija Turković,  
Dmitry Dedov, *judges*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 December 2013,

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

**PROCEDURE**

1. The case originated in an application (no. 5269/08) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Russian nationals, Mr Viktor Ivanovich Shchiborshch and Mrs Valentina Nikolaevna<sup>1</sup> Kuzmina (“the applicants”), on 17 January 2008.

2. The applicants were represented by Ms O.A. Sadovskaya, a lawyer practising in Nizhny Novgorod. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 29 January 2009 the Court decided to apply Rule 41 of the Rules of Court and grant priority treatment to the application.

4. On 26 June 2009 the President of the First Section decided to give notice of the application to the Government.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

5. The applicants were born in 1939 and 1944 respectively and live in Dubna, the Moscow Region.

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<sup>1</sup> Rectified on 28 February 2014: the text was “Ivanovna”.

### **A. Death of Mr Kirill Shchiborshch**

6. The applicants are a married couple. They are the parents of Mr Shchiborshch, who was an economist and the author of a number of publications. At the time of the events he was thirty-seven years old and suffering from a psychiatric disorder which required in-patient treatment.

7. On 7 July 2006 the first applicant, having obtained a referral from Moscow's Psychoneurological Dispensary no. 10 recommending in-patient treatment for Mr Shchiborshch, contacted the Nagatinskiy Zaton department of the interior ("the OVD") and asked the police to assist with placing his son in a psychiatric hospital. He explained that Mr Shchiborshch was in a delirious state and was not letting anyone except the first applicant into his flat as he was afraid of burglars.

8. Between 11.20 a.m. and 12.40 p.m. on 7 July 2006 the head of the OVD ordered police officer G. to forcibly place Mr Shchiborshch in a hospital. Subsequently police officers G., L. and D. arrived at the residence of the applicants' son. When Mr Shchiborshch opened the lobby door and saw the police officers, he immediately ran back to his flat and tried to close the door. He refused their orders to go to the OVD for transfer to a hospital. First, the police officers tried to remove his hand from the door knob so that he could not close the door. Mr Shchiborshch threatened the police officers with a kitchen knife and wounded G. The police officers, who were wearing bullet-proof vests, hit him with rubber truncheons and other objects. Mr Shchiborshch eventually ran to the kitchen and barricaded the door from the inside. The officers called the special police unit ("the OMSN") for support.

9. While in the kitchen, Mr Shchiborshch called an ambulance and said that he needed help because he had been wounded. He also called the police, asking for help because he was being "attacked by burglars". In the meantime, the OMSN arrived. After trying unsuccessfully to negotiate with him, they decided to "storm" the kitchen. Mr Shchiborshch ran to the balcony and cried for help while the police officers continued trying to apprehend him. When he fell on the balcony floor, they handcuffed him and put him on the kitchen floor. The first applicant, who had been ordered to stay in the lobby while the police forced an entry to the kitchen, was then allowed into the kitchen. He saw his son handcuffed and lying on the floor in a pool of blood.

10. Mr Shchiborshch was taken to hospital no. 7 with multiple wounds and in a coma. He died without regaining consciousness, having sustained craniocerebral trauma, brain oedema, concussion, and slash wounds to the head, body and extremities, several fractured ribs and a ruptured jugular vein.

## **B. Investigation of the death of Mr Shchiborshch and independent measures taken by the applicants**

11. On 7 July 2006 the case file concerning the death of Mr Shchiborshch was transmitted to the Simonovskiy Inter-District Prosecutor's Office.

12. On the same date the investigating authorities ordered a forensic examination of Mr Shchiborshch's body.

13. On 10 July 2006 forensic report no. 1262 was issued. The experts made the following findings:

(1) The following injuries were found on Mr Shchiborshch's body:

- open non-penetrating craniocerebral trauma: depressed fracture of the left frontal and parietal bones, fracture of the sphenoid and parietal bones, and the orbital part of the frontal bone; sub-arachnoid haemorrhages and contusion of the convex surface of the left frontal lobe and the surface of the right frontal lobe, haemorrhaging of the soft tissue and bruising of the left frontal parietal and temporal region; bruising of the frontal region, bruising and abrasions of the right frontal region, and the top of the right eye socket; haemorrhaging of the soft tissue of the parietal-temporal region on the right;
- closed fractures of the sixth, eighth, ninth, tenth and eleventh ribs;
- bruising of the right cheekbone;
- bruising of the right and left shoulder joints, and the left shoulder, the surface of the right hip, the inside of the right knee joint, the front of the right and left shin, the front of the left hip; bruising and abrasions of the left cheekbone and periotic-masticatory region, abrasions of the chin, intra-cutaneous haemorrhages of the chest, bruising and abrasions on the right forearm, right hand, and left arm;
- a 3 cm-long punctured slash wound to the left side of the neck;
- multiple surface slash wounds on the right earlobe, left cheekbone and periotic-masticatory region, the lower jaw, chest, shoulders and hands.

(2) All the injuries were caused while Mr Shchiborshch was alive, shortly before his admittance to hospital:

- the craniocerebral trauma was caused by multiple blows with hard blunt objects;
- the rib fractures and the bruising of the right cheekbone, head, body and extremities were caused by blows, and the abrasions by scraping against a hard blunt object (or objects);
- the punctured slash wound to the left side of the neck was caused by a sharp cutting object inflicted upwards from the front to the back and from left to right, assuming that Mr Shchiborshch was in a vertical position;
- the multiple surface slash wounds were caused by a cutting object or objects;
- forensic and spectral research of the soft tissue of the wounds to the head, neck and right hand did not reveal any micro splinters of glass or

other foreign bodies. Emission spectral analysis showed an increased content of aluminium, lead and manganese in the skin of the head, which could have been caused by soiling. Other specimens of skin and soft tissue did not reveal an increased metal content;

- after the injuries had been caused, Mr Shchiborshch was taken to hospital in a coma, incapable of any independent actions, including movement. The injuries could not have been caused as a result of falling from his height to a horizontal surface. In order to establish the possible location of the victim and the aggressor at the time when the injuries were caused, it was necessary to have access to the materials of the file.

(3) The open craniocerebral trauma and the punctured slash wound to the left side of the neck which damaged a blood vessel combined to form a life-threatening trauma classified as grave health damage. The rib fractures were classified as health damage of medium gravity. As the bruises and abrasions were not accompanied by heavy bleeding and no blood vessels were damaged, they were not considered to constitute health damage.

(4) Mr Shchiborshch's death at 4.15 p.m. on 7 July 2006 was caused by the combined trauma, complicated by cerebral oedema and blood loss.

(5) There was a direct causal link between the craniocerebral trauma, the punctured slash wound to the left side of the neck with a damaged blood vessel, and his death. There was no direct link between his death and the other injuries.

14. Forensic report no. 1262 was supplemented by a chemical and histological analysis of his blood and soft tissue conducted on 13 and 24 July 2006 respectively.

15. On 17 July 2006 the Simonovskiy Inter-District Prosecutor's Office refused to institute a criminal investigation. It found that the police officers' actions disclosed no indication of an offence, since they had acted in an appropriate manner in a life-threatening situation.

16. On 24 July 2006 the deputy of the Simonovskiy inter-district prosecutor set aside the decision and remitted the case file for further investigation. He held that the decision was unfounded since not all the circumstances of the case had been established. In particular, it was necessary to obtain the results of the forensic examination of the body and to question the doctor from Psychoneurological Dispensary no. 10 who had recommended in-patient treatment.

17. On 3 August 2006 the Simonovskiy Inter-District Prosecutor's Office instituted a criminal investigation under Article 108 § 2 (murder committed in excess of necessary self-defence or in excess of measures required to arrest a person who has committed an offence) and Article 286 § 3 (abuse of official powers) of the Criminal Code. The decision stated that, by storming the flat and using rubber truncheons, which led to Mr Shchiborshch's death, the police officers had clearly exceeded their authority. The case file was assigned no. 363484.

18. On 10 August 2006 police officer D. was questioned. According to his submissions, at approximately 12.40 p.m. on 7 July 2006 he and police officers G. and L. had been ordered to deliver a mentally-ill person to a hospital. They went to that person's place of residence together with the latter's father, the first applicant, who had given them oral permission to enter the flat. On arrival, they put on bullet-proof vests, and the first applicant rang at the lobby door. Mr Shchiborshch walked to the door and asked who was there. The first applicant replied that it was him. Mr Shchiborshch said that he would open the door and after a while began to open it. G. was standing at the door; L. was behind him and D. was standing to one side. When the door was opened, G. tried to enter but then shouted: "Knife!" Mr Shchiborshch ran to the door of his flat wielding a knife. He tried to close the door to his flat, but L. stopped him. Mr Shchiborshch then went to the kitchen and barricaded himself inside. D. reported the events to the OVD and called an ambulance, which arrived in approximately twenty minutes; G. was given first aid and taken to hospital. L. blocked the door so that Mr Shchiborshch could not leave the flat and harm anyone else, awaiting the arrival of the special police unit. When the special unit arrived, the regular police officers were asked to leave the lobby. D. could not identify the officers of the special police unit as they were all wearing uniforms and their faces were covered with masks. D. did not see what happened in the flat. He was ordered to return to the OVD.

19. On 13 August 2006 police officer Kh. of the special unit was questioned. He stated that on 7 July 2006 he had been on duty. At 1.50 p.m. he received information that a mentally-ill person had wounded a police officer, barricaded himself in his kitchen and resisted involuntary placement in a hospital. Together with special unit police officers B., D-n. and S., he arrived at the address indicated at approximately 2.35 p.m. He stayed in the car while the head of the team, D-n., went to find out what the situation was. Fifteen or twenty minutes later they were ordered to go up to the sixth floor, where D-n. told them that Mr Shchiborshch had been threatening to kill them, saying that the kitchen door was electrified. Kh. heard Mr Shchiborshch say that he had already knocked down one man and the same would happen to the others. Kh. then understood that Mr Shchiborshch had realised that there were police officers in the flat. The four of them were in the lobby discussing further actions when they heard a crash from the kitchen. The stained glass in the kitchen door had been broken and they were showered with shards of glass. Since the police officers were wearing bullet-proof vests, no one was hurt.

Through the kitchen door Kh. saw a bare-chested fair-haired man, approximately thirty-five years old of medium build. His face and chest were covered with blood and he was holding 20-30 cm long kitchen knives. The blades were covered with a brown substance that looked like blood. Kh. noticed that the man had "mad eyes" and was behaving strangely. The

police officers of the special unit introduced themselves and asked Mr Shchiborshch to put down the knives and step out of the kitchen. Mr Shchiborshch, who was very excited, refused and lunged at B. The officers were separated from the kitchen by a door, which had been blocked by furniture on the other side. B. tried to force open the door with his shield. Mr Shchiborshch continued lunging at B. and at a certain point Kh. heard that a wound had been inflicted. He then covered B. with his shield and started to move forward. Kh. was then stabbed in the right shoulder and started to bleed. Mr Shchiborshch then moved to the balcony and Kh. went to the stairwell to receive first aid. He stayed there until the end of the operation. Five or ten minutes later he saw from the lobby Mr Shchiborshch, who was covered with blood and wearing handcuffs, being led from the kitchen to the living room. A doctor entered the room and apparently gave Mr Shchiborshch a sedative injection and dressed his wounds. Kh. then went to the kitchen, took his shield and left the flat.

20. On 15 August 2006 police officer B. of the special unit was questioned. He made a statement similar to that of Kh. concerning the events that had taken place before the latter had been wounded. As regards the subsequent events, B. stated that he and police officers D-n. and S. had forced open the kitchen door and begun to clear up the barricade of furniture in the kitchen. Mr Shchiborshch had run to the balcony. As they approached the balcony, he broke the glass in the balcony door and windows, and started throwing various objects at them, such as an iron and cans. He was also hitting his head and back against the balcony windows and screaming that they were going to kill him. He broke all the glass in the balcony door and lunged at them with knives. B. covered D-n. and S. with his shield. Through the balcony window D-n. hit Mr Shchiborshch several times with a rubber truncheon on the left hand in which he was holding a knife. The knife fell to the floor. Mr Shchiborshch then lunged at B. and S. with the knife he was holding in his right hand but S. caught his hand. Mr Shchiborshch pulled S. towards him and they both fell on the balcony floor, which was covered in glass. The other police officers then approached Mr Shchiborshch, handcuffed him and took him to the kitchen. He stopped resisting. Since there were cuts on his body, the police officers called for a doctor, who began dressing the wounds and gave him an injection. Other police officers then entered the kitchen, whereas the officers of the special police unit, having completed their task, left. In answer to the investigator's question about the whereabouts of the first applicant during the events, B. stated that he had been in the lobby all the time; he had neither entered the flat nor witnessed the events.

21. On 17 August 2006 police officer D-n. of the special unit was questioned. He made a statement consistent with those of Kh. and B., and added certain details. In particular, when he arrived at the sixth floor the stairwell floor was covered with blood, which appeared to belong to police



officer G. He heard Mr Shchiborshch swearing at his father, saying that the latter wanted to get his flat. Mr Shchiborshch also asked the police officers to leave and seemed to be sure that he had killed a policeman. D-n. tried to calm him down, and asked him to open the door and step out. However, the negotiations, which lasted ten or fifteen minutes, proved futile and D-n. called for his unit. The first applicant, who remained in the lobby all the time, explained that his son was mentally ill and behaved inadequately; he had threatened to kill everybody. The first applicant emphasised that Mr Shchiborshch was a danger to himself and others. He said that his son had threatened him with a knife before and had beaten him up the previous day. The first applicant seemed very frightened and confused. D-n. added that throughout the operation the police officers had kept telling Mr Shchiborshch to drop the weapons, but he had not reacted. He further submitted that in such a situation, according to the law, the police were allowed to use rubber truncheons, handcuffs and tear gas. They did not use the latter because the ventilation system was shared with other flats, and it could have been dangerous for other residents. D-n. also explained that, apart from the police officers, no one else had witnessed the events.

22. On 21 August 2006 police officer L. was questioned. According to his statement, at approximately 12.40 p.m. on 7 July 2006 he had been instructed to go with police officers G. and D. to a certain address to take a mentally-ill person to hospital. When they arrived, they put on bullet-proof vests and went upstairs with the first applicant, who gave them oral permission to enter the flat. When the first applicant rang at the lobby door, G. was standing beside him; L. was standing behind G., and D. was standing to one side. L. could not immediately see who had opened the door, but then G. shouted that the person who had opened the door had a knife. Mr Shchiborshch ran back to the door of his flat wielding the knife in his hand. Having opened the door with his free hand, he stood in the doorway shouting that he would kill everyone. L. then saw that G. was bleeding. The police officers then tried to calm Mr Shchiborshch down, but had no success. He tried to attack G. and then tried to close the door to the flat, but L. prevented him. Then Mr Shchiborshch ran to a room and barricaded himself inside. While L. blocked the door, an ambulance was called for G. The officers also reported on the situation to the OVD. The ambulance took G. to hospital. After the arrival of the special police unit, L. moved to the stairwell. He could not identify the special unit officers because their faces were covered with masks. He did not see what happened in the flat either. He was then ordered to return to the OVD.

23. On the same date, the first applicant was questioned. He stated that his son, Mr Shchiborshch, had been suffering from a psychiatric disorder. He did not know precisely what his son's condition was because the doctors had never told the parents the exact diagnosis. Mr Shchiborshch had been undergoing treatment since 2001. His condition always worsened in the

spring: recently he had been in a state of delirium. He thought that his parents were not his real parents and that they were trying to kill him. When they visited him, he would swear at them, threaten to kill them, lock himself in his flat and not let them in. On a number of occasions he had been forcibly placed in hospital. He had never agreed to be placed in the hospital voluntarily, and during the forced placement had always resisted the police officers who had apprehended him, so they had sometimes had to use rubber truncheons or tear gas. Since October 2005 Mr Shchiborshch had stopped taking his medication, having declared that he was healthy. Since then, his condition had gradually worsened. The threatening phone calls to his parents had become more frequent. The applicants had started to worry for his life, fearing that he might pose a danger to himself.

On 31 May 2006 the first applicant had asked Mr Shchiborshch's doctor for a referral recommending in-patient treatment and to issue instructions for involuntary placement in a hospital. He then submitted the referral to the Alekseyev Psychiatric Hospital no. 1 and the instructions to the Nagatinskiy Zaton OVD. At 11.20 a.m. on 7 July 2006 he left together with police officers G., L. and D. for Mr Shchiborshch's place of residence. When they reached the sixth floor, the police officers hid and the first applicant rang at the door. Mr Shchiborshch opened the door. He had a knife in his hand, which he began to wield, trying to force them out. The police officers started to explain that they wanted to take him to a hospital. Mr Shchiborshch mistook them for burglars and shouted at them to go away. He did not recognise the first applicant. After approximately ten minutes of negotiations, the police officers tried to take the knife from Mr Shchiborshch, but he stabbed G. in the chest with it and also cut his finger. There was blood all over the stairwell floor. Then one of the police officers went outside to fetch shields and rubber truncheons. Mr Shchiborshch continued behaving inadequately. The police officers tried to apprehend him by knocking the knife from his hand with the rubber truncheons. He continued to brandish the knife and then ran to the kitchen and barricaded himself inside, blocking the kitchen door with a table.

Through the door the first applicant heard him calling an ambulance and the police. At the same time G. called R., the Head of the Nagatinskiy Zaton OVD, who arrived at the scene twenty minutes later, and the special police unit, who arrived an hour and a half later. One of the special unit police officers talked to Mr Shchiborshch through the kitchen door, trying to persuade him to open it. As Mr Shchiborshch did not react to the requests, the special unit prepared to "storm" the kitchen. At that time the first applicant was standing near the lift. He could not see what was happening but heard the sound of breaking glass. He looked inside the flat and saw his son on the balcony screaming: "Help, they are killing me!" At that time the police officers were taking a broken table and a door to the stairwell. They then returned to the flat and went towards the balcony. After a while the

first applicant again looked into the flat and saw his son lying face down on the kitchen floor. He had been handcuffed and there was blood around him. The police officers asked whether there was anything they could put him in. They put him in a blanket and carried him to the ambulance, which took him to City Hospital no. 7. Later the first applicant learnt that his son had died.

24. On 22 August 2006 officer F. of the special police unit was questioned. He stated that for technical reasons he had been unable to get into the same police car as officers B., D-n., Kh. and S. and had arrived later in his own car. He observed most of the operation while standing behind the police officers who had arrived earlier. His account of the events was consistent with those of the other police officers. He also added that the first applicant had told him that recently Mr Shchiborshch had stopped taking his usual medication and had instead switched to light alcoholic drinks, which had aggravated his condition. The latter had also refused to be placed in a hospital voluntarily and had threatened the first applicant with a knife.

25. On 25 August 2006 officer S. of the special police unit was questioned. His account of the events was consistent with that of the other police officers. He emphasised that they had not used firearms while apprehending Mr Shchiborshch.

26. On the same date police officer G. was questioned. According to his submissions, on 7 July 2006 he had been ordered, together with police officers D. and L., to carry out the involuntary placement in hospital of Mr Shchiborshch, who was suffering from a psychiatric disorder. They went to his home address with his father, the first applicant, who explained that at the sight of the police his son would lock himself in his flat, so the police officers would have to get between him and the door. However, the first applicant did not warn the police that his son might be armed, even though it later transpired that his son had already resisted his previous placements in hospital with the use of arms. When they arrived, the first applicant rang the lobby door bell. They heard Mr Shchiborshch leave the flat, walk to the door and ask who was there. The first applicant replied: "Kirill, it's me". Mr Shchiborshch said: "I will open now". G. heard him walk back to the flat and return. When Mr Shchiborshch started opening the door, G. pushed him into the lobby. D. and L. followed him into the lobby. G. felt a blow to his chest and, having pushed Mr Shchiborshch away, saw a knife in his hand. He shouted to the other officers that Mr Shchiborshch had a knife, and then received another stab in his chest. Mr Shchiborshch ran to his flat and began to shut the door behind him. However, L. caught the door and opened it, preventing Mr Shchiborshch from locking himself inside the flat. All that time, the first applicant had remained near the lift, too afraid to come closer. Mr Shchiborshch started shouting: "Don't come closer, or I'll kill you", brandishing the knife in his hand. L. took a baby pram that was near the door and, on G.'s order, passed it to him. G. used the baby pram to defend

himself from Mr Shchiborshch. At a certain point he managed to take out his gun and warned Mr Shchiborshch that he would use it if he continued threatening with the knife. However, Mr Shchiborshch did not react to the warning. L. had a submachine gun which had not been loaded.

According to G., the three police officers tried together to persuade Mr Shchiborshch to calm down and drop the knife. The latter shouted to his father to bring a woman, as he would only talk to a woman. The first applicant refused. The talks lasted for ten or fifteen minutes, during which Mr Shchiborshch swore constantly. At a certain point he lowered his trousers and underpants, rubbed his anus with his left hand and made a gesture as if throwing something in the direction of the police officers, saying: "This is shit!" The police officers moved back slightly. D. went outside and came back with two rubber truncheons. He gave one of them to G., who put his gun back in the holster and took the rubber truncheon. Mr Shchiborshch put his underpants and trousers back on and, with his right hand, in which he was holding the knife, reached for the door knob. G. and D. inflicted several blows on his right hand, following which Mr Shchiborshch lunged at them brandishing the knife and saying: "I'll kill you". The police officers moved back towards the lobby door. At that moment Mr Shchiborshch cut the fourth finger of G.'s left hand with the knife, then ran to his kitchen and barricaded himself inside.

Then G. ordered L. to load his submachine gun and shoot to kill if Mr Shchiborshch tried to leave. The first applicant then entered the flat and looked into the living room. G. asked him for permission to use the telephone and called the OVD. He asked them to call an ambulance and the special police unit. In approximately 15 or 20 minutes the ambulance arrived and took G. to hospital. He did not know what had happened afterwards. Answering the investigator's question whether the police officers had been specifically trained for detaining psychiatrically disturbed persons and whether there existed special techniques for apprehending such persons, G. stated that no such training had been provided and that there existed only general rules on apprehending armed offenders in various situations. If the police had information that the person was armed (irrespective of his psychiatric condition), they could use arms in accordance with section 15(2) of the Law on the Police.

27. On an unspecified date – apparently in August 2006 – a person whose name is not clear from the documents but who appears to be R., the Head of the Nagatinskiy Zaton OVD, was questioned. He stated that a year earlier he had taken part in the operation to forcibly place Mr Shchiborshch in hospital. The latter resisted the police officers with weapons and threw acetic acid in the face of one of them. On 6 July 2006 the first applicant called him and asked if the police would assist him in placing his son in hospital on 7 July 2006. On that day police officers G., D. and L. were sent on the operation. Later he received information that G. had been wounded

and he himself went to Mr Shchiborshch's flat. Finding the latter in a dangerous condition, he reported to the Nagatinskiy Zaton OVD and called for emergency psychiatric assistance. He was later informed that a special police unit had been called to the scene. Approximately thirty minutes later two high-ranking police officers, K. and Dub., arrived. After a while, the special police unit also arrived.

While they were preparing to storm the kitchen, R. went outside to ensure that no one entered the building, since they could have been hurt by Mr Shchiborshch. The latter was screaming from the balcony to attract attention. He was shouting that he would jump from the window and throwing objects towards the kitchen. Then he broke the balcony windows and started throwing the broken glass down from the balcony. R. thought that he had seen a shard pierce Mr Shchiborshch's neck. Then R. saw Mr Shchiborshch resisting the police with sharp objects in his hands and falling on the balcony floor with one of the officers. Realising that Mr Shchiborshch had been apprehended, R. went up to the sixth floor. On entering the flat, he saw Mr Shchiborshch lying handcuffed on the kitchen floor. The latter was taken to a room where he was given first aid by an ambulance doctor. As Mr Shchiborshch was bleeding profusely from his neck, it was decided to take him urgently to a hospital. He was carried on a blanket to the ambulance and transported to City Hospital no. 7. R. then called for an investigative unit to inspect the scene. It was established that Mr Shchiborshch had wounded four police officers. R. returned to the OVD and was later informed that Mr Shchiborshch had died. In his view, it had been the result of a tragic concurrence of circumstances, since in his presence nobody had either beaten or hit Mr Shchiborshch. Judging from his conduct, the first applicant had supported the actions of the police throughout the operation. G., L. and D. had acted strictly in accordance with the law.

28. On 4 September 2006 the investigating authorities seized Mr Shchiborshch's medical file kept at psycho-neurological dispensary no. 10.

29. On 7 September 2006 the investigating authorities seized Mr Shchiborshch's medical file kept at psychiatric hospital no. 13.

30. On 5 September 2006 K., the acting head of psycho-neurological dispensary no. 10, was questioned. She submitted that Mr Shchiborshch had been under medical supervision since 2002. He had been diagnosed with paranoid schizophrenia with delirium syndromes. He had been forcibly placed for in-patient treatment a number of times as he had never agreed to it voluntarily. His condition had gradually worsened in the past four years: anxiety had been exacerbated, delirious ideas had accumulated and he had been losing contact with the people around him. He considered everybody his enemy and persecutor. His condition had worsened considerably since he had stopped taking regular medication. The investigator asked K.

whether Mr Shchiborshch, who would have been suffering from fatigue in the absence of the necessary medication, could have actively resisted his placement in hospital. K. answered that in a delirious period he could be aggressive and reveal great physical force, because he perceived everyone as a persecutor. K. also submitted that Mr Shchiborshch had resisted the previous placements in hospital but she did not know whether he had used weapons. The investigator further asked about Mr Shchiborshch's relationship with his parents. K. replied that when his condition had worsened and he had beaten them, they had applied for his in-patient treatment.

31. On 7 September 2006 Ch., a doctor of psychiatric hospital no. 13, was questioned. She submitted that she had been Mr Shchiborshch's doctor since 2002. He had been diagnosed with paranoid schizophrenia. He was subjected to involuntary placement in a psychiatric hospital for the first time in 2004 because his condition had suddenly worsened and he had been delivered to the hospital with self-inflicted burns on his body. Since that time he had begun to display aggression and his delirium had worsened. In such a condition he was dangerous to himself and others. He had had a negative attitude towards the treatment but had agreed to take small doses of medication. Following an improvement in his condition, he had been discharged from the hospital. Answering the investigator's question whether Mr Shchiborshch could inflict self-harm, Ch. submitted that he could do so while in an agitated state; this was corroborated by the self-inflicted burns.

32. On 8 September 2006 the second applicant was questioned. She gave details of the development of Mr Shchiborshch's illness. His condition had worsened in October 2006 after he had stopped taking his medication. In particular, she had seen him talking to an imaginary person. She and the first applicant were very concerned about his condition and decided to arrange for him to be placed in a psychiatric hospital.

33. The second applicant was questioned again on 13 September 2006. First, she gave some additional details concerning medical documents the applicants had obtained to ensure Mr Shchiborshch's in-patient treatment. She then stated that on 7 July 2006 the first applicant had telephoned Mr Shchiborshch and said that he would visit him soon. Mr Shchiborshch talked to him in a normal manner and called him "father", which made the fact that he then met the first applicant and the police with a knife all the more inexplicable. At approximately 12.30 p.m. she called the first applicant, who said that the police had been unable to restrain Mr Shchiborshch, he had cut a police officer's finger and the police had called for an investigator. She called the first applicant regularly so as to follow the events. The first applicant was agitated and told her that they were waiting for the special police unit to arrive. When she called him again at approximately 3 p.m., the first applicant said that the special police unit had apprehended Mr Shchiborshch, and an ambulance doctor had said:

“Hurry, we may not make it, he might not survive.” She asked her husband to go to the hospital with Mr Shchiborshch, but he said that the police would not let him go because they wanted to question him. During another telephone conversation at approximately 7 p.m. the first applicant told her that Mr Shchiborshch had died and turned off his mobile phone. The next day the second applicant telephoned Mr Shchiborshch’s neighbour, Ts., who said that the previous day she had shouted to the police: “Don’t kill him!” She had also tried to open the door to her flat, but the police officers would not let her. Ts. also said that she had seen the police beating Mr Shchiborshch. Later, two unidentified men approached Ts. in the yard of the block of flats and told her that if she had witnessed the events of 7 July 2006, she should forget them.

34. On 18 September 2006 N., the head of the investigative unit of the Nagatinskiy Zaton OVD, was questioned. She submitted that at approximately 3.20 p.m. on 7 July 2006 she had been informed that a police officer of the OVD had sustained a knife wound and she had gone to the address indicated. When she arrived approximately twenty minutes later the first applicant and R., the Head of the OVD, were there. R. explained to her what had happened. She then inspected the flat. The kitchen was crammed with a variety of objects. There were cans, numerous shards of glass and some other objects on the floor. A refrigerator was lying across the kitchen. There were spots of blood on the refrigerator and the floor. On the right-hand wall there was a kitchen unit; on the table there was a kettle, a sugar bowl and two knives, one of which had a long blade and a wooden handle, the other a shorter blade and a plastic handle. Both knives were covered with blood. There was no glass in the kitchen window facing the balcony, but some shards of glass were stuck in the frame. The balcony windows had also been broken. The balcony floor was covered with shards of various sizes. The glass that remained in the frames bore traces of blood. There was also blood on the balcony floor, the door frame and the window frame facing the balcony.

35. On 20 September 2006 the investigating authorities seized certain documents pertaining to Mr Shchiborshch’s medical file kept at the Alekseyev Psychiatric Hospital no. 1.

36. On 21 September 2006 the investigating authorities seized from Botkin City Hospital no. 2 documents related to the medical assistance provided to police officer G. for the wound caused by Mr Shchiborshch on 7 July 2006.

37. On 22 September 2006 G-v., the ambulance doctor, was questioned. He stated that on 7 July 2006 he had been informed that a man had called an ambulance claiming that he had sustained a knife wound to his neck. G-v. went in an ambulance with K-n. to the address indicated. There he found several police officers, who explained that the person in the flat was mentally ill. They had been trying to restrain him in order to place him in

hospital, but he had resisted them with the use of arms. G-v. provided medical assistance to a police officer who had sustained a knife wound to his shoulder. From the stairwell he witnessed the special unit police officers trying for quite a long time to persuade the person to leave the flat. They then decided to storm the flat but G-v. did not see them do that. At a certain point one of the police officers went out to the stairwell. His hand had been cut. G-v. dressed the wound. A few minutes later he and K-n. were asked into the flat in order to provide medical attention. They saw a handcuffed man lying face down on the floor. He was conscious and in a state of psychomotor agitation. His neck was bleeding. They gave him a sedative injection and conducted a detailed examination. Then, with the help of the police officers, they carried the man to the ambulance and transported him to City Hospital no. 7.

38. On 26 September 2006 the investigating authorities ordered the seizure of documents related to the medical assistance provided to police officers B., D-n. and Kh. for the wounds caused by Mr Shchiborshch on 7 July 2006. The documents were seized on 12 October 2006 from polyclinic no. 17.

39. On 29 September 2006 Ts., Mr Shchiborshch's neighbour, was questioned. She submitted that on 7 July 2006 she had looked through the peephole in her front door on several occasions and had seen some of the events. Initially she heard Mr Shchiborshch swearing and two police officers speaking, and then saw the former standing in the doorway. In a while she heard a tinkling sound in the lobby and saw the police officers defending themselves from Mr Shchiborshch with her baby pram. She told them through the door to put it back, which they did. Then she heard Mr Shchiborshch crying: "Neighbour, save me". She tried to open the door but one of the police officers told her to close it. Then she heard somebody shout: "Call an ambulance!" She went to the balcony and saw an ambulance parked near a police officer whose chest had been bandaged. Then she saw through the peephole that Mr Shchiborshch had locked himself in his kitchen. The police had not entered the flat, and somebody said: "Call the special police unit". After a while she heard some noise and saw a special unit police officer near the kitchen trying to persuade Mr Shchiborshch to open the door. He talked to him for quite a long time. Then he left the flat and ordered another officer to switch off the electricity. She understood that they were going to storm the flat. Soon everything was over. When she went out of her flat she saw that the lobby and the stairwell were covered with blood. Mr Shchiborshch's kitchen door without the stained glass and a broken kitchen table, also covered in blood, were in the lobby. In Mr Shchiborshch's flat she saw a pool of blood on the floor and the two knives which he had been holding earlier covered with blood. After the events the second applicant repeatedly telephoned Ts. trying to talk her into testifying against the police officers, alleging that they had killed her son.



Those telephone calls were very disturbing. They stopped after Ts.'s husband had talked to the second applicant.

40. On the same date the investigating authorities inspected Mr Shchiborshch's flat, the adjacent lobby and the stairwell. They established, in particular, that there was no door at the entrance to the kitchen. There was a crack in the glass of the balcony door and the door had reddish-brown spots on it. Two glass panes were missing from the window next to the balcony door and there were reddish-brown traces on the frames. The doors of a cupboard on the balcony also had reddish-brown spots on them; the balcony floor and the window frame to the right of the entrance to the balcony were covered with dried reddish-brown stains. The left side of the white linen curtain at the kitchen window was torn. There was a 3 cm reddish-brown stain on the curtain and surrounding it traces of a reddish-brown substance. The balcony was glazed and had three windows. The glass panes were missing in the two windows closest to the balcony entrance.

41. On 3 October 2006 the first applicant was granted victim status in case no. 363484. On the same date he was questioned and confirmed his earlier statements.

42. On 30 October 2006 the investigating authorities ordered the seizure of documents related to the medical assistance provided to police officer B. for the wound caused by Mr Shchiborshch on 7 July 2006. On 8 November 2006 the documents were seized from Kupavna Hospital.

43. On 3 November 2006 an examination was conducted of the knife with a wooden handle seized from Mr Shchiborshch's flat on 7 July 2006. According to report no. 2813, the blood on the knife could have belonged to either Mr Shchiborshch or police officer Kh.

44. On the same date an examination was conducted of the knife with a plastic handle seized from Mr Shchiborshch's flat on 7 July 2006. According to report no. 2814, the blood on the knife could have belonged to either Mr Shchiborshch or police officer Kh.

45. On 9 November 2006 forensic examinations were carried out with regard to the injuries caused to the special unit police officers on 7 July 2006. The results showed that D-n. had sustained bruises and abrasions on his upper body that could have been caused by being hit and scraped against hard blunt objects, possibly on 7 July 2006, which could not be considered as health damage. Kh. had sustained slash wounds to the right shoulder and the right hand that could have been caused by the sliding impact of a hard cutting object, possibly on 7 July 2006; these could be classified as light health damage. B. had sustained a puncture wound on the right hand. The text concerning the gravity of the injury is illegible.

46. On 10 November 2006 D-k., a former colleague of Mr Shchiborshch, was questioned. The latter had worked in the same audit company as D-k. in 2004. D-k. submitted that although Mr Shchiborshch had not been aggressive, he had not been communicative and his behaviour

had been rather weird. He had talked to himself or an imaginary person; in a café he might buy four cups of tea, place them on the table and talk to them. After Mr Shchiborshch's superior had asked him to finish an overdue assignment, he simply stopped coming to work. His colleagues searched for him and called his parents, but his mother told them that she did not know where her son was.

47. On 14 November 2006 a forensic psychological-psychiatric report, ordered on 5 October 2006, was completed. It was based on Mr Shchiborshch's medical file and the materials of the criminal case. The experts stated that at the time of the events of 7 July 2006 Mr Shchiborshch had been suffering from paranoid schizophrenia. His conduct on that date had been due to a psychotic disorder with delirium symptoms, causing feelings of persecution, negativity and aggression towards his parents and the police officers. The psychotic disorder at that time was at such a stage that he was unaware of the meaning of his actions and unable to control them, which is why he posed a danger to others.

48. On 24-25 November 2006 a forensic examination of the injuries caused to police officer G. on 7 July 2006 was conducted. According to the results, he had sustained a shallow puncture wound to the chest and a slash wound to the fourth finger of the left hand caused by the sliding impact of a hard cutting object, possibly on 7 July 2006, which constituted light health damage.

49. On 11 December 2006 the investigating authorities seized from the second applicant a sports jacket that Mr Shchiborshch had been wearing on 7 July 2006. The jacket had remained in the kitchen for a few days before being taken away by the first applicant.

50. On 27 December 2006 Dub., the Head of the Police Inspectorate of the Moscow South District department of the interior ("the UVD"), was questioned. According to his statement, on 7 July 2006 he had been informed by K-k., the Deputy Head of the South District UVD, that Mr Shchiborshch had wounded a police officer. Dub. went to the scene of the events and found three police officers, R. and the first applicant in the sixth-floor stairwell. K-k. arrived at the same time. Dub. witnessed the subsequent events from the stairwell. His account was consistent with that of the other police officers. He emphasised that the first applicant had cooperated with the police and had explained that his son had already been subjected to involuntary placement in hospital a number of times, and was dangerous in his current condition since he was strong and aggressive. Dub. recalled that when he had worked in the Nagatinskiy Zaton OVD a few years earlier the applicant had frequently applied for assistance to place his son in hospital, since the latter had beaten the applicants and they were afraid of him. During one such operation Mr Shchiborshch had thrown acid at a police officer.

51. On 10 January 2007 police officer B. of the special unit was questioned again. He confirmed some details of his earlier statement.

52. On 11 January 2007 the Moscow forensic bureau completed the forensic examination started on 9 November 2006 and issued report no. 628. The experts studied the materials of criminal case no. 363484, medical file no. 39485 kept at City Hospital no. 7, samples of Mr Shchiborshch's hair, nails and skin from his neck wound and the two knives that he had held on 7 July 2006. The experts found as follows:

(a) The wound to the neck could not have been caused by either of the knives that Mr Shchiborshch held on 7 July 2006. However, it is possible that it was caused by contact with a long fixed protruding glass shard.

(b) The craniocerebral trauma was caused by numerous blows with a hard blunt object with a wide limited surface to the left side of the frontal parietal-temporal region and the face. From the materials available it was impossible to establish with certainty the nature of the object with which the injuries (four contused wounds and a depressed fracture of the skull) were caused. This was because the edges of the injuries, the relation of the soft tissue to the bone tissue, and the density of the skull bones in the area of the fracture were not examined and the photograph of the area had no plotting scale.

(c) The rib fractures were caused by numerous blows with hard blunt objects with a limited surface to the right side and the left back side of the chest.

(d) The subcutaneous wounds were caused by sharp objects, probably glass shards. The wounds on the palmar surface of the fingers could have been caused when gripping knife blades.

(e) The subcutaneous hemorrhages on the chest, shoulders, forearms, hips, shins and knee were caused by blows and the sliding impact of hard blunt objects, some of which were elongated in shape (for example a rubber truncheon).

According to the report, the injuries had been caused shortly before Mr Shchiborshch had been admitted to hospital. That fact as well as the number of injuries made it impossible to establish their sequence. His death was caused by the stab/slash wound to the neck, which affected the left external jugular vein. Other injuries, such as the craniocerebral trauma, complicated Mr Shchiborshch's condition but did not directly cause his death. With the wound to the neck and the craniocerebral trauma, Mr Shchiborshch was able to act and move independently for a short time (tens of minutes). However, this ability was reduced by the time of his examination by the ambulance doctors and completely lost by the time he was admitted to hospital. It was possible that the stab/slash wound to the neck was caused in the circumstances described in the materials of the case, namely he might have leaned against the balcony door which had shards of

broken glass in it, or hit his head against the window frame, which also had broken glass in it.

53. On 15 January 2007 the investigator, in the presence of attesting witnesses, listened to an audio recording of Mr Shchiborshch's telephone calls to the police on 7 July 2006 between 1.14 p.m. and 1.39 p.m. According to the transcript, Mr Shchiborshch had called the police several times. Each time he said that burglars had broken into his flat and were trying to kill him. In particular, he said that the burglars wearing police uniforms had already shot at him. He asked the police to urgently send a squad to help him. During one of the calls the tape had also recorded a conversation between the police officer who answered the call and another police officer at the station. When the first police officer told the other one about the call, he replied that it was "the same fool calling", that their unit had already gone there and that the special unit was on its way and preparing to storm the flat. He told the first officer that she need not answer any subsequent calls, since in any event Mr Shchiborshch would soon be apprehended by the special unit.

54. On 19 January 2007 K-k., the Deputy Head of the South District UVD, was questioned. He said that he had arrived at the scene at approximately the same time as Dub. (see paragraph 50 above), and his account of the events was consistent with those of Dub. and the other police officers.

55. On 20 January 2007 police officer F. of the special unit was questioned. Answering the investigator's questions concerning police training in any martial arts, he submitted that D-n. and Kh. were snipers, whereas B. and S. had no special qualifications. He further stated that tear gas, light-sound distraction tools or devices for demolishing barriers were not used while apprehending Mr Shchiborshch.

56. On 23 January 2007 police officer D-n. of the special unit was questioned again. He confirmed some details of his earlier statement (see paragraph 21 above).

57. On 26 January 2007 police officer S. of the special unit was questioned again. He confirmed some details of his earlier statement (see paragraph 25 above).

58. On 30 January 2007 Sch., a forensic expert, was questioned. In his opinion, Mr Shchiborshch's craniocerebral trauma could not have been caused by falling from a standing position (from his own height). The number of injuries and their location showed that they were caused by multiple blows, possibly combined with numerous falls and hitting of his head against the surrounding objects. It was unlikely that the trauma had been the result of merely falling down. Some of the cuts, subcutaneous wounds, bruises and abrasions might have been caused by falling on glass shards and hitting some surrounding objects.

59. On the same date A., a forensic expert and psychiatrist, was questioned. She stated that Mr Shchiborshch's conduct on 7 July 2006 had been caused by the psychotic disorder from which he had been suffering. At the time of the events, his condition was so serious that he was unaware of the meaning of his actions and unable to control them. In particular, he could not understand that the police had come to apprehend him. He resisted them with weapons in an attempt to protect himself from "burglars" because he was in a delirious and aggressive state.

60. On 3 February 2007 the investigation was suspended on account of the failure to identify the person to be charged with the offence.

61. On 15 February 2007 the decision was quashed and the case was remitted for further investigation.

62. On 5 March 2007 B-ch., the deputy head of the special police unit, was questioned. According to his statement, at approximately 1.45 p.m. on 7 July 2006 he received information that a police officer had been wounded and was given the address of the perpetrator. He sent three police officers headed by D-n. and later also sent police officer F. Subsequently he was informed that the person had been apprehended and that three police officers had sustained injuries.

63. On 9 March 2007 police officer K-y. of the special unit was questioned. He submitted that at approximately 1.40 p.m. on 7 July 2006 he had received information that a police officer had been wounded and had been given the address of the perpetrator. He forwarded the information to the deputy head of the special unit and then handed out equipment to the officers instructed to go to the address indicated.

64. On 11 March 2007 the Simonovskiy Inter-District Prosecutor's Office closed the criminal case on the grounds that the actions of the police officers disclosed no indication of offences under Articles 108 § 2 and 286 § 3 of the Criminal Code. The decision stated, in particular, that as a result of the worsening of Mr Shchiborshch's mental state, he had been capable of committing an offence endangering the health and life of other people. The police officers' actions aimed at preventing his unlawful actions had therefore been lawful and appropriate.

65. On 14 March 2007 the applicants' counsel obtained report no. 4/07 by experts B., L. and R. from the Russian Centre for Forensic Examinations of the Federal Agency for Healthcare and Social Development concerning the injuries and the cause of death of Mr Shchiborshch. According to the report, he had sustained multiple contusions, haemorrhages and bruises on his face and head; fractures of the frontal bone and the left parietal bone; subarachnoid haemorrhages under the soft membranes of the convex surface of the forehead; a slash wound to the neck across the jugular vein; numerous subcutaneous haemorrhages of the chest; fractures of the sixth rib on the right side and of the eighth, ninth, tenth and eleventh ribs on the left side; bruises, abrasions and slash wounds to the shoulders, arms and hands, and

bruises on the hips and legs. The bruises, abrasions and fractures of the ribs were caused by blows with hard blunt objects. The multiple slash wounds and the wound on the neck were caused by sharp objects. The head injuries constituted grave craniocerebral multitrauma caused by strong blows with hard blunt objects, such as heavy boots, which constituted a grave injury. Taking into account the character of the head injuries, they could not have been caused by inertial trauma as a result of falling down. The craniocerebral trauma had led to Mr Shchiborshch's death. The other injuries had not directly led to his death but had complicated his condition.

66. On 16 April 2007 the applicants asked the prosecutor's office of the Moscow South Administrative District to resume the investigation and conduct another forensic examination.

67. On 26 April 2007 the deputy prosecutor of the South Administrative District granted the request and ordered a number of investigative measures.

68. On 22 May 2007 the first applicant was again questioned (see paragraph 23 above). In addition to his initial statement he submitted that when Mr Shchiborshch had opened the lobby door he had not known that he and the police had come to place him in hospital, otherwise he simply would not have opened the door. On that day he had mistaken the first applicant for a burglar and had been holding a knife. The first applicant warned the police that when Mr Shchiborshch saw them he might try to lock himself in the flat. That is why when Mr Shchiborshch opened the door, the first applicant asked one of the police officers to hold it open. Mr Shchiborshch was wielding a knife and would not let anyone near him. Police officer G. then aimed his gun at Mr Shchiborshch and told him to drop the knife. Mr Shchiborshch did not react and shouted back at G. to take away the gun. G. eventually put the gun away but Mr Shchiborshch would not drop the knife. G. then made a movement towards him, probably intending to seize the knife, and Mr Shchiborshch, while wielding the knife, wounded G. in the chest. The latter moved aside. One of the police officers took a baby pram that had been placed nearby and tried to knock the knife out of Mr Shchiborshch's hand with it. Another officer hit his other hand with the butt of a submachine gun trying to remove it from the door handle so as to stop him closing the door.

After Mr Shchiborshch had wounded G., another police officer brought rubber truncheons and two of the officers started using them against Mr Shchiborshch, trying to knock the knife out of his hand and to knock him off his feet in order to apprehend him. Not all their blows hit him on the hand, as he was constantly wielding the knife. Some of the blows hit him on the body and the head. When G. left to call for support, he ordered the other officers to shoot to kill should Mr Shchiborshch attack them. Through the glass the first applicant heard Mr Shchiborshch telephoning the police and the ambulance and saying that he had been wounded, there was blood, and that burglars had been trying to kill him. After Mr Shchiborshch had been

apprehended, D. said that they should take him to hospital quickly as he might not make it. When the first applicant entered the kitchen he saw blood on Mr Shchiborshch's neck. The bleeding was heavy and the kitchen floor was covered with blood.

69. In response to questions put in the course of that interview, the first applicant submitted that he did not believe that on 7 July 2006 Mr Shchiborshch had posed a real danger either to him or to the police. However, the assistance of the police was required in order to place Mr Shchiborshch in hospital, as the first applicant could not have done it on his own. He believed that the police officers had had to apprehend Mr Shchiborshch because his psychiatric condition at that time had been very serious. In the first applicant's view, at the time of the police officers' arrival Mr Shchiborshch had been incapable of perceiving the situation and would not have voluntarily surrendered to anybody. The police officers were wearing bullet-proof vests and helmets, and used shields and, after Mr Shchiborshch had wounded one of them with a knife, rubber truncheons. Immediately after Mr Shchiborshch had been apprehended, the first applicant had entered the kitchen. The refrigerator was lying across the kitchen floor. Also on the floor there were glass shards, pieces of paper and Mr Shchiborshch's laptop. The kitchen table had been removed by the police while they were apprehending Mr Shchiborshch. When the first applicant was cleaning Mr Shchiborshch's flat about ten days after the events, he noticed that most of the broken glass from the kitchen door was scattered on the kitchen floor, which meant that the door had been broken from the entrance hall. The kitchen window had also been broken and there was a crack in the glass of the door to the balcony. Most of the broken glass was scattered on the balcony floor, but some of it was also on the kitchen floor. There were also spots of blood on the balcony floor and another spot of blood on the window frame on the side of the balcony, approximately at the level of Mr Shchiborshch's head.

70. On 28 May 2007 the first applicant was questioned once more. In addition to his earlier statements he submitted that Mr Shchiborshch had mistaken the doctors and police officers for burglars only when his condition had worsened and he had been in a state of delirium. The first applicant also specified that G. had told L. to load his submachine gun and open fire should Mr Shchiborshch leave the kitchen. When the first applicant entered the kitchen after Mr Shchiborshch had been apprehended, he saw him lying on the floor; the left side of his head and neck were covered in blood. He was lying face down and handcuffed. The first applicant further stated that on 7 July 2006 Mr Shchiborshch had not posed a real danger either to the first applicant or to the police as he had been trying to protect himself. His actions were not provoked by either the first applicant or the police since, when he opened the door holding a knife, he did not know that the police were there. The first applicant stated that he did

not know why Mr Shchiborshch had been holding a knife – perhaps he had been cooking something in the kitchen.

71. On 8 June 2007 the first applicant was confronted with police officer L. (see paragraph 22 above). The first applicant's account of the events of 7 July 2006 was in line with his previous statements. L. stated that he partially confirmed the first applicant's account. He further submitted that in front of Mr Shchiborshch's flat there was a lobby with a wooden door. When they arrived, the man who had accompanied them [the first applicant] rang at the door while police officer G. was standing beside him. L. stood behind G. Then a man, who appeared to be Mr Shchiborshch, came to the door and, before opening it, asked who was there. The first applicant called him by his name and said that he had brought him money. Mr Shchiborshch told him to wait, and when he opened the door, G. shouted that he had a knife and started crouching. As it appeared, Mr Shchiborshch had stabbed G. in the chest and then immediately ran inside his flat. L. removed the submachine gun from his shoulder, but G. told him not to shoot and ran after Mr Shchiborshch. The applicant told them not to let Mr Shchiborshch close the door as he might lock himself in the flat and it would then be impossible to get him out.

72. In response to questions from the first applicant and his counsel, L. stated that he had seen two knives in Mr Shchiborshch's hands when the latter had run into his living room. However, he returned from the living room with just one knife and a telephone receiver. He had been trying to call an ambulance, asking somebody for help and demanding to speak to a woman. L. also stated that the police officers had been wearing bullet-proof vests on that occasion and that they had hit Mr Shchiborshch with rubber truncheons and a submachine gun. At first L. was holding his rubber truncheon, but when Mr Shchiborshch stabbed G. and ran into the flat, L. dropped the truncheon, removed the submachine gun from his shoulder and ran after him with it. The rubber truncheon remained in the lobby. L. further submitted that when the police officers had been standing at the door to the flat, Mr Shchiborshch had started throwing faeces at them, apparently trying to make them let go of the door.

73. On 10 June 2007 B., the investigator of the Simonovskiy Inter-District Prosecutor's Office, again closed the investigation.

74. On 11 June 2007 the Simonovskiy inter-district deputy prosecutor quashed the decision to close the investigation on the ground that not all the investigative measures ordered in the decision of 26 April 2007 had been carried out (see paragraph 67 above).

75. On 22 June 2007 the first applicant was confronted with police officer D. (see paragraph 18 above), whose account of the events of 7 July 2006 was consistent with that of L. He added that when Mr Shchiborshch had been standing at the entrance to his flat while L. had been holding the door, Mr Shchiborshch had been brandishing a knife and



shouting at them not to approach him, otherwise he would stab them. D. then had to go to the lobby to use his radio transmitter as there was no reception in the flat. He reported on the events to the officer on duty and called an ambulance. Then he took the rubber truncheon left by L. in the lobby and handed it over to him. D. and police officer G. also had rubber truncheons and the three of them were wearing bullet-proof vests. They tried again to persuade Mr Shchiborshch to drop the knife. However, he continued to wield it and threaten them with it. They tried to knock it out of his hand with the rubber truncheons. At a certain point G. happened to be near Mr Shchiborshch and the latter stabbed his hand. However, none of the police officers used their weapons.

76. In response to the investigator's questions, D. stated that police officer L. had not hit Mr Shchiborshch with the butt of the submachine gun; that the police had used rubber truncheons trying to knock the knife out of his hand but had not inflicted targeted blows; and that several times Mr Shchiborshch had thrown his faeces at them using his free hand. In response to the first applicant's questions, D. submitted that initially Mr Shchiborshch had been holding one knife, at a certain point he had seen him holding two knives, but then he had put the second knife down somewhere. When the police entered the lobby, D. and G. were armed with rubber truncheons. When D. returned to the lobby to report on the situation, he noticed L.'s rubber truncheon – he must have dropped it there. D. confirmed that he had not inflicted targeted blows on Mr Shchiborshch but had wanted to knock the knife out of his hand with the rubber truncheon. However, since D. was standing to the side of the door, he could not have done that unless Mr Shchiborshch had stuck his hand out of the door, which he did not do. Hence, D. did not hit him with the rubber truncheon at all. Furthermore, he did not hear G. ordering L. to shoot to kill should Mr Shchiborshch leave the kitchen.

77. The first applicant partially confirmed D.'s account. He pointed out, however, that Mr Shchiborshch had stabbed G. not when he had opened the door to the lobby but later, when G. had been standing in front of the flat persuading him to drop the knife. Mr Shchiborshch had then shouted: "Don't come near me, or I'll kill you. Leave!". After a while G. took out a handgun and ordered Mr Shchiborshch to drop the knife. D. also tried to knock the knife out of Mr Shchiborshch's hand with a baby pram.

78. Still on 22 June 2007 the first applicant was confronted with police officer G. (see paragraph 26 above), who stated that on 7 July 2006, following the police officers' arrival at the scene of the events, the first applicant had explained to them that as soon as Mr Shchiborshch opened the door they should prevent him from returning to the flat as he might then lock himself inside. The first applicant then rang at the door and G. heard a man enter the lobby behind the door. The man asked who was there and the first applicant replied that he had brought him money. G. was standing in

front of the door, the first applicant was standing to his right and police officers L. and D. were slightly behind them. When Mr Shchiborshch started opening the door, G. tried to push him back into the lobby and felt two blows to his chest. After the second blow G. noticed that Mr Shchiborshch was holding a knife. Mr Shchiborshch then rushed towards his flat and G. felt his right side itching. He put his hand underneath his bullet-proof vest and felt something moist; when he took it out he saw blood and realised that Mr Shchiborshch had wounded him with the knife. G. remained by the stairwell, and Mr Shchiborshch tried to close the door to the flat. L. then ran towards him, pulled the door from him and propped it open with his foot. Mr Shchiborshch was brandishing the knife and shouting: “Don’t come closer, or I’ll kill you”. G. stood facing the door to the flat with D. to his right and L., who was holding the door, to his left. The first applicant remained in the stairwell as D. had prevented him from entering the lobby.

According to G., the three police officers had been wearing bullet-proof vests since the beginning of the operation and L. had been armed with a submachine gun. They tried for some time to persuade Mr Shchiborshch to drop the knife. When D. left the lobby to call the officer on duty on his radio, G. and L. placed a baby pram they had found in the lobby in front of them as a shield. Mr Shchiborshch threw faeces at the police while continuing to brandish the knife. After a while, in an attempt to close the door, Mr Shchiborshch pushed the baby pram back with his foot. In so doing, he came out of the flat and moved towards G. and D. G. then hit him on his hand three times with a rubber truncheon, trying to knock the knife to the ground. That is when Mr Shchiborshch cut G.’s left hand. Then Mr Shchiborshch stepped back into the flat and shouted at the officers to call a woman he could talk to. G. asked the first applicant to call the neighbour and ask whether there was a woman who could talk to Mr Shchiborshch. A woman then appeared in the lobby from another flat on the same floor. However, she was afraid to talk to Mr Shchiborshch and returned to her flat. After that, the police officers continued trying to persuade Mr Shchiborshch to drop the knife, but he kept shouting that they were burglars and that he would kill them, and kept wielding the knife so that no one could get near him. Then he barricaded himself in the kitchen, and G. heard him moving furniture. G. then left L. to guard Mr Shchiborshch and authorised him to use his weapon should Mr Shchiborshch come out and attack him.

79. In response to the investigator’s questions, G. stated that he could not tell exactly whether L. had hit Mr Shchiborshch with the submachine gun butt. He said that L. had used the submachine gun to try to knock the knife out of Mr Shchiborshch’s hand, but had not inflicted targeted blows. G. hit Mr Shchiborshch several times with a rubber truncheon, also trying to knock the knife from his hand. D. did not use his rubber truncheon as he

was standing between G. and the first applicant. Most of the time L. was holding the submachine gun, which he used to parry Mr Shchiborshch's attacks with the knife. During all that time, the first applicant was standing in the stairwell unable to enter the lobby because D. was blocking the entrance.

80. Responding to questions from the first applicant and his counsel, G. submitted that initially Mr Shchiborshch had been holding one knife. G. noticed him holding a second knife, which he must have taken from a cupboard, when he regained the flat. However, when he started throwing faeces at the police he had put the second knife down. At the beginning of the operation, after Mr Shchiborshch had wounded him with a knife, G. had taken his handgun out. However, when G. was standing in front of the flat having placed the baby pram between himself and Mr Shchiborshch, he had put the handgun away.

81. The first applicant submitted that he believed that Mr Shchiborshch had wounded G. for the first time in the lobby while L. had been holding open the door to the flat. However, he did not actually see the wound being inflicted. He did not see Mr Shchiborshch wound G. before that, but it was possible that the events had unfolded as recounted by G. The first applicant specified that after Mr Shchiborshch had cut G.'s finger, L. and D. had started hitting Mr. Shchiborshch with rubber truncheons.

82. On 3 July 2007 the applicants' counsel asked the Simonovskiy Inter-District Prosecutor's Office to provide copies of procedural decisions taken in the case and reports on investigative measures carried out with the first applicant's participation.

83. On 5 July 2007 the request was refused.

84. On 6 July 2007 the applicants complained to the South Administrative District Prosecutor's Office about the investigating authorities' failure to take measures ordered in the decision of 26 April 2007 and to provide them with copies of procedural documents.

85. On 11 July 2007 the investigator of the Simonovskiy Inter-District Prosecutor's Office closed the investigation again, holding that Mr Shchiborshch had inflicted on himself the numerous injuries listed in the forensic reports as a result of his imprudent behaviour due to his mental illness.

86. On 12 July 2007 the applicants complained to the Moscow Prosecutor's Office about a number of procedural breaches in the course of the investigation. On the same date they met with officer K., who allegedly assured them that a check would be carried out following their complaint.

87. On 17 July 2007 the investigation was resumed.

88. On 2 August 2007 the applicants complained to the Moscow Prosecutor's Office that their complaint of 12 July 2007 had merely been forwarded to the Simonovskiy Inter-District Prosecutor's Office.

89. On the same date the investigative authorities conducted two re-enactments of the events of 7 July 2006 with police officers L. and G. respectively.

90. On 3 August 2007 Kh. of the special police unit was questioned again. His submissions were consistent with those made in the course of questioning on 13 August 2006 (see paragraph 19 above). He specified that after the support unit had arrived at the scene of the events, the actual operation to apprehend Mr Shchiborshch had started after he had thrown a heavy object at the police, breaking the glass door to the kitchen. As he continued lunging at the police with the knife and shouting that he had “already knocked one cop down”, it became clear to them that he had realised that they were police officers and that he would continue resisting them. The four police officers from the support unit were equipped with bullet-proof vests, shields and helmets, and two of them were wearing gloves with kevlar inserts. After Kh. had been stabbed in the shoulder, he discontinued participation in the operation.

91. On 6 August 2007 S. of the special police unit was questioned again (see paragraphs 25 and 57 above). He submitted that initially there had been no question of storming the flat. The unit arrived following receipt of information that a police officer had been wounded and the initial task had been to solve the situation through negotiations. However, the negotiations with Mr Shchiborshch did not lead to any results. Furthermore, the latter threw a heavy object through the glass door of the kitchen and shards of broken glass fell on the police officers; and he kept lunging at them with a knife. Given how small that part of the flat was, those actions were really dangerous for the police, so it was decided to apprehend him. During the operation the police were equipped with bullet-proof vests, shields and helmets. The leather gloves with kevlar inserts that S. was wearing had no metal inserts. Through the broken glass in the kitchen door the police could see that Mr Shchiborshch had barricaded the door with furniture and a refrigerator. The four police officers tried to open it. B. had a big shield which he pushed against the kitchen door with the help of S. and Kh. When they managed to slightly open the door, B. leaned with his hand against the door stud and Mr Shchiborshch wounded him in the palm of his right hand. Then B. moved back and Kh. took his place. The police continued opening the door and Kh. managed to squeeze through the opening but Mr Shchiborshch immediately stabbed him in the right shoulder. Kh. then retreated and D-n. accompanied him to the doctor [in the lobby]. Kh. took no further part in the operation.

S. also stated that the flat was quite small and the police had to move forward in single file. B. again took up the position in front of the kitchen door, with S. behind him. When D-n. returned from the lobby, he stood behind S. They kept pushing against the kitchen door and Mr Shchiborshch resisted from the other side. Then the police abruptly pushed the door and S.

heard a crash on the other side but he could not see what had caused it, as B. was blocking his view. He presumed that either Mr Shchiborshch had fallen or pieces of the barricade had fallen apart. When S. could again see Mr Shchiborshch, the latter was stepping back towards the balcony and still threatening the police. The kitchen floor was covered with furniture. Then he started running towards the balcony, having twice stumbled against the barricade and fallen. When he was on the balcony the police cleared some of the barricade and entered the kitchen. Then Mr Shchiborshch started throwing objects at them through the windows between the kitchen and the balcony, breaking all the windows. An iron hit D-n.

Then S. and B. approached the door to the balcony with B. holding the shield so as to protect them from the objects being thrown, and D-n. moved close to the balcony window. Mr Shchiborshch started lunging at them with the knives, and D-n. tried to knock the knives out of his hands with a rubber truncheon. D-n. was specifically aiming at his hands, but Mr Shchiborshch kept moving around and hitting his head and shoulders against the broken glass protruding from the window frames. After D-n. had knocked the knife out of Mr Shchiborshch's left hand, the latter lunged with his right hand at the police officer but hit B.'s shield. He then repeated the lunge but S. caught his hand by the wrist and with his other gloved hand caught the knife's blade. Mr Shchiborshch tried to free himself, pressing his left shoulder and neck against the window frame and pulling S. towards him. Since S. was standing on the balcony threshold, he could not put one of his feet forward for balance. Then, having wrought the knife from Mr Shchiborshch's hand so as to move the blade away from him, S. leant his weight on Mr Shchiborshch and they both fell to the floor. As he stumbled against the threshold, he eventually put all his weight on Mr Shchiborshch. Then D-n. handcuffed him and they took him into the kitchen, where the doctors administered injections and took him to the living room. D-n. and S. then left the flat.

92. On 10 August 2007 the applicants asked the Moscow Prosecutor's Office to take measures to ensure the completion of the delayed investigation.

93. On 11 August 2007 D-n. of the special police unit was questioned again. His submissions were consistent with those that S. made on 6 August 2007. He specified that he had tried to negotiate with Mr Shchiborshch, but that that had proved futile. He also specified that when Mr Shchiborshch was on the balcony, D-n. had seen a rubber truncheon on the refrigerator and had picked it up and used it to knock the knives out of Mr Shchiborshch's hands.

94. On 17 August 2007 the investigation was suspended. It was resumed on the next day.

95. On 18 September 2007 B., the investigator from the Simonovskiy Inter-District Prosecutor's Office, again suspended the investigation and

ordered a search for persons to be charged with the offence. On the same day that decision was quashed by the head of the investigative department on the ground that it was premature.

96. On 18 October 2007 B. suspended the investigation again on account of the failure to identify the perpetrator.

97. On 14 November 2007 the head of the investigative department quashed the decision of 18 October 2007 and resumed the investigation.

98. On 15 November, and 7 and 12 December 2007 the applicants complained to the Moscow Investigative Committee of procedural breaches in the course of the investigation and asked it to apply administrative sanctions to the head of the investigative department of the Simonovskiy Inter-District Prosecutor's Office. Their complaints were forwarded to the head of the investigative department they had complained about.

99. On 14 December 2007 R., the investigator from the Simonovskiy Inter-District Prosecutor's Office, suspended the investigation and then resumed it on the same date. It was subsequently suspended and resumed on the same date on a number of occasions, in particular on 14 January, 14 February, 14 March, 14 April and 14 May 2008.

100. On 25 December 2007 the second applicant was questioned again. She confirmed her earlier statements (see paragraphs 32-33 above) and added some information. In particular, she stated that two days after the events she had called Ms Ts., Mr Shchiborshch's neighbour, to ask what had happened. Ms Ts. said that she had seen Mr Shchiborshch being brutally beaten and hit with a submachine gun. She also said that her baby pram had been broken and covered with blood. She heard Mr Shchiborshch screaming first: "Neighbour, save me" and then, after the arrival of the police special unit: "People, save me, they are killing me". Ms Ts. said that the previous day Mr Shchiborshch had behaved normally and had helped her to wash the floor in the lobby. The second applicant asked Ms Ts. whether she would confirm that statement before the authorities. First she agreed but after a while refused, saying that two men had threatened her and she was afraid to testify against the police.

101. On 15 February 2008 the investigative authorities conducted three re-enactments of the events of 7 July 2006 with officers G., S. and D-n. of the special police unit. Overall, the police officers' statements were consistent with the submissions they made during their earlier questioning. However, as the re-enactments were conducted in the presence of the applicants, their counsel and a forensic expert, Zh., the police officers had to answer their specific questions.

102. In response to questions from the investigator and Zh., G. submitted that he had hit Mr Shchiborshch twice on his hand and had then pushed him twice with the baby pram. He said that the police had not left any rubber truncheons in the flat; they had taken all the truncheons with them.

103. In response to questions from the applicants and Zh., S. of the special police unit stated, in particular, that he could not remember exactly how long the operation had lasted. He neither heard Mr Shchiborshch calling the police nor remembered exactly how the windows had been broken. S. could not remember exactly how he had fallen on the balcony floor with Mr Shchiborshch, but as they were falling he was gripping the latter's hand holding the knife. On the balcony floor there were shards of glass and other objects – he could not remember exactly what. S. was equipped with a shield, a bullet-proof vest and a handgun. He did not use the weapon because D-n. had not given the order to do so and because they had been informed that the situation concerned a mentally disturbed person. S. had seen no particular injuries on Mr Shchiborshch but he had seen him bleeding profusely. The upper part of his body was covered with blood. S. did not see Mr Shchiborshch fall in the kitchen, but he heard him fall. Nobody hit him with anything in the kitchen; he was apprehended on the balcony. S. could not remember exactly how Mr Shchiborshch sustained his injuries. However, on the balcony the latter hit himself against various surfaces, although S. did not see exactly how, as his attention was concentrated on the knife. S. believed that Mr Shchiborshch had posed a real danger to his life, as he had threatened him with a knife and had a mad look in his eyes.

104. In response to questions from the applicants and Zh., D-n. of the special police unit stated, in particular, that he had been equipped with a bullet-proof vest, a helmet that he had not had time to put on, and a handgun. The special police unit did not have rubber truncheons. He further submitted that there had been no order to storm the flat as such, but their superior had instructed them to apprehend Mr Shchiborshch. D-n. did not know that at the time of the special unit's arrival, emergency psychiatric assistance had been called for (see paragraph 27 above). He did not hear Mr Shchiborshch calling the police but he heard him scream: "People, help". When D-n. first saw Mr Shchiborshch there was a lot of blood on his head, chest and arms, and abrasions on his forehead. D-n. did not know how the glass in the kitchen door had been broken and could not tell exactly how much time elapsed from the moment when Mr Shchiborshch broke the door to the time the special unit entered the kitchen. No one tried to apprehend Mr Shchiborshch in the kitchen, as the door was barricaded, and when the police managed to enter he was on the balcony. D-n. did not see Mr Shchiborshch fall in the kitchen, but he did see him disappear from view through the kitchen door opening, and heard the sound of him falling. On the kitchen floor there were various objects and shards of glass, all covered with blood. D-n. submitted that he had taken the rubber truncheon from the refrigerator in the kitchen and had hit Mr Shchiborshch with it to knock the knife from his hand no more than two or three times. Mr Shchiborshch had then pulled S. towards him while the latter was gripping the hand in which

he was holding the knife. D-n. could not tell why they had fallen to the floor. He entered the balcony through the broken window. When the police were handcuffing Mr Shchiborshch he continued to resist them. Then D-n. and S. led him to the kitchen where he could walk by himself. They put him on the kitchen floor. He stopped resisting them and kept repeating something like “Don’t, don’t”.

105. B. of the special police unit refused to take part in the re-enactment, stating that he would only be willing to do so in the presence of his lawyer.

106. On 18 February 2008 the second applicant was questioned yet again (see paragraph 100 above). She confirmed her earlier statements and commented on the police officers’ submissions made in the course of the re-enactments conducted on 15 February 2008 and earlier questioning. The second applicant stated that the submissions of S. and D-n. of the special police unit were untenable and pointed out that in response to important questions they had answered that they either did not know or did not remember. In particular, they did not remember how they had broken the kitchen door and the kitchen table and thrown them into the lobby. Immediately after the events the first applicant found a broken table leg in the kitchen near the balcony window. The end of the table leg had blood on it. The first applicant put it on the balcony, where it remained to this day. Hence, D-n.’s statement that he had found a rubber truncheon on the refrigerator in the kitchen was untrue, as a rubber truncheon could not have been there. Not only had the regular police squad not entered the flat but by that time they had left, and the special unit officers were the first ones to enter the kitchen. The only baton that remained in the kitchen was the leg of the broken table, which D-n. must have used as he did not deny hitting Mr Shchiborshch with a baton. As the latter was standing to the left of D-n., the police officer must have hit him on the head with the table leg, which would be consistent with the medical report stating that Mr Shchiborshch had sustained injuries on the left side of his head. The second applicant also requested an expert examination of the table leg.

107. The second applicant further contended that S.’s submissions to the effect that while on the balcony Mr Shchiborshch kept moving around and hitting his head and shoulders against the glass remaining in the window frames was equally untenable. Should that have been the case, Mr Shchiborshch would have slashed his neck lengthwise. However, the wound to his neck measured 3 cm across and, in the second applicant’s view, must have been caused by falling down. Although the police officers of the special unit no longer remembered how Mr Shchiborshch had fallen on the floor with S., in her view it followed from the materials of the case that Mr Shchiborshch had fallen face down, and that was what had caused the wound. Furthermore, the officers failed to clarify how he had sustained multiple fractures of the ribs.



108. Furthermore, the second applicant alleged that a number of D-n.'s statements had been false. In particular, Mr Shchiborshch could not have thrown an iron at him, because the iron had been tied to the balcony door. When D-n. entered the kitchen, he could not have seen its floor covered in blood. Although the regular squad had hit Mr Shchiborshch with rubber truncheons, the blood on the floor appeared only after the special unit officers had apprehended Mr Shchiborshch and put him there. Nor could it be true that Mr Shchiborshch, having been handcuffed, walked to the kitchen from the balcony by himself, as in that case it was unclear why the police officers had had to put him on the floor. Moreover, D-n.'s submissions that he had entered the balcony through the broken window made no sense given that he could have used the door. Similarly, it was unlikely that he had not heard Mr Shchiborshch calling the police for help, as his first call, made at 2.10 p.m., had been heard even by those standing in the lobby. Therefore, it was untenable that D-n., standing next to the kitchen door, had not heard the call made at 2.39 p.m.

109. As regards the organisation of the operation, the second applicant noted that D-n. had had no authority to storm the flat, especially given that emergency psychiatric assistance had already been called for by R., the Head of the Nagatinskiy Zaton OVD. She pointed out that Mr Shchiborshch had not been holding hostages or otherwise posing a danger to other people. He had acted merely out of fear, trying to defend himself, which was corroborated by his calls to the police. Therefore, there were no grounds for such an urgent operation, which eventually led to her son's death.

110. On 21 February 2008 the broken table leg was seized from Mr Shchiborshch's flat.

111. On 26 February 2008 an examination of the broken table leg was conducted. According to the results of the examination, no blood was detected on the leg. Although epidermis cells were detected, there were too few to determine their type and gender. Six pieces of hair were also detected. One of them could have belonged to Mr Shchiborshch, another to D-n., and yet another to G. It appeared possible that five pieces of hair had been separated by a blunt object, such as a table leg.

112. On 22 March 2008 Zh., the forensic expert, was questioned. He submitted that the results of the forensic examination had showed that Mr Shchiborshch's right wrist, which had been gripped by police officer S., had not been broken. He further stated that on the basis of forensic report no. 1262 it had been impossible to determine whether the craniocerebral trauma had been caused by the broken leg of the kitchen table. Zh. noted that he could have provided more detailed answers following an additional forensic examination.

113. On 22 April 2008 Ms I. was questioned. She submitted that she had had good relations with Mr Shchiborshch and used to visit him and his wife, whom he had divorced in 2003. According to her, his psychiatric condition

had worsened after the divorce and he had been seen by a psychiatrist. He had no friends and sometimes fantasised that he was in the company of a woman. For example, when she took him meals she would ring at the door and he would reply that he could not open it because he was with a woman. However, through the keyhole she could see that he was alone in the kitchen. Ms I. stated that Mr Shchiborshch had believed that his parents were not his biological parents and that he had been adopted; he had been afraid that they would place him in a psychiatric hospital.

114. On the same date another inspection of the scene of the events – in particular the balcony – was carried out. In the course of the inspection two reddish-brown stains were found. One was on the inside of the doorway; it was 21 cm long and started 171 cm from the floor. The other one, next to it, was 18 cm long and started 190 cm from the floor. There were also reddish-brown spots.

115. Between 8 April and 7 May 2008 a forensic examination was conducted by L-o, A. and D., experts from the Russian Centre for Forensic Examinations. Report no. 40/08 stated, in particular, that:

(a) Mr Shchiborshch had sustained a stab/slash wound to the neck 3 cm long crossing the jugular vein and multiple slash wounds to the right ear, the left side of the face, the chest, the right shoulder and collarbone, the left shoulder, the back of the elbow and wrists, the back of the left hand, two fingers of the right hand, and four fingers of the left hand. The wounds were complicated by profuse bleeding and led to Mr Shchiborshch's death. The wound on the neck was caused by an object with multiple sharp cutting edges, which could have been a piece of glass. The piece of glass must have been fixed somehow and stayed in its place quite firmly and motionlessly. Such an injury was often observed when wounds were caused by the breaking of an entire window pane or glass door, when the main part of the window fell out but sharp shards on the edges remained firmly fixed to the frame. The multiple slash wounds were caused by fragments of broken glass. Although it was not possible to determine the sequence of the injuries, they were sustained within a short period of time shortly before Mr Shchiborshch's death. They were complicated by external bleeding leading to anaemia, which caused his death.

(b) Mr Shchiborshch had an open craniocerebral trauma consisting of bruising of the left frontal parietal and temporal region and the top of the right eye; superficial bruising of the right cheekbone; bruises and abrasions of the forehead, eyelid and top of the right eye, the left eyelid, the right temporal region, the left jaw, cheek and chin; haemorrhages of the soft tissue of the left frontal parietal and temporal region and the right parietal and temporal region; depressed fracture of the frontal bone and the left parietal bone; linear fractures of the left parietal bone and frontal bone; subarachnoid haemorrhages and contusion of the cerebral cortex on the convex surface of the forehead. The craniocerebral trauma was defined as a

grave injury. However, since there were no symptoms of dislocation or compression of the brain, the essential areas of cerebral tissue were not damaged and there was no inflammation, the craniocerebral trauma alone could not have led to the death of Mr Shchiborshch. The craniocerebral trauma was caused by multiple blows with hard blunt objects, which probably had a wide surface. However, it was not possible to determine exactly how it had been caused.

(c) Mr Shchiborshch had closed fractures of the sixth right rib and of the eighth, ninth, tenth and eleventh left ribs. They were caused by repeated blows with hard blunt objects. Such injuries could have been caused as a result of being punched, kicked with boots or as a result of falling on protruding objects.

(d) Mr Shchiborshch also had subcutaneous haemorrhages on the chest, shoulder joints, the left shoulder, forearm, hip and shin, and on the right forearm, hip, knee joint and shin; and bruises and abrasions on the right forearm and hand which were caused by blows with hard blunt objects. Such bruises and subcutaneous haemorrhages were classified as light injuries.

116. According to the report, the injuries were caused shortly before Mr Shchiborshch was admitted to hospital. His death was caused by the stab/slash wound to his neck, which affected the jugular vein, and multiple slash wounds which were complicated by profuse bleeding. Other injuries, such as craniocerebral trauma, complicated Mr Shchiborshch's condition but did not directly cause his death. The neck wound was definitely caused by a fixed piece of glass. However, it was impossible to establish at which precise moment during Mr Shchiborshch's apprehension it had been caused.

117. As regards the first applicant's question whether the injuries that led to Mr Shchiborshch's death could have been caused as a result of his falling down, the forensic experts stated that, since the precise way in which the wound to the neck had been caused could not be established, they could not rule out such a possibility. Whereas the experts considered that at a certain moment a fixed shard of glass had been thrust against Mr Shchiborshch's neck, the shard might have been either in the window or door frame, or on the floor clamped between other objects. However, the multiple slash wounds could not have been caused by his falling down.

118. On 19 May 2008 the applicants' counsel questioned R., the expert who participated in the forensic examination completed on 14 March 2007 (see paragraph 65 above), with regard to the conclusions of report no. 40/08. R. noted that a neurosurgeon had not taken part in the examination completed on 7 May 2008, which affected the reliability of its conclusions. In particular, it was not clear why the craniocerebral trauma had not been given as the cause of death. It was likewise unclear which areas of cerebral tissue had been classed as "not essential", whereas all such areas were essential. Furthermore, it was not sufficiently specified what was meant by

“profuse bleeding”: acute bleeding or acute anaemia. At the same time the conclusion that the wound to the jugular vein had caused the death was not accurate, since the jugular vein was not a blood vessel and damage to it could not have caused blood loss.

119. On the same date the second applicant asked the investigating authorities to order a forensic examination with the participation of a neurosurgeon.

120. On 30 May 2008 the investigation was closed on the ground that the actions of the police disclosed no indication of an offence.

121. On 17 June 2008 the decision of 30 May 2008 was quashed and the investigation was resumed.

122. On 31 June 2008 the investigator questioned A., an expert who had participated in the forensic examination carried out between 8 April and 7 May 2008. According to A., there had been no need for a neurosurgeon’s participation in the forensic examination, as the cause of Mr Shchiborshch’s death was acute anaemia and not craniocerebral trauma.

123. On 1 August 2008 the Simonovskiy District Prosecutor’s Office dismissed the request of 19 May 2008.

124. On 4 August 2008 the second applicant asked the investigating authorities to question the head of the emergency ward of hospital no. 7 concerning the cause of Mr Shchiborshch’s death.

125. On 7 August 2008 the Simonovskiy District Prosecutor’s Office dismissed the request.

126. On the same date the investigating authorities ordered the Russian Centre for Forensic Examinations to conduct another forensic examination.

127. On 1 September 2008 the investigation was suspended. It was resumed on the next day.

128. On 29 September 2008 the applicants’ counsel obtained report no. 169/08 of a forensic examination conducted by P. and Sh., experts from the State Centre for Forensic Expert Examinations of the Ministry of Defence. The description of the injuries sustained by Mr Shchiborshch corresponded to that of report no. 40/08 (see paragraph 115 above). However, the experts’ conclusions concerning the cause of death differed. According to report no. 169/08, his death had been caused by a complex trauma to the head, chest and extremities, together with the fractured skull, medullary contusion, haemorrhages under the pia, wound to the jugular vein and multiple fractures of the ribs. In the experts’ opinion, the jugular vein wound could not have been the only cause of death as it had not been accompanied by life-threatening symptoms such as acute massive blood loss, or an air or fat embolism. However, taken together with the other injuries, it had constituted a factor contributing to Mr Shchiborshch’s death. The same applied to the complex trauma to the head, chest and extremities, which was also a contributing factor, the combined effect of which led to the lethal outcome.

In response to particular questions put to them, the experts stated, *inter alia*, that the craniocerebral trauma had probably caused the coma, whereas the other injuries had aggravated its course. They also submitted that it was possible that after having sustained the craniocerebral trauma, Mr Shchiborshch had been able to move independently for a short period of time. In cases of similar craniocerebral trauma, there could be periods – ranging from several minutes to several hours – when the injured person was able to talk and consciously perform certain actions. The craniocerebral trauma was caused by a hard blunt object with a limited surface. It could not be ruled out that it was caused by kicking with boots. However, there were no signs leading to the conclusion that it was caused by a baton. The experts further stated that inflammatory complications in the brain could not have developed in the course of the forty minutes' resuscitation efforts before Mr Shchiborshch's death. Lastly, having regard to the entry in Mr Shchiborshch's medical file to the effect that he had suffered from moderate blood loss, the experts stated that the results of the general blood test showed that blood loss had been light to moderate. They reiterated that Mr Shchiborshch's death had been caused not by the blood loss alone but by a combination of factors.

129. On 1 December 2008 the investigation was suspended.

130. On 15 December 2008 the investigation was resumed.

131. On 12 January 2009 the Russian Centre for Forensic Examinations issued report no. 122/08 on the results of the forensic examination ordered on 7 August 2008 (see paragraph 126 above). The conclusions were essentially the same as those of report no. 40/08 of 7 May 2008.

132. On the same date the Russian Centre for Forensic Examinations issued report no. 81/09. It said that it was more likely that Mr Shchiborshch's craniocerebral trauma had been caused by at least two blows, but that it could not be ruled out that the fractures of the skull had been sustained when he fell on a protruding object or hit his head against an object.

133. On 15 January 2009 the investigation was suspended.

134. On 25 February 2009 the investigation was resumed.

135. Between January and April 2009 the applicants asked the investigating authorities to conduct a number of investigative measures, such as questioning the forensic experts and conducting another forensic examination with the participation of a neurosurgeon, and to enclose certain documents in the case file. The requests were refused. The applicants' complaints about the refusals to higher prosecuting authorities were dismissed.

136. On an unspecified date the applicants wrote to the Federal Supervisory Service for Healthcare and Social Development with a request to review the accuracy of the forensic reports enclosed in the criminal case file.

137. On 16 April 2009 the Federal Supervisory Service for Healthcare and Social Development provided the second applicant with an opinion of T., a forensic expert, dated 26 March 2009 and a report of the commission that examined the request. According to T., the experts from the Russian Centre for Forensic Examinations had not assessed certain factors related to the craniocerebral trauma. He pointed out that the participation of a neurosurgeon in the examination would have been desirable. T. also stated that forensic report no. 122/08 had supported the conclusions of report no. 40/08 without proper scientific substantiation, which cast doubt on the objectivity of the conclusions and their scientific accuracy. According to the findings of the commission, forensic examination no. 122/08 had been conducted in breach of time-limits; the commission's report had not corresponded to certain formal requirements; the experts who had conducted the examination had used traditional methods accepted in forensic activity; and, taking into account the nature of the trauma, the participation of a neurosurgeon in the examination would have been desirable.

138. On 23 April 2009 the investigation was closed on the ground that the police officers' actions disclosed no indication of an offence.

139. On 29 April 2009 the applicants complained about the decision to the Moscow Investigative Committee. It is not clear whether the complaint was examined.

140. On 28 May 2009 the investigation was resumed.

141. On 8 August 2009 the investigation was closed.

142. On 18 August 2009 the investigation was resumed.

143. On 26 August 2009 the investigator ordered an additional forensic examination.

144. On 18 September 2009 the investigation was suspended.

145. On 21 September 2009 the investigation was resumed.

146. Following an order by the investigator, between 15 March and 16 April 2010 another forensic examination on the basis of the case materials was conducted by five experts, F., B., I., S. and P., from the Russian Centre for Forensic Examinations. In report no. 232/09 the experts stated, in particular, that it was more likely that Mr Shchiborshch's craniocerebral trauma had been caused by at least two blows to his head than by his falling down. More specific findings might be made following a detailed examination of the skull. In the experts' opinion, there had been no symptoms of massive blood loss, and the craniocerebral trauma had been the only cause of Mr Shchiborshch's death. The experts assessed the other injuries as contributing to Mr Shchiborshch's condition but not affecting the lethal outcome. There was no evidence of any inflammatory complications of the brain either.

147. On 26 October 2009 the Moscow Investigative Committee upheld an earlier refusal of the applicants' request to conduct DNA tests in respect

of the broken table leg. According to the response, as no traces of blood had been found on the table leg in the course of the biological tests, there were no grounds for DNA tests.

148. On 17 April 2010 the investigation was closed. The findings of the investigation may be summarised as follows: on 7 July 2006 following the first applicant's request on the basis of a referral from Moscow's Psychoneurological Dispensary no. 10, police officers G., L. and D. accompanied by the first applicant, tried to escort Mr Shchiborshch to a hospital. However, he refused to accompany them and resisted the police officers with the use of arms, wounding one of them in the chest and finger. Given that Mr Shchiborshch committed a criminal offence by using violence against a police officer on duty and that he posed a danger to others, it was decided to ask a special police unit for support in order to apprehend him. After negotiations with Mr Shchiborshch had proved futile, the special unit officers stormed the flat. In the course of the operation they used rubber truncheons, handcuffs and means of defence. As a result of Mr Shchiborshch's actions, four police officers sustained various injuries. As a result of the police operation, Mr Shchiborshch was apprehended and immediately transferred to hospital for medical assistance, as he had sustained injuries. He died on the same date.

149. The statements of the applicants and of the police officers who took part in the events, forensic reports nos. 1262, 628, 40/08, 122/08, 81/09 and 232/09, and a report of a forensic psychological-psychiatric examination of 14 November 2006 were cited in the decision to close the investigation.

150. It was also stated in the decision that the investigation had established that there had been lawful grounds for apprehending Mr Shchiborshch as he had posed a danger to himself and others. The police officers could not have left the flat without having apprehended him. Similarly, they were unable to use certain special tools as they would have endangered other residents. The police officers had valid reasons to call the special police unit for assistance, since Mr Shchiborshch had actively resisted them and had wounded one of them in the chest. The use of special tools in order to apprehend him was also justified as his mental state and the fact that he had wounded a police officer were reasons to believe that he posed a real danger to them and might commit unlawful acts in respect of others or hurt himself. In accordance with the Law on Police 1991, police officers may use physical force if other means employed in order to fulfil their duties prove futile. A police officer may use special tools to repel attacks against the police and other citizens. In the present circumstances, the fact that the police inflicted light injuries on Mr Shchiborshch was justified by the necessity to apprehend him.

151. As regards the grave injuries, the decision noted that the results of the forensic expert examinations were conflicting. Whereas according to some of them Mr Shchiborshch's death had been caused by massive blood

loss, others concluded that it had been caused by the craniocerebral trauma. Therefore, the investigation was unable to establish with certainty the cause of death and had to take into account all the injuries. In particular, all the experts agreed that the neck wound had probably been caused by a glass shard. As Mr Shchiborshch was resisting the police from behind the balcony door in which there was broken glass, he probably sustained that wound when some of the police officers pulled him by the hand and he cut himself on a protruding glass shard. The police thus had no intention of injuring Mr Shchiborshch and he sustained the injury also as a result of his own actions. Such an injury, regarded as grave and possibly the cause of Mr Shchiborshch's death, could not have been foreseen.

152. The decision of 17 April 2010 further stated that the experts had not reached a unanimous conclusion concerning the cause of the craniocerebral trauma. Whereas some of the reports stated that it could have been caused as a result of Mr Shchiborshch hitting his head against something or falling down, other reports concluded that it had probably been caused as a result of blows to the head. A definitive conclusion might have been reached following an additional examination of Mr Shchiborshch's skull, but his relatives did not give their consent to exhumation and the investigator's request for exhumation was refused by the court. Therefore, there remained no further opportunities to clarify the cause of the injury, and the investigation still had certain doubts in that respect. Should the craniocerebral trauma have been caused as a result of Mr Shchiborshch's falling onto protruding objects, no questions concerning the police officers' responsibility would arise. Should it have been caused by blows to the head, the investigation took the view that the police had had no intention of harming Mr Shchiborshch. That was confirmed by the fact that immediately after the storming of the flat, a doctor had been asked to provide him with medical assistance. From the witness statements it followed that the police had used rubber truncheons to knock the knife out of Mr Shchiborshch's hands. It could not be ruled out that some of the blows had accidentally hit Mr Shchiborshch on the head. However, that would not have been intentional. In any event, any conclusions in that respect were of a probabilistic nature and could not be regarded as established facts, as the investigation had unresolvable doubts concerning the cause of the injury. Taking this into account, there was insufficient evidence to show that the police officers had committed an offence, and the investigation should therefore be closed.

153. On 4 May 2010 the applicants complained to the investigating department of the Simonovskiy District of Moscow about the closure of the investigation. The outcome of the complaint is unclear.



### **C. The applicants' complaints before courts concerning the ineffectiveness of the investigation**

#### *1. First complaint*

154. On 31 July 2007 the second applicant lodged a complaint before the Lefortovskiy District Court concerning the inactivity of the Simonovskiy Inter-District Prosecutor's Office. She stated, in particular, that a number of investigative measures, including those ordered by a higher prosecutor's office, had not been carried out and that she had not been granted victim status in the proceedings.

155. On 19 September 2007 the Lefortovskiy District Court partially granted the complaint. It held that the refusal to grant the second applicant victim status in the investigation was unfounded and dismissed the remainder of the complaint. The applicants appealed.

156. On 15 October 2007 the Moscow City Court dismissed the appeal and upheld the decision.

#### *2. Second complaint*

157. On an unspecified date the applicants complained to the Lefortovskiy District Court about the decision to suspend the investigation of 18 October 2007 and the failure to examine a number of their requests for additional investigative measures.

158. On 10 December 2007 the Lefortovskiy District Court partially granted the complaint. It found unlawful the failure to examine the applicants' request, but dismissed the part of the complaint related to the suspension of the investigation. It is not clear whether the applicants appealed.

#### *3. Third complaint*

159. On 10 June 2008 the second applicant complained to the Lefortovskiy District Court about the decision of 30 May 2008 to suspend the investigation, the failure to examine a number of her requests, the refusal to conduct certain additional investigative measures and the delays in the investigation.

160. On 18 June 2008 the Lefortovskiy District Court partially granted the complaint. It noted that the investigation had been resumed on 17 June 2008. The court found unlawful the failure to examine the second applicant's request for another forensic examination, the failure to provide her with decisions taken in respect of her other requests and the delays in the investigation.

#### *4. Fourth complaint*

161. On an unspecified date the second applicant complained to the Lefortovskiy District Court about the failure of the Simonovskiy District Prosecutor's Office to comply with the court's decision of 18 June 2008. She asked the court to find forensic report no. 40/08 unlawful and to declare it inadmissible as evidence.

162. On 30 July 2008 the Lefortovskiy District Court granted the part of the complaint related to the failure to comply with the decision of 18 June 2008 and dismissed the remaining part. The second applicant appealed.

163. On 27 August 2008 the Moscow City Court dismissed the appeal.

#### *5. Fifth complaint*

164. On 18 August 2008 the applicants complained to the Lefortovskiy District Court about the continued failure of the Simonovskiy District Prosecutor's Office to comply with the court's decision of 18 June 2008 and the failure to grant a number of their requests for additional investigative measures.

165. On 20 August 2008 the Lefortovskiy District Court granted the part of the complaint related to the failure to comply with the decision of 18 June 2008 and dismissed the remaining part. The applicants appealed.

166. On 22 September 2008 the Moscow City Court dismissed the appeal.

#### *6. Sixth complaint*

167. On 25 August 2008 the applicants complained to the Lefortovskiy District Court about certain investigative measures related to another forensic examination.

168. On 30 September 2008 the Lefortovskiy District Court dismissed the complaint. The applicants appealed.

169. On 29 October 2008 the Moscow City Court dismissed the appeal.

#### *7. Seventh complaint*

170. On an unspecified date the second applicant complained to the Lefortovskiy District Court about the failure to examine a number of her requests related to certain investigative measures.

171. On 6 October 2008 the Lefortovskiy District Court granted the part of the complaint related to the failure to examine her request for another forensic examination and dismissed the remaining part.

*8. Eighth complaint*

172. On an unspecified date the applicants again complained to the Lefortovskiy District Court about certain investigative actions related to another forensic examination.

173. On 27 October 2008 the Lefortovskiy District Court dismissed the complaint.

*9. Ninth complaint*

174. On 26 February 2009 the applicants complained to the Lefortovskiy District Court about the investigating authorities' refusal to let them study the case file, their refusal to include forensic report no. 169/08 in the case file, the failure to examine a number of the applicants' requests in due time and the refusal of several requests for additional investigative measures.

175. On 4 March 2009 the Lefortovskiy District Court granted the part of the complaint related to the failure to examine a request submitted by the second applicant and the refusal to allow the applicants access to the case file. The remainder of the complaint was dismissed.

*10. Tenth complaint*

176. On 6 March 2009 the second applicant complained to the Lefortovskiy District Court about the decision to suspend the investigation of 1 December 2008 and the investigating authorities' failure to inform the applicants of the suspension.

177. On 12 March 2009 the Lefortovskiy District Court dismissed the complaint. The second applicant appealed.

178. On 8 April 2009 the Moscow City Court dismissed the appeal.

*11. Eleventh complaint*

179. On 16 April 2009 the second applicant complained to the Lefortovskiy District Court about the refusal of her request to question the forensic experts.

180. On 22 April 2009 the Lefortovskiy District Court dismissed the complaint.

*12. Twelfth complaint*

181. On 10 August 2009 the second applicant complained to the Lefortovskiy District Court about the refusal of her request to declare report no. 122/08 inadmissible evidence, to conduct an additional forensic examination and to adduce certain evidence.

182. On 20 August 2009 the Lefortovskiy District Court dismissed the complaint.

#### **D. Criminal proceedings against senior officers of the Nagatinskiy Zaton OVD**

183. On an unspecified date the second applicant requested the institution of criminal proceedings against K. and R., senior officers of the Nagatinskiy Zaton OVD. She argued that their decision to storm Mr Shchiborshch's flat had been unlawful and taken in abuse of their official powers, as it had been in breach of the Law on Psychiatric Assistance.

184. On 12 January 2009 the institution of criminal proceedings was refused. The decision stated, in particular, that as Mr Shchiborshch had posed a danger to the police officers and other citizens, there had been grounds for storming the flat, and the use of rubber truncheons had been in accordance with the law.

### **II. RELEVANT DOMESTIC LAW**

#### **A. Constitution of the Russian Federation**

185. Article 20 (1) of the Constitution provides that everyone has the right to life.

#### **B. Law on Police 1991**

186. In accordance with section 10(2) of the Law on Police of 18 April 1991, in force until 1 March 2011, the police had to provide assistance to citizens who were victims of a crime, an administrative offence or an accident, or in a helpless or other state that threatened their health and life. Under section 10(22), following a request from a medical institution authorised by a court, the police had to bring to that institution for medical treatment persons suffering from illnesses who posed an imminent danger to themselves or others, or had committed a socially dangerous act and refused to go to the institution. For the purposes of crime prevention the police also had to ensure, jointly with the public health agencies and as provided for by the applicable legislation, the monitoring of persons suffering from mental disorders, drug addiction or alcoholism and posing a danger to others.

187. Section 11(9) provided that the police were competent to apprehend and take to specialised institutions persons refusing compulsory medical treatment that had been prescribed in accordance with a legal procedure.

188. Section 12 provided that the police could use force, special tools or firearms only in situations stipulated in the Law. When using force, special tools or firearms a police officer had to:

- warn about the intention to use them sufficiently in advance to enable the person to comply with the requirements of the police, except in cases

where a delay might put in danger the life or well-being of other citizens or police officers, or entail other grave consequences, or where, given the circumstances, such a warning would be inexpedient or impossible;

- try to minimise the possible damage, depending on the nature of the offence, the perpetrator and the resistance;
- ensure that those injured were provided with medical assistance and notify their relatives as quickly as possible;
- inform the prosecutor of any wounds or deaths.

189. Section 12 further provided that those found guilty of abuse of powers when using force, special tools or firearms would be held liable.

190. Section 13 authorised the police to use force, including martial arts, in order to prevent the commission of crimes and administrative offences; to arrest persons who had committed them; and to break down the resistance to lawful demands where non-violent means had failed to ensure the fulfillment of police duties.

191. Section 14 provided a list of special tools, which included, but were not limited to, rubber truncheons, handcuffs, electroshock tools and tear gas. The special tools could be used by the police in the following circumstances:

- (1) to repel attacks against citizens and police officers;
- (2) to break down the resistance to a police officer;
- (3) to apprehend a person caught red-handed and trying to escape;
- (4) to apprehend persons in respect of whom there were sufficient grounds to believe that they would resist the police with the use of arms;
- (5) to take those apprehended to a police station or to convey those subjected to administrative arrest if there were grounds to believe that they might flee, hurt themselves or others, or resist the police;
- (6) to release hostages;
- (7) to prevent mass disorders or group actions disrupting the functioning of traffic, communication or of other organisations;
- (8) to stop a vehicle whose driver did not comply with a police officer's request to stop;
- (9) to identify persons who are committing or have committed a crime;
- (10) to protect citizens from an attack that threatens their life or well-being, as provided for by section 15(1).

192. Section 14 further provided that the use of special tools was forbidden in respect of pregnant women, minors and disabled persons, except if they resisted the police with the use of arms or attacked them, thereby posing a danger to the life and well-being of other people. In a situation of justifiable self-defence or in an emergency, in the absence of special tools a police officer could use any available means. It was forbidden to equip the police with special tools which might cause excessively grave injuries or pose unjustified risks.

### **C. Standard Regulation on Special Police Units**

193. Under Article 2 of the Standard Regulation on Special Police Units of the Ministry of the Interior of the Russian Federation, adopted by Order no. 162 of 19 March 1997 of the Ministry of the Interior and amended on 22 December 2000 and 7 March 2001, the special police unit had the following tasks:

(2.1) ensuring personal safety and safety of property on the street and in other public spaces;

(2.2) ensuring law and order and public safety on the street and in other public spaces and transport, and crime prevention;

(2.3) participation in the investigation of crimes;

(2.4) providing assistance, within its competence, to citizens, officials, enterprises, organisations, agencies and public associations in exercising their rights and lawful interests;

(2.5) participation, together with other law-enforcement and military units, in the fight against terrorist, subversive and intelligence groups.

194. Under Article 3 the functions of special police units in fulfilling the above tasks include ensuring order at public events; conducting raids in criminogenic areas; identification and apprehension of terrorists and members of armed gangs; conducting special operations for defusing explosive devices; securing public order and safety in a state of emergency; participation in operations conducted by other law-enforcement, security, customs or tax agencies.

### **D. Law on Psychiatric Assistance**

195. Section 29 of the Law on Psychiatric Assistance and Citizens' Rights in this Respect of 2 July 1992, as amended on 21 July 1998, 25 July 2002, 10 January 2003 and 29 July 2004 ("the Law on Psychiatric Assistance"), provides that a person suffering from a mental disorder may be placed in a psychiatric hospital without his or her consent, or the consent of his or her representative, before a court had delivered a decision in this respect, if the person's examination or treatment is only possible on an inpatient basis and the mental disorder is grave and:

- poses an immediate danger to either himself or others;
- renders the person incapable of attending to his basic needs; or
- risks causing considerable harm to his health should the person be left without psychiatric assistance.

196. Under section 30(3) police officers have to assist the medical personnel in carrying out the involuntary hospitalisation and ensure safe access to the person concerned and his or her examination. Should the police have to prevent the actions of the person posing a danger to the life

and health of others, or to search for and apprehend the person, they must act as provided for in the Law on Police.

**E. Instruction on cooperation between health services and agencies of the interior for the prevention of socially dangerous actions by persons suffering from mental disorders**

197. Under Article 1.6 of the Instruction, adopted by Order no. 133/269 of 30 April 1997 of the Ministry of Public Health and the Ministry of the Interior, if it is necessary to carry out the involuntary hospitalisation of a person suffering from a mental disorder who poses a danger to himself or others and where there are reasons to believe that either he or his relatives would resist the hospitalisation, psychiatric emergency services personnel should contact the local department of the interior for assistance. The head of the department of the interior or his deputy should arrange for police officers to arrive at the relevant address at the required time.

198. Under Article 1.7 of the Instruction, involuntary hospitalisation is carried out by psychiatric emergency services personnel. Police officers conduct a search for the person in question and provide assistance in apprehending persons subject to involuntary hospitalisation, ensure public safety and safe conditions for access to the person subject to hospitalisation and prevent any unlawful actions of persons resisting the hospitalisation.

**F. Code of Criminal Procedure**

199. Article 125 of the Code sets out the judicial procedure for the examination of complaints. The orders of an investigator or prosecutor refusing to institute criminal proceedings or terminating a case, and other orders and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to hinder citizens' access to justice, may be appealed against to a local district court, which is competent to check the lawfulness and grounds of the impugned decisions.

**THE LAW**

**I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION ON ACCOUNT OF MR SHCHIBORSHCH'S DEATH**

200. The applicants complained under Article 2 of the Convention that the police had been responsible for the death of their son. In particular, although they were called in precisely to deal with a mentally disturbed

person, they had not been trained for such a situation, nor were they accompanied by a specialist, such as a psychiatrist; and their excessive and unjustified use of force led to Mr Shchiborshch's death. Article 2 of the Convention reads as follows:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

201. The Government contested that allegation. Relying on *Andronicou and Constantinou v. Cyprus* (9 October 1997, § 171, *Reports of Judgments and Decisions* 1997-VI), they argued that the use of force by the police was compatible with Article 2 of the Convention, which allowed the use of force which could lead to the unintentional deprivation of life. It was likewise in accordance with section 14 of the Law on Police, which authorised the police to use force and special tools in particular situations. As it had been established that at the time of the events Mr Shchiborshch had posed a danger to himself and others, and had resisted the lawful demands of the police, the use of force had been justified. Furthermore, it had also been established that a number of his injuries, including those leading to his death, had been self-inflicted either intentionally or negligently through actions resulting from his mental state.

202. The applicants disagreed with the Government. Firstly, they maintained that the entire operation had not been conducted in a way that minimised the risk to Mr Shchiborshch's life. The operation had been neither well-planned nor controlled. Whereas under the applicable law, involuntary hospitalisation had to be carried out by psychiatric emergency services personnel, with police officers providing assistance if necessary, in this case the police acted on their own. Furthermore, the special police unit stormed the kitchen without any grounds for applying such drastic force and still in the absence of psychiatric assistance, which was on its way. Moreover, given that it was not the first time that Mr Shchiborshch had had to be subjected to involuntary hospitalisation, the police could have foreseen his reaction and planned the operation in such a way as to make it less traumatic for him, which had not been done. Secondly, the use of force was disproportionate. Even though Mr Shchiborshch was armed with a knife, he was only trying to hide in the flat and did not try to attack anyone. Furthermore, being of slender build and exhausted by his condition, he



could hardly have posed any real danger to police officers wearing bullet-proof vests, helmets and Kevlar gloves and equipped with shields. The applicants further pointed out that neither the regular police nor the special police had been trained to deal with mentally unstable persons and thus had not been able to act appropriately in the situation, especially in the absence of any qualified medical personnel. The applicants also argued that the use of rubber truncheons by the police had been unlawful. At the same time the police failed to even consider using other special tools, such as electroshock or tear gas, which might have minimised the damage caused to Mr Shchiborshch. In particular, no evidence was submitted to show that they had actually checked the possibility of using tear gas. Overall, in the applicants' view, the State was responsible for their son's death.

### **A. Admissibility**

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

### **B. Merits**

#### *1. General principles*

204. Article 2, which safeguards the right to life and sets out the circumstances in which deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *Andronicou and Constantinou*, cited above, § 171, and *Huohvanainen v. Finland*, no. 57389/00, § 92, 13 March 2007).

205. The text of Article 2, read as a whole, demonstrates that it covers not only intentional killing but also the situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. Any use of force must be no more than "absolutely necessary" for the achievement of one or more of the purposes set out in sub-paragraphs (a) to (c). This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is "necessary in a democratic society" under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the

force used must be strictly proportionate to the achievement of the permitted aims (see *Kelly and Others v. the United Kingdom*, no. 30054/96, § 93, 4 May 2001).

206. In keeping with the importance of Article 2 in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination. When lethal force is used within a “policing operation” by the authorities it is difficult to separate the State’s negative obligations under the Convention from its positive obligations. In such cases the Court will normally examine whether the police operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force and human losses, and whether all feasible precautions in the choice of means and methods of a security operation were taken (see *McCann and Others v. the United Kingdom*, 27 September 1995, Series A no. 324, §§ 146-50 and 194; *Andronicou and Constantinou*, cited above, §§ 171, 181, 186, 192 and 193; *Ergi v. Turkey*, 28 July 1998, *Reports* 1998-IV, § 79; *Hugh Jordan v. the United Kingdom*, no. 24746/95, §§ 102–04, ECHR 2001-III; *Makaratzis v. Greece* [GC], no. 50385/99, §§ 56-59, ECHR 2004-XI and *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, § 208, ECHR 2011 (extracts)).

## 2. Application to the present case

### (a) Conduct of the operation: establishment of the facts

207. Mr Shchiborshch had been under medical supervision since 2002, having been diagnosed with paranoid schizophrenia with delirium syndromes. In the course of the subsequent four years his condition worsened and he was involuntarily hospitalised for in-patient treatment a number of times. Each time he resisted the hospitalisation. In 2006 his condition became worse after he stopped taking his medication (see paragraphs 30-31 and 47 above).

208. On 7 July 2006 the first applicant applied to the Nagatinskiy Zaton OVD for assistance with the involuntary hospitalisation of Mr Shchiborshch, having previously obtained a referral from Psychoneurological Dispensary no. 10. Between 11.20 a.m. and 12:40 p.m. on 7 July 2006 the first applicant went with police officers G., L. and D. to Mr Shchiborshch’s place of residence (see paragraphs 18, 22 and 23 above). On arrival, the police officers put on bullet-proof vests and hid in the stairwell on the sixth floor. The first applicant rang at the door. Mr Shchiborshch opened the door. Being in a delirious state, he did not recognise his father, and when he saw the police he mistook them for

burglars. He had a kitchen knife in his hand and began to wield it, trying to force them out. He stabbed G. in the chest with it and also cut G's finger. The police officers tried to explain that they wanted to take him to hospital. The attempted negotiations, which lasted several minutes, proved futile. Mr Shchiborshch still believed that the police were burglars and shouted at them to go away. At a certain point he started throwing faeces at them. The police then tried unsuccessfully to knock the knife out of his hand with rubber truncheons and a submachine gun butt. The use of the latter was confirmed by the statements of the first applicant, L. and G. (see paragraphs 68, 72 and 79 above). The police also used a baby pram which they found in the lobby either to defend themselves from the attempts to stab them or to try to knock the knife out of Mr Shchiborshch's hand (see paragraphs 26, 39, 68, 77, 78, 80 and 102).

209. Mr Shchiborshch continued wielding the knife and then ran to the kitchen. He barricaded himself inside, blocking the kitchen door with furniture. As Mr Shchiborshch rushed for the kitchen, G. ordered L. to load his submachine gun and shoot to kill should Mr Shchiborshch try to leave or attack the police officers (see paragraphs 26, 68 and 70 above). However, the gun was not fired (see paragraph 71 above).

210. While in the kitchen Mr Shchiborshch called for an ambulance and called the police saying that burglars had broken into his flat and wounded him. At the same time, the police officers called the OVD asking for support and an ambulance for G. In response to their call, a special police unit was sent to assist them, and an ambulance arrived within fifteen or twenty minutes and took G. to hospital. R., the Head of the Nagatinskiy Zaton OVD, also arrived at the scene and called for emergency psychiatric assistance (see paragraphs 27, 104 and 109).

211. The special police unit consisting of officers Kh., B., D-n. and S. arrived at around 2.35 p.m. (see paragraph 19 above). The first applicant, who was still in the lobby, explained that his son was mentally disturbed, behaving inadequately and could pose a danger to himself and others. During all that time, Mr Shchiborshch remained barricaded in the kitchen. D-n. was the first to go up to the sixth floor to find out what the situation was. The other three police officers were ordered to go up after about fifteen minutes. D-n. then told them that Mr Shchiborshch was threatening to kill them, saying that the kitchen door was under electric current. Mr Shchiborshch shouted that he had already "knocked down" one man and that the same would happen to the others (see paragraph 19 above). While they were still in the lobby, the special unit police officers heard a crash in the kitchen, and then the glass in the kitchen door broke. They could see Mr Shchiborshch through the opening in the door. He was holding a knife in each hand. The police officers introduced themselves and asked him to put the knives down. The negotiations were mostly conducted by D-n. and lasted about ten or fifteen minutes (see paragraph 21 above).

Mr Shchiborshch did not react to the requests to drop the knives and surrender, and continued to lunge at the special unit officers. The latter then put on bullet-proof vests and prepared to storm the kitchen. It is not clear when and exactly how the decision to storm was taken (see paragraphs 23, 37, 39, 53, 91, 104, 109 and 148 above). B. tried to force the door with his shield while using it to cover D-n. and S. (see paragraphs 19 and 91 above).

212. When the special police unit managed to open the door slightly, B. leaned with his hand against the door frame and Mr Shchiborshch wounded him in the palm of his right hand. B. then moved back and Kh. took his place. When the latter was able to squeeze through the opening, Mr Shchiborshch stabbed him in the right shoulder. Kh. then retreated and D-n. accompanied him to the doctor in the lobby. Kh. no longer took part in the operation. B. again took up the position in front of the door with S. behind him. When D-n. returned from the lobby he stood behind S. They kept pushing against the door while Mr Shchiborshch pushed against it from the other side. After a while the police pushed the door abruptly and there was crash sound on the other side. Then they saw Mr Shchiborshch stepping back towards the balcony. As he ran towards the balcony, according to S. he twice stumbled against pieces of the barricade and fell (see paragraph 91 above). When he was on the balcony the police cleared some of the barricade and entered the kitchen. Then Mr Shchiborshch started throwing objects at them through the windows between the kitchen and the balcony, breaking the windows.

213. S. and B. approached the balcony door while B. protected them with the shield, and D-n. moved close to the balcony window. Mr Shchiborshch lunged at them with the knives, and D-n. tried to knock the knives out of his hands with either a rubber truncheon or a broken table leg, or some other long hard object (see paragraphs 91, 93, 104 and 106 above). Mr Shchiborshch kept moving around and hitting his head and shoulders against the broken glass that remained in the window frames (see paragraph 91 above). After D-n. had knocked the knife out of Mr Shchiborshch's left hand, the latter continued to lunge with his right hand. S. caught him by the wrist and with his other gloved hand caught hold of the knife's blade. Mr Shchiborshch tried to free himself and pulled S. towards him. S. lost his balance and fell down on the balcony floor with Mr Shchiborshch, putting all his weight on the latter. Although it cannot be established with certainty, it cannot be ruled out that the police kicked Mr Shchiborshch (see paragraphs 65, 115 and 128 above). D-n. then handcuffed him and the police took him to the kitchen and put him on the kitchen floor. It appears that he was bleeding profusely. There the doctors gave him some injections and took him to the living room. He was put in a blanket and taken to the ambulance, which transported him to City Hospital no. 7. He arrived at the hospital in a coma and died at 4.15 p.m. without having regained consciousness.

**(b) Causal relationship between the use of force by the police and Mr Shchiborshch's death**

214. Between 7 and 10 July 2006 a forensic examination of Mr Shchiborshch was carried out. Its conclusions were reflected in report no. 1262. In the course of the investigation a number of additional forensic examinations based on the relevant medical documents were carried out. The applicants also independently obtained expert opinions likewise based on the medical documents.

*(i) Injuries sustained by Mr Shchiborshch*

215. According to the results of the forensic examinations, the following injuries were found on Mr Shchiborshch's body (see paragraphs 13, 65, 115 and 128 above):

- open non-penetrating craniocerebral trauma;
- a three-centimetre long punctured slash wound to the left side of the neck, which affected the left external jugular vein;
- closed fractures of the sixth, eighth, ninth, tenth and eleventh ribs;
- bruising of the right cheekbone;
- multiple bruises, abrasions and subcutaneous haemorrhages on the face, arms, shoulders, chest and legs;
- multiple surface slash wounds to the face, chest, shoulder joints and hands.

*(ii) Gravity and cause of injuries*

216. The craniocerebral trauma and the slash wound to the neck constituted grave injuries. The craniocerebral trauma was caused by multiple blows with hard blunt objects with a wide limited surface (see paragraphs 13 and 52 above). The forensic examinations could not establish with certainty the object with which it had been caused (see paragraphs 52, 112 and 128 above), although it could not be ruled out that it had been caused by kicking (see paragraphs 65, 115 and 128 above). The conclusions of the forensic reports differed as to whether the trauma was caused by Mr Shchiborshch's falling down. One report stated that it could not have been the case (see paragraph 58 above); another stated that it could not be ruled out that the trauma had been the result of falling on a protruding object or hitting his head against an object (see paragraph 132 above); and yet another stated that it was more likely that it had been caused by at least two blows to the head than by falling down (see paragraph 146 above).

217. The slash wound to the neck was caused by a sharp object (see paragraphs 13 and 52 above). It could not have been caused by either of the knives that Mr Shchiborshch was holding on 7 July 2006 (see paragraph 52 above). The forensic reports appear to agree that it was probably caused by a fixed glass shard that was protruding either from the window frame or

from the balcony door, or was clamped between other objects on the floor (see paragraphs 52, 65 and 115-17).

218. The rib fractures, bruising of the right cheekbone, and the bruises on the head, body and extremities were caused by blows with hard blunt objects, and the abrasions were caused by scraping against a hard blunt object or objects. The multiple surface slash wounds were caused by a cutting object or objects (see paragraphs 13, 52, 65 and 115 above). The rib fractures were classified as health damage of medium gravity, whereas the bruises and abrasions were not considered to constitute health damage (see paragraph 13 above).

*(iii) Cause of death*

219. Whereas the forensic reports and opinions were consistent as regards the account of injuries sustained by Mr Shchiborshch, their conclusions concerning the cause of death differed.

220. According to the first forensic report, no. 1262, Mr Shchiborshch's death was caused by the combined trauma of the craniocerebral trauma and the slash wound to the neck, complicated by cerebral oedema and blood loss (see paragraph 13 above). This conclusion was supported by report no. 169/08 following an additional forensic examination (see paragraph 128 above).

221. Forensic reports nos. 628, 40/08 and 122/08 concluded that the death had been caused by the slash wound to the neck, which had entailed blood loss, whereas the craniocerebral trauma had been a complicating factor (see paragraphs 52, 115-16 and 131 above).

222. At the same time forensic reports nos. 4/07 and 232/09, the latter being the most recent one, concluded that the death had been caused by the craniocerebral trauma, with the blood loss being a complicating factor (see paragraphs 65 and 146 above).

223. All the forensic reports agreed, however, that the other injuries could not have caused death.

*(iv) Whether Mr vShchiborshch's death was caused by the use of force by the police*

224. Having regard to the foregoing, the Court observes that in view of the conflicting findings of the forensic examinations, it cannot be conclusively established whether Mr Shchiborshch's death was caused either by the craniocerebral trauma or the slash wound to the neck. However, on the basis of the forensic reports the Court finds it possible to conclude that each of those injuries was life-threatening, and their combination led to the lethal outcome.

225. The Court further notes that in paragraph 208 above it has established that the officers of the regular police unit who took part in the operation used rubber truncheons and a submachine gun butt to knock the

knife out of Mr Shchiborshch's hand. They also used a baby pram which they found in the lobby either to defend themselves from the knife attacks or to knock the knife out of his hand. The special unit police officers used shields and either a rubber truncheon or a broken table leg, or another long hard object, to knock the knife out of Mr Shchiborshch's hand. According to police officer S., Mr Shchiborshch twice stumbled against pieces of the barricade in the kitchen and fell down as he was running towards the balcony. While on the balcony, he threw objects at the police, having broken the glass in the windows and the balcony door. Eventually, S. caught his hand by the wrist and together they fell down on the balcony floor, and S. put all his weight on Mr Shchiborshch (see paragraph 213 above). It has been neither established nor ruled out that the police kicked Mr Shchiborshch. He was then handcuffed, taken to the kitchen and put on the kitchen floor.

226. The Court notes that while the forensic experts agreed that the craniocerebral trauma had been caused by multiple blows with hard blunt objects, they could not identify the precise objects. Furthermore, whereas some reports considered it unlikely that it could have been caused as a result of Mr Shchiborshch's falling down, others did not rule out such a possibility. Nor was it ruled out that it could have been caused by kicking. Accordingly, it is impossible to establish conclusively that the craniocerebral trauma was caused by any of the special tools or other objects used by the police. Similarly, it is impossible to establish whether it was caused as a result of Mr Shchiborshch falling down in the kitchen or on the balcony floor with S.

227. As regards the wound to the neck, the forensic experts agreed that it had been caused by a fixed glass shard. Thus, the Court finds that it could have been caused either by a glass shard that remained in the balcony window frames or the balcony door, or by a glass shard on the floor that was lodged between other objects, on which Mr Shchiborshch might have fallen. In either case, there is insufficient evidence to conclude that the wound was directly caused by the police. The Court thus has no evidence to enable it to depart from the findings of the domestic authorities in this respect (see paragraphs 151-52 above).

228. Accordingly, on the basis of the materials available to it, the Court is unable to find that Mr Shchiborshch's death was directly caused by the use of force by the police.

### **(c) Planning and control of the operation**

229. The Court notes that section 29 of the Law on Psychiatric Assistance provides that a person may be subjected to involuntary hospitalisation prior to a court decision to that effect if his or her treatment is only possible on an inpatient basis and the mental disorder is grave and (i) poses an immediate danger either to the person himself or to others;

(ii) renders the person incapable of attending to his or her basic needs; or (iii) would cause considerable harm to the person's health should he or she be left without psychiatric assistance. Under Article 1.7 of the Instruction on cooperation between health services and agencies of the interior for the prevention of socially dangerous actions by persons suffering from mental disorders, involuntary hospitalisation is carried out by psychiatric emergency services personnel, whereas the police provide assistance in apprehending the person to be placed in hospital, ensure public safety and safe conditions for access to the person and prevent persons resisting hospitalisation from acting unlawfully (see paragraphs 195-98 above).

230. In view of the worsening of Mr Shchiborshch's condition, the first applicant obtained a referral from the Psychoneurological Dispensary no. 10 for his involuntary hospitalisation. The Court thus accepts that there existed grounds for the involuntary placement of Mr Shchiborshch in a psychiatric hospital.

231. Between 11.20 a.m. and 12.40 p.m. on 7 July 2006 the first applicant went with police officers G., L. and D. to Mr Shchiborshch's place of residence and rang at the door (see paragraph 208 above). When Mr Shchiborshch opened the door to the lobby he was holding a knife. He was clearly in a delirious state, did not recognise the first applicant and mistook the police for burglars. Nevertheless, the police officers introduced themselves and tried to persuade him to accompany them.

232. The Court further notes that in the course of questioning on 25 August 2006, G. stated that the police had not been specifically trained for the detention of mentally disturbed persons and that in conducting the operation they were following the general rules on apprehending armed offenders. It further observes that under section 30(3) of the Law on Psychiatric Assistance the police have to assist medical personnel in carrying out involuntary hospitalisation and ensure safe access to the person concerned and his or her examination. Yet, no medical personnel were present at the scene and the police acted entirely on their own.

233. The Court observes that dealing with mentally disturbed individuals clearly requires special training, the absence of which is likely to render futile any attempted negotiations with a person with a mental disorder as grave as that of Mr Shchiborshch. This understanding is reflected in section 30(3) of the Law on Psychiatric Assistance, which only provides for police assistance to medical personnel when carrying out involuntary hospitalisation and does not empower the police to act independently. No explanation has been presented to the Court as to why the police took actions aimed at securing Mr Shchiborshch's involuntary hospitalisation without being accompanied by qualified medical personnel.

234. After Mr Shchiborshch refused to follow the police officers' order and lunged at them with a knife believing them to be burglars, the police



tried to knock the knife out of his hand using rubber truncheons, a submachine gun butt and possibly a baby pram they found in the lobby.

235. Under section 10(22) of the Law on the Police, the police, following a request from a medical institution authorised by a court, had to bring to that institution for medical treatment persons suffering from illnesses and posing an immediate danger to themselves or others. Section 14 provided a list of special tools, including rubber truncheons, handcuffs and tear gas, which the police could use, in particular, to repel attacks against citizens and police officers and to break down resistance to a police officer. However, it prohibited the use of special tools in respect of disabled persons, except if they resisted with the use of arms or attacked, thereby posing a danger to the life and well-being of other people (see paragraphs 186-192 above).

236. The Court entertains doubts as to whether, in so far as the use of special tools and other objects is concerned, the police officers' actions were in compliance with domestic law. However, even leaving that question aside, the Court finds that the use of special tools in these circumstances did not comply with the police's duty to minimise the risks to Mr Shchiborshch's life and health. Although the Court has accepted that there existed grounds for Mr Shchiborshch's involuntary hospitalisation, no evidence has been submitted to show that he posed such an immediate danger to himself or others as to require urgent measures. Insofar as he might have endangered the police officers, having threatened them with a knife and, indeed, having wounded police officers B., D-n., G., and Kh., the Court considers this to have been caused by the police's own actions. As corroborated by a psychiatrist's opinion, Mr Shchiborshch resisted the police with arms trying to protect himself from "burglars" because of the delirious and agitated state he was in, when he was neither aware of the meaning of his actions nor able to control them (see paragraphs 59 and 208 above). This is further confirmed by Mr Shchiborshch's telephone calls to the police and the ambulance service asking for help because burglars in police uniform had broken into his flat. The Court reiterates that the police were not supposed even to proceed with the involuntary hospitalisation in the absence of qualified medical personnel. *A fortiori*, when they nevertheless started to act on their own and were faced with the fact that Mr Shchiborshch was in a delirious state and therefore unable to comprehend who they were or their demands, the only appropriate recourse was to discontinue any efforts to apprehend him until the arrival of psychiatric assistance. However, they persisted in their attempts to apprehend him as if they were dealing with any armed offender. The Court is particularly struck by G.'s order to shoot to kill should Mr Shchiborshch try to leave or attack the police (see paragraphs 26, 68, 70 and 209 above), which, although not executed, in the Court's view was clearly excessive and

demonstrated the police officers' inability to assess the situation and react appropriately.

237. The Court further observes that emergency psychiatric assistance was only called after the police had unsuccessfully tried to apprehend Mr Shchiborshch on their own (see paragraphs 27 and 209 above). No explanation for such a delay has been provided to the Court. Moreover, at the same time a special police unit was called for support. The Court notes that the responsibilities of special police units include a range of tasks aimed, in particular, at ensuring public safety in public spaces, including in a state of emergency; crime prevention; participation in the investigation of crimes; and the fight against terrorism (see paragraph 193 above). Assistance in involuntary hospitalisation is not specifically mentioned among their tasks and functions, and no evidence has been provided to the Court that the special unit officers had had any special training in that respect. Consequently, for the reasons set out in the preceding paragraph with respect to the regular police unit, the Court considers that the special unit's attempts to apprehend Mr Shchiborshch in the absence of qualified medical personnel did not correspond to their duty to minimise the risks to his life and health. The Court notes in this respect that following the arrival of the special unit, negotiations with Mr Shchiborshch were conducted by D-n., who was a sniper by training (see paragraph 55 above) and thus had neither the relevant training nor experience of dealing with mentally disturbed individuals. The Court finds it particularly difficult to understand why the special unit acted on its own when emergency psychiatric assistance had already been called for and Mr Shchiborshch remained barricaded in his kitchen, where he posed no imminent danger to anyone.

238. The Court notes that after D-n.'s negotiations with Mr Shchiborshch had proved futile, the special police unit "stormed" the kitchen in order to apprehend him. From the materials available to it, the Court has only incoherent information about how the decision to storm was taken. It appears that the police had not received orders to that effect when they left for the operation, and the decision was taken somewhat hastily when they were in Mr Shchiborshch's flat and he kept refusing to give himself up (see paragraphs 36, 91 and 104 above). The Court accepts that in certain situations the police might need to decide on the use of force very quickly, in particular where there are reasons to consider that their lives or the lives of others are in immediate danger (see *Andronicou and Constantinou*, cited above, § 191-93). However, the Court does not consider that this was the situation at hand. Mr Shchiborshch remained barricaded in his kitchen for hours, in an attempt to protect himself from the police whom he believed to be burglars. He did not attack them unless they approached him, did not pose an immediate danger to others, and emergency psychiatric assistance had already been called for. Thus, the Court finds no pressing circumstances that would require any urgent actions on the part of the

police. However, there is no evidence that the storming operation resulted from any kind of preliminary planning and consideration. Nothing shows that the imminent arrival of the psychiatric emergency services was taken into account – in fact, it appears that D-n. was not even aware of it (see paragraph 104 above); that the application of other less violent ways to apprehend Mr Shchiborshch was considered; or that the use of force was given any prior consideration and assessment.

239. The Court observes in this connection that Mr Shchiborshch had a history of involuntary hospitalisations that had been carried out with the police's assistance, as each time he had resisted his placement in hospital (see paragraphs 23, 27, 30, 31, 50 and 207 above). Therefore, the situation was not new to the police and they should have been able to foresee that they would be faced with resistance from him and should have prepared accordingly.

240. In paragraph 228 above the Court has found insufficient evidence to conclude that Mr Shchiborshch's death was directly caused by the use of force by the police. However, even assuming that the lethal injuries were the consequence of his own actions, the Court considers this to be the result of the way in which the involuntary hospitalisation operation was carried out, in particular: (i) emergency psychiatric assistance was called for with an inexplicable delay; (ii) both police units, who had received no special training in dealing with mentally disturbed individuals, acted on their own in the absence of qualified medical personnel, contrary to domestic law; (iii) the police used force as if dealing with any armed offender and without regard to Mr Shchiborshch's delirious state or to the fact that he did not pose an immediate danger to either himself or others; (iv) the storming of the kitchen in which Mr Shchiborshch had barricaded himself, in the course of which he sustained injuries that proved lethal, was not subject to any preliminary planning and assessment but was hastily decided at the scene in the absence of any call for urgent action. Taking into consideration all these circumstances, the Court cannot but conclude that the police operation in the present case was conducted in an uncontrolled and unconsidered manner and that the measures taken by the police lacked the degree of caution to be expected from law-enforcement officers in a democratic society (see *Golubeva v. Russia*, no. 1062/03, § 110, 17 December 2009).

241. It follows from the above that the involuntary hospitalisation was not organised so as to minimise to the greatest extent possible any risk to the life of Mr Shchiborshch (see *Finogenov*, cited above, § 208). There has accordingly been a violation of Article 2 under its substantive limb.

## II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION ON ACCOUNT OF THE LACK OF AN EFFECTIVE INVESTIGATION

242. The applicants also complained under Article 2 of the Convention about the lack of an effective investigation into their son's violent death.

243. The Government maintained that the investigation had been effective, as corroborated by the numerous investigative measures and forensic examinations conducted.

244. The applicants averred that the investigation into Mr Shchiborshch's death had not been effective. Firstly, it was instituted with a delay of almost one month. Secondly, it was suspended and discontinued numerous times, being subsequently reopened following the applicants' complaints. In their view, it proved that the procrastination on the part of the authorities had been intentional. Thirdly, certain investigative measures had not been carried out. In particular, the applicants' requests for a DNA test of the broken table leg and for the questioning of certain experts had been refused. Fourthly, the authorities failed to investigate why the police had started the operation before the arrival of the emergency psychiatric services. The investigation also failed to establish who had ordered the police to storm the flat. Fifthly, in the applicants' view, the investigation had relied excessively on the police officers' statements. Sixthly, the investigation was not sufficiently prompt. The participants in the events had been known from the start and all the required expert examinations could have been conducted shortly after the opening of the investigation, rather than conducting numerous additional examinations. Accordingly, the overall length of the investigation, that is three years and nine months, could not be justified.

### A. Admissibility

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

### B. Merits

#### *1. General principles*

246. The Court reiterates that Article 2 contains a positive obligation of a procedural character: it 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 by the authorities (see, *mutatis mutandis*,

*McCann and Others*, cited above, § 161, and *Kaya v. Turkey*, 19 February 1998, *Reports* 1998-I, § 105).

247. The Court points out that not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II).

248. To be "effective", an investigation should meet several basic requirements, formulated in the Court's case-law under Articles 2 and 3 of the Convention: it should be thorough (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq., *Reports* 1998-VIII; see also, *mutatis mutandis*, *Salman*, cited above, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000), expedient (see *Tekin v. Turkey*, 9 June 1998, § 67, *Reports* 1998-IV; *Labita v. Italy* [GC], no. 26772/95, §§ 133 et seq., ECHR 2000-IV; *Timurtaş*, cited above, § 89; and *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001), and independent (see *Güleç v. Turkey*, 27 July 1998, §§ 80-82, *Reports* 1998-IV; *Öğür v. Turkey*, [GC], no. 21954/93, §§ 91-92, ECHR 1999-III; and *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004); and the materials and conclusions of the investigation should be sufficiently accessible to the relatives of the victims (see *Oğur v. Turkey* [GC], no. 21594/93, § 92, ECHR 1999-III, and *Khadzhaliyev and Others v. Russia*, no. 3013/04, § 106, 6 November 2008), to the extent that it does not seriously undermine its efficiency.

249. More specifically, a requirement of "thorough investigation" means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Assenov and Others*, cited above, §§ 102 et seq. and *Mikheyev v. Russia*, no. 77617/01, §§ 107 et seq., 26 January 2006).

250. Lastly, the investigation's conclusions must be based on a thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible (see *Kolevi v. Bulgaria*, no. 1108/02, § 201, 5 November 2009). Nevertheless, the nature and degree of scrutiny which

satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Velcea and Mazăre v. Romania*, no. 64301/01, § 105, 1 December 2009).

## *2. Application to the present case*

251. The Court notes that on the date of Mr Shchiborshch's death, 7 July 2006, the authorities ordered a forensic examination of his body. The forensic report was issued on 10 July 2006, and it was supplemented by further tests of blood and tissue conducted on 13 and 24 July 2006 (see paragraphs 13-14 above).

252. After the initial refusal to institute criminal proceedings of 17 July 2006, the authorities opened a criminal investigation on 3 August 2006 (see paragraphs 15-17 above). Given that the forensic examination and tests were being conducted at that time, the Court does not find that such a delay undermined the efficiency of the subsequent investigation.

253. In the course of August 2006 the investigating authorities questioned all the police officers directly involved in the operation and the first applicant. In September-October 2006 the investigating authorities inspected Mr Shchiborshch's flat, questioned the second applicant, the psychiatrists who could provide information on Mr Shchiborshch's condition and a number of other witnesses. They also seized his medical files. In the course of November-December 2006 the investigating authorities questioned some indirect witnesses, conducted an examination of the knives found in Mr Shchiborshch's flat, seized his jacket and ordered certain additional forensic examinations (see paragraphs 18-50 above).

254. The Court further notes that in the course of 2007 the investigating authorities again questioned the direct witnesses and some other witnesses and experts; conducted additional forensic examinations; studied the audio-recordings of Mr Shchiborshch's telephone calls to the police; and conducted re-enactments with police officers L. and G. The first applicant was confronted with police officers L., D. and G. (see paragraphs 51-100 above). In the course of 2008 the investigating authorities conducted re-enactments with police officers S. and D-n. of the special unit and again with G.; seized a broken table leg from Mr Shchiborshch's flat following a request by the second applicant and had it examined; conducted another inspection of the flat; questioned some additional witnesses and experts; and obtained an additional forensic report (see paragraphs 101-130 above). In 2009 they conducted additional forensic examinations (see paragraphs 131-145 above).

255. The investigation was closed on 17 April 2010 on the grounds that the police officers' actions had been lawful and their use of force had been in accordance with the Law on the Police, and that, given the conflicting

nature of the conclusions of the forensic reports concerning the cause of death, there was insufficient evidence to hold the police responsible (see paragraphs 148-152 above).

256. The Court finds that the investigating authorities promptly conducted a number of important investigative measures, such as a forensic examination and the questioning of the main witnesses. Although the investigation lasted for over three years and eight months and was suspended and reopened a number of times, the Court is unable to detect any prolonged periods of inactivity which could be considered as procrastination on the part of the investigating authorities. In fact, the forensic examinations led to conflicting conclusions as regards the cause of Mr Shchiborshch's death. The Court finds it only proper that in order to clarify them, the investigating authorities conducted additional examinations and re-enactments, and called certain witnesses for further questioning. Therefore, the Court finds that the investigation was sufficiently prompt.

257. The Court further notes that the investigation was eventually closed on the grounds that there was insufficient evidence to find that any of Mr Shchiborshch's lethal injuries had been caused by the police officers involved in the operation. The Court has reached the same conclusion in paragraph 228 above.

258. The Court observes, however, that the investigating authorities did not address the issue of the planning and control of the operation. In particular, they did not investigate why the police acted on their own authority in the absence of qualified medical personnel, contrary to the Law on Psychiatric Assistance and the Instruction on cooperation between health services and agencies of the interior for the prevention of socially dangerous actions by persons suffering from mental disorders. While the investigation assessed the use of force and special tools in particular, like the police officers the investigating authorities appeared to consider the situation as though it had involved any armed offender, with no regard to Mr Shchiborshch's mental condition. Furthermore, the investigating authorities made no assessment of the manner in which the decision to storm the flat had been taken.

259. Given the investigation's failure to address such crucial points, despite the large volume of investigative measures carried out, the Court considers that it fell short of being "thorough" as required by Article 2.

260. Accordingly, there has been a violation of Article 2 of the Convention on account of the State's procedural obligation.

### III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE TREATMENT TO WHICH MR SHCHIBORSHCH WAS SUBJECTED BEFORE HIS DEATH

261. The applicants further complained under Article 3 of the Convention that Mr Shchiborshch had been subjected to ill-treatment which led to his death. They referred to forensic reports, which stated that in the course of the police operation he had sustained seventy injuries, including a craniocerebral multitrauma, stab and slash wounds to the neck and several fractured ribs. They also claimed that the investigation in this respect had not been effective. Article 3 reads as follows:

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

262. The Government pointed out that the investigation had not established that Mr Shchiborshch had been subjected to treatment proscribed by Article 3 of the Convention.

263. The applicants maintained the complaint.

264. The Court observes that this complaint concerns the same issues as those examined in paragraphs 207-41 and 251-60 above under Article 2 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusions above under Article 2, the Court considers it unnecessary to examine these issues separately under Article 3 of the Convention.

### IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANTS' SUFFERING

265. The applicants further complained under Article 3 of the Convention that they themselves had suffered from severe mental distress as a result of witnessing the cruel treatment of their son and the State's failure to conduct an effective investigation in that respect.

266. The Government contested that allegation. They contended that the applicants had not been subjected to treatment in breach of Article 3 of the Convention as the investigation into their son's death had been effective and the State authorities had shown empathy with the applicants' sufferings.

267. The applicants maintained the complaint. They submitted that they felt devastated by the death of their only son, who was a talented person and an author of over 100 publications. They had hoped that he would recover from his illness and resume his work on the next book. The first applicant was suffering from heavy guilt as it was he who had called the police to assist with the hospitalisation. The second applicant was suffering from depression after having seen the body of her son with multiple grave injuries at his funeral. Their suffering had been aggravated by the



ineffectiveness of the investigation into the events and the indifference on the part of the authorities. The fact that both applicants were suffering from depression caused by the death of their son was confirmed by the opinions of a psychiatrist dated 21 and 23 December 2009.

#### A. Admissibility

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

#### B. Merits

269. The Court notes that in a number of cases it has found that relatives of a disappeared person were themselves victims of a violation of Article 3 of the Convention. Such findings were based on the state of uncertainty the relatives had had to endure owing to their inability to find out the fate of their next of kin and on the authorities' reluctance to take due measures so as to respond to their enquiries (see, among other cases, *Orhan v. Turkey*, no. 25656/94, §§ 359-60, 18 June 2002, and *Khamila Isayeva v. Russia*, no. 6846/02, §§ 143-46, 15 November 2007).

270. The Court observes that the present case is substantially distinct in that it concerns not a disappearance, but the death of the applicant's son following a police operation. Thus, the Court considers that in the present case no separate issues arise under this Convention provision beyond those already examined under Article 2 of the Convention above (see, *mutatis mutandis*, *Velkhiyev and Others v. Russia*, no. 34085/06, §§ 135-38, 5 July 2011).

271. In these circumstances, while the Court does not doubt that the death of their son caused the applicants profound suffering, there is no basis for finding a separate violation of Article 3 of the Convention in this context.

### V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

272. Lastly, the applicants complained that they had no effective remedies in respect of their complaints under Articles 2 and 3, contrary to Article 13 of the Convention. In particular, they averred that they had no real possibility to claim compensation within civil proceedings. Article 13 reads 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.”

273. The Government argued that the applicants had had effective remedies as required by Article 13 of the Convention. In particular, not only had the scope of the investigation corresponded to the requirement of domestic law and the Convention, but the applicants' numerous complaints had been examined by the courts and many of them had been granted.

274. The applicants averred that their complaints about the investigation had been examined neither fully nor timeously. Furthermore, since the investigation had failed to establish who was responsible for their son's death, they had been deprived of the opportunity to claim compensation. Even though in theory the courts in civil proceedings were empowered to conduct an independent assessment of the facts, in practice they always relied heavily on the outcome of the criminal investigation. Accordingly, their right to claim compensation was illusory.

#### **A. Admissibility**

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

#### **B. Merits**

276. The Court reiterates that Article 13 of the Convention guarantees the availability, at the national level, of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV; *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005 and *Cobzaru v. Romania*, no. 48254/99, §§ 80-82, 26 July 2007).

277. The Court has already found a violation of Article 2 of the Convention on account of the poorly planned and controlled operation, which resulted in Mr Shchiborshch's death. The applicants therefore had an "arguable claim" for the purposes of Article 13 and the authorities were under an obligation to carry out an effective investigation into their allegations against the police officers. For the reasons set out above, the criminal investigation carried out cannot be considered effective for the

purposes of Article 13, the requirements of which are broader than the obligation to investigate imposed by Article 2 (see, *mutatis mutandis*, *Tanrikulu*, cited above, § 119; *Buldan v. Turkey*, no. 28298/95, § 105, 20 April 2004; and *Cobzaru*, cited above, § 83).

278. Furthermore, as regards the availability of a civil-law remedy, the Court notes that the criminal investigation was closed on the grounds that the police officers' actions did not disclose any elements of an offence. The Court reiterates that it has already found on a number of occasions that there is no case-law authority for Russian civil courts to be able, in the absence of a finding of guilt in criminal proceedings, to consider the merits of a civil claim relating to alleged serious criminal actions. The Court has found that while the Russian civil courts in theory have the capacity to make an independent assessment of factual and legal issues, in practice the weight attached to the findings of the preceding criminal proceedings is so important that even the most convincing evidence to the contrary furnished by a plaintiff would be discarded and such a remedy would prove to be only theoretical and illusory rather than practical and effective, as required by the Convention (see *Menesheva v. Russia*, no. 59261/00, § 76, ECHR 2006-III; *Chember v. Russia*, no. 7188/03, § 71, ECHR 2008; and *Denis Vasilyev v. Russia*, no. 32704/04, § 136, 17 December 2009). In cases where criminal proceedings against public officials were discontinued at the pre-trial stage or ended in an acquittal, any other remedy available to the applicant, including a claim for damages, had limited chances of success and could not be regarded as capable of affording redress to the applicant (see *Tarariyeva v. Russia*, no. 4353/03, § 101, ECHR 2006-... (extracts); *Dedovskiy and Others v. Russia*, no. 7178/03, § 101, 15 May 2008; and *Denis Vasilyev*, cited above, § 136). In the instant case the Government have not provided the Court with any examples of domestic practice or other evidence that would enable it to depart from those findings.

279. The Court therefore finds that the applicants have been denied an effective remedy in respect of their complaint under Article 2. Consequently, there has been a violation of Article 13 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

280. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Pecuniary Damage

281. The applicants claimed 103,212 roubles (RUB) or 2,550 euros (EUR) for pecuniary damage consisting of funeral expenses for their son's burial (relying on *Öneryıldız v. Turkey* [GC], no. 48939/99, § 167, ECHR 2004-XII). They supported their claim with invoices for the funeral services.

282. The Government pointed out that the applicants had failed to submit all supporting documents.

283. The Court notes that the applicants properly adduced the documents supporting their claim. It considers that this claim is not unreasonable since the applicants had to bury their son. It therefore awards in full the amount claimed under this head, namely EUR 2,550.

### B. Non-Pecuniary Damage

284. The first applicant claimed EUR 50,000 and the second applicant claimed EUR 40,000 in respect of non-pecuniary damage caused by the death of their only son as a result of brutal use of force by the police and the lack of an effective investigation in this respect. They stated that they were devastated by the events and were still suffering from post-traumatic depression as confirmed by the opinion of a psychiatrist. The first applicant claimed a higher amount since he had been a witness to the events and blamed himself for having called the police for assistance.

285. The Government found the amount claimed excessive.

286. The Court reiterates its findings that the Russian authorities failed to plan and conduct the involuntary hospitalisation operation in respect of the applicants' son in such a way as to minimise the risk to his life. Nor did the authorities discharge their duty to investigate, in an efficient manner, the failings of that operation. These events must have caused the applicants distress, frustration, feelings of injustice, and prolonged uncertainty, which call for an award in respect of non-pecuniary damage (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 224, 18 September 2009, with further references). Making an assessment on an equitable basis, the Court awards the applicants jointly EUR 45,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

### C. Costs and expenses

287. The applicants also claimed RUB 50,000 or EUR 1,235 for the costs and expenses incurred before the domestic authorities. They supported their claim by an agreement on legal assistance and invoices.

288. The Government pointed out that the applicants had failed to submit all supporting documents and stated that it had not been shown that the expenses had been necessary and reasonable.

289. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Rotaru v. Romania* [GC], no. 28341/95, § 86, ECHR 2000-V). The Court notes that the applicants properly adduced the documents supporting their claim. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,235 for costs and expenses in the domestic proceedings.

#### **D. Default interest**

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

### **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention on account of the lack of planning and control of the involuntary hospitalisation operation in respect of Mr Shchiborshch;
3. *Holds* that there has been a violation of Article 2 of the Convention on account of the failure to conduct an effective investigation into the events that led to Mr Shchiborshch's death;
4. *Holds* that there is no need to examine the complaint under Article 3 of the Convention in respect of Mr Shchiborshch;
5. *Holds* that no separate issue arises under Article 3 of the Convention in respect of the applicants;
6. *Holds* that there has been a violation of Article 13 of the Convention;
7. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following

amounts, plus any tax that may be chargeable to the applicants, to be converted into Russian roubles at the rate applicable at the date of settlement:

- (i) EUR 2,550 (two thousand five hundred and fifty euros) in respect of pecuniary damage;
  - (ii) EUR 45,000 (forty-five thousand euros) in respect of non-pecuniary damage;
  - (iii) EUR 1,235 (one thousand two hundred and thirty-five euros) in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Isabelle Berro-Lefèvre  
President