



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

FIRST SECTION

CASE OF KARSAKOVA v. RUSSIA

(Application no. 1157/10)

JUDGMENT

STRASBOURG

27 November 2014

FINAL

20/04/2015

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

In the case of Karsakova v. Russia,

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

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Paulo Pinto de Albuquerque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 1157/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Olga Nikolayevna Karsakova (“the applicant”), on 16 December 2009.

2. The applicant was represented by Mr I. Kalyapin, Ms O. Sadovskaya and Mr A. Ryzhov, lawyers from the interregional non-governmental organisation Committee against Torture, based in Nizhniy Novgorod. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the Russian authorities had failed to provide medical assistance to her brother while he was in detention, and that the ensuing investigation into his death had not been effective.

4. On 25 November 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Oktyabrskiy, Bashkortostan Republic.

A. Mr Timin's remand in custody

6. On 10 March 2004 the police opened an investigation against Mikhail Timin, the applicant's brother, and two other individuals, on charges of extortion. Mr Timin was arrested on the same day and taken to the temporary detention centre of a police station.

7. On 11 March 2004 at 7.25 a.m. Mr Timin complained of headaches and cramps in his legs, allegedly resulting from ten days' drinking. Paramedic A., who had been called by the administration, examined Mr Timin and diagnosed him with alcohol intoxication. She also advised that he be taken to hospital for inpatient treatment. It appears that there was some delay in his transfer to hospital pending the arrival of the convoy officers who would take him. He was taken to a rehabilitation clinic at 10.15 a.m. Doctor Kh. examined and diagnosed him with alcohol withdrawal syndrome and seizures and he was administered treatment. The doctor found him fit for detention and he was discharged from the clinic. He was then taken back to the temporary detention centre.

8. At the temporary detention centre Mr Timin did not feel well and the guards once again summoned an emergency response team, which arrived at 3.24 p.m. Paramedics I. and Z. examined and diagnosed him with alcohol intoxication. They recommended that he be given inpatient treatment. The administration of the temporary detention centre did not take him to the clinic, as they had failed to provide a convoy.

9. On 12 March 2004 the Oktyabrskiy Town Court of the Bashkortostan Republic (hereinafter "the Town Court") authorised Mr Timin's detention pending investigation. He attended the hearing at court. According to investigator Kam., who asked for him to be remanded in custody, he had not complained of any health issues either at the time of his arrest on 10 March 2004 or at the hearing on 12 March 2004.

10. Upon his return to the temporary detention centre, Mr Timin was placed in cell no. 3 together with E., S. and Sh. The inmates complained repeatedly to the guards about his aggressive behaviour (he assaulted Sh.) and asked the guards to transfer him to another cell. At 8.45 p.m. he was transferred to cell no. 10, where he was detained in isolation. He did not calm down and continued shouting, swearing and banging on the door.

11. On 13 March 2004 at 6.25 a.m. one of the guards heard some noise coming from cell no. 10 and looked through the peephole. He saw Mr Timin lying on the floor. The guard entered the cell, checked for a pulse but there was none. When the emergency response doctor summoned by the guards arrived, Mr Timin was pronounced dead.

B. Ensuing inquiry

12. On 13 March 2004 the police carried out an inquiry into the circumstances of Mr Timin's death and concluded that the guards had failed to properly carry out surveillance over him. The relevant report was then forwarded to the prosecutor's office, which commissioned a forensic examination to establish the cause of his death.

13. On 16 March 2004 the prosecutor's office refused to open a criminal investigation into the death. Investigator A. indicated that Mr Timin had died as a result of acute coronary insufficiency exacerbated by alcohol withdrawal syndrome.

14. On the same date the head of the town department of the interior found that the chief of police, his deputy and the police officers on duty at the time of Mr Timin's death had failed to carry out their duties properly, in particular, they had failed to monitor the detainees closely. The officers were subjected to a disciplinary sanction (a reprimand).

15. A forensic examination of Mr Timin's body was completed on 7 April 2004. The findings of the examination were presented in forensic report no. 89. The expert noted numerous bruises and abrasions on the body which, in his opinion, were not fatal. His conclusion was that Mr Timin had died of acute coronary insufficiency exacerbated by alcohol withdrawal syndrome.

16. On 21 July 2004 the town prosecutor quashed the investigator's decision of 16 March 2004 and remitted the matter for a further inquiry. In particular, he noted:

“[The decision of 16 March 2004] is premature, unlawful and ill-founded ...

According to the forensic medical examination report, [the expert] noted numerous injuries on Mr Timin's body (fourteen bruises and injuries). However, this fact was not considered in the course of the inquiry. [The investigator] failed to establish under what circumstances Mr Timin had sustained the injuries. In the course of the additional investigation it will be necessary to re-examine the [forensic] documents and to put [further] questions to the forensic expert ...

It follows from the logbook records of the temporary detention unit that [Mr Timin] was in need of urgent inpatient treatment. However, owing to the absence of the convoy officers, he was left in the temporary detention centre. In this connection, it is necessary to question the staff [there].”

17. On 25 July 2004 investigator V. commissioned an additional forensic expert examination to clarify the cause of the injuries on Mr Timin's body.

18. On 31 July 2004 investigator V. refused to open a criminal investigation and reiterated the findings of the previous inquiry.

19. On 14 September 2004 the additional forensic examination was completed. According to report no. 65, the injuries on Mr Timin's body had:

“... resulted from the impact of blunt solid objects, or a collision with them. It cannot be ruled out that the ... injuries on the rear of the body could have resulted from [Mr Timin] falling on his back ... He could have caused the injuries on the front of the body himself. [The injuries] occurred within a short time of one another. It is not possible to determine the order of their appearance.”

20. On 20 September 2004 the acting town prosecutor quashed the decision of 31 July 2004, noting that it had been taken prematurely before the additional forensic examination was completed.

21. On 21 September 2004 investigator V. yet again refused to open criminal investigation, reiterating that Mr Timin had died from acute coronary insufficiency exacerbated by alcohol withdrawal syndrome. As regards the injuries, the investigator considered that they might have been self-inflicted, given that Mr Timin had thrown himself against the door of the cell and had had an altercation with other inmates. The investigator questioned the guards, who denied that they had beaten Mr Timin, and G., one of the detainees, who claimed that he had seen through his peephole five or six policemen enter Mr Timin's cell at around 2 or 3 a.m. The investigator rejected G.'s testimony, noting that it would have been impossible to see the door of Mr Timin's cell through the peephole of G.'s cell.

22. On 31 March 2005 the Town Court found the decision of 21 September 2004 unlawful. The court stated that the investigator had failed to question the medical practitioners who had treated Mr Timin on the day preceding his death. In compliance with the court's decision of 31 March 2005, on 16 May 2005 the town prosecutor quashed the decision of 21 September 2004 and ordered a further inquiry.

23. On 21 May 2005 investigator V. again refused to open a criminal investigation into Mr Timin's death. On 13 October 2005 the Town Court found the decision unlawful, noting that the investigator had failed to (i) question the medical practitioners who had treated Mr Timin; (ii) identify the staff of the temporary detention centre who had been present when he had been examined by the medical practitioners, in order to elucidate why he had not been transferred to a medical facility in contravention of the emergency response team's recommendation; and (iii) identify the alleged perpetrators. On 8 November 2005 the acting town prosecutor quashed the decision of 21 May 2005 and ordered a further inquiry into the matter.

24. On 11 November 2005 investigator V. refused to open a criminal investigation, reiterating his previous findings practically verbatim. The town prosecutor quashed the decision on 30 November 2005, and on 7 December 2005 ordered a further inquiry and transferred the case to investigator M. It was noted that investigator V. had failed to identify and question various witnesses, including the detainees and medical practitioners.

25. On 17 December 2005 investigator M. refused to open a criminal investigation. On 15 June 2006 the Town Court quashed the decision because he had failed to notify the applicant of it.

26. It appears that the applicant subsequently lodged several complaints requesting a criminal investigation into the circumstances of her brother's death. The complaints were dismissed on 26 July and 28 September 2007, but these decisions were quashed by the regional investigative committee on 19 October 2007 because the investigator's inquiry had been incomplete. In particular, it was noted that the investigator had failed to question the medical practitioners who had examined and treated Mr Timin on 11 March 2004.

27. On 28 October 2007 investigator F. refused to open a criminal investigation, reiterating his predecessors' findings concerning the causes of Mr Timin's death. The superior investigator quashed the decision on 5 December 2007, noting yet again that the medical practitioners who had treated Mr Timin on the day before he died had not been questioned.

28. On 15 December 2007 investigator F. again refused to open a criminal investigation into Mr Timin's death. His decision was quashed by the regional investigative committee on 10 December 2008. In particular, it was noted that on 11 March 2004, following the recommendations of the medical practitioners who had examined Mr Timin, it had been incumbent on the temporary detention unit to take him to hospital for further treatment. It was further noted that the inquiry conducted by investigator F. had failed to establish the reasons as to why Mr Timin had not been taken to hospital, in contravention of the recommendations of the medical practitioners. Nor had the medical practitioners been questioned.

29. On 11 February 2008 the Ministry of Health of the Bashkortostan Republic completed an inquiry into the circumstances of Mr Timin's death. Their findings were summarised in a report:

“1. Regard being had to the dynamics and clinical picture of [Mr Timin's] condition and objective data, it can be concluded that [he] developed alcohol withdrawal syndrome with seizures. Treatment was prescribed in accordance with his condition and was aimed at managing the symptoms.

2. The rehabilitation clinic ... acted in compliance with [applicable legislation] which provides that, as a rule, psychiatric treatment is administered voluntarily, upon the request and approval of a patient.

Mr Timin did not have a history of alcohol-related [illness]. At the time, he was not psychotic and could understand his actions and control them. There were no grounds for [his] involuntary admission to hospital ... Mr Timin's condition, when he was released from the rehabilitation clinic and transferred back to the temporary detention centre, was satisfactory. As regards the period from 10.50 a.m. on 11 March to 13 March 2004, there is no information showing that [his] condition deteriorated.”

30. On 26 December 2008 investigator R. refused to open criminal proceedings into Mr Timin's death. He based his findings on forensic

reports, medical documentation and witness statements, including those made by the inmates, guards and medical practitioners.

31. On 28 August 2009 the Town Court dismissed a complaint by the applicant alleging that the investigator's decision of 26 December 2008 was unlawful. On 22 October 2009 the Supreme Court of the Bashkortostan Republic upheld the decision on appeal.

32. On 14 September 2011 the Presidium of the Supreme Court of the Bashkortostan Republic quashed the decisions of 28 August and 22 October 2009 by way of supervisory review and remitted the matter for fresh consideration. The court noted, *inter alia*, as follows:

"... in the course of the inquiries [the investigators] failed to duly take into consideration the fact that on 11 March 2004 at 3.24 p.m., following the second examination of Mr Timin, the medical practitioners considered that he should urgently consult the drugs counsellor. However, he was not allowed to do so. This was confirmed by emergency response doctors Z. and I., who diagnosed Mr Timin with alcoholic intoxication with epileptic seizures. They recommended that he be taken to hospital, but the administration of the temporary detention centre refused to do so. [The investigators] did not consider why the administration ... had not complied with the doctors' recommendation to take Mr Timin to the rehabilitation clinic ...

It follows from the material of the inquiry that Mr Timin did not receive timely or thorough medical assistance; the doctors did not diagnose him correctly, because the administration of the temporary detention centre did not provide the necessary information about [his] behaviour and health condition. This point should have been verified and assessed."

33. On 3 November 2011 the Town Court found the investigator's decision of 26 December 2008 unlawful and quashed it.

34. On 13 December 2011 investigator N. of the investigative committee refused to open a criminal investigation into Mr Timin's death, concluding that he had died of ischemic heart disease and coronary insufficiency. He discerned no *corpus delicti* in the actions of the administration of the temporary detention centre or the medical practitioners who had treated him. In his report, he relied on the forensic medical documents, statements made by the police officers from the temporary detention centre and the paramedics who had treated him.

35. On 29 February 2012 senior investigator Akh. of the investigative committee opened a criminal investigation on charges of abuse of power. He noted, in particular, as follows:

"From 11.50 p.m. on 10 March 2004 to 6.25 a.m. on 13 March 2004 unidentified police officers at [the temporary detention centre] caused Mr Timin the following injuries: two elongated bruises on the right temple, a bruise on the left of the chest ... , a bruise on the outside left shoulder ... , a bruise on the rear left elbow ... , a bruise on the rear left shoulder ... , a bruise on the back of the left hand ... , a bruise on the rear right shoulder ... , five abrasions on the rear right elbow ... , bruises on the second and third fingers of the right hand, a bruise on the right knee ... , a bruise on the right lower leg ... , a bruise on the left lower leg... The injuries ... can be classified as light health damage."

36. It appears that this investigation is still pending.

II. RELEVANT DOMESTIC LAW

A. Right to life and health care

37. Article 20 of the Constitution of the Russian Federation protects the right to life.

38. The Health Care (General Principles) Act of 22 July 1993 provides that persons serving a sentence in prisons are entitled to medical assistance at the State's expense and, as the case may be, at institutions run by the general public health service (section 29).

39. According to the Pre-trial Custody Act of 15 July 1995 as amended, it is incumbent of the administration of the detention facility to ensure access to medical care and treatment for a detainee with healthcare needs (Article 24).

B. Investigation procedure

40. Article 125 of the Code of Criminal Procedure of the Russian Federation lays down a judicial procedure for the consideration of complaints. Orders of an investigator or prosecutor refusing to institute criminal proceedings or terminate 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 impede a citizen's access to justice, may be appealed against to a local district court, which is empowered to check the lawfulness and grounds of the impugned decisions.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

41. The applicant complained that the national authorities had failed to comply with their positive obligation to protect her brother's life and to undertake a thorough investigation into the circumstances of his death in contravention of Article 2 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone's right to life shall be protected by law.”

42. The Government contested that argument. They submitted that the applicant's brother had died of acute coronary insufficiency and ischemic decease exacerbated by alcohol withdrawal syndrome, whereas Article 2 of

the Convention covered only the deprivation of life by use of force. Accordingly, the applicant's complaint should be dismissed as incompatible with the relevant Convention provisions. As regards the ensuing investigation, the Government considered that the national authorities had promptly investigated the circumstances of Mr Timin's death. The investigators had questioned the staff of the temporary detention centre and medical practitioners, and had commissioned forensic evidence. The authorities had examined the circumstances of the case thoroughly and had established the cause of Mr Timin's death, which excluded any criminal liability on the part of the staff of the temporary detention centre or medical practitioners.

43. The applicant maintained her complaint. She submitted that her brother's death had been caused by the authorities' failure to provide him with medical treatment. Despite their knowledge of his condition, they had left him without any medical assistance for thirty-six hours. Their negligence had been the direct cause of his death, and had amounted to a failure on the part of the State to comply with the positive obligation set out in Article 2 of the Convention. It had been established in the course of the domestic inquiry that the guards of the temporary detention centre had shirked their responsibility to exercise surveillance over Mr Timin and monitor him. The guards and other inmates had witnessed his erratic behaviour; however, nothing had been done by the authorities to alleviate his condition. As was apparent from the authorities' decision of 29 February 2012, Mr Timin had also been subjected to ill-treatment while in police custody from 10 to 13 March 2004. Lastly, the applicant asserted that the Russian authorities had failed to carry out an effective investigation into the circumstances of her brother's death. On numerous occasions the investigators had refused to open criminal investigation, the relevant decision being quashed each time by the superior prosecutor or a court for failure to carry out a complete inquiry.

A. Admissibility

44. In so far as the Government contested the applicability of Article 2 of the Convention in the present case, the Court reiterates that the provision does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see, among other authorities, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII).

45. The Court further observes that, while it was not suggested by the applicant that the respondent State had intentionally sought to deprive her brother, Mr Timin, of his life, she alleged that the failure on the part of the authorities to provide her brother adequate medical assistance while in the

State's custody had resulted in his death. In other words, she complained that the State had failed to comply with its positive obligation to take measures to protect an individual whose life was at risk. Accordingly, the complaint falls directly within the ambit of Article 2 of the Convention (compare *Tarariyeva v. Russia*, no. 4353/03, §§ 73-103, ECHR 2006-XV). The Court therefore dismisses the Government's objection, and 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

1. *Alleged violation of Mr Timin's right to life*

46. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The first sentence of Article 2 enjoins the Contracting States not only to refrain from the taking of life "intentionally" or by the "use of force" disproportionate to the legitimate aims referred to in subparagraphs (a) to (c) of the second paragraph of that provision, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, *inter alia*, *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III; and *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III).

47. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Not every claimed risk to life can therefore entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual (compare, *Renolde v. France*, no. 5608/05, § 81, ECHR 2008 (extracts)).

48. The Court further emphasises that people in custody are in a particularly vulnerable position and the authorities are under an obligation to account for their treatment. It reiterates that where a detainee dies as a result of a health problem, the State must offer an explanation as to the cause of death and the treatment administered to the person concerned prior to their death. As a general rule, the mere fact that an individual dies in suspicious circumstances while in custody should raise an issue as to

whether the State has complied with its obligation to protect that person's right to life (see *Slimani v. France*, no. 57671/00, § 27, ECHR 2004-IX).

49. The applicable standard of proof under Article 2 is "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Thus, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of people within their control in custody, strong presumptions of fact will arise in respect of injuries, death or disappearances occurring during such detention. The burden of proof may then be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

50. Turning to the circumstances of the present case and regard being had to the general principles summarised above, the Court considers that its task is to examine, firstly, whether the authorities knew or ought to have known of the existence of a real and immediate risk to Mr Timin's life and, secondly, whether they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. In particular, the Court will have to establish whether the medical aid available to Mr Timin while he was in custody was adequate and sufficient (compare, *mutatis mutandis*, *Shumkova v. Russia*, no. 9296/06, § 92, 14 February 2012).

51. The Court notes from the outset that the authorities were aware of the precariousness of Mr Timin's situation. It is undisputed by the Government that his medical condition while in the temporary detention centre from 10 to 13 March 2004 called for urgent medical supervision and treatment. He complained of headaches and cramps and suffered from seizures while enduring alcohol withdrawal syndrome and intoxication. His behaviour was erratic and aggressive (see paragraphs 8 and 10 above). The paramedics who were summoned twice by the administration of the temporary detention centre to attend to him recommended that he be taken to hospital for further examination and treatment. While the administration complied with the first recommendation and Mr Timin, albeit with a delay, was taken to hospital where he was consulted by a drugs counsellor and received treatment, the second recommendation was not followed. He remained without any access to medical aid for two days until his death in solitary confinement.

52. The Court does not lose sight of the fact that, as argued by the Government, the cause of Mr Timin's death was coronary insufficiency and ischemia, which he developed prior to his remand in custody and of which the authorities were not aware. Nor were his ailments detected by the medical practitioners who examined him. The Court also accepts the Government's argument that the injuries he sustained while in police custody were not fatal. Nevertheless, it considers that by denying him

access to medical care and leaving him in solitary confinement in the absence of sufficient and appropriate monitoring or supervision, the authorities put his health and life in danger. Their failure to take necessary steps in order to ensure that he was properly examined and treated had, given the circumstances, resulted in his death (compare, *Jasinskis v. Latvia*, no. 45744/08, §§ 61-68, 21 December 2010; and *Kats and Others v. Ukraine*, no. 29971/04, §§ 105-12, 18 December 2008).

53. The Court concludes that the Government failed to rebut the presumption that the State was responsible for Mr Timin's death. There has accordingly been a violation of Article 2 of the Convention on account of the Russian authorities' breach of their obligation to protect Mr Timin's life.

2. Alleged failure to carry out an adequate investigation into Mr Timin's death

54. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Öneryıldız*, cited above, § 91).

55. Accordingly, where a positive obligation to safeguard the life of people in custody is at stake, the system required by Article 2 must provide for an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness. In such cases, the competent authorities must act with exemplary diligence and promptness and must of their own motion initiate investigations capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved. The requirement of public scrutiny is also relevant in this context (see *Shumkova*, cited above, § 109).

56. Turning to the circumstances of the present case, the Court notes that it took the national authorities over six years to establish the circumstances of Mr Timin's death (see paragraphs 13-31 above and – after the supervisory review – paragraphs 32-36 above). At no point during that period was an official criminal investigation opened into the matter. The investigators confined themselves to a series of inquiries, each time concluding that Mr Timin had died of natural causes and refusing to open criminal investigation into the matter. The Court notes that on twelve occasions, the domestic prosecutors and the courts quashed the relevant investigator's decisions for failure to carry out a comprehensive inquiry. It was repeatedly noted that the inquiries had been incomplete and the refusals to institute criminal proceedings had been premature, unlawful and ill-founded. The Court concurs with the national authorities' findings as regards the quality and the scope of the inquiries, and considers that the

repeated remittals of the case disclose a serious deficiency in the authorities' compliance with the obligation to establish the circumstances of Mr Timin's death and irreparably protracted the proceedings.

57. In such a context, the Court does not deem it necessary to look into every alleged deficiency of the domestic proceedings. It considers that a failure on the part of the authorities to institute criminal proceedings in a situation where an individual has died while in police custody is, in itself, sufficient for it to conclude that the investigation conducted by the authorities has not been effective (compare *Kleyn and Aleksandrovich v. Russia*, no. 40657/04, §§ 52-59, 3 May 2012).

58. There has therefore been a violation of Article 2 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

59. Article 13 of the Convention provides:

"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."

60. The parties reiterated the arguments they submitted on the effectiveness of the investigation from the standpoint of Article 2 of the Convention (see paragraphs 42 and 43 above).

61. The Court considers that this complaint should therefore be declared admissible. However, having regard to its findings above under Article 2 (see paragraphs 56-58 above), it considers that no separate issue arises under Article 13 of the Convention (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 123, ECHR 2005-VII).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. Article 41 of the Convention provides:

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

A. Damage

63. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage.

64. The Government considered the applicant's claims excessive.

65. The Court considers that the applicant must have suffered anguish and distress as a result of the circumstances of her brother's death and her

inability to obtain an effective investigation into the matter. In these circumstances, the Court finds it reasonable to award her EUR 25,000 for non-pecuniary damage.

B. Costs and expenses

66. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award her any sum on that account.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention under its substantive limb;
3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;
4. *Holds* that no separate issue arises under Article 13 of the Convention in conjunction with Article 2;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President