La CEDU sul diritto alla vita
(CEDU, sez. I, sent. 3 ottobre 2019, ric. n. 50283/13)

La Corte EDU si pronuncia sul caso di un ragazzo ucciso da due uomini appartenenti alle forze dell'ordine greche. La famiglia del ragazzo come parte richiedente, sostiene che ci sia stata una violazione dell'art. 2 della convenzione a causa del suo mancato coinvolgimento in misura sufficiente nell'inchiesta. Sostiene che non sono stati concessi i documenti relativi all' indagine amministrativa, se non dopo quattro anni dalla richiesta d'accesso. La Corte afferma che l'obbligo di proteggere il diritto alla vita, sancito dall'art. 2, letto in combinato disposto con l'obbligo generale dello Stato "di assicurare a tutti nella sua giurisdizione i diritti e le libertà definiti nella convenzione", richiede che ci debba essere un'indagine ufficiale efficace quando le persone sono state uccise a causa dell'uso della forza da parte di agenti dello Stato.
I giudici di Strasburgo ricordano come lo Stato debba garantire con tutti i mezzi a sua disposizione una risposta adeguata in modo tale che il quadro amministrativo e legislativo istituito per proteggere il diritto alla vita, sia adeguatamente attuato ed ogni violazione di tale diritto sia repressa e punita.
La Corte riscontra una violazione del suddetto articolo in quanto, con la mancata puntuale consegna dei documenti pertinenti al richiedente, le autorità competenti non sono riuscite a salvaguardare gli interessi dei parenti stretti nel procedimento. Quindi, l'indagine risultava essere inefficacie in quanto mancava di un'importante garanzia, ossia quella del coinvolgimento della famiglia del defunto.

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

FIRST SECTION

CASE OF FOUNTAS v. GREECE
(Application no. 50283/13*)*

JUDGMENT
STRASBOURG
3 October 2019

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Fountas v. Greece,
The European Court of Human Rights (First Section), sitting as a Chamber composed of:
Ksenija Turković, *President,*
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Armen Harutyunyan,
Pere Pastor Vilanova,
Tim Eicke,
Jovan Ilievski, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 10 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 50283/13) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mr Georgios Fountas ("the applicant"), on 1 August 2013.

2. The applicant was represented by Mr S. Kalamitsis, a lawyer practising in Athens. The Greek Government ("the Government") were represented by their Agent's delegates, Mr K. Georgiadis and Ms A. Magrippi, Senior Advisor and Legal Representative A, respectively, at the State Legal Council.

3. The applicant alleged that the investigation conducted into his son's death, which had been caused by a bullet fired by a policeman, had been ineffective.

4. On 5 September 2017 notice of the application was given to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1934 and lives in Athens.

The circumstances surrounding the death of the applicant's son

6. The applicant's son, Lambros Fountas, was born in 1975 and worked as a biologist in a laboratory.

7. The parties differ as to the description of the facts: in particular, the Government cites the sequence of events as described by officer Th.K. and accepted by the public prosecutor at the Court of Appeal who issued the final order closing the investigation after the completion of the preliminary inquiry (*προκαταρκτική εξέταση*); the applicant contests the description cited below and contends that this version of the sequence of events is based solely on the officers' testimony.

8. On the evening of 9 March 2010 police officers Th.K. and A.X. were ordered to patrol the neighbourhoods of Palaio Faliro, Nea Smyrni, Agios Dimitrios and Neos Kosmos from 9:00 p.m. until 05:30 a.m. the next day. Officer Th.K. was the driver and officer A.X. was the passenger.

9. At around 04:35 a.m., at the crossroads of Kefallinias Street and Kountouriotou Street, they spotted a red Seat Ibiza car parked in Kountouriotou Street with two people inside and decided to perform a check. According to Th.K., he blocked Kountouriotou Street with his car. As he and his colleague were taking up their positions, a person came out of the passenger seat of the Seat Ibiza, whom Th.K. perceived from the corner of his eye. At the same time, he heard A.X. shouting that the person exiting the car was carrying a gun. He heard gunshots coming from the place where the Seat Ibiza was parked and then a gunshot coming from the direction of his colleague, whom he saw with his gun pointed towards the sky. He then saw a person running away in the opposite direction and heard a fresh gunshot fired from that direction. After Th.K. had fired two shots, he heard a fresh gunshot and saw dust rising from the upper side of the rear windscreen of the police car, indicating that the bullet had hit that part of the car. He fired another shot and then he sought better cover next to his colleague. They both moved behind a "piloti" (pilotis are supports that raise a building from the ground, creating an open ground-floor level) of a nearby building and called for back-up. The above-mentioned sequence of events is in accordance with Th.K.'s testimony of 2 October 2012. In his earlier testimony dated 10 March 2010, officer Th.K. had cited the events in a similar way, except for the fact that he mentioned he had fired four shots and that testimony had been repeated in order no. A5/2012 of the public prosecutor at the Court of First Instance. In his testimony dated 10 March 2010, officer A.X.'s account of the incident was similar, except that according to him, after he heard gunshots coming from the direction of the Seat Ibiza, Th.K. returned fire several times and then shot a bullet into the air.

10. When back-up arrived, it was found that one of the people who had been in the Seat Ibiza had escaped on foot; the other was found dead on the pavement of Kountouriotou Street. The person lying dead was identified as Lambros Fountas, the applicant's son. He was wearing a black jacket, hat and gloves, as well as a communications device on his ear. A revolver and a hand grenade were found next to him. A forensic examination later found gunshot residue on his gloves.

11. The above version of facts, as given by officer Th.K. and accepted by the Athens public prosecution office, was contested by the applicant, who argued that not all avenues of investigation had been followed. He referred, *inter alia*, to the press release issued by the Hellenic Police on the day on which the incident took place. In that press release, the incident was stated to have taken place in front of 33 Kountouriotou Street rather than 48 Kountouriotou Street, the hand grenade was stated to have been found in a backpack that Lambros Fountas was carrying and not next to him, and the communication device was stated to have been found in his jacket and not on his ear.

The criminal investigation

The preliminary investigation under Article 243 of the Code of Criminal Procedure

12. Pursuant to Article 243 of the Code of Criminal Procedure, a preliminary investigation (*προανάκριση*) was undertaken by the Police Directorate for Countering Special Violent Crimes. From 10 March until 11 April 2010 thirty-two witness statements were taken and evidence was collected as part of that preliminary investigation. The witnesses included the two officers involved in the incident, residents of the neighbourhood, and the girlfriend and certain relatives, neighbours and acquaintances of the deceased.

13. Among those who gave testimony was Ms E.M., the owner of the Seat Ibiza, who stated that she had parked it on the corner of Kountouriotou and Kefallinias Streets and had volunteered her testimony after she had seen the incident covered on the news the next day. She also realised that her car had been involved when she discovered two bullet holes – one next to the rear windscreen and one in the rear windscreen. On 26 March 2010 the applicant and his family were also called upon to testify. According to the applicant, the person in charge of the preliminary inquiry informed him that his son had left his flat and had later been found at the scene. The applicant perceived that statement as constituting proof that his son had been under surveillance when the incident had taken place; otherwise the police force would not have been aware of his son's movements before the incident.

14. On 18 March 2010 a report on the collection of Lambros Fountas's clothes from the morgue and their delivery to the General Police Directorate was drawn up. The report listed all the applicant's clothes, such as underwear and pants, together with his shoes. No gloves or hat were mentioned.

15. In addition, a ballistics examination and an autopsy were conducted.

(a) The ballistics examination

16. On 10 March 2010, from 7.30 a.m. until 12.40 p.m., a ballistics investigation was conducted at the crime scene. The evidence collected consisted of the following: (a) a USP service pistol belonging to A.X., whose magazine (which had a total capacity of fifteen rounds) contained twelve rounds, (b) a Beretta MOD 92 FS pistol belonging to Th.K., whose magazine (which had a total capacity of fifteen cartridges) contained twelve cartridges, (c) a Zastava pistol containing four cartridges and two shells, which was found next to the body of Lambros Fountas; (d) five shells; (e) four full-metal-jacket (FJM) bullets; (f) one metal bullet fragment; and (g) one lead bullet fragment that was removed from the body of Lambros Fountas during autopsy.

17. From an examination of the above-mentioned evidence it appeared that the two shells found in the Zastava pistol had been fired from that same gun. Furthermore, one of the five shells collected had been fired from the USP pistol belonging to A.X., three had been fired from the Beretta pistol owned by Th.K. and one had been fired from a Glock pistol. Of the four bullets found, two had been fired from the Zastava pistol and two had been fired from the Beretta pistol. The metal bullet fragment had been fired by the Beretta pistol. The lead bullet fragment that had been removed from Lambros Fountas' body had come from the lead core of an FJM bullet that had fragmented because it had struck a hard surface with great force.

18. As to the location of the bullets, one of the two that had been fired from the Zastava pistol was found in a store located at the junction of Kefallinias and Kountouriotou Streets and the other in Kountouriotou Street. Taking into account the distortion of the bullet and the damage sustained by the police car, it was estimated that the police car had been damaged by the second bullet and that the person who had fired those two bullets had been on the pavement nearby 48 Kountouriotou Street. Of the three bullets that had been fired by the Beretta pistol owned by officer Th.K., one was found on the balcony of the first floor of the block of flats at 48 Kountouriotou Street and one was found by the entrance to the same block of flats; the metal fragment that formed part of the external case of the third bullet was found at 52 Kountouriotou Street. Lastly, the Seat Ibiza had a hole in the right rear pillar (as seen from the

driver's seat) and another hole at the rear windscreen. The form, location and general features of the holes led to the conclusion that they had been caused by a single bullet fired from a gun outside the car; the bullet had been fired at the car from its right side towards its left side and had had a slightly downward trajectory. After estimating that the person firing the shot had been located on the right side of the car, the investigators did not find the bullet in question, despite searching the area.

(b) The autopsy

19. H.M., a coroner with the Forensic Medical Service of Athens, was called in the early hours of 10 March 2010 (as the coroner on duty) to go to the site of the incident. On arrival, he saw the body of a man, which had not been moved, lying face down the pavement. When he turned him over, an intercommunications system appeared in the left pocket of his jacket. During the autopsy performed on the same day at the morgue of the Forensic Medical Service of Athens, a gun wound was found on the lateral and posterior areas of the chest; the bullet had been fired from behind and from the left side. The bullet was wedged in the sternum and no exit wound was found. It had punctured the lung and the starting point of the aorta, causing internal bleeding. The injury had been fatal and immediate. The coroner issued the death certificate on the same day that the incident took place, reporting that he had performed an autopsy on the body of a man who had been identified as Lambros Fountas. In the autopsy report, dated 5 July 2010, it was noted that the autopsy had been conducted on 10 March 2010 but the time at which the autopsy had been conducted was not specified.

20. According to the applicant, he was informed of his son's death only after the autopsy had been conducted – that is to say at 1 p.m. on 10 March 2010. When he tried to appoint an expert to attend the autopsy, he was informed that an autopsy had already been conducted on an unidentified body and was asked whether he would like it to be repeated. However, he considered that it would not have been possible or useful to repeat certain actions, so he made an appointment for the next day to be informed of the findings of the autopsy. According to the applicant's allegations, he was informed at that meeting that his son had been shot from a distance of between three and four metres and that his death had been immediate, following the injury to his aorta.

The investigation concerning the "Revolutionary Fight"

21. On 12 April 2010 the Police Directorate for Countering Special Violent Crimes (First Department for Responding to Internal Terrorism) ("the Internal Terrorism Police") sent to the Athens public prosecution office a case file in respect of proceedings against six people suspected of having committed terrorist acts and other offences. Those people allegedly belonged to a terrorist organisation called Revolutionary Fight (*Επαναστατικός Αγώνας*). In the case file the incident culminating in the death of Lambros Fountas, who had allegedly been a member of that organisation, is described, with some differences as compared with the version mentioned in the orders of the Athens public prosecution office (see paragraphs 7 and 11). In particular, the Seat Ibiza was reported as having been parked in Kefallinias Street and not in Kountouriotou Street and the hand grenade was described as having been found in a little bag inside the jacket that the deceased was wearing. In the case file, there are also documents describing the evidence collected from the applicant's house and from the houses of other relatives

of the deceased, and the evidence collected following the lifting of the secrecy in respect of communications data of the deceased. The case file was given the number AF-10/541. Under decision no. 5/2010 of the plenary composition of the Athens Council of Appeal Judges, a special investigator conducted a main investigation against those six people.

The applicant's criminal complaint

22. On 3 June 2010 the applicant and G.A. (the uncle of the deceased and the brother of the applicant's wife) lodged a criminal complaint against the person or persons responsible for the death of Lambros Fountas and lodged a request to be allowed to join the proceedings as civil parties. On the same date, criminal case file no. ABM A2010/2820 was created and assigned to a public prosecutor for processing. On 30 July 2010 they lodged a protest with the public prosecutor at the Court of Cassation regarding the delay in the initiation of an investigation following the lodging of their criminal complaint. On 6 October 2010 the case file was transmitted to an Athens magistrate in order for a preliminary inquiry to be conducted. After that inquiry was completed it was returned to the Athens public prosecution office, and on 2 March 2011 it was assigned to a public prosecutor. On 14 June 2011 the case file was returned to the Athens magistrate in order for a further preliminary inquiry to be conducted, after the completion of which it was assigned on 18 July 2011 to a public prosecutor. In the meantime, on 13 December 2010 the applicant sent a written report to the public prosecutors at the Court of First Instance, the Court of Appeal and the Court of Cassation complaining of the delay in the initiation of an investigation after he had lodged his criminal complaint; in particular, he protested about the fact that no investigative measures seemed to have been undertaken and that he still did not have access to the documents relating to his son's death, which were held in the investigation file concerning the "Revolutionary Fight" organisation and which he had been requesting since 4 October 2010 (see paragraph 38 below).

23. In the course of the preliminary inquiry conducted by the Athens magistrate, on 12 January 2011 the applicant and G.L., as the people who had lodged the criminal complaint, were examined as witnesses. In addition, on 24, 25 and 26 January 2011 eight further witnesses, who had been indicated by the applicant, testified as witnesses.

24. On 14 January 2011 the applicant submitted a memorandum asserting that, even though it was not explicitly mentioned in the Code of Criminal Procedure, a civil party should have access to all documents pertaining to a preliminary inquiry in order to be able to exercise his rights – in particular, his right to lodge an appeal under Article 245 § 4 of the Code of Criminal Procedure in the event that a criminal complaint lodged by him was rejected. In this regard, he listed a series of investigative actions and asked to be informed of whether or not they had been conducted; he also listed a series of documents to which he requested access; specifically, he asked, *inter alia*, to be informed of whether a reconstruction of the incident had taken place and why an autopsy had been conducted on a body described as "unidentified" in view of the fact that his son's personal data had already been known to the police authorities, who could have easily identified him. He also asked to be given copies of all the relevant documents – including the autopsy report, all photographs of the site of the incident, the results of the ballistics examination, the testimony of all the people involved, the documents relating to the sworn administrative inquiry (*ένορκη διοικητική εξέταση*), all relevant photographs and a copy of the report detailing what had been seized from his son's flat. He also asked to be told why

the emergency services had not been called to the crime scene and how his son had been declared dead given the absence of the emergency services.

25. On 27 January 2012, following the preliminary inquiry and the sworn administrative inquiry, a prosecutor from the Athens public prosecution office issued order no. A5/2012, pursuant to Article 47 of the Code of Criminal Procedure, rejecting the applicant's and G.A.'s criminal complaint. No specific reference was made to any of the applicant's comments and requests in the memorandum. In this order, the public prosecutor, after citing the sequence of events and the testimony of three people in particular – namely, the owner of the Seat Ibiza, the coroner (H.B.), and a resident of the neighbourhood, concluded that the police officers had been in a situation necessitating lawful means of self-defence and that therefore, the use of their guns had been necessary and lawful. As regards the gunshot that had caused Lambros Fountas's death, the public prosecutor noted the following:

"In the present case, from the preliminary inquiry but also from the sworn administrative inquiry that was conducted ... – specifically, from the witness testimony, in conjunction with all the documents in the case file – the following was proved:

...

The officers replied to the gunshots, officer Th.K by shooting once into the air and three times towards the unknown perpetrators, ... and officer A.X. by shooting once into the air ...

From what has been described in detail, it follows that when officers Th.K. and A.X. approached to check the suspects inside the Seat Ibiza ... they received [not only] two gunshots from Lambros Fountas, who exited the passenger seat, ... [but also] gunshots from the unknown perpetrator in the driver's seat, given that a Glock shell was found at the scene. Consequently, during the above-mentioned surprise attack involving gunshots fired against them, it is obvious that the above-mentioned officers were acting in defence and that the use of their guns was therefore necessary and lawful in this case in order to defend themselves. Moreover, the combined review of the evidence shows that the bullet (fragment thereof) that hit the body of the deceased Lambros Fountas came from the BERETTA pistol of officer Th. K. As to whether the above-mentioned police officer observed or not the necessary measure of defence by choosing to fire a neutralisation gunshot against Lambros Fountas, instead of using another, milder method of defence in order to avert the attack, and more specifically instead of firing a warning or immobilisation gunshot, the following must be said: if one takes into account the above-mentioned conditions and circumstances under which the attack took place, and especially that it was manifested in a way that was linked to an immediate risk of death or grave injury of the above-mentioned officers, that is to say suddenly, at night and with consecutive shots fired from a small distance, then it is considered that the means selected, that is to say the neutralisation shot, was absolutely necessary in order to avert the attack. In addition, it was lawful, pursuant to the above-mentioned provision of Article 3 § 6 (a) of Law no. 3169/2003, according to which the neutralisation gunshot is allowed, if that is required, in order to avert an attack that is linked to an imminent risk of death or grave injury of a person. In the present case, the shots fired by officers Th.K. and A.X. are considered to have been justified in order to counter an attack against them, because any milder methods (such as a warning or an "immobilising" shot) would not have provided any guarantee that the attack would be countered securely, immediately and effectively so as to protect their own lives and

physical safety; for that reason and on the basis of the above-mentioned considerations, the sworn administrative inquiry concluded that the above-mentioned officers had acted lawfully within the scope of their official duties and did not bear any disciplinary responsibility for the use of their service guns."

26. On 7 March 2012 the applicant and G.A. lodged an appeal against order no. A5/2012. In his appeal, the applicant complained that he had not been granted access to the whole case file in order to be able to verify the accuracy of the conclusions drawn from the evidence collected and to effectively contest the public prosecutor's conclusions. He nevertheless pointed out what he perceived to be inconsistencies in order no. A5/2012. Specifically, he drew attention to the differences between the description of the incident (i) included in case file AF-10/541 and in the press release issued by the Hellenic Police on the day of the incident (see paragraphs 21 and 11, respectively, above) and (ii) in the above-mentioned order. According to the applicant it was not clear where exactly the incident had taken place, where the Seat Ibiza had been parked and how many bullets had been shot by the policemen. Moreover, he mentioned what he considered to be omissions during the autopsy conducted on his son's body – namely, the time and personal data had not been indicated in the autopsy report and there was no indication as to whether his son's body had been identified prior to the start of the autopsy. Lastly, he contested the conclusions of the sworn administrative inquiry (as cited by the Athens public prosecution office), given that (i) he had not been granted access to them, and (ii) he considered that the sworn administrative inquiry had not been conducted impartially.

27. On 9 March 2012 the case file was submitted to the public prosecutor at the Court of Appeal, who issued order no. 208/2012 rejecting G.A.'s appeal as having been lodged out of time. As to the applicant's appeal, it was considered admissible. The public prosecutor refrained from issuing a ruling and ordered a further preliminary inquiry, owing to the fact that officer Th.K. had not been summoned to be heard as a suspect at the stage of the initial preliminary inquiry but only as a witness. After Th.K. had given unsworn testimony on 2 October 2012, the case file (which consisted in total of four hundred and nineteen pages, ninety-three photographs and five DVDs containing video material) was returned on 16 November 2012 to the public prosecutor at the Court of Appeal.

28. On 31 December 2012 the applicant submitted a memorandum to the public prosecutor at the Court of Appeal in which he addressed a series of points that he considered to have not been clarified. He maintained that he still had not been granted access to the documents adduced by the sworn administrative inquiry and that there had been many inconsistencies between the various documents – for example, between order no. A5/2012 issued by the Athens public prosecution office and case file AF-10/541. In particular, the Athens public prosecution office had identified as the applicant's son the person who had got out of the passenger's seat of the Seat Ibiza and shot twice towards the policemen. However, case file AF–10/541 had not made clear who had been in the passenger's seat; therefore, the applicant considered any other conclusion to be arbitrary. He argued that the gun and hand grenade found next to his son's body could not have belonged to him and considered it curious that the bullet that had been shot from the Glock had never been found. He contested in general the sequence of events described in the order of the Athens public prosecution office, arguing that other people could have been present on the scene and could have placed the guns next to his

son's body. He also claimed that there had been a trail of blood stains leading from 48 Kountouriotou Street to 52 Kountouriotou Street – that is to say for roughly forty metres; in his view, this proved that his son's death had not been immediate and that the policemen had left him without any medical help.

29. On 10 February 2013 the public prosecutor at the Court of Appeal issued order no. 551/2012 dismissing the applicant's appeal on the following grounds:

"... Th.K.'s description of facts was confirmed by A.X. [and] by the objective findings and was not refuted by any other evidence in the case file. In particular, it was established that [the officers], during their performance of their official duties – that is to say verifying the identity of the above-mentioned people – were attacked by the deceased with the aim of inflicting harm in respect of the life, or at least the physical safety of the police officers and especially of officer Th.K. who, at the time of the attack, had only the police car as cover and could have been gravely injured (even fatally) ...

... Following the assessment and weighing-up of all of the evidence, without exceptions, that was collected during the preliminary inquiry and more specifically, further to the criminal complaint, the witnesses' testimony, the documents and written explanations [submitted by] the defendant, in conjunction with the appeal under consideration, together with the memorandum and documents that accompany it ... [it can be seen] that the police officers had to counter the above-mentioned unlawful and present attack given the degree of danger [and] the kind of harm that it threatened – that is to say the risk to the life or the physical safety of Th.K. – owing to the above-mentioned circumstances under which [the attack] took place, the fact that it was unprovoked, its intensity, the lack of safe cover and the lack of any other suitable means of countering it, but also given the professional duty [of the officers], which did not allow them to allow the deceased to escape. The officer had to counter the above-mentioned attack with gunshots, in the absence of any other suitable means [and] given the fact that at the time of the attack he was outside the police car and did not have any possibility to find cover behind any other object other than the police car, at which, however, the deceased was shooting (as proved by the damage caused to the roof of the police car by a bullet).Assessing all the elements together – namely the professional duty of the defendant, the degree of danger that the attack represented, the nature of the harm threatened and the above-mentioned circumstances under which the attack took place, the defensive actions taken by Th.K. in order to counter the unlawful and present attack against him did not exceed the maximum necessary bounds of defence, given that a fatal shot is considered as constituting a "neutralising" shot but that it has not been proved that [the officer] aimed at the deceased and that in addition, at the time at which [the defendant] fired the fatal shot the attack against him had not ended as the then unknown perpetrator was continuing to shoot ..."

The sworn administrative inquiry

30. Under order no. 265003/3/6a of 30 March 2010 issued by the director of the Attica emergency response team, a sworn administrative inquiry was conducted. During the course of that investigation, four police officers were requested to testify, two of whom had handled the incident *via* the radio after officers Th.K. and A.X. had called for back-up and two of whom had arrived at the scene after the incident had taken place. The first two officers described the call for back-up made by officers Th.K. and A.X. and the instructions that had been given to those officers

– namely to wait and to stay under cover. The other two officers explained that they had replied to the call for back-up and described the scene they had faced when they had arrived on the scene – namely the dead body lying on the pavement, the police car at the crossroads and the two officers in a nearby building, clearly upset. In addition, testimony were taken from the owner of the Seat Ibiza, a nearby resident and H.M., the coroner, who had been called to the scene to examine the body of the deceased and had performed the autopsy afterwards. Officers Th.K. and A.X. also testified regarding the events of that night. Lastly, an officer who was an expert on ballistics was called to testify; he reported the results of the ballistics examination.

31. On the basis of the above-mentioned written testimony and other documents, a report on the findings of the sworn administrative inquiry dated 27 July 2010 and a report on the findings of the supplementary sworn administrative inquiry dated 4 March 2011 were drafted recommending that the case be closed as it was concluded that the police officers concerned had acted within the scope of their duties and had lawfully defended themselves. By a decision dated 27 June 2011, the Attica Chief of Police ordered that the case be closed.

Access of the applicant to the case file

Concerning the documents of the sworn administrative inquiry

32. On 9 February 2011 the applicant lodged a request with the Attica Police Headquarters (referring to the criminal complaint lodged on 3 June 2010) to be furnished with a copy of the documents relating to the sworn administrative inquiry and the Athens public prosecution office's opinion on them. He furthermore requested copies of all evidence and testimony relating to the incident of 10 March 2010, including photographs of the scene, the results of the ballistics examination, the autopsy results, details of how and when the body was identified, and in general, any evidence which could prove how the incident had taken place. On 26 April 2011 the Internal Terrorism Police replied that it had prepared a case file relating to the death of the applicant's son, as well as to the arrest of members of a terrorist organisation; this case file had been transmitted to the Athens public prosecution office on 12 April 2010. The case had been assigned to an investigating officer; therefore, the Internal Terrorism Police no longer had any of the documents requested. In addition, on 11 May 2011 the Attica emergency response team transmitted the documents relating to the incident to the prosecutor at the Athens public prosecution office who had been placed in charge of conducting the preliminary inquiry following the lodging of the applicant's complaint. The documents relating to the sworn administrative inquiry were sent to the Attica Police Headquarters.

33. On 3 May 2011 the applicant lodged a new request with to the Chief of Greek Police; he asked to be granted access to the case file and also asked for replies to all the questions he had asked in his document dated 9 February 2011. On 15 June 2011 the Internal Terrorism Police reiterated its reply (see paragraph 32 above) that all relevant documents had been transmitted to the relevant bodies.

34. On 9 April 2012 the applicant reiterated his request to be given the documents relating the Sworn Administrative Inquiry, but this time addressed it to the Attica Police Headquarters. That service forwarded the request on 17 April 2012 to the Police Staff Directorate (*Διεύθυνση Προσωπικού* – the police's human resources department). On 9 July

2012 the Police Staff Directorate informed police officers Th.K. and A.X. of the request; Th.K. and A.X. objected to the applicant's request for the above-mentioned documents. Both officers refused permission to grant the request, insisting – using identical wording – that they did not agree to the handover of any documents to the applicant "relating to the investigation into the circumstances in which my gun was used and which resulted in the fatal wounding of Lambros Fountas". The Police Staff Directorate considered that the applicant had a legal interest in reviewing the requested documents in order to be able to use them in court, but officers Th.K. and A.X. lodged objections to the Data Protection Authority. On 11 August 2012 the Directorate of Police Staff transmitted the case file to the Data Protection Authority in order for it to rule on whether the communication of the relevant documents, which contained sensitive personal data under Article 7 § 2 of Law no. 2472/1997, could be allowed or not. On 21 August 2012 the applicant lodged a request with the Data Protection Authority to be allowed access to the documents in question.

35. On 5 August 2016 the Data Protection Authority postponed its decision on the objections lodged by the two officers in respect of the communication of their personal data in order to receive information regarding whether the case file and the report on the findings of the sworn administrative inquiry had been requested by and sent to the public prosecutor at the Court of First Instance or the prosecutor at the Court of Appeal. On 26 August 2016 the relevant authorities informed the Data Protection Authority that the conclusions of the sworn administrative inquiry had been transmitted to the Department of Preliminary Inquiries of the Magistrate Court of Athens. However, it appeared that the remainder of the documents relating to the sworn administrative inquiry had not been submitted to any investigative or preliminary-inquiry authorities.

36. By its decision 95/2016 dated 10 October 2016, the Data Protection Authority dismissed the officers' objections and allowed the transmission of the documents relating to the sworn administrative inquiry to the applicant in order that he might use them before the Court, provided that the subjects of the personal data be informed thereof beforehand. The applicant's representative received a copy of the documents relating to sworn administrative inquiry on 7 November 2016.

Concerning the autopsy results

37. On 13 June 2012 the applicant lodged a request with the Forensic Medical Service of Athens for information on the autopsy conducted on the applicant's son. On 3 July 2012 he received a reply, which confirmed that an autopsy had taken place on an identified body between 11 a.m. and 1 p.m. on the day of his death and that the applicant, as well as Lambros Fountas' uncle, had been present at the morgue on the morning before the autopsy had taken place. Lastly, in respect of the bullet removed from the deceased, that had been delivered to the competent authorities in order for them to send it on to a specialised laboratory. On 3 July 2012 the applicant submitted a document to the Forensic Medical Service requesting that it be corrected in respect of its assertion that he and his brother-in-law had been present at the morgue on the morning of the death of the applicant's son. He reiterated that request on 8 August, 17 August and 30 August 2012. No reply appears to have even been made.

Concerning the documents of the preliminary inquiry

38. On 4 October 2010 the applicant lodged a request with the investigator conducting the investigation concerning the organisation called "Revolutionary Fight" to be given all documents of that investigation in so far as they were related to his son's death. He received an oral reply that all those documents would be transmitted to the competent public prosecutor who would handle the applicant's criminal complaint.

39. The applicant first requested the documents of the preliminary inquiry in his memorandum dated 14 January 2011 addressed to the public prosecutor at the Court of First-Instance (see paragraph 24 above). No reply appears to have been given to his request.

40. Following order no. A5/2012 by which the public prosecutor at the Court of First Instance dismissed the applicant's criminal complaint and was served to the applicant on 21 February 2012, on 28 February 2012 the applicant lodged a request with the Athens public prosecution office for copies of the documents adduced during the preliminary inquiry and information on whether certain investigative acts had taken place. He furthermore requested the documents adduced during the sworn administrative inquiry, the results of the ballistics examination and the witness testimony, arguing that all this material had been taken into account by the public prosecutor at the Court of First Instance in his order no. A5/2012 and that he needed it in order to be able to effectively lodge an appeal under Article 245 § 4 of the Code of Criminal Procedure against the above-mentioned order. There is a signed hand-written note by the prosecutor from the Athens public prosecution office dated 2 March 2012 stating that the applicant's request for copies of the above-mentioned documents had been granted. The applicant, however, maintained that he had never been informed of the outcome of his request; in his appeal dated 7 March 2012 against the order dismissing his criminal complaint, he once again complained about the lack of access to the documents and information regarding his son's death.

41. Following order no. 551/2012, which dismissed the applicant's appeal, on 1 April 2013 the applicant lodged a request with the Athens public prosecution office to be given a copy of that order; that request was granted on the same day.

Pending judicial proceedings

42. On 24 February 2015 the applicant brought before the Athens Administrative Court of First-Instance an action for damages under Article 105 of the Introductory Law to the Civil Code against the Greek State "in respect of the mental suffering caused by my son's murder [and] by the illegal actions of the opposing party's agents, who hid and continue to hide from me all evidence relating to this murder". The action was initially scheduled to be heard on 25 April 2018 and then adjourned until 24 October 2018.

RELEVANT DOMESTIC LAW AND PRACTICE

Code of Criminal Procedure

43. The relevant Articles of the Code of Criminal Procedure are described in the Court's judgment in *Tsalikidis and Others v. Greece*, (no. 73974/14, § 34, 16 November 2017). In addition, the following provision is relevant:

Article 243
When and by whom a preliminary inquiry is conducted

"1. A preliminary inquiry is conducted by any investigating officer upon a written order given by the Public Prosecutor...

2. If delay may give rise to imminent danger or if the preliminary inquiry concerns a felony or misdemeanour committed *in flagrante delicto*, then all investigating employees, pursuant to Articles 33 and 34, are obliged to undertake all necessary preliminary actions in order to confirm [that] the offence [actually occurred] and identify the perpetrator, even in the absence of a written order from the prosecutor. In such a case, they notify the public prosecutor by the fastest means and submit to him without any delay all reports that have been drafted. The public prosecutor, after receiving the reports, shall act in accordance with Articles 43 *et seq* ..."

Criminal Code

44. The relevant Articles of the Criminal Code, as in force at the material time, read as follows:

Article 22
Defence

"1. An offence committed in defence is not unlawful.

Defence is a necessary offensive action committed against an attacker that a person commits in order to defend himself or another person from an unlawful and ongoing attack that is directed against them.

The necessity of a measure of defence shall be determined by [assessing] the degree of the danger posed by the attack, the kind of damage threatened, the manner and intensity of the attack and the remaining aspects of circumstances in question."

Article 23
Excess of defence

"Any person exceeding the [acceptable] bounds of defence shall be punished, if such excess was intentional, with a reduced sentence (Article 83); ... if such excess was owing to negligence, [he or she shall be punished] in accordance with the relevant provisions. He or she shall not be punished and shall not be held accountable for such excess if he or she acted in that manner because of fear or anxiety caused by the attack."

Article 27
Intent

"1. A person acts with intent when he or she undertakes acts that constitute an offence under the law, or when he or she knows that such acts may arise from his or her actions but [nevertheless proceeds with those actions].

2. When the law stipulates that an offence must have been knowingly committed, potential intent shall not suffice. When the law requires that an offence must have been committed with intent to produce a certain result, it is required that the perpetrator must have pursued that result".

Article 299
Intentional Homicide

"1. [A man or woman] who has killed another intentionally shall be punished by the death sentence or life imprisonment.

2. If the offence was decided and executed in the heat of the moment, it shall be punished by a sentence of incarceration."

Law no. 3169/2003 on the carrying and use of firearms by police officers, the training of police officers in the use of firearms, and other provisions

45. The relevant provisions of Law no. 3169/2003, which is entitled "The carrying and use of firearms by police officers, the training of police officers in the use of firearms, and other provisions", as in force at the relevant time, read as follows:

Article 1
Definition of terms

"In the present law, the following terms shall have the meanings given below:

...

d. The use of a firearm shall be constituted by the activation of a weapon, in accordance with its purpose and the firing of a bullet. Depending on the target of the bullet, the use of the firearm falls under one of the following categories:

(1) a warning shot, when no target is aimed at;

(2) a shot against objects, when objects are aimed at;

(3) an immobilisation shot, when non-vital parts of the human body are aimed at (especially the lower limbs); and

(4) a neutralisation shot, when a person is aimed at and his or her death is considered probable.

e. An armed attack shall mean the use of a weapon referred to in Article 1 of Law no. 2168/1993 by an attacker against another person or the threat of its being directly used against another person. An armed attack shall also mean such a threat using a convincing imitation of a weapon or an inactive weapon [*ανενεργό όπλο*]."

Article 3
Use of a firearm and the principles governing it

"1. Police officers may, during the performance of their duties, aim their firearms when there is a danger of armed attack against them or against third persons.

2. Police officers may use their firearms if that is required for the performance of their duties in the following circumstances:

a. when they have exhausted all means less drastic than [firing a] gunshot, unless they are not available or suitable in the specific case. Less drastic means shall mainly include exhortation, incitement, the use of obstacles [*χρήση εμποδίων*], the use of physical force, striking, permitted chemical substances or other specialised means, or the issuance of a warning that a firearm may be used or the issuance of a threat to use a firearm.

b. when they have declared their capacity [that is to say identified themselves as policemen] and have issued a clear and comprehensible warning of the imminent use of a firearm and provided adequate time in which to respond, unless this is pointless under the circumstances in question or intensifies the risk of death or bodily injury.

c. the use of firearm does not constitute an excessive measure in view of the kind of harm threatened and the dangerous nature of the threat.

3. In the event that the circumstances outlined in the preceding paragraph are met, a less drastic deployment of the firearm shall be undertaken, unless this is pointless given the circumstances in question or intensifies the risk of death or bodily injury. Such [initial] less drastic use of the firearm shall [be followed by] the escalation of use of the firearm, pursuant to sub-paragraph d of Article 1 with the smallest possible and necessary harm.

4. Warning shots or shots against objects shall be allowed, especially in cases of risk posed by animals or [the need to] issue a warning that a shot may be fired at a person, provided that all necessary measures are taken in order not to harm a person in the event that the bullet misses or ricochets ...

6. Neutralisation shots shall be allowed, when they are necessary, in the following cases:

a. in order to counter an attack linked to an imminent risk of death or grave bodily injury of a person;

b. in order to rescue hostages at risk of death or grave bodily injury.

7. Immobilisation or neutralisation shots shall be prohibited:

...

d. against a person who escapes when called on to subject [himself or herself] to legitimate checks...

...

10. Any instance of the use of firearms by policemen shall be reported immediately to the relevant police agency and judicial authority."

Introductory Law to the Civil Code

46. Article 105 of the Introductory Law to the Civil Code provides as follows:

"The State shall be duty-bound to make good any damage caused by unlawful acts or omissions attributable to its organs in the exercise of public authority, except where such unlawful act or omission was in breach of an existing provision but was intended to serve the public interest. The person responsible and the State shall be jointly and severally liable, without prejudice to the special provisions on ministerial responsibility."

THE LAW

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION UNDER ITS PROCEDURAL LIMB

47. The applicant complained under Article 2 of the Convention that the domestic authorities had failed to effectively investigate the circumstances surrounding his son'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."

Admissibility

The parties' arguments

48. The Government submitted that the application should be rejected owing to the non-exhaustion of domestic remedies, as the applicant had brought an action for damages under Article 105 of the Introductory Law to the Civil Code, requesting the sum of 49,990 euros (EUR) for the psychological damage he [had] suffered owing to his son's death and due to the agents' conduct who did not share all relevant evidence with him. The applicant's action covered the same issues as his application to the Court and was still pending before the Greek courts. If the domestic courts considered that the State agents had acted unlawfully, they would award the applicant damages. Accordingly, his application should be rejected due to the non-exhaustion of domestic remedies, pursuant to Article 35 of the Convention.

49. The applicant contested the Government's arguments. In particular, he argued that the subject of his action for damages was different to that of the complaint that he had submitted before the Court. The first referred to the psychological damage he had suffered owing to his son's death and the refusal of the State authorities to cooperate in handing him all the relevant documents. On the contrary, his application to the Court referred to the ineffectiveness of the investigation that had been conducted by the authorities into his son's death.

The Court's assessment

50. The Court reiterates that the obligation to exhaust domestic remedies requires an applicant to make normal use of the remedies that are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV, and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014). To be effective, a remedy must be capable of directly redressing the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II).

51. On the contrary, there is no obligation to pursue remedies which are inadequate or ineffective (see *Akdivar and Others*, cited above, § 67, and *Vučković and Others*, cited above, § 73). However, the existence of mere doubts as to the prospects of success of a particular remedy that is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Akdivar and Others*, cited above, § 71; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009; and *Vučković and Others*, cited above, § 74).

52. The Court notes that the Greek legal system provides, in principle, two avenues of recourse for the victims of illegal and criminal acts attributable to the State or its agents – namely civil and criminal remedies. It is not disputed between the parties that the applicant's son lost his life as a result of the use of force by State agents. Given the circumstances in question, the State was under an obligation to initiate and carry out an investigation that fulfilled the procedural requirements of Article 2. Civil proceedings initiated at the initiative of the victim's relatives would not have satisfied the State's obligation in this regard (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 74, ECHR 2002-II). The Court has repeatedly held that the procedural obligation of the State under Article 2 to conduct a thorough, official, effective and prompt investigation when individuals have been killed as a result of the use of force cannot be substituted by the payment of damages. The Court has confirmed that an action for damages, either to provide redress for a death or for a breach of an official obligation during the related investigation, is not capable, without the benefit of the conclusions of a criminal investigation, of making any findings as to the identity of the perpetrators and still less of establishing their responsibility (see *Milić and Others v. Croatia*, no. 38766/15, § 29, 25 January 2018, and *Jelić v. Croatia*, no. 57856/11, § 64, 12 June 2014). It therefore rejects the Government's objection.

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

Merits

The parties' arguments

(a) The applicant

54. The applicant complained about the investigation conducted into his son's death, arguing that it had not been prompt and effective and that he had, as the next of kin, not been sufficiently involved in the investigation.

55. As regards the promptness of the investigation, he argued that for months (until he had lodged his criminal complaint on 30 June 2010) no investigation had been conducted. In addition, even when he had lodged a criminal complaint, no investigative measures had been taken for at least six months, an omission that he had emphasised in various requests and memoranda addressed to all the relevant bodies (see paragraph 22 above concerning the applicant's requests dated 30 July and 13 December 2010).

56. Turning to the matter of whether the investigation had been adequate, the applicant complained about the fact that no reconstruction took place. He maintained that a reconstruction would have clarified the trajectory of bullets, as well as the place where the officers found shelter after the incident.

57. There had also been inconsistencies as to the number of bullets that had been allegedly fired and the number of cartridges missing from the officers' guns. Both guns that had been used by the officers had been missing three bullets; however, according to order no. A5/2012 of the public prosecutor at the Court of First Instance, four bullets had been fired from the officers' guns in total, although at some other point he had acknowledged that both officers had fired once into the air and that, additionally, officer Th.K. had fired a further three times towards the Seat Ibiza car; this would have resulted in four bullets missing from his gun and five in total from both guns. The applicant had pointed out all the above inconsistencies in his appeal against the said order but had received no reply.

58. The applicant further claimed that no sufficient explanation had been given as to why his son had been shot in the back and how his body had been found by 52 Kountouriotou Street if he had been shot by 48 Kountouriotou Street – that is to say forty-five to fifty metres away – and his death had been immediate, as confirmed by the coroner who had performed the autopsy. In the applicant's view, this meant that the people present on the scene had failed to offer medical assistance to his son, even though he could not have been dead at the time. He referred to the bloodstains found between those two addresses and argued that a person so heavily injured could not possibly have carried a Zastava pistol for that distance, so it must have been placed later by others. In any event, the fact that it had been found next to him did not mean that it had necessarily belonged to him. In addition, he contested that the intercommunications system had been found on his son's ear as he considered it illogical that it could have stayed in position after his son had collapsed on the pavement. Lastly, he contested the presence of gloves on his son's body. In the applicant's view, the fact that no gloves had been recorded in the report on the delivery and collection of his son's clothes from the morgue to the General Police Directorate (see paragraph 14 above) meant that his son had not worn any gloves and, given that no fingerprints had been found on the gun, he had not been the one who used the Zastava pistol.

59. The applicant pointed out that his son's death could have resulted from A.X.'s gun, instead of Th.K.'s gun. He based this allegation on the objection lodged by A.X. concerning the handover of the documents relating to the sworn administrative inquiry to him (see paragraph 34 above).

60. The applicant claimed that the whole investigation had been conducted in secrecy and that he had not been involved in the investigation to a sufficient degree. Firstly, he had not been granted the documents relating to the sworn administrative inquiry until 2016 – that is to say four years after he had requested access to them and after having lodged a number of requests with various authorities. Secondly, he had been denied access to the documents relating to the criminal investigation that had been conducted following his criminal complaint. He denied the Government's submission that his request had been granted (as proof of which the Government cited the note dated 2 March 2012 appended by the prosecutor from the Athens public prosecution office). In particular, he argued that neither he nor his lawyer had been informed of the outcome of their request and that this had been clear from the content of his appeal against order no. A5/2012, in which he had extensively complained that he had not been in a position to fully rebut the Public Prosecutor's conclusions in view of the fact that he had not had access to the documents in the case file. In addition, the public prosecutor at the Court of Appeal had issued order no. 551/2012 dismissing the applicant's appeal and had not refuted the applicant's

complaint regarding his lack of access by referring to the alleged acceptance of his request, of which the applicant had been informed when he had received the Government's observations in the present case.

61. The applicant also complained about the circumstances surrounding the autopsy conducted on his son's body. Firstly, he contested his alleged presence in the morgue on the morning before the autopsy had been conducted. Secondly, he emphasised that it was not clear from the case file when his son's body had been identified. Lastly, he complained about not having been asked to be present at the autopsy on his son or assign an expert if he so wished.

62. The applicant maintained that he had raised all these issues before the domestic authorities in his memoranda and his appeal against order no. A5/2012 of the public prosecutor at the Court of First Instance but that they had never replied to any of his comments on the alleged omissions or on the alternative theories that he had advanced as to how the incident might have unfolded, such as his observation that his son might have been abducted from his house, might have been dragged to the scene under false pretences by people that he knew or might simply have been passing by and been unlucky.

(b) The Government

63. The Government contended that the circumstances of the applicant's son's death had been fully investigated, both at a disciplinary and criminal level. As regards the sworn administrative inquiry, it had been conducted in accordance with the principles of criminal law. The criminal investigation had been conducted by an independent authority – namely the Athens public prosecutor's office. Domestic legislation provided that public prosecutors had full power to fully investigate the case and initiate criminal proceedings if they considered that there was sufficient evidence to bring the implicated people to trial.

64. In the present case, the public prosecutors at the Court of First-Instance and at the Court of Appeal had been free to take into consideration the evidence collected during the sworn administrative inquiry, but they had also assessed all evidence collected during the criminal investigation, including the testimony of the witnesses proposed by the applicant. The case file had reached in total four hundred ninety-three pages. On the basis of all the evidence collected, they had concluded that officer Th.K. had acted within the scope of his duties and had acted in self-defence, without having exceeded the limits thereof. The orders (to close the investigation and dismiss the applicant's criminal complaint) issued by the public prosecutors at the Court of First-Instance and at the Court of Appeal had contained full reasoning and they had interpreted domestic legislation in the light of the Court's case-law, concluding that there had not been sufficient evidence to justify initiating criminal proceedings. Domestic legislation concerning the use of force by police officers had been in full compliance with the principles of proportionality, necessity and legality and had preserved a fair balance between the various interests at stake. The Government refrained from commenting on the applicant's versions of the case and the points he identified as inconsistent in the case file, arguing that this would be in violation of the principle of the separation of powers.

65. In addition, the Government submitted that, as could be seen from the case file, the applicant had been in full contact with the domestic authorities, lodging requests, submitting memoranda and requesting information from the various competent authorities. He

had been given access to the criminal case file (as well as, eventually, to the disciplinary case file) after securing permission to do so from the Data Protection Authority under the process set out by the domestic legislation regarding the protection of personal data so as to protect the personal data of the officers involved. Having regard to the above-mentioned considerations, the Government claimed that the investigation conducted into the applicant's son's death had been effective and fully compliant with the procedural requirements of Article 2 of the Convention.

The Court's assessment

(a) General principles

66. A general legal prohibition on arbitrary killing by agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under this provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", 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, *inter alia*, agents of the State (see see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 230, 30 March 2016). The State must therefore 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 *Zavoloka v. Latvia*, no. 58447/00, § 34, 7 July 2009, and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 298, ECHR 2011 (extracts)).

67. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the people responsible for and carrying out the investigation to be independent from those implicated in the events (see, for example, *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III; *Giuliani and Gaggio*, cited above, § 300; *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 177, 14 April 2015). This means not only a lack of hierarchical or institutional connection but also a practical independence (see, for example, *Güleç v. Turkey*, 27 July 1998, §§ 81-82, *Reports of Judgments and Decisions* 1998-IV; *Giuliani and Gaggio*, cited above, § 300; *Mustafa Tunç and Fecire Tunç*, cited above, § 177). What is at stake here is nothing less than public confidence in the State's monopoly on the use of force (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 106, 4 May 2001; *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-II; *Giuliani and Gaggio*, cited above).

68. In order to be "effective" as this expression is to be understood in the context of Article 2 of the Convention, an investigation must firstly be adequate (see *Ramsahai*, cited above, § 324 and *Mustafa Tunç and Fecire Tunç*, cited above, § 172). This means that it must be capable of leading to the establishment of the facts, a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible (see *Giuliani and Gaggio*, cited above, § 301, and *Mustafa Tunç and Fecire Tunç*, cited above, § 172). This is not an obligation of result, but of means (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII); *Jaloud v. the Netherlands* [GC], no. 47708/08, § 186, ECHR 2014; and *Mustafa Tunç and Fecire Tunç*, cited above, § 173). The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident,

including eyewitness testimony, forensic evidence and, where appropriate, an autopsy that provides a complete and accurate record of injury and an objective analysis of the clinical findings, including the cause of death. (As regards autopsies, see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; on the subject of witnesses, see, for example, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 109, ECHR 1999-IV; as regards forensic examinations, see, for example, *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Moreover, where there has been a use of force by State agents, the investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances (see, for example, *Kaya v. Turkey*, 19 February 1998, § 87, *Reports* 1998-I). Any deficiency in the investigation which undermines its ability to establish the cause of death will risk falling foul of this standard (see *Avşar v. Turkey*, no. 25657/94, §§ 393-395, ECHR 2001-VII (extracts); *Giuliani and Gaggio*, cited above, § 301; and *Mustafa Tunç and Fecire Tunç*, cited above, § 174).

69. In particular, 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, and *Mustafa Tunç and Fecire Tunç*, cited above, § 175). 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. The nature and degree of scrutiny 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, and *Mustafa Tunç and Fecire Tunç*, cited above, § 175). Where a suspicious death has been inflicted at the hands of a State agent, particularly stringent scrutiny must be applied by the relevant domestic authorities to the ensuing investigation (see *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 277, 26 April 2011).

70. In addition, the investigation must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests. There must also be a sufficient element of public scrutiny of the investigation, the degree of which may vary from case to case (see *Hugh Jordan*, cited above, § 109; *Giuliani and Gaggio*, cited above, § 303; and *Mustafa Tunç and Fecire Tunç*, cited above, § 179). The Court had additionally held, under Article 8 of the Convention, that where the State authorities, but not other family members, are aware of a death, there is an obligation for the relevant authorities to at least undertake reasonable steps to ensure that surviving members of the family are informed (see *Lozovyye v. Russia*, no. 4587/09, § 38, 24 April 2018).

71. However, the disclosure or publication of police reports and investigative material may involve sensitive issues, with possible prejudicial effects on private individuals or other investigations; such disclosure or publication therefore cannot be regarded as constituting an automatic requirement under Article 2. The requisite access of the public or the victim's relatives may therefore be provided for in other stages of the procedure (see, among other authorities, *McKerr v. the United Kingdom*, no. 28883/95, § 129, ECHR 2001-III, and *Giuliani and Gaggio*, cited above, § 304). Moreover, Article 2 does not impose a duty on the investigating authorities to satisfy every request for a particular investigative measure made by a relative in the course of the investigation (see *Ramsahai and Others*, cited above, § 348).

72. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-104, *Reports* 1998-VI; and *Kaya*, cited above, §§ 106-107). It must be accepted that there may be obstacles or difficulties that prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *McKerr*, cited above, §§ 111 and 114, and *Opuz v. Turkey*, no. 33401/02, § 150, ECHR 2009).

(b) Application of the principles in the present case

73. Turning to the circumstances of the present case, the Court notes that it is undisputed between the parties that the applicant's son was killed by a police officer. In order to establish whether the State satisfactorily discharged its obligation to account for Lambros Fountas' death, the Court must first have regard to the investigation carried out by the authorities and the conclusions reached by them.

(i) Promptness of the investigation

74. As regards the promptness of the investigation, the Court notes that, pursuant to Article 243 of the Code of Criminal Procedure, the first investigative measures were taken as soon as the incident took place – that is to say on the morning of Lambros Fountas' death. From 10 March 2010 until 11 April 2010 thirty-two witness statements were taken and evidence was collected as part of that preliminary investigation. In addition, an autopsy and a ballistics examination were conducted (see paragraphs 12-21 above). That investigation was later associated with the criminal complaint lodged by the applicant (and G.L.) on 3 June 2010 and was concluded on 10 February 2013, by the order issued by the public prosecutor at the Court of Appeal. Having regard to the volume of the case file and the complexity of the case, which was also associated with an ongoing investigation on the offences allegedly committed by members of the "Revolutionary Fight", the Court considers that the investigation was conducted both promptly and with reasonable expedition.

(ii) Independence of the investigation

75. In addition, the Court takes note of the fact that the entire investigation was conducted by the Athens public prosecution office, an authority which is institutionally independent (see *Tsalikidis and Others*, cited above, § 95). With regard to the non-prosecutorial investigators who conducted some of the investigative measures, such as the ballistics examination, the Court observes that although some of them were members of the police force, there was no hierarchical relationship between these investigators and individuals (such as Th.K. and A.X.) who were likely to be involved. The investigators in question were not the direct colleagues of those individuals (see *Mustafa Tunç and Fecire Tunç*, cited above, § 243; and *Putintseva v. Russia*, no. 33498/04, § 52, 10 May 2012). Moreover, they were not responsible for steering the investigation, overall control of which remained in the hands of the prosecutor.

76. Furthermore, the main acts carried out by these investigators concerned the scientific aspects of the investigation, such as ballistic tests. The fact that the investigators were members of the police force cannot in itself be said to have affected the impartiality of the investigation. To hold otherwise would be to impose unacceptable restrictions in many cases on the ability of the

justice system to call on the expertise of the law-enforcement agencies, which often have particular authority in the matter (see *Giuliani and Gaggio*, cited above, § 322).

(iii) Adequacy of the investigation

77. Turning to whether the investigation conducted was adequate, the Court needs to examine whether it was capable of leading to the establishment of the facts, a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible.

78. In this regard, the Court is not persuaded by the applicant's submission that there have been significant oversights or omissions. The facts of the case show that all traceable witnesses were interviewed and the available evidence collected and reviewed. In the instant case, the law-enforcement agencies were already present at the scene and were thus able to secure the area and search for and record any items of relevance to the investigation.

79. More specifically, the Court notes that the investigating authorities examined a number of witnesses – mainly residents of the neighbourhood in which the incident took place and the police officers who attended at the scene, in addition to the witnesses that the applicant had proposed. While none of those witnesses was an eye-witness, it cannot be said that the prosecuting authorities accepted without question the version supplied by the law-enforcement officers implicated in the events. They not only questioned numerous witnesses, but also ordered several forensic examinations, including an autopsy and a set of ballistics tests (see paragraphs 12-21 above). The fact that the ballistics tests were not conclusive in respect of some aspects of the case (namely which gun had caused the holes in Seat Ibiza) was not, in itself, such as to make further investigations necessary, given that it was for the public prosecutor to assess the pertinence of the explanations given by the various experts.

80. The same considerations apply in respect of the bullets missing from the officers' guns. In particular, the fact that officer Th.K. testified at one point that he had shot three times and another time that he had shot four times is not sufficient to rebut the relevant evidence collected and the result of ballistics examination indicating that three bullets were missing from his gun. As regards the applicant's argument that officer A.X. must have shot three times as his gun was missing three bullets, the Court notes that there was no evidence on the crime scene to call into question the conclusion that A.X. only shot once. While admittedly it would have been preferable if the investigating authorities had questioned A.X. regarding when and where the missing bullets had been fired, the Court does not consider that omission as so serious as to have called the adequacy of the investigation into question.

81. The Court takes note of the applicant's argument that a reconstruction should have been conducted, which would have proved that the series of events could not have taken place in the manner accepted by the investigating authorities. In this regard, it reiterates that Article 2 does not impose a duty on the investigating authorities to satisfy every request for a particular investigative measure lodged by a relative in the course of an investigation (see *Ramsahai and Others*, cited above, § 348). While a reconstruction would have been desirable, the Court notes that the applicant has not adduced any evidence, such as an expert report, indicating that the trajectory of the bullets was not the one indicated in the ballistics examination. As regards the applicant's allegation that the implicated officers could not have found shelter behind a piloti in Kountouriotou Street, the

Court notes that the officers testified that they had found shelter behind a nearby piloti, without referring to the name of the street and that there is thus no inconsistency that would be clarified with the reconstruction of the events.

82. Turning to the elements of the case file that the applicant identified as being inconsistent, the Court notes that these are mostly allegations and are not supported by the evidence in the case file. More specifically, the pictures taken at the scene after the incident had taken place indicate that the applicant's son was wearing an intercommunications system and leather gloves. In this regard, the Court takes issue with the fact that the report on the delivery and collection of Lambros Fountas' clothes does not mention the gloves and hat that appear in the pictures. However, this omission cannot rebut the pictures taken immediately after the incident.

83. As regards the autopsy, the Court reiterates that, where an expert medical examination is of crucial importance in determining the circumstances of a death, significant shortcomings in the conduct of that examination may amount to serious failings capable of undermining the effectiveness of the domestic investigation (see, for example, *Tanlı v. Turkey*, no. 26129/95, §§ 149-154, ECHR 2001-III (extracts)). However, in the present case the applicant did not provide evidence of any serious failings in the autopsy performed on Lambros Fountas. It was not alleged, either, that the forensic experts had failed to establish the cause of death with certainty. As regards the applicant's allegation that he had been informed by the coroner that his son had been shot from a distance of three to four metres (see paragraph 20 above), the Court notes that this information was not corroborated by any evidence in the case file. Similarly, the applicant complained that there had been a trail of blood measuring approximately fifty metres – that is to say from where the Seat Ibiza had been parked (by 48 Kountouriotou Street) to the place where his son's body had been found (by 52 Kountouriotou Street). However, from the pictures included in the case file and sent to the Court, as well as from the sketch of the scene drawn by the police officers in charge of collecting the evidence that day, no trail of blood stains of such a length can be discerned. The blood stains are visible around the body of the deceased and from 50 Kountouriotou Street to 52 Kountouriotou Street. Therefore, the coroner's conclusions that the death of the applicant's son was immediate cannot be called into question on the basis of the evidence presented to the Court.

84. The Court also notes that the applicant advanced various hypotheses as to how the incident could have taken place, including the suggestion that his son could have been abducted from his house or that the Zastava pistol found next to his body could have been left by someone else. In this regard, the Court reiterates that a failure to follow an obvious line of inquiry would undermine to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible (see *Mustafa Tunç and Fecire Tunç*, cited above, § 175). However, that does not mean that the domestic authorities have to entertain every possible scenario advanced by the next-of-kin when it is not supported by corroborating evidence. The Court, having regard to the case file in its possession, considers that there is nothing to support the assertion that the domestic authorities failed to follow an obvious line of inquiry or disregarded evidence which could have pointed towards another line of events than the one accepted by the investigating authorities.

85. As regards the examination of whether the use of force was justified, the Court reiterates that the use of force by agents of the State in pursuit of one of the aims delineated in paragraph 2 of

Article 2 of the Convention may be justified under this provision where it is based on an honest belief which is perceived, for good reasons, to be valid at the time but which subsequently turns out to be mistaken. To hold otherwise would be to impose an unrealistic burden on the State and its law-enforcement personnel in the execution of their duty, perhaps to the detriment of their lives and those of others (see *McCann and others*, cited above, § 200). In a number of cases the Court has expressly stated that as it is detached from the events at issue, it cannot substitute its own assessment of the situation for that of an officer who was required to react in the heat of the moment to counter an honestly perceived danger to his life or the lives of others; rather, it must consider the events from the viewpoint of the person(s) acting in self-defence at the time of those events (see, for example, *Bubbins v. the United Kingdom*, no. 50196/99, § 139, ECHR 2005-II (extracts); and *Giuliani and Gaggio*, cited above, §§ 179 and 188). Consequently, in those Article 2 cases in which the Court specifically addressed the question of whether a belief was perceived, for good reasons, to be valid at the time, it did not adopt the standpoint of a detached observer; instead, it attempted to put itself into the position of the person who used lethal force, both in determining whether that person had the requisite belief and in assessing the necessity of the degree of force used (see, for example, *Makaratzis v. Greece* [GC], no. 50385/99, §§ 65-66, ECHR 2004-XI; *Oláh v. Hungary* (dec.), no. 56558/00, 14 September 2004; and *Giuliani and Gaggio*, cited above, § 189). Moreover, in applying this test the Court has not treated reasonableness as a separate requirement but rather as a relevant factor in determining whether a belief was honestly and genuinely held (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 246, 30 March 2016, and the case-law cited therein). In this regard, it is particularly significant that the Court has never found that a person purporting to act in self-defence honestly believed that the use of force was necessary but proceeded to find a violation of Article 2 on the ground that the belief was not perceived, for good reasons, to be valid at the time. Rather, in cases of alleged self-defence it has only found a violation of Article 2 where it refused to accept that a belief was honest or where the degree of force used was wholly disproportionate (ibid, § 247 and the case-law cited therein). It can therefore be elicited from the Court's case-law that the principal question to be addressed is whether the person had an honest and genuine belief that the use of force was necessary. In addressing this question, the Court will have to consider whether the belief was subjectively reasonable, having full regard to the circumstances that pertained at the relevant time. If the belief was not subjectively reasonable (that is, it was not based on subjective good reasons), it is likely that the Court would have difficulty accepting that it was honestly and genuinely held (ibid., § 248).

86. Turning to the circumstances of the present case, the Court notes that both public prosecutors examined the actions of the law-enforcement agents involved in relation to the applicable legislative framework and concluded that they had acted in self-defence. In doing so, they assessed a number of items of relevant evidence – namely the professional obligations of the officers, the degree of danger that the attack represented, the nature of the threatened harm and the circumstances under which the attack took place. The prosecutors also considered the question of whether officer Th.K. had exceeded the level of reasonable force in defending himself and provided reasons for the implicated officer's submission that his use of force had been reasonable. In this regard, the Court has to examine whether the test applied by the public prosecutors, namely whether the use of force had been justified and whether the police officer in question had exceeded the level of reasonable force, is compatible with the requirement that an

honest belief be perceived, for good reasons, to be valid at the time under Article 2 of the Convention. It is clear from domestic law and the orders of both the Public Prosecutors (see paragraphs 25 and 29 respectively) that the focus of the test applied was on the fact that officer Th.K. was acting in defence. At the same time, the Public Prosecutors examined whether another, milder method of defence could be used and whether Th.K. could be said to have exceeded the necessary level of defence. Bearing in mind that the Court has previously declined to find fault with a domestic legal framework purely on account of a difference in wording which can be overcome by the interpretation of the domestic courts (see *Perk and Others v. Turkey*, no. 50739/99, § 60, 28 March 2006, and *Giuliani and Gaggio*, cited above, §§ 214-15), it cannot be said that the test applied by the Greek authorities falls short of the standard required by Article 2 of the Convention. It is also clear that in the present case the public prosecutors carefully examined the subjective reasonableness of the belief that the attack the police officers received justified the level of force used by focusing on the circumstances at hand, namely the surprise element of the attack, the darkness, the continuous gunshots fired at the policemen from a short distance and the lack of safe cover, and concluded that Th.K. reasonably believed that a neutralisation shot had been necessary. Consequently, it cannot be said that the domestic authorities failed to consider, in a manner compatible with the requirements of Article 2 of the Convention, whether the use of force by the implicated police officers had been justified in the circumstances.

87. The Court has also to examine whether the investigation was adequate in the sense of being capable of leading to the identification and – if appropriate – punishment of those responsible. It has not been disputed that officers Th.K. and A.X. were implicated in the event. The Court takes note of the applicant's argument that when A.X. objected to the communication of the documents of the sworn administrative inquiry he mentioned that his gun had caused Lambros Fountas' death (see paragraph 59 above). However, the Court does not share the applicant's interpretation of officer A.X.'s objection. Moreover, there was no forensic evidence or any other element in the case file which would lead to doubt as to the identification of the person responsible for Lambros Fountas' death.

88. As regards the punishment of those responsible, the Court notes that the procedural obligations arising out of Article 2 require that an effective "investigation" be carried out and do not require the holding of any public hearings. Hence, if the evidence gathered by the authorities is sufficient to rule out any criminal responsibility on the part of the State agent who had recourse to force, the Convention does not prohibit the discontinuation of the proceedings at the preliminary inquiry stage. As the Court has just found, the evidence gathered by the prosecuting authorities led to the conclusion, beyond reasonable doubt, that Th.K. had acted in self-defence, which constitutes justificatory grounds under Greek criminal law.

89. Having regard to the above-mentioned considerations, the Court perceives no shortcomings that might call into question the overall adequacy of the investigation conducted by the domestic judicial authorities.

(iv) Involvement of the applicant in the investigation

90. It remains to be determined whether the applicant was afforded access to the investigation to the extent necessary to safeguard his legitimate interests. In this regard, the Court notes that under Greek law the injured party does not explicitly have access to the case file at the stage of

the preliminary inquiry. Nevertheless, there are other rights that are afforded to them, such as the right to appeal against the order of the public prosecutor at the Court of First instance, pursuant to Article 245 § 4 of the code of Criminal Procedure (see paragraph 24 above).

91. It is not disputed in the instant case that the applicant had the opportunity to exercise these rights. In particular, he submitted various memoranda with the investigating authorities, expressing his opinion on the incident and the ongoing investigation. Furthermore, he was able to lodge an appeal against the order issued by the public prosecutor at the Court of First Instance closing the investigation and to indicate additional investigate measures that he wished to see carried out, such as a reconstruction of the incident at issue . The fact that the public prosecutor, making use of his powers to assess the facts and the evidence, refused his request does not in itself amount to a violation of Article 2 of the Convention, particularly since his decision on those points does not appear to the Court to have been arbitrary (see the Court's conclusions in paragraph 81 above).

92. As regards the applicant's access to the documents of the case file, the Court considers it opportune to distinguish between the documents of the criminal investigation and the documents of the sworn administrative inquiry. In so far as the criminal case file is concerned, the Court notes that the parties disagree as to whether the applicant was given access to it. In particular, the applicant claimed that even though he had requested access to the case file so as to be able to exercise his rights under the Code of Criminal Procedure, his request had never been granted or at least he had never been informed of it, as proven by the fact that he had complained about it in his appeal dated 7 March 2012 against order no. A5/2012 of the public prosecutor at the Court of First Instance (see paragraph 60 above). On the contrary, the Government claimed that the applicant's request to be given access to the documents of the case file was granted, as proven by the handwritten note dated 2 March 2012 by the prosecutor from the Athens public prosecution office granting the applicant's request (see paragraph 40 above).

93. The Court notes that on the applicant's request to be given access to the case file, there is a handwritten note indicating that the request was granted and the date and signature of a prosecutor from the Athens public prosecution office. However, from the applicant's appeal against the order of the public prosecutor at the Court of First-Instance, it can be seen that the applicant was never informed that his request had been accepted. In addition, it appears that the Public Prosecutor at the Court of Appeal did not comment on the applicant's complaint that he had been unable to rebut the conclusions of order no. A5/2012 without sufficient access to the case-file (see paragraphs 26 and 28 above). In this connection, the Court considers that the applicant was only partially able to exercise his right to lodge an appeal against the order closing the investigation, as at the time he did not have access to the case file and was thus not able to rebut effectively the conclusions referred to in that order. The applicant could only speculate regarding the content of the case file and had no means of learning what it contained. It also follows from the case file that the applicant made multiple efforts to be informed of the progress of the investigation and to be given access to the various documents; those efforts, however, were unsuccessful.

94. Turning to the applicant's access to the documents of the sworn administrative inquiry, the Court notes that the applicant requested access to them already from 2012 but was only granted access to them in 2016. The reason for that delay was the fact that officers Th.K. and A.X. objected

to the communication of the relevant documents because they included their personal data. While the Court has previously held that disclosure or publication of police reports and investigative materials may involve sensitive issues with possible prejudicial effects on private individuals or other investigations and, therefore, cannot be regarded as an automatic requirement under Article 2, it still considers that a delay of four years before the Data Protection Authority was excessively long. It also appears that for the greater part of it, the applicant's request was inactive – that is to say from August 2012 until August 2016 no processing of the applicant's request took place. The failure to give the applicant the relevant documents on time appears all the more significant if one considers that the public prosecutor at the Court of First-Instance took explicitly into account the conclusions of the sworn administrative inquiry, as can be seen from his reference to it in order no. A5/2012 (see paragraph 25 above); this renders the applicant's ability to access the documents even more imperative in order that he be able to safeguard his legitimate interests. Moreover, the relevant authorities provided no reasons to explain why the applicant's request took so long to be examined.

95. As regards the applicant's general involvement in the investigation, the Court notes that the applicant was not informed of his son's death until after the autopsy had been conducted nor has there been any indication that the competent authorities undertook reasonable steps to inform Lambros Fountas' relatives earlier than 1 pm of the day the incident took place. That deprived him of the possibility of designating a technical expert who could observe the procedure on his behalf. Even though Article 2 does not require, as such, that the victim's relatives be afforded this possibility (see *Giuliani and Gaggio*, cited above, § 315) it follows from the parties' submissions that if the applicant had been informed on time, he would have been able to assign an expert if he so wished. In that respect, the Court takes note of the possibility afforded to the applicant after the initial autopsy to designate an expert of his own choosing and have the autopsy repeated (see paragraph 20 above). Nevertheless, having regard to the applicant's allegations (which were not refuted by the Government) – namely that the coroner confirmed that an autopsy had taken place on an identified body but that the applicant had only been informed of the incident afterwards – the Court is not convinced that the State authorities fulfilled their obligation to undertake reasonable steps in the circumstances to ensure that surviving members of the family were informed of the death of the applicant's son (compare *Lozovyye v. Russia*, cited above, §§ 44 and 46). These circumstances lead to the conclusion that the relevant authorities failed to ensure that the investigation received the required level of public scrutiny or to safeguard the interests of the next-of-kin in the proceedings.

(v) Conclusion

96. The foregoing considerations are sufficient to enable the Court to conclude that the investigation conducted into the applicant's son's death was ineffective as it lacked an important guarantee, that of the involvement of the deceased person's family. The Court holds, therefore, that there has been a violation of Article 2 of the Convention under its procedural limb due to the insufficient involvement of the applicant in the investigation conducted into his son's death.

ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

97. The applicant, relying on Article 6 of the Convention, complained that his rights as civil party had been violated on account of the refusal of the domestic authorities to give him copies of the documents of the investigation.

98. In view of its analysis under Article 2 of the Convention and the conclusions made, the Court considers that in the circumstances of the present case it is not necessary to examine any further complaint under Article 6 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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."

Damage

100. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

101. The Government contested those claims, arguing that the sum was excessive in view of the circumstances of the case and the country's current financial situation.

102. Having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the findings of a violation. Making its assessment on an equitable basis, the Court awards the applicant 15,000 EUR, plus any tax that may be chargeable to him.

Costs and expenses

103. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court.

104. The Government submitted that only documented claims should be reimbursed and that the applicant's request should therefore be rejected. In this regard, they argued that the applicant had failed to produce documents that would have proved that he had actually incurred these costs. In any event, they found this claim excessive and unsubstantiated, especially in view of the fact that no hearing had taken place.

105. 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. In the present case, the applicant failed to submit any document proving he had actually incurred those costs. Accordingly, it dismisses his claim.

Default interest

106. 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,

Declares the application admissible;

Holds that there has been a violation of Article 2 of the Convention under its procedural limb due to the insufficient involvement of the applicant in the investigation into his son's death;

Holds that there is no need to examine the complaint under Article 6 of the Convention;

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 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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;

Done in English, and notified in writing on 3 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel CamposKsenija Turkovic
RegistrarPresident