

La CEDU su diritto alla vita, divieto di tortura e diritto di libertà e sicurezza (CEDU, sez. III, sent. 30 giugno 2020, ric. n. 79947/12)

Con la decisione resa al caso Satybalov contro Russia, la Corte Edu si è pronunciata sul ricorso sollevato da tre cittadine russe congiunte da rapporto di parentela al Sig. Marat Satybalov, deceduto nel 2010 a seguito di maltrattamenti subiti nella stazione di polizia del distretto di Kazbekovskiy. Il Sig. Satybalov, assieme ad altre persone, era stato fermato sulla base di una segnalazione pervenuta alla polizia, secondo la quale l'uomo, per via della sua barba molto lunga, aveva destato sospetti. In seguito al rifiuto di fornire la propria identità veniva tradotto presso la stazione di polizia per l'identificazione e qui rimaneva in stato di detenzione per l'intera notte. L'indomani veniva rimesso in libertà, pagando la multa "per non aver obbedito agli ordini legittimi della polizia, in violazione dell'articolo 19.3 del codice dei reati amministrativi".

Con il ricorso presentato innanzi alla Corte EDU, le ricorrenti lamentavano la violazione degli articoli 2 (Diritto alla vita); 3 (Proibizione della tortura); 5 (Diritto alla libertà e alla sicurezza) e 13 (Diritto a un ricorso effettivo) della Convenzione EDU, nonché l'omissione di adeguate indagini da parte delle autorità nazionali.

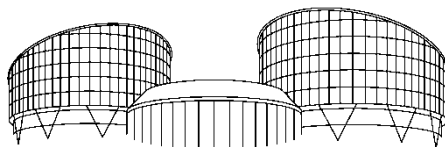
I giudici di Strasburgo dopo aver respinto l'eccezione di inammissibilità del ricorso sollevata dal Governo hanno proceduto ad esaminare il merito della questione. La Corte ha riscontrato la violazione degli articoli 2, 3 e 5 della CEDU. Rispetto invece alla violazione dell'art. 13 CEDU ha ritenuto assorbita la questione negli altri profili di censura posti.

Per la Corte EDU le percosse subite dal Sig. Satybalov - come confermato anche dalle indagini interne della polizia - ne hanno procurato la morte. A tal riguardo, si è ribadito che "quando un individuo viene preso in custodia dalla polizia in buona salute e viene trovato ferito al momento del rilascio, spetta allo Stato fornire una spiegazione plausibile di come sono state causate tali lesioni". In casi simili, l'obbligo per le autorità di rendere conto del trattamento di un individuo in custodia è particolarmente severo quando ne segua poi il decesso e, nel caso di specie, l'assenza di ogni ragionevole giustificazione del Governo circa l'uso eccessivo della forza da parte della polizia ha portato a ritenere responsabile lo Stato per la morte del Sig. Satybalov, con conseguente violazione dell'art. 2 CEDU. La stessa disposizione è stata ritenuta lesa anche sotto il suo profilo procedurale, in quanto l'obbligo di effettuare indagini efficaci (e tempestive), quando siano in questione gli articoli 2 e 3 della Convenzione, risponde allo scopo di garantire l'effettiva attuazione delle leggi nazionali a tutela del diritto alla vita e, in quei casi che coinvolgono agenti o organismi statali, far valere la loro responsabilità.

In riferimento all'art. 3 CEDU, la Corte ha poi ricostruito il contenuto della disposizione, tracciando la fondamentale distinzione tra tortura e trattamento inumano e degradante. In proposito, ha ravvisato nel maltrattamento inflitto nel caso di specie gli estremi di una vera e propria tortura, affermando che può definirsi come tale ogni trattamento che si caratterizzi non solo per una certa lesività seria ed intensa, ma anche per il concorrere dell'atteggiamento doloso dell'agente volto ad infliggere intenzionalmente dolore o sofferenza, punizioni o intimidazioni.

In tale contesto la Corte ha ravvisato parimenti la violazione dell'art. 5 CEDU, ritenendo che scopo principale della disposizione sia quello di prevenire privazioni arbitrarie o ingiustificate della libertà

che, assieme al diritto alla sicurezza, costituisce il pilastro fondamentale su cui si fonda il carattere democratico di ogni società. Infine, per le parti ricorrenti è stato disposto il risarcimento per danno morale e, per due delle tre richiedenti, anche il risarcimento per danno patrimoniale.



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

THIRD SECTION

CASE OF SATYBALOVA AND OTHERS v. RUSSIA

(Application no. 79947/12)

JUDGMENT
STRASBOURG

30 June 2020

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 Satybalova and Others v. Russia,

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

Paul Lemmens, *President,*

Helen Keller,

Dmitry Dedov,

María Elósegui,

Gilberto Felici,

Erik Wennerström,

Ana Maria Guerra Martins, *judges,*

and Olga Chernishova, *Deputy Section Registrar,*

Having deliberated in private on 9 June 2020,

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

PROCEDURE

1. The case originated in an application (no. 79947/12) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Russian nationals, listed below (“the applicants”), on 10 December 2012.
2. The applicants were represented by the Stichting Russian Justice Initiative, in partnership with another non-governmental organisation, Astreya (“SRJI/Astreya”). The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to

the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 27 June 2017 notice of the application was given to the Government.

THE FACTS

4. The applicants are:

- (1) Ms Madina Satybalova, who was born in 1961;
- (2) Ms Luiza Satybalova, who was born in 1968; and
- (3) Ms Taisa Nartayeva, who was born in 1940.

The first applicant lives in Khasavyurt and the other applicants in Aksay, the Khasavyurt district, Dagestan. They are respectively the sister, wife and mother of Mr Marat (in the documents submitted also referred to as Abu-Ali) Satybalov, who was born in 1974 and died in 2010.

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

I. Mr SATYBALOV'S ILL-TREATMENT BY THE POLICE AND HIS SUBSEQUENT DEATH

A. Detention of Mr Satybalov and his friends

6. On the evening of 2 May 2010 Marat Satybalov and his six friends, Mr M.Sh., Mr M.G., Mr K.A., Mr K.S., Mr A.N. and Mr D.Kh., were driving to the countryside for a barbecue in two cars. On the way there Mr Satybalov, Mr M.Sh. and Mr M.G., who were driving together in one car, stopped at a pharmacy in the village of Dylm to get painkillers for Mr M.G.'s toothache.

7. The pharmacy was already closed, so Mr M.G. went to buy the painkillers directly from the pharmacist, who lived next door. Mr Satybalov and Mr M.Sh. waited for him in the car. The pharmacist thought that Mr M.G. looked suspicious with his long beard and called the police.

8. After Mr M.G. purchased the medicine and went outside, a UAZ-type vehicle with police officers was already waiting in the street. The policemen, who were from the investigative-operational unit (COI) of the Kazbekovskiy district police station ("the ROVD"), got out and searched him at gunpoint. They then approached the passengers in the car, grabbed Mr M.Sh. and forced him out.

9. Then, the commander of the officers, Major A.S., dragged Mr Satybalov out of the car by his beard and hit him on the head with the butt of his machine gun.

10. The police officers then subjected Mr Satybalov, Mr M.Sh. and Mr M.G. to beatings, hitting them with the butts of their machine guns and kicking them. Then they took them to the ROVD without telling them the reasons for their detention.

B. Ill-treatment at the police station

11. At the ROVD the three men were taken to the courtyard and subjected to beatings. They were punched, kicked and hit with the butts of machine guns. They were then taken inside and asked repeatedly why they had long beards.

12. Major A.S. repeatedly pulled Mr Satybalov's beard, beat him and asked him about his beard. He filmed the ill-treatment of the three men on his telephone whilst hurling insults at them. After having been asked where they had been heading and the reasons for their trip, Mr Satybalov, Mr M.Sh. and Mr M.G. were subjected to further beatings in the courtyard.

13. Meanwhile, the four men from the second car went to the police station to look for their friends. They were also taken into the courtyard and subjected to beatings. A relative of one of the four men, Mr R.G., a law-enforcement officer who worked at the ROVD, then arrived at the police station. He spoke with his colleagues and the four men from the second car were released. Mr Satybalov, Mr

M.Sh. and Mr M.G. were taken to a cell on the station premises.

14. The cell where the three men were held overnight was cold. They were not provided with medical assistance, food or drink.

15. At approximately 10 a.m. the following morning Mr Satybalov, Mr M.Sh. and Mr M.G. were taken to the Kazbekovskiy District Court and ordered to pay an administrative fine of 500 roubles (about 12 euros) each for failing to obey lawful orders of the police. They were not provided with any documents concerning their detention at the police station or the court hearing (see paragraph 26 below).

16. Mr Satybalov, Mr M.Sh. and Mr M.G. were subsequently released on 3 May 2010.

C. Mr Satybalov's death and subsequent events

17. At about 3 p.m. on 3 May 2010 Mr M.Sh. and Mr M.G. took Mr Satybalov, who was unable to walk, to Khasavyurt Hospital, where he underwent an X-ray. The doctor said that he had no fractures, gave him some painkillers and sent him home.

18. The two men carried Mr Satybalov home. The applicants noticed that all three men had been injured. Mr Satybalov was injured particularly badly: he could not stand up, his entire body and head were covered in haematomas, abrasions and bruises and part of his beard had been pulled out. He could not breathe normally. Mr Satybalov remained at home and by 4 and 5 May 2010 the state of his health had worsened.

19. In the early hours of 6 May 2010 the applicants and their relatives took Mr Satybalov back to Khasavyurt Hospital, where he immediately underwent emergency surgery. According to the doctors, he had lost a lot of blood owing to internal bleeding following the beatings on 2 May 2010.

20. At about 5 p.m. on 6 May 2010 the doctors performed further emergency surgery and informed the applicants that Mr Satybalov was in a critical condition. He had punctured lungs, broken ribs and damage to his heart and arteries. They said that his kidneys were severely damaged and had stopped functioning. On 7 May 2010 Mr Satybalov died in hospital.

21. On 7 May 2010 about 600 residents of the Kazbekovskiy district blocked the Rostov-Baku motorway in the vicinity of the Uzun-Otar settlement to demand that the policemen responsible for Mr Satybalov's death be prosecuted. The Dagestan Minister of the Interior, Mr Ali M., arrived at the scene and promised that all the police officers involved, including Major A.S., would be prosecuted. The incident received wide local and online media coverage.

22. In support of their submissions to the Court, the applicants furnished copies of their complaints to the authorities and their statements concerning the circumstances of the events provided throughout the investigation, a copy of Mr Satybalov's medical records and copies of several articles published in local newspapers in connection with the incident.

D. Documents submitted by the Government concerning the administrative proceedings against Mr Satybalov

23. At 9.50 p.m. on 2 May 2010 at the ROVD, in the presence of two attesting witnesses, Mr A.M. and Mr N.A., Major Kh.Kh. drew up administrative detention records concerning Mr Satybalov, Mr M.Sh. and Mr M.G. According to the document, Mr Satybalov "failed to obey lawful orders of the police" in violation of Article 19.3 of the Code of Administrative Offences.

24. On 2 May 2010 Major Kh.Kh. took statements from Mr M.Sh. and Marat Satybalov, both of whom stated that on 2 May 2010 they and their friends had been driving in two cars for a picnic. On

the way they had had to stop at a pharmacy in Dylm. A group of police officers had asked for their identity documents and had then taken them to the police station as they and their friends had had long beards.

25. On 3 May 2010 Major Kh.Kh. also interviewed Mr M.G., who stated that on 2 May 2010 he and his six friends had been driving in two cars for a barbecue. On the way, he had got a toothache, so they had had to stop in Dylm to pick up some painkillers. As the local pharmacy had been closed, he had had to purchase the medication from the pharmacist's house next door. A group of police officers had then run up to their car, forced him and his friends to the ground and then, without any explanation, had taken them to the police station. About one and a half hours later, the second car with his friends had also been taken to the police station.

26. On 3 May 2010 the justice of the peace of department no. 116 in the Kazbekovskiy district, Mr Ya.Sh., examined the administrative cases against Mr M.G., Mr M.Sh. and Mr Satybalov. Without examining the grounds for their detention between 2 and 3 May 2010 at the police station, the justice of peace fined them 500 roubles (about 12 euros) each. The decisions issued in respect of the three men were almost identical and stated, among other things, as follows:

"... the fact of failing to obey lawful orders of the police in connection with the execution of their responsibility to protect public order is confirmed by a telephone message. From [that], it appears that at 9.45 p.m. on 2 May 2010 the Kazbekovskiy ROVD [the police station] received a telephone message from a policeman from the investigative-operational unit stating that, in the centre of Dylm in the Kazbekovskiy district, next to the pharmacy, there were people acting suspiciously with overgrown beards ... where [the police officers] did in fact find three strangers, suspicious looking, all of whom had overgrown beards and one of whom was in a military uniform. The officers approached them and introduced themselves as policemen from the ROVD and asked for [their] identity documents. The strangers replied that they did not have any documents on them and started to express their discontent, asking why they needed to have the documents on them. The officers then asked the men to follow them to the police station to establish their identity and carry out further clarifications.

The men then started to show their indignation and said that they had not done anything and should not go to the station. [They did not respond] to the lawful and repeated requests to [go to] the police station, and by doing so failed to obey lawful orders [of the police]. As it was impossible to establish [their] identity on the spot, and given that the three of them had committed an administrative violation under Article 19.3 of the Code of Administrative Offences [failing to obey lawful orders of the police], the individuals, with the use of physical force, were taken to the police station for an identity check and further clarifications ..."

II.OFFICIAL INVESTIGATION INTO THE EVENTS

27. On 8 May 2010 the third applicant complained to the Dagestan prosecutor's office that her son Marat Satybalov had been ill-treated by the police and had died as a result. She pointed out that her son had described the circumstances of the incident to her while still alive. According to him, the commander of the investigative-operational unit of the ROVD, Major A.S., had dragged him out of the car by his beard and had hit him on the head with the butt of a machine gun. He and his two friends had then been subjected to beatings, taken to the police station and then to its courtyard. Her son had been questioned afterwards about his religious beliefs and his beard;

Major A.S. had filmed it all on a telephone. After spending a night in the cell without food, drink or medical assistance, her son had been taken to court and fined for an administrative violation. No paperwork concerning either his detention or the court proceedings had been given to him. He had then been taken home. By 4 and 5 May 2010 his health had deteriorated as he could not walk or speak. Indeed, his state had worsened because his two ribs had been broken by Major A.S. The fractured ribs had damaged an artery, which in turn had caused extensive internal bleeding. On 7 May 2010 Marat Satybalov had died in hospital as a result of the beatings carried out by Major A.S. and his subordinates from the ROVD. The applicant requested that the perpetrators of her son's ill-treatment be prosecuted and that she be informed of the steps taken.

28. On 8 May 2010 the Khasavyurt investigations department of the Dagestan prosecutors' office ("the investigators") interviewed Mr Satybalov's friends, Mr M.Sh., Mr K.A., Mr M.G., Mr K.S. and Mr D.Kh., who had witnessed the events. They all gave statements similar to the applicants' submissions to the Court, including the description of Mr Satybalov's beatings by the policemen.

29. On the same date, 8 May 2010, the investigators also interviewed Mr U.U., who lived next to the police station and worked at the pharmacy in Dylm. He stated that late in the evening of 2 May 2009 a young man had shown up at the door of his house and asked for painkillers. The witness had sold him two types of painkillers from his house as the pharmacy was already closed.

30. On 13 May 2010 one of Marat Satybalov's friends, Mr D.Kh., complained to the Dagestan prosecutor's office that he and his friends had been subjected to severe beatings on 2 May 2010 at the ROVD, and requested that the perpetrators be prosecuted. He described the ill-treatment in detail, stating that a police officer wearing a balaclava had broken his nose. He stressed that Major A.S. and his subordinates had beaten Mr Satybalov and fractured, amongst other things, two of his ribs, which had subsequently led to internal bleeding and his death on 7 May 2010.

31. On 18 May 2010 the investigators opened criminal case no. 02222 under Article 286 of the Criminal Code (abuse of authority). The applicants were informed thereof on 18 June 2010.

32. On various dates between 13 and 26 May 2010 six persons who had been detained with Mr Satybalov complained to the Dagestan prosecutor's office that they and Marat Satybalov had been subjected to severe beatings on 2 May 2010 at the Kazbekovskiy police station. They described the circumstances of the incident in detail and requested that the perpetrators, including Major A.S., be prosecuted. They also stressed that their detention at the station had been unlawful.

33. On 22 and 23 May 2010 those who had been involved in the incident on 2 May 2010 were granted victim status in the criminal case and questioned about the circumstances of the ill-treatment. Their detailed statements were similar to the applicants' submissions to the Court.

34. Between 23 and 26 May 2010 the investigators ordered a forensic examination of the victims. According to the relevant expert report, each of them had sustained physical injuries of varying degrees of severity.

35. On 26 May 2010 the third applicant again complained to the Dagestan prosecutor's office that her son and his friends had been unlawfully detained and beaten by the police and that he had died as a result of that ill-treatment. She stressed that, according to her son, Major A.S. had filmed the beatings and degrading treatment by the officers at the police station.

36. On 4 June 2010 the Dagestan prosecutor issued an order concerning the elimination of

procedural violations committed during the investigation of the criminal case (*Требование об устранении нарушений федерального законодательства, допущенных в ходе предварительного расследования*). The order stated, amongst other things, as follows:

“... the case material clearly shows that a crime was committed; there is direct evidence from the victims concerning the identity of the culprits and the circumstances in which the crime was committed. [However], to date, the crime scene has not been examined.

The investigators have seriously violated criminal procedure regulations by failing to take urgent steps for more than [twenty] days since the opening of the investigation, in particular by failing to take the following measures:

- obtaining information from the Kazbekovskiy ROVD concerning the policemen on duty on 2 May 2010 who had gone to the pharmacy;
- identifying and questioning the driver of the UAZ vehicle belonging to the ROVD and identifying those who had gone to the pharmacy;
- questioning the police officers who had gone to the crime scene (the pharmacy) concerning the allegations of the victims and their statements given to the investigation;
- questioning Mr U.U. (the pharmacist) and verifying the victims' allegations ...
- questioning the police officer Rashid concerning the discovery of the grenade launcher in the victims' car and finding out whether it had been placed to imitate the illegal possession of firearms;
- questioning the victims and finding out why they had called Marat Satybalov by the name Abu-Ali;
- establishing every minute of the whereabouts of [Major] A.S. on the date of the incident by questioning the witnesses at the ROVD, as well as finding out what he had done on that date. All those facts should have been duly reflected in the documents and supported by witness statements;
- granting victim status to Marat Satybalov's relatives and questioning them ...

The investigation has been conducted without a plan. The steps taken to establish the motive for the crime have not been sufficient. In addition, the investigators failed to reply to the victims' complaints ...”

37. On 27 June 2010 the head of the Internal Security Department of the Dagestan Ministry of the Interior issued a conclusion on “the internal inquiry regarding information concerning the unlawful actions of police officers from the Kazbekovskiy ROVD”. According to the document, the inquiry established, among other things, the following:

“... thus, the inquiry established the involvement of the ROVD officers, including the commander Major A.S., in the unlawful forcible actions on 2 May 2010 against Mr M.G., Mr M.Sh., Mr Marat Satybalov, who had been taken to the police station, and against Mr K.A., Mr A.N., Mr D.Kh. and Mr K.S., who had [gone there] to find out the reasons for their [friends'] detention ... It is necessary, in order to establish the circumstances of the use of physical force against those individuals, to take a number of investigative steps, which is possible only within the framework of criminal case no. 02222.

In addition, [the documents show that] Warrant Officer A.A. and Sergeant S.G. from the ROVD submitted information that on 2 May 2010 they had taken Mr M.Sh., Mr M.G. and Marat Satybalov

to the ROVD for allegedly disobeying lawful orders of the police. However, in fact, the inquiry established that [both] officers had not left the police station and had remained on its premises; the duty officer, Major Kh.Kh., having received information concerning suspicious-looking people in Dylm, had sent [a group] of policemen there without a [commanding] officer and had then failed to log information [in the register] concerning the identity of the policemen who had actually gone to that location.

Based on the above, the following measures [are to be taken]:

1. The internal inquiry aimed at verifying the information concerning the Kazbekovskiy ROVD policemen is considered to be finished;
2. For the gross violations of the Code of Professional Ethics ... expressed by the lack of sincerity, unscrupulousness and false statements given in the internal inquiry, as well as false information concerning the taking to the ROVD on 2 May 2010 of Mr M.SH., Mr M.G. and Mr Marat Satybalov [for allegedly] disobeying lawful orders and insubordination, Warrant Officer A.A. and Sergeant S.G. are to be subjected to disciplinary measures by the head of the ROVD;
3. For the gross violations of the orders of the Ministry of the Interior ... expressed on 2 May 2010 by the sending of a special unit of policemen without a commanding officer and the failure to duly log that information, Major Kh.Kh. is to be subjected to disciplinary measures by the head of the ROVD;
4. The supervising officers of the Kazbekovskiy ROVD should be denounced for their lack of control over the actions of their subordinates, as a result of which gross violations of professional discipline and lawfulness took place;
5. A copy of the conclusion of the internal inquiry should be incorporated into the case file in criminal case no. 02222.
6. The issue of the responsibility of the police officers from the Kazbekovskiy ROVD who allegedly caused bodily harm to Mr M.G., Mr M.Sh., Mr K.A., Mr A.N., Mr D.Kh., Mr K.S. and Mr Marat Satybalov, as a result of which the latter died, should be examined within the framework of criminal case no. 02222, to establish the identity of the perpetrators and the extent of their [individual] involvement in the crime ...”

From the documents submitted it is unclear whether the ordered measures were taken. The applicants were not informed of the inquiry.

38. On 12 July 2010 the applicants' lawyer asked Khasavyurt Hospital to provide a copy of Mr Satybalov's medical records. On 13 July 2010 his request was granted.

39. On 18 August 2010 the investigation of the criminal case was suspended for failure to identify the perpetrators. The applicants were not informed thereof.

40. On 24 January 2011 the first and second applicants requested that the investigators grant them and the third applicant victim status in the criminal case and inform them of the steps taken to prosecute the ROVD police officers. In particular, they asked whether all of the witnesses and victims had been questioned, whether a post-mortem of Mr Satybalov's body had been carried out and whether his medical records had been examined. The applicants also asked to be provided with copies of documents showing the main steps taken by the investigators.

41. On 31 January 2011 the Kazbekovskiy district prosecutor issued an order concerning the elimination of procedural violations committed during the investigation of the criminal case. The prosecutor ordered that a number of urgent steps be taken, including those ordered on 4 June 2010

by the Dagestan prosecutor (see paragraph 36 above).

42. On 13 February 2011 the investigators granted the applicants victim status in the criminal case, but refused to grant the rest of their request of 24 January 2011. In particular, they stated that access to the contents of the investigation file was only allowed after the conclusion of the criminal proceedings. No other information concerning the investigation was given.

43. On 13 February 2011 the investigators' supervisor overruled the suspension of the investigation of 18 August 2010 as unlawful and premature and ordered that the proceedings be resumed immediately and that a number of urgent steps be taken, including those ordered on 4 June 2010 and 31 January 2011 (see paragraphs 36 and 41 above).

44. On 13 March 2011 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The steps ordered on 13 February 2011 were not taken. The applicants were not informed of the suspension.

45. On 4 April 2011 the investigators' supervisor overruled the suspension of the investigation of 13 March 2011 as unlawful and premature, ordering that the proceedings be resumed immediately and that a number of urgent steps be taken, including those ordered on 4 June 2010, 31 January 2011 and 13 February 2011 (see paragraphs 36, 41 and 43 above).

46. On 4 May 2011 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The steps ordered on 13 February and 4 April 2011 were not taken. The applicants were not informed of the suspension.

47. On 5 September 2012 the first applicant again requested that the investigators allow her to access the investigation file and inform her of the steps taken to have the perpetrators prosecuted. In particular, she asked to be informed whether all of the witnesses and victims had been questioned, whether a post-mortem of her brother's body had been carried out and whether his medical records had been examined.

48. On 24 September 2012 the investigators replied to the first applicant that she had been granted victim status in the criminal case and that the investigation had been suspended on 13 March 2011. No other information was given.

49. On 6 May 2013 the investigators' supervisor overruled the suspension of the investigation of 4 May 2011 as unlawful and premature and ordered that the proceedings be resumed immediately and that a number of the previously ordered urgent steps be taken (see paragraphs 36, 41 and 43 above).

50. On 7 June 2013 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The steps ordered on 6 May 2013 were not taken. The applicants were not informed of the suspension.

51. On 21 September 2015 the investigators' supervisor overruled the suspension of the investigation of 7 June 2013 as unlawful and premature and ordered that the proceedings be resumed immediately and that a number of the previously ordered urgent steps be taken (see paragraphs 36, 41, 43 and 49 above).

52. On 25 September 2015 the first applicant was granted victim status in the criminal case and questioned. Her detailed statement was similar to the applicants' submissions to the Court.

53. On 25 September 2015 the investigators ordered a forensic examination to establish the cause of Mr Satybalov's death on the basis of his medical records. The applicants were not informed thereof,

despite their requests to this effect (see paragraphs 40 and 47 above).

54. On 21 October 2015 the investigation of the criminal case was again suspended for failure to identify the perpetrators. The applicants were not informed of that decision.

55. From the documents submitted it appears that the proceedings are still pending.

56. In their submissions to the Court, the Government did not dispute the circumstances of Mr Satybalov's detention and alleged ill-treatment as described by the applicants. They only stated that he had been taken to the ROVD for "not obeying lawful orders of the police" and that the following day he had been taken before a judge, who had sanctioned him with a fine.

RELEVANT LEGAL FRAMEWORK

57. For a summary of the relevant domestic regulations, see *Turluyeva v. Russia* (no. 63638/09, §§ 56-64, 20 June 2013) and *Tsvetkova and Others v. Russia* (nos. 54381/08 and 5 others, §§ 60-81, 10 April 2018).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 2 AND 3 OF THE CONVENTION

58. The applicants complained under Articles 2 and 3 of the Convention that their relative Marat Satybalov had died as a result of severe ill-treatment by the police, and that the domestic authorities had failed to effectively investigate the matter. Articles 2 and 3 of the Convention read as follows:

Article 2

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.

Article 3

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

A. Admissibility

1. *The parties' submissions*

59. The Government submitted that the applicants had failed to exhaust domestic remedies by failing to lodge an appeal concerning the investigators' inaction with the domestic courts and had, in any event, lodged their application out of time. According to the Government, the application should have been lodged within six months of the second suspension of the investigation on 13

March 2011, the date on which the applicants should have realised the ineffectiveness of the pending criminal proceedings.

60. The applicants submitted that they had complied with the admissibility criteria and reiterated their complaint.

2. The Court's assessment

61. In cases concerning the obligation to investigate under Article 2 of the Convention, the Court has held that, where a death has occurred, relatives who are applicants are expected to take steps to keep track of an investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any appropriate redress, including effective criminal investigations (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 268-69, ECHR 2014 (extracts)). In declaring so, the Court has imposed a duty of diligence and initiative on the families of victims wishing to complain of a delayed or ineffective investigation, stating that they cannot wait indefinitely before bringing such complaints to the Court.

62. The Court observes that in the case at stake the applicants lodged their application within about two years and seven months of the incident and the beginning of the criminal investigation. Throughout that period they maintained regular contact with the authorities by providing statements and lodging various complaints and requests concerning the investigation. The Court further observes that at the time the application was lodged the investigation was ongoing and no final domestic decision on its results had been taken. The decision of 13 March 2011 referred to by the Government concerned a procedural step taken within the framework of the ongoing criminal proceedings and therefore could not serve as a final domestic decision capable of triggering the time-limit (see, among other examples, *Kushtova and Others v. Russia (no. 2)*, no. 60806/08, §§ 66-68, 21 February 2017).

63. In the light of the foregoing, the Court finds that the applicants have complied with the time-limit and dismisses the Government's objection under that head.

64. As to the Government's objection concerning the applicants' failure to exhaust domestic remedies within the criminal proceedings, the Court considers that it raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicants' complaints. It therefore decides to join this objection to the merits of the case and considers that the issue falls to be examined below. It also notes that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

65. The applicants reiterated their complaint and submitted that their relative Marat Satybalov had died as a result of severe ill-treatment by the police and that the authorities had failed to carry out an effective investigation into the matter.

66. The Government did not comment on whether the State should be held responsible for the ill-treatment of Mr Satybalov and his subsequent death. They submitted that the investigation had been effective and had fully complied with the procedural obligation under Articles 2 and 3 of the Convention.

2. *The Court's assessment*

67. A summary of the general principles relating to the establishment of matters in dispute, in particular when faced with allegations of violations of fundamental rights, can be found in *El-Masri v. "the former Yugoslav Republic of Macedonia"* ([GC], no. 39630/09, §§ 151-52, 13 December 2012).

(a) Article 2

(i) *Alleged violation of the substantive aspect of Article 2 of the Convention*

68. The Court observes that the Government neither disputed the circumstances of the ill-treatment of Mr Satybalov as presented by the applicants, nor the applicants' allegation that he had died as a result of the injuries inflicted during the ill-treatment. Therefore, it has been established that as a result of the beatings on 2 May 2010 by the police officers, Mr Satybalov suffered numerous injuries, including punctured lungs, broken ribs and damage to his heart, kidneys and arteries, which led to his death on 7 May 2010 (see paragraphs 19-20 above). The internal police inquiry carried out into the circumstances of the incident confirmed the use of physical force against Mr Satybalov by the police officers (see paragraph 37 above).

69. The Court reiterates that where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies (see *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII; *Tanlı v. Turkey*, no. 26129/95, § 141, ECHR 2001-III (extracts); and *Tekin and Arslan v. Belgium*, no. 37795/13, § 83, 5 September 2017). In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government (see *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002).

70. Given that the domestic investigation or the Government in their submissions before the Court have failed to provide any explanation or justification for the use of force by the police against Mr Satybalov which led to his death, the Court finds that Mr Satybalov's death can be attributed to the State. Bearing in mind the rejection of the preliminary objection of non-exhaustion of domestic remedies in the context of criminal investigation, as raised by the Government (see paragraphs 64 above and 73 below), the Court concludes that there has therefore been a violation of the substantive aspect of Article 2 of the Convention.

(ii) *Alleged violation of the procedural aspect of Article 2 of the Convention*

71. The obligation to carry out an effective investigation into allegations of treatment infringing Articles 2 and 3 suffered at the hands of State agents is well established in the Court's case-law (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, §§ 229-39, ECHR 2016; *El-Masri*, cited

above, §§ 182-85, and *Mocanu and Others*, cited above, §§ 316-26). Indeed, the essential purpose of an investigation under Article 2 is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 105, 4 May 2001; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 110, ECHR 2005-VII; and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 163, ECHR 2011). Article 2 requires investigations to be prompt (see *Armani Da Silva*, cited above, § 237) and to proceed with reasonable expedition (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 305, ECHR 2011 (extracts)). The Court accepts that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, but it considers that 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 *Al-Skeini and Others*, cited above, § 167; *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 224, ECHR 2004-III; and *Armani Da Silva*, cited above, § 237). The Court observes that the passage of time is liable not only to undermine an investigation, but also to compromise definitively its chances of being completed (see *Mocanu and Others*, cited above, § 337).

72. At the outset, the Court observes that the investigation of the criminal case has been ongoing for several years without attaining any results, despite the numerous pieces of direct evidence pointing to the identity of the perpetrators (see paragraphs 21, 27, 28, 30, 32, 33, 36 and 37 above). The documents submitted show that the investigation has been consistently criticised by the supervisory bodies, which have ordered compulsory remedial measures to no avail (see paragraphs 36, 41, 43, 45, 49 and 51 above).

73. Furthermore, as to the Government's preliminary objection that was joined to the merits of the complaint, the Court observes that from the documents submitted it appears that despite repeated requests the applicants were not duly informed of the suspensions and other important steps taken by the investigators in the criminal case (see paragraphs 39, 40, 42, 44, 47, 49, 51, 53 and 54 above). Keeping in mind the principles established by its case law (see paragraphs 83 and 84 below) and given the investigators' systematic and clear failure to comply with the orders issued by their superiors, the Court finds that any further challenge by the applicants before a court of the very same failures would appear devoid of any practical purpose (see, for example, *Aliyev and Gadzhiyeva v. Russia*, no. 11059/12, §§ 99-100, 12 July 2016). Accordingly, the Court finds that the remedy suggested by the Government (see paragraph 59 above) would have been ineffective in the circumstances and dismisses their preliminary objection.

74. There has accordingly been a violation of Article 2 of the Convention under its procedural limb.
(b) Article 3

(i) *Alleged violation of the substantive aspect of Article 3 of the Convention*

75. The Court notes that the Government do not dispute that Mr Satybalov was subjected to ill-treatment which resulted in his death. It has also been established that he was ill-treated by State agents and died as a result of that ill-treatment (see paragraph 70 above). In the light of this, the Court finds that State agents were responsible for the ill-treatment.

76. In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. Thus, an assessment of the level of severity of the ill-treatment has to be carried out. This assessment depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015). In addition to the severity of the treatment, there is a purposive element, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of inflicting punishment or intimidating (see *El-Masri*, cited above, § 197). Keeping in mind these criteria, the Court finds that the ill-treatment to which Mr Satybalov was subjected between 2 and 3 May 2010 (see paragraphs 9-12 and 18-20 above) and which led to his subsequent death on 7 May 2010 amounted to torture.

77. Accordingly, there has been a violation of the substantive aspect of Article 3 of the Convention.

(ii) *Alleged violation of the procedural aspect of Article 3 of the Convention*

78. As to the applicants' complaint concerning the failure to properly investigate the alleged ill-treatment of Mr Satybalov, the Court notes that the substance of that complaint has been examined by the Court under the procedural aspect of Article 2 of the Convention (see paragraph 74 above).

79. The Court does not therefore consider it necessary to make a separate finding under Article 3 of the Convention concerning the alleged shortcomings of the investigation into Marat Satybalov's ill-treatment.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

80. The applicants complained that Mr Satybalov's right to liberty and security had been violated. In particular, they stated that his detention at the police station between 2 and 3 May 2010 had been in breach of the guarantees contained in Article 5 of the Convention, the relevant parts of which read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings

by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful ...”

A. Admissibility

1. *The parties' submissions*

81. The Government submitted that the complaint should be rejected for failure to exhaust domestic remedies.

82. The applicants disagreed with the Government' submission stating that the authorities had been informed of the unlawfulness of Mr Satybalov's detention at the police station.

2. *The Court's assessment*

83. The Court reiterates that the purpose of the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention is to afford Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. In consequence, complaints intended to be brought subsequently before the Court in Strasbourg should first have been made – at least in substance – to the appropriate domestic body (see *Hutten-Czapska v. Poland* (dec.), no. [35014/97](#), 16 September 2003).

84. The Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of each individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the applicant's personal situation. There is no obligation to have recourse to remedies which are inadequate or ineffective. In addition, the “generally recognised rules of international law” provide that there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal (see *Aksoy v. Turkey*, 18 December 1996, §§ 52-53, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 66-67, *Reports* 1996-IV).

85. The Court notes that the Government do not dispute that Mr Satybalov was released from detention, and that he died shortly thereafter. Following Mr Satybalov's death, the issue of the alleged unlawfulness of his detention has been one of the subject matters of the complaints to the investigating authorities (see paragraphs 27, 32 and 35 above). Therefore, the authorities were made aware of it by way of the criminal complaint, which prompted the opening of the criminal case, where the proceedings are still pending. The Government's non-exhaustion objection should therefore be dismissed (see *Leonid Petrov v. Russia*, no. [52783/08](#), § 50, 11 October 2016).

86. Given the above, the Court finds that this complaint is linked to the one already examined (see paragraph 74 above) and must therefore likewise be declared admissible.

B. Merits

1. *The parties' submissions*

87. The applicants contended that Mr Satybalov's detention at the police station had been unlawful and arbitrary, and that his arrest had not been properly documented.

88. The Government stated that Mr Satybalov's detention at the police station between 2 and 3 May 2010 had been "in full compliance" with Article 5 of the Convention, as on 3 May 2010 he had been taken before a judge.

2. *The Court's assessment*

89. The key purpose of Article 5 is to prevent arbitrary or unjustified deprivations of liberty (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 73, 22 October 2018, and *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-X). The right to liberty and security is of the highest importance in a "democratic society" within the meaning of the Convention (see *Medvedyev and Others v. France* [GC], no. 3394/03, § 76, ECHR 2010). The Court therefore considers that the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision (see *El-Masri*, cited above, § 233; *Al Nashiri v. Poland*, no. 28761/11, § 529, 24 July 2014; and *Belozorov v. Russia and Ukraine*, no. 43611/02, § 113, 15 October 2015). The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible, *inter alia*, with the very purpose of Article 5 of the Convention (see *Kurt v. Turkey*, 25 May 1998, § 125, *Reports* 1998-III). It is also incompatible with the requirement of lawfulness under the Convention (see *Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV).

90. The Court notes that according to the court's decision of 3 May 2010, Mr Satybalov's detention at the ROVD and the subsequent fine imposed by the justice of the peace came about as a result of his refusal to obey lawful orders of the police (see paragraph 26 above). However, according to the conclusions of the internal inquiry of 27 June 2010, which had been carried out into the actions of the police officers following the incident, the reasons given by the implicated police officers for Mr Satybalov's detention had been characterised by "the lack of sincerity, unscrupulousness and ... false information" (see paragraph 37 above). The internal police inquiry therefore established that the reasons for Mr Satybalov's detention had not been substantiated.

91. Having regard to the above and its finding relating to Article 2 (see paragraph 74 above), the Court finds that there has been a violation of Article 5 of the Convention on account of Mr Satybalov's detention at the police station between 2 and 3 May 2010.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

92. Article 13 of the Convention provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an

effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

93. The parties referred to their submissions on the effectiveness of the investigation from the standpoint of Article 2 of the Convention.

94. Having regard to the findings relating to Article 2 of the Convention under its procedural limb (see paragraph 74 above), the Court considers that it is not necessary to examine whether in the present case there have been a violation of Article 13 taken in conjunction with Article 2 of the Convention (see, *mutatis mutandis*, *Khodzhayev v. Russia*, no. [52466/08](#), § 151, 12 May 2010, and *Fanziyeva v. Russia*, no. [41675/08](#), § 85, 18 June 2015).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. Article 41 of the Convention provides:

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

A. Damage

1. Pecuniary damage

96. The first applicant did not claim pecuniary damage, whereas the other applicants claimed pecuniary damage for the loss of the breadwinner in their family. They based their calculations on the subsistence level and inflation rate in Russia, as Mr Satybalov had not been officially employed at the material time. The second applicant claimed that, as the wife of Mr Satybalov, she could have counted on at least 30% of his earnings and claimed 1,515,362 roubles (RUB) (about 22,100 euros (EUR)). The third applicant, as the mother of Mr Satybalov, also claimed that she could have counted on at least 30% of his earnings and claimed RUB 1,263,645 (about EUR 18,300) under this head.

97. The Government stated that the compensation should be made in accordance with the Court’s case law.

98. The Court reiterates that there must be a clear causal connection between the damages claimed by the applicants and the violation of the Convention. This may, where appropriate, include compensation for loss of earnings, which applies to close relatives, including spouses, elderly parents and minor children (see, among other authorities, *Imakayeva v. Russia*, no. [7615/02](#), § 213, ECHR 2006-XIII (extracts)).

99. In the light of the foregoing conclusions, the principles enumerated above, and the parties’ submissions, the Court awards the second applicant EUR 10,000 and the third applicant EUR 8,000 in respect of pecuniary damage, plus any tax that may be chargeable to them on those amounts.

2. Non-pecuniary damage

100. As for non-pecuniary damage, the applicants claimed jointly a compensation for the mental

suffering caused by the death of their close relative Marat Satybalov as a result of the police ill-treatment and the authorities' failure to investigate the circumstances thereof. They left the determination of the amount to the Court.

101. The Government stated that the compensation should be made in accordance with the Court's case-law.

102. Taking account of the parties' submissions and the violations found, the Court awards the applicants EUR 80,000 jointly in respect of non-pecuniary damage, plus any tax that may be chargeable to them.

B. Costs and expenses

103. The applicants also claimed a total of EUR 4,260 for costs and expenses incurred before the Court. They were represented by lawyers from SRJI/Astreya. The claim covered the drafting of legal documents, translation services and administrative and postal costs.

104. In accordance with 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 to cover costs under all heads. The award is to be paid into the representative's bank account as specified by the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's preliminary objection concerning the exhaustion of domestic remedies and *rejects* it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of the substantive aspect of Article 2 of the Convention in respect of Mr Marat Satybalov;
4. *Holds* that there has been a violation of the procedural aspect of Article 2 of the Convention on account of the authorities' failure to investigate the circumstances of Mr Satybalov's death;
5. *Holds* that there has been a violation of the substantive aspect of Article 3 of the Convention on account of Mr Satybalov's torture;
6. *Holds* that there is no need to examine separately the complaint under the procedural aspect of Article 3 of the Convention;
7. *Holds* that there has been a violation of Article 5 of the Convention on account of Mr Satybalov's detention at the police station;
8. *Holds* that that there is no need to examine the complaint under Article 13 taken in

conjunction with Article 2 of the Convention;

9. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State, except for the payment of costs and expenses, at the rate applicable at the date of settlement:

(i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the second applicant;

(ii) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage to the third applicant;

(iii) EUR 80,000 (eighty thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicants jointly;

(iv) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank accounts as indicated by the applicants;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 30 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova

Paul Lemmens

Deputy Registrar President