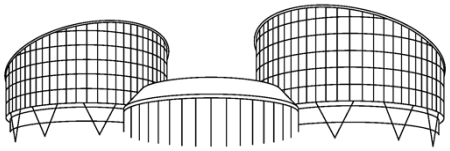

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF VAZAGASHVILI AND SHANAVA v. GEORGIA

(Application no. 50375/07)

JUDGMENT

STRASBOURG

18 July 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 Vazagashvili and Shanava v. Georgia,

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

Angelika Nußberger, *President,*
Yonko Grozev,
André Potocki,
Síofra O'Leary,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lado Chanturia, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 25 June 2019,

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

PROCEDURE

1. The case originated in an application (no. 50375/07) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Georgian nationals, Mr Yuri Vazagashvili ("the first applicant") and Ms Tsiala Shanava ("the second applicant"), who were husband and wife, on 20 October 2007.

2. The applicants were successively represented first by a group of three Georgian lawyers (Mr G. Mosiashvili, Mr M. Jangirashvili and Ms I. Tchkadua) and then by a group of two Georgian lawyers and one British lawyer (Ms N. Jomarjidze, Ms T. Abazadze and Mr Ph. Leach). The Georgian Government ("the Government") were successively represented by their Agents, Mr L. Meskhoradze and M. B. Dzamashvili, of the Ministry of Justice.

3. The applicants complained, under Article 2 of the Convention, of their son's killing by the police and the absence of an effective investigation in that regard.

4. On 18 March 2013 notification of the application was given to the Government. On 25 March 2014 the Government informed the Court that they wished to waive their right to submit observations on the admissibility and merits of the case, and invited the Court to decide the case on the basis of the file as it stood at hand. The applicants submitted their additional arguments on the admissibility and merits as well as their claims for just satisfaction.

5. On 22 July 2015 the second applicant informed the Court that the first applicant had been assassinated on 20 January 2015 and that she wished to

pursue the proceedings in her own name as well as on behalf of her late husband.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Both applicants were born in 1953. On 20 January 2015 the first applicant died. The second applicant currently lives in Tbilisi.

A. The situation prior to notification of the case being given on 18 March 2013

7. On 2 May 2006, at around 9.30 a.m., Z.V., the applicants' son, aged 22 at that time, and his friend, A.Kh., aged 25, were shot dead by police as they were driving in Z.V.'s car in a street of Tbilisi ("the police operation of 2 May 2006"). At least fifty police officers, including senior officials from the criminal police unit of the Ministry of the Interior led by that unit's deputy head, I.P., and masked officers of a riot-police unit, armed with machine guns, participated in that police operation. More than seventy bullets were shot by the police in the direction of Z.V.'s car, with some forty bullets hitting their target. Experts of a subsequent, post-mortem forensic examination were not able to establish, owing to the severity of the injuries, the exact number of bullets that had penetrated the body and skull of the applicants' son and A.Kh. A third passenger of the car, Mr B.P., aged twenty-two, was seriously wounded during the shooting, but survived.

8. On the same day, 2 May 2006, the criminal unit of the Ministry of the Interior opened a criminal case against the applicants' late son and the other passengers of Z.V.'s car for attempted robbery and unlawful possession and transport of firearms. The investigation was led by a senior official of the Ministry who had himself participated in the police operation earlier that day. All the preliminary investigative measures, including those directly relating to the examination of the scene of the shooting, were conducted within the framework of that investigation. The results of the investigation were subsequently transmitted to the Tbilisi city public prosecutor's office ("the city prosecutor's office"), which relied on the thus collected evidence in its subsequent probe into the lawfulness of the police actions (see paragraph 10 below).

9. Later the same day, I.K., the head of the criminal police unit of the Ministry, stated at a press briefing that the applicants' son and the two other passengers of his car had robbed a pawn shop on 30 April 2006 in Tbilisi. According to "information provided by an anonymous police informant",

the group of young men had been on their way to carry out another robbery of an apartment on 2 May 2006 when the "carefully planned" police operation had intervened, preventing the group from realising their criminal goals. Commenting further on the circumstances of the police operation of 2 May 2006, the high-ranking police officer stated that the passengers of the car had opened fire on the police first and that the police had been obliged to return fire.

10. On 5 May 2006 the Tbilisi city prosecutor's office opened an investigation under Article 114 of the Criminal Code (killing as a result of the use of force beyond what was required for arresting a wrongdoer) for excessive use of force by the police during the operation of 2 May 2006. The relevant investigation file was mostly based on the evidence that had been collected by the Ministry of the Interior in the immediate aftermath of the police operation in question (see paragraph 8 above).

11. From the early stages, the applicants complained regularly to the city prosecutor that the investigation was not being conducted thoroughly and impartially. They alleged that the investigators from the city prosecutor's office who were in charge of the case were ignoring important witness statements which incriminated the police in the intentional killing of their son, and were denying the applicants the possibility to participate effectively in the proceedings, and that they had destroyed and fabricated evidence. In respect of the denial to participate properly in the proceedings, the applicants asserted that the prosecution authority had refused to grant, for several weeks, a request by the second applicant to be recognised a victim in the case. On 7 July 2006, following numerous complaints lodged by the applicants' lawyers and the involvement of the Public Defender (Ombudsman), the second applicant was at last granted that procedural status. She was subsequently invited to get acquainted with the case file at the office of the prosecutor in charge of the case. As she was denied an opportunity to photocopy case-file material, the second applicant was obliged to rewrite by hand the content of the most significant pieces of evidence, including the forensic report containing the detailed description of the numerous lethal injuries on the body and skull of her late son.

12. As is apparent from the case-file material, the city prosecutor's office questioned at that time only two independent eyewitnesses to the police operation of 2 May 2006, M.Ts. and I.G. During interviews with them that took place in February 2007 the witnesses reported that it had been the police who had started firing and that there had been no retaliation from the passengers in Z.V.'s car; the police had continued shooting even after the car had hit the kerb and stopped. In a later prosecutorial resolution on the discontinuation of the investigation into the police's actions (see paragraph 14 below), the prosecution authority stated that the statements given by the above-mentioned two independent witnesses had not been credible as they had clearly contradicted the opposite statements given by

the police officers who had participated in the police operation of 2 May 2006.

13. According to the results of a ballistics test commissioned by the city prosecutor's office in February-March 2007, the passengers of Z.V.'s car had fired shots at the police from through a hole in the left upper corner of the car's rear window during the police operation of 2 May 2006.

14. On 19 April 2007 the city prosecutor's office quashed its previous decision granting victim status to the second applicant (see paragraph 12 above). On the following day, 20 April 2007, the prosecution authority issued a resolution discontinuing the investigation into the police actions for want of a criminal offence. In reaching that decision, the authority mainly relied on the statements of the police officers who had participated in the police operation of 2 May 2006 as well as the results of the relevant ballistics test (see paragraphs 13 above) to conclude that the police had used force only in retaliation to the gunfire from Z.V.'s car and that the use of force had thus been necessary in the circumstances.

15. Deprived of her victim status (see the preceding paragraph), the second applicant became unable to appeal against the discontinuation of the investigation to a court.

16. Acting at the request of the first applicant, the Public Defender's Office conducted, in 2009, its own probe into the circumstances surrounding the police operation of 2 May 2006 and assessed the adequacy of the investigation into the police actions. As part of that probe, the Public Defender commissioned an alternative forensic examination of Z.V.'s car. The results of that examination established that no shot had ever been fired from that car.

17. On 8 September 2009 the Public Defender's Office addressed the Chief Public Prosecutor's Office with a recommendation to reopen the investigation into the police actions during the incident of 2 May 2006. The prosecution authority's attention was drawn to the fact that the original investigation, which had been discontinued on 20 April 2007, had failed to address such principal aspects of the case as whether or not the use of force by the police during the incident had been proportionate. The Public Defender further called into question the inconclusiveness of a number of findings previously made by the city prosecutor's office, notably as regards the question of gunfire purportedly originating from Z.V.'s car (see paragraphs 14 and 16 above). The recommendation of the Public Defender's Office was left unanswered.

18. The case file contains video footage, filmed by a cameraman of the Ministry of the Interior, showing the state of Z.V.'s car at the scene of the police operation of 2 May 2006 immediately after the shooting had ended. The footage showed the glass of the car's rear window as wholly intact, without any holes or other damage. A verbatim record of the visual examination of the car after it had been taken from the scene of the shooting

to a special parking area of the Ministry of the Interior further attested, similarly to the above-mentioned video footage, that the car's rear window had been undamaged.

B. Circumstances revealed after notification of the case being given

1. Reopening of the investigation into the use of force by the police during the incident of 2 May 2006

19. On 23 October 2012 the applicants obtained a statement from a former officer of the Ministry of the Interior, V.Kh. According to that witness, several police officers who participated in the police operation of 2 May 2006 were instructed by I.P., the senior officer who had set up the police operation (see paragraph 7 above), to fire guns at a police vehicle found at the scene of the police operation of 2 May 2006 in order to be able to claim later that there had been an exchange of fire with the passengers of Z.V's car. V.Kh. also stated that he had heard how, in the immediate aftermath of the police operation of 2 May 2006, a forensic expert had clearly told I.P. that the bullet holes found on the police car had been inconsistent with the trajectory of shots that could have been fired from where Z.V.'s car had been standing after it had hit the kerb (see paragraphs 12, 13 and 16 above).

20. On 26 October 2012 the applicants were able to approach B.P., the third passenger in the car (see paragraph 7 above), for the first time. They obtained a written statement from him, in which he described details of the police operation of 2 May 2006. He recalled that he and his two friends had been waiting in the relevant street in Tbilisi at a red traffic light in the car driven by Z.V. when suddenly a person in civilian clothes, holding a pistol in his hand, had approached the car from the right side. That person had first attempted to open the front door from the outside, but as the door was locked, the person, without giving any prior warning, had started shooting with his pistol. Z.V. had attempted to manoeuvre the car in order to escape the shooting but the car had veered out of its lane, mounted the kerb and crashed into a lamp post. The relentless shooting towards them had continued even after the crash. B.P. emphasised that not a single shot had ever been fired in the direction of the police from their side. He added that neither he nor his friends had been carrying any firearms with them on the day of the incident.

21. On 12 November 2012 the applicants obtained written statements from two additional independent eyewitnesses to the police operation of 2 May 2006, R.P. and M.P. (see also the statements of two original independent witnesses, described in paragraph 12 above). Those witnesses confirmed that they had seen Z.V.'s car crashing into a lamp post and numerous armed men shooting in the direction of the car after that crash.

The shooting had lasted about a minute or so. After it had stopped, the armed men had started collecting the used cartridge cases from the ground.

22. On 30 October 2012 the applicants, referring to the newly obtained information (see paragraphs 19-21 above), asked the Chief Public Prosecutor's Office to reopen the investigation into the police actions during the incident of 2 May 2006.

23. On 14 December 2012 the Chief Public Prosecutor's Office annulled the prosecutorial resolution of 20 April 2007 (see paragraph 14 above) and reopened the investigation into the police operation of 2 May 2006.

24. In January 2013, after the first applicant had personally met with the Chief Public Prosecutor, during which the latter had allegedly conceded that the previous investigation had been defective, the applicants again transmitted to the Chief Public Prosecutor's Office the witness statements that they had recently collected (see paragraphs 19-21 above).

25. On 18 January 2013 the applicants asked the Chief Public Prosecutor's Office to conduct a number of specific investigative measures. The prosecution authority replied on 22 January 2013 that the applicants' request could not be taken into consideration because neither of them had been granted victim status.

26. On 2 February 2013 the applicants obtained a written statement from another independent eyewitness to the police operation of 2 May 2006, K.M. That witnesses stated that she had seen how, after the police had ended a minute-long cycle of uninterrupted shooting from multiple firearms at Z.V.'s car, a police officer, wearing a balaclava, had approached the front left door of the car and shot into the cabin of the car through the left-side front window.

27. In July 2013 the first applicant had a meeting with the Tbilisi city prosecutor, during which the latter allegedly promised the former that all the police officers who had been implicated in his son's murder would be brought to justice.

28. On 21 July 2013, G.M., a former member of the special police unit, who had personally participated in the police operation of 2 May 2006, convened a press conference. During that press conference, G.M. publicly declared that the order to "liquidate" (*ლიკვიდაციის ბრძანება* – in Georgian the term implies "lawful force") the passengers of Z.V.'s car had been given by I.P., the then deputy head of the criminal police unit (see paragraphs 7 and 19 above). G.M. gave an additional explanation as regards the possible motive behind I.P's order, suggesting that the latter had felt personal animosity towards A.Kh., one of the victims of the incident (for more details, see paragraphs 37, 39 and 44 below).

29. On 9 August 2013 the first applicant held a press conference, speaking about the reopened investigation into the circumstances surrounding the police operation of 2 May 2006. He declared that sufficient evidence had been obtained to directly incriminate several high-ranking

officers of the Ministry of the Interior in the killing of his son and in the subsequent cover-up of the original investigation. Notably, the first applicant publicly mentioned the names of I.P., G.Ts. and K.N. (see paragraph 46 below), as well as I.K., the former commanding officer of I.P. at the criminal police unit (see paragraph 9 above). The first applicant stated that he would not stop his public activities until all those implicated officers had been arrested and punished.

30. On 18 August 2013 the applicants lodged another request with the Chief Public Prosecutor's Office aimed at obtaining information regarding the progress in the investigation, if any. Their request was left unanswered.

31. On 18 August, 18 and 23 September and 9 and 11 October 2013 the applicants repeatedly enquired with the prosecution authority about the progress in the investigation and asked to view the available case-file material. They further requested that specific investigative measures be undertaken, such as formal questioning of the witnesses they had already approached themselves (see paragraphs 19-21 above) and a repeat forensic examination of Z.V.'s car with the aim of establishing whether any shots had been fired from inside of it.

32. In reply, the Tbilisi city prosecutor's office advised the applicants in letters dated 4 and 14 October 2013, that since victim status had not been granted to either of them, they were not entitled either to make any procedural requests or to view the criminal-case-file material or to receive updates concerning the progress in the investigation. The prosecution authority limited itself to advising the applicants in general terms that the criminal investigation was still ongoing, that important pieces of evidence had already been collected but that a number of additional investigative measures remained to be undertaken.

33. According to the applicants, in December 2013 the first applicant met personally with the then Minister of the Interior. During a tense conversation, the first applicant complained that one of the high-ranking police officers, G.D., who had participated as a member of the criminal police unit in the police operation of 2 May 2006 was still holding a senior post within the Ministry. The Minister replied that he was aware that G.D. had participated in the incident. However, according to G.D.'s own statements, the latter had never fired shots at Z.V.'s car. That being so, the Minister had not seen any need to dismiss G.D. from his post. On the other hand, the Minister brought the first applicant's attention to the fact that all the other senior officers implicated in the police operation of 2 May 2006 had already been fired from their positions in the law-enforcement system.

34. On 14 February 2014 the applicants again requested victim status. The request was left unanswered.

2. Delivery of the court judgment of 30 October 2015 on the basis of the reopened investigation

35. Given that the applicants had not been involved in the reopened investigation as victims, it came as a surprise to the second applicant that, after her husband's death (see paragraph 5 above), on 30 October 2015 the Tbilisi City Court delivered a judgment convicting five former senior officers of the Ministry of the Interior, including I.P., the ex-deputy head of the criminal police unit, of either aggravated murder (Article 109 of the Criminal Code), perverting the course of justice in a criminal case by fabrication of evidence (Article 369 of the Criminal Code), malfeasance by a public official (Article 333 of the Criminal Code) or false arrest (Article 147 of the Criminal Code).

36. As is apparent from the conviction of 30 October 2015, both the prosecution authority and the trial court conducted various investigative actions, including the examination of all those witnesses to whom the applicants had referred during the investigation stage (see paragraphs 19-21 above). As a result, the conviction delivered against the five former high-ranking police officers was confirmed by copious material and documentary evidence, both direct and circumstantial, such as the relevant witnesses' statements, results of various crime-detection examinations, forensic expert statements given to the trial court, video recordings of the shooting scene in the immediate aftermath of the police operation 2 May 2006, various official documents, inferences drawn from a confrontation during the trial between the accused people and the witnesses for the prosecution, and so on. On the basis of all that evidence examined during the trial with the participation of the parties concerned, the Tbilisi City Court established the following facts, giving them the relevant legal qualifications.

(a) Established facts

37. The trial court established that on 7 April 2006 the special investigations unit of the Ministry of the Interior ("the SIU") had arrested L.P., a younger brother of I.P., the senior officer who had set up the police operation (see paragraphs 7, 19 and 29 above), in relation to drug trafficking. The initiation of the criminal proceedings against L.P. and his arrest had been based on information provided to the SIU by A.Kh., one of the people killed during the police operation of 2 May 2006 (see paragraph 7 above). A.Kh. had been a regular client of L.P., frequently buying various narcotic substances from the latter. A.Kh. had decided to act as a police informer owing to the emergence of a personal conflict between him and L.P. It was also reported that A.Kh. had been spreading rumours that L.P. had been procuring drugs for sale from the store of narcotic substances seized by the Ministry of the Interior as evidence in drug-trafficking cases.

38. A number of former officers of the Ministry of the Interior testified before the trial court that, when L.P. had been arrested on 7 April 2006, a number of high-ranking officers of the SIU had been involved in a deep organisational feud with their counterparts from the criminal police unit, in particular with I.P., its deputy head. That being so, the SIU was believed to have been interested in using the initiation of the criminal proceedings against L.P. as an opportunity to undermine the authority of I.P., the accused's brother, in the eyes of the then Minister of the Interior.

39. Having regard to the arrest of his younger brother as well as the organisational tensions with the competing agency, I.P. had decided to take revenge against A.Kh., who had been at the origin of all his family and professional troubles. Driven by that motive, I.P. had reported on 1 May 2006 to his direct superior, the head of the criminal police unit, that he was in possession of anonymously received information that a robbery of a pawn shop had been planned by a small group of "criminals", led by A.Kh. He had asked for and obtained approval to conduct a police operation against the group. I.P. had also received authorisation to mobilise an armed response squad of the Ministry of the Interior, which had consisted of approximately twenty heavily-armed officers. That squad had been led by K.N. In addition to that, I.P. had mobilised around thirty police officers from the criminal police unit.

40. Having studied the files of the criminal police unit, the trial court concluded that I.P. had fabricated the so-called "anonymous information" about the planned robbery (see paragraph 9 above) in order to obtain authorisation to conduct a police operation. Furthermore, since I.P. had been tapping, in an unlawful manner, the mobile telephone conversations of A.Kh, he knew about the latter's plan to meet up with his friends, Z.V. and B.P., on the morning of 2 May 2006. I.P. had ordered a small team of criminal police officers to monitor A.Kh.'s movements starting from the evening of 1 May 2006. With the help of that surveillance team and by tapping A.Kh.'s telephone conversations, I.P. had learnt that, having met with his two friends at 9 a.m. on 2 May 2006, the group had been travelling in a vehicle registered in the name of Z.V. in the direction of Isani-Samgori metro station. To reach the destination, the car had been supposed to pass through the right bank of the River Mtkvari, an extremely busy arterial avenue through the centre of Tbilisi.

41. The Tbilisi City Court further established that I.P. had considered that the above-mentioned highway had been the most suitable place to conduct a police operation and so had ordered the mobilised police officers to prepare for an ambush there. At around 9.45 a.m., the moment the black car driven by Z.V. had stopped at a red traffic light, and an undercover police van had artificially created a traffic jam ahead of it, I.P. and eight officers of the special unit, led by K.N., had started approaching the car. K.N. had been the first one to reach the car, from the front passenger side,

and, after having attempted to open the closed door from the outside, he had started shooting with his service pistol in the direction of the front passenger and the driver. The latter had started manoeuvring his car in order to escape the traffic jam created by the police van. In that manoeuvre, the car had crossed the lane into the traffic lane in the opposing direction; at that moment all the nine officers had opened heavy fire. Eventually, Z.V. had lost control over his vehicle which had crashed into a lamp post on the kerb, but the shooting at the car had continued after the crash. The trial court also established that, after the heavy shooting at Z.V.'s vehicle had stopped, G.Ts., a senior officer of the criminal police unit, who had been I.P.'s closest confidant at work, had approached the car from the driver's side and fired two shots from his service pistol through the rolled-down window of the car into the heads of the driver, Z.V., and the front passenger, A.Kh. Those two shots were characterised by the trial court as "controlling" (*საკონტროლო გასროლა*) ones. Notably, as was confirmed by the results of the relevant forensic examination of the two dead bodies, both Z.V. and A.Kh. had been alive prior to those shots. The third passenger of the car, B.P., who had been seated on the rear passenger seat, had been heavily wounded, with more than fifteen bullets having penetrated various parts of his body, but had nevertheless survived.

42. As a follow-up to its previous finding concerning the fabrication of the anonymous information received at the criminal police unit about the "planned robbery" (see paragraphs 9 and 40 above), the Tbilisi City Court further established, on the basis of the relevant legal documents, that a criminal investigation into conspiracy to commit a robbery by A.Kh., Z.V. and B.P. had been launched after the police operation of 2 May 2006. The trial court concluded that the only reason why the criminal police unit had launched that criminal investigation had been to be able to get control of the very first investigative measures conducted at the scene of the crime, as I.P. had been conspiring to cover up his and his team's wrongdoings. In that connection, the trial court established, on the basis of the statements received from a number of former officers of the Ministry of the Interior, including those who had participated in the police operation of 2 May 2006, that, when preparing the armed ambush on Z.V.'s car, I.P. had thought of bringing along from the carpark of the Ministry of the Interior a police car that had already received bullet damage in a previous and unrelated police operation ("the damaged police car"). I.P. had ordered the driver of the damaged police car to place it right behind Z.V.'s car after the termination of the police operation of 2 May 2006. Those facts were confirmed to the trial court by the driver of the damaged police car himself.

43. The Tbilisi City Court further found, on the basis of the statements given by numerous witnesses, including both the participants in the police operation and the independent eyewitnesses to the police operation of 2 May 2006, that no shot had ever been fired from inside of Z.V.'s car. The

latter fact was further confirmed by the results of a ballistics examination conducted during the reopened investigation. The City Court further established that, in another attempt to fabricate evidence of having been under fire from Z.V.'s car, I.P. had ordered one of his subordinates, L.B., who had participated in the police operation of 2 May 2006, to inflict a light injury on himself, and the latter had duly obeyed. Furthermore, I.P. had ordered his subordinates to plant four different types of guns, balaclavas and police radio scanners in Z.V.'s car immediately after the termination of the police operation. A subsequently conducted ballistics examination confirmed that no shot had ever been fired from any of the four planted guns. The trial court also established that I.P. had made prior arrangements with an undercover police informer, who had been collaborating with the criminal police in a number of unrelated cases, to come forward in the case at hand and pretend to be a victim of the robbery attack purportedly planned by Z.V. and his two friends. Lastly, it was also established that I.P. had induced a former convicted criminal, who had been released on parole and under the criminal police's close supervision during the probationary period, to claim falsely that he had been the three young men's fourth accomplice in their intention to commit the robbery.

(b) Conclusions drawn from the established facts

44. In the light of the foregoing factual findings, the Tbilisi City Court concluded that, firstly, there had been no lawful grounds for mounting a police operation against Z.V. and his two friends as the criminal police unit had not been in possession of any real information raising a reasonable suspicion that the young men had been planning to commit a criminal offence. I.P. was found to have fabricated, possibly in complicity with other unidentified senior law-enforcement officers of the Ministry of the Interior, the relevant documents in order to justify the mobilisation of police units. The trial court established that the *mens rea* behind I.P.'s criminal actions had been to take personal revenge against A.Kh. (see paragraphs 37-39 above). The police operation of 2 May 2006 had thus been mounted with the sole aim of assassinating the passengers of Z.V.'s car. The trial court also concluded that G.Ts. had been the direct perpetrator of the killings of the two young men.

45. Apart from the clearly murderous intent behind I.P.'s and G.Ts.'s actions, the Tbilisi City Court emphasised the shortcomings of the police operation of 2 May 2006, not least the choice to proceed with it on one of the most densely crowded avenues of the capital city during the morning rush hour, thus endangering the lives of passers-by, and the decision to open fire at Z.V.'s car unexpectedly, without giving any prior warning or order to surrender. The trial court also underscored the clearly disproportionate nature of the force used by the police – whilst no resistance whatsoever had been received from the passengers in Z.V.'s car, within the fifteen seconds

that followed K.N.'s initial unwarranted gun shots, at least five police officers fired from their Kalashnikov automatic rifles, each of them fully discharging their high-capacity magazines. Overall, more than hundred shots were fired, with some of the stray bullets damaging a public-transport bus. The trial court stated that, even assuming that the passengers of Z.V.'s car had put up resistance to the police's lawful orders, the use of such overwhelming armed force had been clearly disproportionate.

46. The Tbilisi City Court also found that I.P. and L.B. had been directly implicated in the intentional misrepresentation of facts and fabrication of evidence with the aim of obstructing the original investigation into the police actions during the police operation of 2 May 2006. When reaching the latter conclusion, the City Court suggested that it was not unreasonable to assume that other officers of the Ministry of the Interior, who had not been identified during the reopened investigation, could have been involved in perverting the course of justice. Furthermore, given that the initiation of the criminal proceedings for attempted robbery and unlawful transport of firearms against the passengers of Z.V.'s car had been unlawful (see paragraph 40 above), the trial court concluded that the arrest of B.P., the only survivor, by G.K., the investigator in charge of the fabricated robbery case, had been unlawful. All in all:

– I.P., born in 1968, was found guilty of aggravated murder (the offence prosecuted under Article 109 (a), (g) and (h) and of the Criminal Code) and sentenced to sixteen years' imprisonment. Reducing the latter prison sentence by a quarter, pursuant to section 16 of the Amnesty Act of 28 December 2012 ("the Amnesty Act"), the court finally fixed his sentence at twelve years;

– G.Ts., born in 1972, was likewise convicted of murder under Article 109 (a) and (h) of the Criminal Code and sentenced to sixteen years in prison. Reducing the latter prison sentence by a quarter, pursuant to section 16 of the Amnesty Act, the court finally fixed his sentence at twelve years;

– K.N., born in 1976, was convicted of malfeasance (the offence prosecuted under Article 333 § 1, 2 and 3 (b) of the Criminal Code) on account of the disproportionate use of force by the special unit under his command, sentenced to eight years' imprisonment and banned from public service jobs for a period of two years. Reducing the latter prison sentence by a quarter, pursuant to section 16 of the Amnesty Act, the court finally fixed the convict's prison sentence at six years;

– L.B., born in 1975, was convicted of fabrication of evidence with the aim of perverting the course of justice under Article 369 § 3 of the Criminal Code, sentenced to four years in prison and banned from public service jobs for a period of two years and three months. Reducing the latter prison sentence by a quarter, pursuant to section 16 of the Amnesty Act, the court finally fixed his prison sentence at three years;

– G.K., born in 1978, was convicted of unlawful arrest of B.P. (the offence prosecuted Article 147 § 1 of the Criminal Code), sentenced to six years of imprisonment and banned from holding public service jobs for a period of two years and three months. Reducing the latter prison sentence by a quarter, pursuant to section 16 of the Amnesty Act, the court finally fixed his prison sentence at four years and six months.

47. In the sentencing part of the judgment of 30 October 2015, the Tbilisi City Court stated that, when imposing the prison sentences, it took into consideration both the aggravating circumstances in which the offences had been committed and a number of mitigating considerations. Amongst the latter, the court referred to the fact that all five individuals to be sentenced had successfully fought criminality, owing to their former status as officers of the Ministry of the Interior, for many years, and that some of the convicted individuals were moreover war veterans who had participated in various armed conflicts and defended the territorial integrity of the country, for which service they should be given credit.

(c) Termination of the criminal proceedings

48. The prosecution authority – who requested a more severe punishment – and the five accused – who claimed their innocence – all appealed against the Tbilisi City Court's judgment of 30 October 2015. The prosecution authority particularly insisted in its appeal that the prison sentences imposed upon the convicted individuals had been manifestly inadequate when compared with the heinous nature of the crimes committed. The authority complained that the lower-instance court had failed to give due consideration to the fact that the offences in question had been committed by former State agents who had used State power for the commission of the crime.

49. By a decision of 21 June 2017, the Tbilisi Court of Appeal, after having conducted a fully adversarial retrial during which all of the witnesses and material pieces of evidence were examined anew, dismissed the parties' appeals and upheld the lower-instance judgment in full. With respect to the sentencing part, the appellate court briefly stated that the prison sentences imposed by the lower court had been adequate.

50. By a decision of 23 January 2018, the Supreme Court rejected appeals on points of law lodged by the parties, thus terminating the criminal proceedings.

3. Investigation of the first applicant's assassination

51. On 20 January 2015 the first applicant was killed in a bomb blast caused by an improvised device planted at his son's grave. The incident occurred in the village of Karaphila, Kaspi district, where Z.V., had been buried in the family cemetery plot.

52. On 7 February 2015 G.S., a police officer, was arrested on suspicion of assassination of the first applicant. In a judgment of 6 November 2015 the Tbilisi City Court convicted G.S. as charged. As disclosed by the conviction, his guilt was confirmed by the following facts and inferences.

(a) Established facts

53. The Tbilisi City Court established that, after the killing of his son on 2 May 2006, which became one of the most well-known and scandalous examples of police abuse, the first applicant had become actively involved in public life, incessantly demanding an effective investigation into and the bringing to justice of all those police officers who had been implicated in the crime. As part of that public struggle, the first applicant had established a non-governmental organisation, Save a Life ("the NGO"), whose mission had been to shine a light on the activities of numerous high-ranking law-enforcement officers who had allegedly been involved in various crimes committed by the police. The first applicant and his NGO had been propagating the idea that there had been an administrative practice of tolerance towards and impunity in respect of police abuse in the country.

54. The Tbilisi City Court noted that the first applicant had become particularly active in 2012, when he had started having private meetings with various decision-makers in the Government and other high-level State officials (see paragraphs 19-29 above). It had been as a result of his constant pressure that the investigation into the police operation of 2 May 2006 had been renewed and that the implicated police officers had been dismissed from the Ministry (see paragraphs 33 above). In 2012 the NGO had published an article in a national newspaper with a long list of all those police officers believed to have been implicated in various criminal offences (hereinafter "the police blacklist"). At the top of the police blacklist there had been the names of I.P. and of two other senior police officers, Z.Tch. and N.S., whilst in the end of the document the name of G.S., the accused, had also appeared.

55. The trial further established, by reference to witness statements and various Internet news feeds found in G.S.'s electronic possession, that the accused had been closely monitoring the first applicant's public activities and had been aware of the published police blacklist. Having regard to lawfully wiretapped conversations that G.S. had held with a number of witnesses through an Internet messaging service as well as to the statements that those witnesses had given during the trial, the court established that G.S. had experienced negative personal animosity towards the first applicant because of the threat that the latter had represented for him and his colleagues. It had been further confirmed by various pieces of evidence that G.S. had been on particularly good terms with I.P., Z.Tch. and N.S., the officers at the top of the police blacklist (see the preceding paragraph).

56. The Tbilisi City Court also established that G.S., who had taken part in the armed conflict between Georgia and the Russian Federation in August 2008, possessed, according to his military records, significant expertise in dealing with explosive materials. The trial court further found that on 12 January 2015 G.S. had accessed, using his personal official password, the police national database, which contained certain data of Georgian nationals, and collected all available information about the first applicant and his late son. It had been through the latter database, as well as by placing repeated telephone calls with his acquaintance, a police officer who had worked in the Kaspi police station, that G.S. had learnt that Z.V. had been buried in the village of Karaphila and that the first applicant had visited his son's grave regularly, at least once every two weeks.

57. On 18 January 2015 G.S. had driven in his car to the village of Karaphila. His car had been seen on that day by several villagers at the entrance to the local cemetery. As further incriminating evidence, the City Court referred to the fact that (i) traces of G.S.'s DNA had been found on the parts of the bomb found dispersed at the scene of the crime and that (ii) particles of soil from Z.V.'s grave had been found in G.S.'s car, under the driver's seat, near the accelerator. The City Court also took into account the following facts – as soon as the news about the first applicant's death had spread, G.S. had not been able to hide his satisfaction in a conversation with his friend and had immediately started promoting, within his professional, police circles, a version of the first applicant's suicide. Shortly after the investigation into the first applicant's assassination had been launched, G.S. had started enquiring, using his professional network, as to whether any suspects had already been identified.

(b) Conclusions drawn from the established facts

58. In the light of the foregoing conclusions, the Tbilisi City Court found G.S. guilty of the first applicant's murder, committed in aggravating circumstances (Article 109 of the Criminal Code). The court qualified the method of the assassination to have been particularly vile and cynical given the sanctity and significance that the son's grave, who had in his turn been killed by police officers, had represented for the mourning father and because G.S. had eagerly assumed the risk of creating an excessive and indiscriminate danger to other peoples' lives when planting such a large explosive device. The *mens rea* behind the crime had been G.S.'s wish to punish the first applicant for and/or prevent him from carrying out his public activities that had been directed against the officers appearing on the police blacklist (see paragraph 54 above). In that connection, the City Court noted, as a suspicious fact, that telephone conversations had taken place between I.P. and G.S. both a few days before and after the first applicant's assassination. However, as they did not know the content of those

conversations, the trial court refrained from making any further inferences. G.S. was sentenced to twenty years in prison.

(c) Termination of the criminal proceedings

59. By a decision of 24 June 2016, the Tbilisi Court of Appeal upheld G.S.'s conviction and sentence. On 23 December 2016 the Supreme Court, rejected an appeal on points lodged by G.S., finally terminating the criminal proceedings against him.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure

60. Article 57 of the Code of Criminal Procedure, which was enacted on 9 October 2009 and was in force at the time of the reopened investigation (see paragraphs 23-35 above), provided for the following procedural rights of a person who had been granted victim status:

Article 57 - Rights of a victim

"1. A victim shall have the right to:

(a) be informed about the nature of the charges brought against the accused;

(b) be informed about the procedural actions provided for by Article 58 of this Code;

(c) give a testimony concerning the damage he or she has incurred as a result of the offence, or submit, in writing, that information to the court during the hearing of a case on the merits ...;

(d) obtain free of charge a copy of decrees/rulings, and/or of a judgment on the termination of investigation and/or criminal prosecution, or of other final court decisions;

(e) be indemnified for the expenses incurred as a result of participating in the proceedings; ...

(g) request the application of special protective measures if his or her own or close relative's/ family member's life, health and/or property is endangered;

(h) be informed on the progress of the investigation and review the materials of the criminal case, unless this contradicts the interests of the investigation;

(i) upon request, obtain information on the measure of restraint applied against the accused, and information on the release from a penal facility of the accused/convicted person, unless this creates a risk for the accused/convicted person;

(j) review the material of the criminal case at least ten days before a preliminary hearing; ...

(l) receive explanations as to his or her rights and obligations;

(m) enjoy other rights granted under this Code. ..."

Article 58 of the Code of Criminal Procedure, mentioned in the above-cited Article 57 § 1 (b), read as follows:

Article 58 – Duty of informing the victim

"1. Upon request of the victim, the public prosecutor shall inform the victim in advance of the place and time of the following procedural actions:

(a) the initial appearance of the accused before a investigating judge;

(b) preliminary hearing;

(c) main hearing; ...

(e) sentencing hearing;

(f) appellate or cassation-court hearing. ...

3. A prosecutor is obliged to notify the victim of the conclusion of a plea bargain with the accused."

B. Code of Civil Procedure

61. Pursuant to the relevant domestic law, notably Articles $309^{(16)}$-$309^{(21)}$ of the Code of Civil Procedure, any person who considers her or himself to have incurred pecuniary or non-pecuniary damage as a result of the commission of a criminal offence, is entitled, after the coming into effect of the relevant criminal conviction establishing the existence of the offence in question, to sue the perpetrator for damages.

62. Whilst the above-mentioned legislative provisions do not limit the right of lodging a civil action against the criminal offender exclusively to a person who benefited from victim status in the related criminal proceedings, it is clear from Article $309^{(17)}$ § 2 of the Code, that, for the purposes of awarding just satisfaction, it is preferable if the conviction establishing the fact of the commission of the criminal offence in question, the latter decision representing the main legal grounds for lodging a civil action, already contains indications of the scope of the damage inflicted on the claimant.

C. Criminal Code

63. Under Article 43 of the Criminal Code, as in force at the material time, banning a convicted person from public service could be imposed as an auxiliary sentence even if it was not directly provided for as a punishment for the offence in question under the relevant provision of the Code. In such a situation, the above-mentioned auxiliary sentence, which could be imposed for the maximum duration of up to three years, started to run from the moment the convicted person had finished serving his or her main (prison) sentence.

64. The other relevant provisions from the Criminal Code, as in force prior to the amendments of 28 April 2006, which were applied by the Tbilisi City Court in its judgment of 30 October 2015 (see paragraph 46 above), read as follows:

Article 109 – Aggravated murder

"Murder ...

(a) of two or more people; ...

(g) using a particularly life-threatening method;

(h) by a group; ...

shall be punishable by ten to twenty years' or life imprisonment."

Article 147 § 1 – False arrest

"False arrest ... shall be punishable by ... four to eight years' imprisonment. ..."

Article 333 §§ 1, 2 and 3 (b) – Malfeasance

"Malfeasance – the wilful and intentional action by a [senior] public official ... which substantially adversely affects the rights of a natural person or other legal entity or the legal interests of society or of the State – ... committed with the threat of or use of force ... shall be punishable by ... five to eight years' imprisonment, with up to three years' disqualification from holding public office."

Article 369 § 3 – Fabrication of evidence

"Fabrication of evidence [by a prosecutor or investigator] in an investigation into a crime that qualifies as serious or particularly serious ... shall be punishable by four to six years' imprisonment, with up to three years' disqualification from holding public office."

D. Amnesty Act of 28 December 2012

65. The Amnesty Act, enacted by Parliament on 28 December 2012, proclaimed two purposes in its preamble. The first one was "to decrease the prison population ... in the light of the relevant humanitarian considerations and society's demand for justice ... and having regard to the relevant mechanisms for continuing the fight against crime function well." The second declared purpose was "to acknowledge the existence of political prisoners in the country".

66. In the light of the above-mentioned two purposes, the Amnesty Act was divided into two parts. The first part consisted of sections 1 to 21 and applied to different types of "ordinary" offences, that is to say those which were not qualified as being the result of criminal prosecution for ulterior, political reasons, all across the Criminal Code. Those sections relating to different types of offenders proposed either various gradations in the reduction of sentences or complete remission of punishment on the basis of

relevant criteria. Section 21 specified that amnesty with respect to ordinary offences was to extend to the crimes that had been committed prior to 2 October 2012.

67. Section 16 of the Act, which was applicable to offences committed, *inter alia*, under Articles 109, 147, 333 and 369 (see paragraphs 46 and 64 above), stated that prison sentences imposed with respect to relevant offences ought to be reduced by a quarter.

68. The second part of the Amnesty Act consisted of section 22 which dealt with political prisoners and stated that "persons who have been granted the status of politically persecuted by virtue of a resolution of the Parliament of Georgia shall be exempted from criminal responsibility and punishment altogether".

III. INTERNATIONAL DOCUMENTS

69. In September 2007 Amnesty International published its Briefing to the Human Rights Committee on Georgia. The relevant excerpts from this document (on pages 9-11) read as follows:

> "Amnesty International is concerned about allegations that in many cases where police used lethal force, no prompt, thorough, impartial and independent investigations were carried out into the cause and circumstances of the deaths. According to the Georgian Young Lawyers Association, no officer has been brought to justice in any of the cases involving the use of lethal force.
>
> *The case of Z[.]V[.] and A[.]Kh[.]*
>
> Z[.]V[.] and A[.]Kh[.] were shot dead by police as they were driving in their car in central Tbilisi on 2 May 2006. According to non-governmental sources, at least 50 police officers including senior officers of the criminal department of the Ministry of Internal Affairs, 10 masked officers of the special police unit as well as other police officers participated in the special operation. According to M[.]D[.], who has been engaged by Z[.]V[.] family, 'there were so many bullets in the two men that the medical experts who examined their bodies were unable to actually count them'. B[.]P[.], who was travelling in the same car, was seriously injured and was hospitalized. ...
>
> I[.]K[.], head of the criminal police department of Tbilisi, stated at a press briefing later that day that the men had committed a robbery of a pawn-shop on 30 April 2006 in Tbilisi and were planning to carry out another robbery on 2 May. He added that the men opened fire at the police and that the police killed them in response. However, G[.]M[.], a lawyer of the Georgian Young Lawyers Association who also defends the interests of Z[.]V[.] family, claimed that the police set up an ambush with the intention to kill the two men and that police fired the first shots.
>
> On 5 May 2006 the Prosecutor General's office requested that the Tbilisi City Prosecutor's Office city prosecutor's office investigate whether police used excessive force in the operation. An investigation was opened under Article 114 of the Criminal Code, for 'killing resulting from excessive force used to detain criminals'.

The lawyers I[.]Ch[.] and M[.]D[.], who work on Z[.]V[.], told Amnesty International on 9 May 2007 that the investigation into allegations of excessive use of force by police was not conducted thoroughly and impartially; that investigators ignored witness statements that incriminated the police; that the authorities had intentionally destroyed evidence; and that the authorities effectively blocked them from defending Z[.]V[.]'s rights both with regard to the conduct of the police operation as well as with regard to the crimes allegedly committed and planned by their client.

Reportedly, for several weeks the authorities refused to satisfy a request by Tsiala Shanava, Z[.]V[.]'s mother, to be recognized as her son's "legal successor" in the context of the investigation into allegations of excessive use of force during the special operation. However, on 7 July 2006, following numerous complaints by the lawyers and interventions by the Ombudsman of Georgia and the Chair of the Parliamentary Committee on Human Rights and Civil Integration, Tbilisi Prosecutor's Office recognized the mother as the victim's representative. However, according to the Ombudsman, even after that 'the investigation did all it could to prevent [Tsiala Shanava from getting] access to the case file'. In addition, the lawyers have alleged that the Prosecutor's Office did not allow them to participate in the questioning of witnesses and did not provide them with transcripts of the witness statements.

According to G[.]M[.], investigators of Tbilisi Prosecutor's Office did not thoroughly and impartially investigate the allegations that excessive force had been used. Prosecutors reportedly only questioned several eyewitnesses who had been identified by Z[.]V[.]'s lawyers many months after the special operation, in February 2007. The witnesses allegedly reported that police started the shoot-out and that police officers continued shooting even after the men were no longer resisting arrest. However, the prosecution reportedly ignored their statements. There were also allegations that police officers approached people who live near the place where the shootings took place and warned them not to give evidence incriminating the police.

Reportedly, according to the state ballistic investigation, the passengers of the car shot at police through the car's back window. However, the lawyers claim that video footage recorded by the press centre of the Ministry of Internal Affairs and aired on television shortly after the special operation showed that the glass of the car's back window was undamaged. The lawyers decided to commission an independent ballistic examination and, on 25 April 2007, filed a request with the Prosecutor General's Office to forward the documents of the state experts to an independent expert. However, their request was not granted. The next day Tbilisi Prosecutor's Office reportedly informed them that the case examining the allegations of excessive use of force had already been closed on 20 April and that the investigation did not find evidence that excessive force had been used."

THE LAW

I. PRELIMINARY ISSUE

70. The second applicant informed the Court that she wished to pursue the proceedings in her own name as well as on behalf of her late husband,

the first applicant (see paragraph 5 above). Having regard to the circumstances of the present case, the Court accepts that the second applicant has a legitimate interest in pursuing the application in her own name and in that of the late applicant. However, for the sake of clarity and other practical considerations, the Court will continue referring to both applicants in the relevant parts of the present judgment (see *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 1, 26 April 2011).

II. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

71. The applicants complained under both the substantive and procedural limbs of Article 2 of the Convention of the killing of their son by the police on 2 May 2006 and the absence of an adequate investigation in that regard. The cited provision 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."

72. The Government waived their right to submit observations on either the admissibility or merits of the applicants' complaints (see paragraph 4 above).

A. Admissibility

73. Although the Government did not raise any objection as regards the admissibility of the applicants' complaints under Article 2 of the Convention, the Court observes, of its own motion, that the particular circumstances of the present case – notably, the fact that several police officers were eventually convicted of the murder of the applicants' son and of perverting the course of justice – may reasonably be deemed to call into question the validity of the applicants' victim status for the purposes of Article 34 of the Convention. It should be restated in this connection that the question of whether or not an applicant has lost victim status in the Convention proceedings is a matter of compatibility *ratione personae*, which forms part of the Court's own jurisdiction and is not contingent upon the existence of an objection from the Government on the matter (compare, for example, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, ECHR 2016 (extracts)).

74. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive that person of his or her status as a "victim", within the meaning of Article 34 of the Convention, unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for instance, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180,

ECHR 2006‑V, with further references). As to the redress which is appropriate and sufficient in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, with particular regard to the nature of the right alleged to have been breached (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010). In cases where it is alleged that death was intentionally inflicted or occurred following an assault or ill-treatment by State agents, two measures are required. Firstly, the State authorities must have conducted an effective investigation capable of leading to the identification and punishment of those responsible (see, for instance, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 79, ECHR 1999-IV), and, secondly, there should exist a possibility for the applicant to seek and obtain adequate compensation for the damage caused by the act constituting a breach of Article 2 (compare, for instance, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 130, 14 April 2015; *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 56, 20 December 2007; and *Gäfgen*, cited above, § 116).

75. In the present case the question of the possible loss by the applicants of their victim status on the basis of the conviction of several of the police officers is closely linked to the issue of effectiveness of the investigation into the killing of their son. The Court thus considers it appropriate to join this matter to the merits of the complaint made by the applicants under the procedural limb of Article 2 of the Convention (compare, for instance, *Petrović v. Serbia*, no. 40485/08, §§ 64 and 65, 15 July 2014; *Külah and Koyuncu v. Turkey*, no. 24827/05, § 35, 23 April 2013; *Dimitrova and Others v. Bulgaria*, no. 44862/04, § 67, 27 January 2011; and *Özcan and Others v. Turkey*, no. 18893/05, § 55, 20 April 2010).

76. The Court further notes that this part of the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

77. Given that the issue of the applicants' victim status was joined to the merits of their complaint under the procedural limb of Article 2 of the Convention concerning the allegedly ineffective domestic investigation into the death of their son, the Court considers it appropriate to start its examination of the merits of the application with the latter complaint.

1. As to whether the investigation into Z.V.'s killing was effective

(a) The applicants' arguments

78. The applicants mainly referred to the various shortcomings underpinning the original investigation conducted into the death of their son between 5 May 2006 and 20 April 2007 (see paragraphs 10-14 above). They argued that the original investigation had not satisfied the requirements of impartiality and independence as the very first investigative measures had been conducted by the criminal police unit, the same unit of the Ministry of the Interior whose officers had been directly implicated in the killing of their son. The applicants further complained that, after the investigation had been transferred to the Tbilisi city prosecutor's office, the latter authority had continued with the investigation, consistently misleading the applicants, and turning a blind eye to the evidence establishing that no shots had ever been fired in the direction of the police by the passengers of Z.V.'s car and that the actions of several police officers, such as I.P., G.Ts., L.B., had clearly contained signs of murderous intent. The applicants also complained that they had not been involved in a meaningful manner in the original criminal investigation and that public scrutiny of that investigation had likewise been limited.

79. As regards the reopened criminal investigation, which had formally been revived on 14 December 2012 (see paragraph 23 above), the applicants submitted that those proceedings had not been effective because the investigative measures had been unjustifiably protracted in time and because, similarly to the original investigation, they had not been involved in those proceedings as victims. Without possessing the requisite victim status under domestic law, the applicants had not been able either to follow the progress made in that investigation or to influence in any meaningful manner its course by exercising various procedural rights (see paragraph 60 above). The applicants did not make any comment on the outcome of the reopened investigation, the judgment of 30 October 2015 convicting the relevant police officers of the murder of their son and of other associated criminal offences (see paragraphs 23-50 above)

(b) The Court's assessment

(i) General principles

80. The obligation to carry out an effective investigation into unlawful or suspicious deaths is well-established in the Court's case-law. When considering the requirements flowing from the obligation, it must be remembered that the essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. Even where

there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities is vital 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 *Brecknell v. the United Kingdom*, no. 32457/04, § 65, 27 November 2007, with further references).

81. In order to comply with the requirements of Article 2 of the Convention, the investigation must be effective in the sense that it is capable of leading to the establishment of the relevant facts and to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. The requirements of promptness and reasonable expedition are implicit in this context (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II; *Anguelova v. Bulgaria*, no. 38361/97, § 139, ECHR 2002−IV; and *Šilih v. Slovenia* [GC], no. 71463/01, § 195, 9 April 2009).

82. The persons responsible for an investigation should be independent of anyone implicated or likely to be implicated in the events. This means not only a lack of hierarchical or institutional connection but also practical independence (see *Aliyev and Gadzhiyeva v. Russia*, no. 11059/12, § 96, 12 July 2016). Moreover, an 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, for example, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 109, 4 May 2001). Furthermore, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of enquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and, where appropriate, the identity of those responsible (see *Mustafa Tunç and Fecire Tunç*, cited above, § 175).

83. 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. It is not possible to reduce the variety of situations which might occur to a bare check-list of acts of investigation or other simplified criteria (see *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000‑VI). It should also be borne in mind that 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, and *Velcea and Mazăre v. Romania*, no. 64301/01, § 113, 1 December 2009).

84. Where this has led to the institution of proceedings in the national courts, the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the domestic courts should not under any circumstances be prepared to allow life-threatening offences to go unpunished. The Court's task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Article 2 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life are not undermined (see, for instance, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 306, ECHR 2011 (extracts), and *Enukidze and Girgvliani*, cited above, § 242). While the Court will grant substantial deference to the national courts in the choice of appropriate sanctions for homicide by State agents, it must still exercise a certain power of review and intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 238, 30 March 2016).

85. While identification and punishment of those responsible for the death and the availability of compensatory remedies to the applicant are important criteria in the assessment of whether or not the State has discharged its Article 2 obligation (see, among other authorities, *Fedina v. Ukraine*, no. 17185/02, §§ 66-67, 2 September 2010), in already a significant number of cases brought before the Court the finding of a violation was largely based on the existence of unreasonable delays and a lack of diligence on the authorities' part in conducting the proceedings, regardless of their final outcome (see, for example, *Merkulova v. Ukraine*, no. 21454/04, § 51, 3 March 2011, with further references).

86. Lastly, the Court considers it useful to reiterate that, when it comes to establishing the facts, and sensitive to the subsidiary nature of its role, it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them. Though the Court is not bound by the findings of domestic courts and remains free to make its own assessment in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by the domestic courts (see, for instance, *Mustafa Tunç and Fecire Tunç*, cited above, § 182).

(ii) Application of the above principles to the present case

87. The Court notes that the very first investigative measures were undertaken, in the immediate aftermath of the police operation of 2 May 2006, by the same officers of the criminal police unit of the Ministry of the Interior who had participated in that operation. The evidence collected by those officers between 2 and 5 May 2006 was later relied on by the prosecution authority during the first stage of the investigation into the proportionality of the use of force by the police (see paragraphs 8 and 10 above). That being so, the Court considers that the primary and most decisive investigative steps taken by the relevant officers of the Ministry of the Interior manifestly fell afoul of the requisite requirements of independence and impartiality, and such a procedural deficiency could not but taint the subsequent developments in the investigation (see, for instance, *Enukidze and Girgvliani*, cited above, §§ 245-49; *Özcan and Others*, cited above, §§ 65 and 66; and *Kolevi v. Bulgaria*, no. 1108/02, §§ 208 and 212, 5 November 2009).

88. As regards the initial investigation after it had been taken over by the Tbilisi city prosecutor's office on 5 May 2006, the Court observes that one of the most serious omissions was the latter authority's unwillingness to involve the applicants by allowing them to benefit uninhibitedly from the requisite victim status. Without the latter procedural standing, the applicants were not even able to appeal to a court against the prosecutorial decision terminating the investigation (see paragraphs 14 and 15 above). The Court further observes that the prosecution authority failed to give due consideration to the statements of two independent witnesses who confirmed that the passengers in Z.V.'s car had never put up any armed resistance to the police. A proper assessment of the latter fact was, however, indispensable for the purposes of reaching objective conclusions regarding the proportionality of the use of force by the police. These considerations are sufficient for the Court to conclude, even without enquiring into other relevant circumstances, that the part of the original investigation carried out by the Tbilisi city prosecutor's office manifestly lacked the requisite thoroughness, objectivity and, as was subsequently revealed by the results of the reopened investigation, integrity (compare, *mutatis mutandis*, *Enukidze and Girgvliani*, cited above, §§ 250-58, and *Medova v. Russia*, no. 25385/04, § 109, 15 January 2009).

89. The Court recognises that after the criminal investigation into the police operation of 2 May 2006 had been reopened on 12 December 2012, five high-ranking officers of the Ministry of the Interior were convicted on 30 October 2015 in relation to that incident of either double aggravated murder or malfeasance or perverting the course of justice (see paragraph 46 above). However, the Court is not convinced that the outcome of the reopened criminal proceedings constituted sufficient redress for the applicants. The belated acknowledgement of the fact of the aggravated

murder of the applicants' son, more than nine years after the killing had taken place, coupled with the significant periods of total inactivity on the part of the investigation authorities (see paragraphs 14, 17 and 19-34 above), clearly amounted to procrastinated justice. The Court reiterates that justice delayed is often justice denied (compare *Lopatin and Medvedskiy v. Ukraine*, nos. 2278/03 and 6222/03, § 75, 20 May 2010), as the existence of unreasonable periods of inactivity and a lack of diligence on the authorities' part in conducting the proceedings renders the investigation ineffective irrespective of its final outcome (compare *Šilih*, cited above, § 211; *Merkulova*, cited above, §§ 52-62; *Şandru and Others v. Romania*, no. 22465/03, §§ 73 and 77-80, 8 December 2009; *Dvořáček and Dvořáčková v. Slovakia*, no. 30754/04, § 70, 28 July 2009; *Agache and Others v. Romania*, no. 2712/02, §§ 79-84, 20 October 2009; and *Mojsiejew v. Poland*, no. 11818/02, §§ 57-58, 24 March 2009).

90. In this connection, the Court also attaches significance to the fact that, despite the existence of a formal call made by the Public Defender on 8 September 2009 for the prosecution authority to reopen the investigation into the police operation of 2 May 2006 due to the manifest inconclusiveness of that investigation's original findings (see paragraph 17 above), the authority remained idle until 14 December 2012. However, after the reopening of the investigation on the latter date, the Court observes that it was the first applicant who, even in the absence of the relevant victim status, still bore the burden of the investigation, by interviewing the various key witnesses and collecting other evidence, for a considerable period of time (see paragraphs 19-34 above, and compare, for instance, *Šilih*, cited above, §§ 201 and 209). After the reopening of the investigation, and despite the fact that there already existed substantial evidence implicating the relevant police officers in the unlawful use of the lethal force against the applicants' son, it still took the relevant domestic authorities almost three years to terminate the investigation and transfer the case for trial (compare, *mutatis mutandis*, *Agache and Others*, cited above, § 79, and *Şandru and Others*, cited above, § 74). It should be noted in this connection that it was partly on the basis of the evidence collected by the first applicant himself that the conviction for his son's murder was later secured (see paragraph 36 above). Although this issue does not obviously fall within the scope of the present application, the Court cannot fail to note that, as was established by the relevant domestic courts (see paragraphs 54 and 58 above), the first applicant's assassination – in a bomb blast caused by a device planted at his son's grave – was prompted by his incessant public activities aimed at shining a light on the activities of the police officers responsible for the killing of Z.V. on 2 May 2006. By taking over the investigative role, which should normally have been the responsibility of the relevant authorities, the first applicant put himself at almost certain risk of retaliation. The Court underlines that the tragic development in the present case can be seen as yet

another vivid example of how tangibly deleterious the consequences of a lack of due diligence on the part of the authorities investigating life-endangering crimes can be, particularly where police corruption is involved (compare, *mutatis mutandis*, *Enukidze and Girgvliani*, cited above, §§ 276 and 277).

91. Another reason why the reopened investigation, despite the conviction of the five police officers it has brought along, cannot be considered to have been sufficiently effective is that, similarly to what had happened during the initial investigation, the second applicant was not granted victim status, did not attend the trial and could not benefit from the exercise of a number of major procedural rights pertaining to that status (see paragraph 60 above; and compare, for instance, *Mindadze and Nemsitsveridze v. Georgia*, no. 21571/05, § 108, 1 June 2017; *Dimitrova and Others*, cited above, §§ 87 and 88; and *Trufin v. Romania*, no. 3990/04, § 52, 20 October 2009; and contrast *Mustafa Tunç and Fecire Tunç*, cited above, §§ 213-15). According to the relevant domestic law and practice, the second applicant's inability to take part in the trial, after her husband's death, deprived her, amongst other things, of an opportunity to testify before the domestic courts about the degree of anxiety and distress caused by the commission of the crime, which would have assisted her in the subsequent and separate procedural steps aimed at obtaining civil redress from the perpetrators (see, in this connection, Article 57 § 1 (c) of the Code of Criminal Procedure and Article 309^{17} § 2 of the Code of Civil Procedure, cited in paragraphs 60 and 62 above). In other words, the second applicant's inability to attend the trial impaired the possibility of seeking and obtaining adequate compensation for the damage which she and her already late husband had sustained as a result of the killing of their son by the police (see the references cited *in fine* of paragraph 74 above, and also *Yeter v. Turkey*, no. 33750/03, § 58, 13 January 2009).

92. As stated above (see paragraph 84 *in fine* above), although substantial deference should be granted to the national courts in the choice of appropriate sanctions for ill-treatment and homicide, the Court must intervene in cases of manifest disproportion between the seriousness of the act committed by State agents and the punishment imposed. This is essential for maintaining public confidence, ensuring adherence to the rule of law and preventing any appearance of tolerance of or collusion in unlawful acts committed by State agents (compare, for instance, with *Bektaş and Özalp v. Turkey*, no. 10036/03, § 50, 20 April 2010, and *Nikolova and Velichkova*, cited above, § 61). In the present case, although domestic law permitted the trial court to impose a higher sentence – either twenty years in prison or life imprisonment – it initially handed down sixteen-year prison sentences for the two authors of the aggravated murder of the applicants' son (Article 109 of the Civil Code, cited in paragraph 64 above). Furthermore, when handing down those sentences, the trial court obviously knew that the terms were not

real as they were subject to a further reduction, by a quarter, pursuant to the automatic application of section 16 of the Amnesty Act of 28 December 2012 (see paragraphs 46 and 67 above). The Court regrets that the domestic legislator, when enacting the Amnesty Act, did not apparently give a due consideration to the need to punish serious police misconduct with unbending stringency. In this connection, the Court reiterates that when an agent of the State, in particular a law-enforcement officer, is convicted of a crime that violates Article 2 of the Convention, the granting of an amnesty or pardon should not be permissible (compare, amongst many others, *Nina Kutsenko v. Ukraine*, no. 25114/11, § 149, 18 July 2017; *Yeter*, cited above, § 70; and *Ali and Ayşe Duran v. Turkey*, no. 42942/02, § 69, 8 April 2008). Indeed, the Court expects States to be all the more stringent when punishing their own law-enforcement officers for the commission of such serious life-endangering crimes than they are with ordinary offenders, because what is at stake is not only the issue of the individual criminal-law liability of the perpetrators but also the State's duty to combat the sense of impunity the offenders may consider they enjoy by virtue of their very office, and to maintain public confidence in and respect for the law-enforcement system (see *Enukidze and Girgvliani*, cited above, § 274, and, *mutatis mutandis*, *Nikolova and Velichkova*, cited above, § 63).

93. The Court further observes that, unlike the other three police officers convicted of comparatively less serious offences, the two police officers who were found guilty of aggravated murder of the two passengers of Z.V.'s car, were not banned from public service by the domestic courts (see paragraph 46 above). In other words, the two convicted former police officers could potentially join the law-enforcement system of the respondent State anew after they have served their twelve-year prison sentences. In this connection, the Court emphasises that, as a matter of principle, it would be wholly inappropriate and would send the wrong signal to the public if the perpetrators of the very serious crime in question maintained eligibility for holding public office in the future (see *Enukidze and Girgvliani*, cited above, § 274; *Türkmen v. Turkey*, no. 43124/98, § 53, 19 December 2006; and *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004). In the light of the foregoing, the Court concludes that the sentences imposed upon the two police officers who murdered the applicants' son and his friend in the egregious circumstances – with malice aforethought, employing the law-enforcement machinery for that unique purpose – did not constitute fully adequate punishment for the crime committed.

94. In the light of the foregoing, the Court finds that, despite the eventual conviction of the five police officers in relation to the police operation of 2 May 2006, the criminal-law system, as applied to the killing of Z.V., proved to be far from rigorous and cannot be said – owing to the initial lapses and prohibitive delays in the investigation, the applicants' inability to be sufficiently involved in the criminal proceedings and the

domestic courts' failure to secure adequate punishment for the two State agents who committed double murder in aggravating circumstances – to have had sufficiently dissuasive effect for prevention of similar criminal acts in the future (see *Külah and Koyuncu*, cited above, § 42 and 43; *Yeter*, cited above, § 71; and *Ali and Ayşe Duran*, cited above, § 72).

95. The Court thus concludes that the applicants have retained their victim status within the meaning of Article 34 of the Convention and that there has been a violation of the procedural limb of Article 2 of the Convention.

2. As to whether Z.V.'s killing was imputable to the State

96. As regards their complaint under the substantive limb of Article 2 of the Convention, the applicants submitted that, having regard to all the circumstances surrounding the police operation of 2 May 2006, their son had been killed as a result of police force that had neither been proportionate nor strictly necessary. They further stated that the use of force by the police had been unlawful.

97. The Court observes that the domestic courts, after acquainting themselves with the evidence and examining the facts of the case, found that the two police officers, who had been acting in an official capacity, were guilty of the aggravated murder of the applicants' son. Three other police officers were convicted of the other relevant offences committed in public office in relation to the circumstances surrounding the killing of Z.V. and his friend on 2 May 2006. These findings of the domestic courts made it crystal clear that the killing of Z.V. by State agents with malice aforethought was attributable to the respondent State (compare, for instance, *Nikolova and Velichkova*, cited above, § 68, and *Külah and Koyuncu*, cited above, § 44; and contrast *Enukidze and Girgvliani*, cited above, §§ 289 and 290).

98. There has therefore been a violation of the substantive limb of Article 2 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

99. Both applicants reiterated their complaints concerning the ineffective investigation into their son's death under Articles 6 and 13 of the Convention. They also cited Articles 7 and 14 of the Convention and Article 1 of Protocol No. 1 without providing any meaningful explanation in that regard. Lastly, the second applicant separately complained that the prosecution authority had made her rewrite by hand the report on the post-mortem forensic examination of her son's body (see paragraph 11 above), which had caused her additional suffering, in breach of Article 3 of the Convention.

100. Having regard to the facts of the case, the submissions of the parties and its findings under Article 2 of the Convention, the Court considers that it has examined the main legal questions raised in the present application. It concludes, therefore, that there is no need to give a separate ruling on the applicants' remaining complaints (see, amongst many other authorities, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014; *Gulyan v. Armenia*, no. 11244/12, § 95, 20 September 2018; and *Babat and Others v. Turkey*, no. 44936/04, § 44, 12 January 2010).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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

102. The applicants claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

103. The Government waived their right to submit comments on the applicants' just-satisfaction claims (see also paragraphs 4 and 72 above)

104. Having regard to its conclusions under Article 2 of the Convention, the Court has no doubt that the applicants suffered intense distress and frustration on account of the killing of their son by State agents and the failure to conduct a timely investigation leading to the adequate punishment of all those responsible (see *Enukidze and Girgvliani*, cited above, § 315, 26 April 2011). Making its assessment on an equitable basis, the Court awards the second applicant, Ms Tsiala Shanava (see paragraph 5 above), the claimed amount – EUR 50,000 – in its entirety.

B. Costs and expenses

105. The applicants claimed 675 pounds sterling (GBP – approximately EUR 788) on account of their representation before the Court by a British lawyer (see paragraph 2 above). The amount was broken down into the number of hours spent and the lawyer's hourly rate – four hours and thirty minutes at the rate of GBP 150. No copies of the relevant legal service contracts, invoices, vouchers or any other supporting financial documents were submitted. The applicants additionally claimed, by submitting a copy of the relevant receipts, GBP 359.89 (EUR 420 approximately) for postal,

translation and other types of administrative expenses incurred by the British lawyer.

106. The Government did not submit any comments (see also paragraph 101 above).

107. The Court notes that a representative's fees are actually incurred if the applicant has paid them or is liable to pay them. Accordingly, the fees of a representative who has acted free of charge are not actually incurred. The opposite is the case with respect to the fees of a representative who, without waiving them, has simply taken no steps to pursue their payment or has deferred it. The fees payable to a representative under a conditional-fee agreement are actually incurred only if that agreement is enforceable in the respective jurisdiction (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017). In the present case the applicants did not submit documents showing that they had paid or were under a legal obligation to pay the fees charged by their British representative or the expenses incurred by him. In the absence of such documents, the Court finds no basis on which to accept that the costs and expenses claimed by the applicants have actually been incurred (ibid., §§ 361-62, 364-65 and 372-73).

108. It follows that the claim must be rejected.

C. Default interest

109. 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. *Holds* that the second applicant has standing to pursue the application in her own name and in that of the late first applicant;

2. *Joins* to the merits the question relating to the applicants' victim status;

3. *Declares* the complaints under Article 2 of the Convention concerning the killing of the applicants' son admissible;

4. *Holds* that the applicants may claim to be victims for the purposes of Article 34 of the Convention and there has been a violation of both substantive and procedural aspects of Article 2 of the Convention;

5. *Holds* that there is no need to examine separately the complaints under Articles 3, 6, 7 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention;

6. *Holds*
(a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President