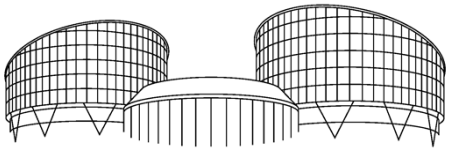

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SHAVADZE v. GEORGIA

(Application no. 72080/12)

JUDGMENT

Art 2 (procedural) • Effective investigation • Investigation into death of applicant's husband at the hands of officers of the Ministry of Interior initially conducted by same authority, with their collected evidence exclusively relied upon by the prosecutor's office taking over the investigation • Refusal to grant applicant civil-party status as next of kin • Protracted investigation

Art 2 (substantive) • Life • Failure of Government to discharge burden of proof for satisfactory and convincing explanation of how events unfolded

STRASBOURG

19 November 2020

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

In the case of Shavadze v. Georgia,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Ganna Yudkivska,
Latif Hüseynov,
Jovan Ilievski,
Lado Chanturia,
Arnfinn Bårdsen, *judges,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 72080/12) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Ms Tsitsino Shavadze ("the applicant"), on 1 November 2012;

the decision to give notice of the application to the Georgian Government ("the Government");

the parties' observations;

Having deliberated in private on 20 October 2020,

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

INTRODUCTION

1. The applicant complains under Article 2 of the Convention about a death in police custody and the absence of an effective investigation thereof.

THE FACTS

2. The applicant was born in 1965 and lives in Batumi, the Ajarian Autonomous Republic of Georgia. She was represented by Mr R. Papidze, a lawyer practising in Batumi.

3. The Government were represented by their Agent, Mr L. Meskhoradze, of the Ministry of Justice.

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

I. KILLING OF THE APPLICANT'S HUSBAND ON 16 AUGUST 2008

5. On 15 August 2008 the applicant's husband, R.Sh., who was a military officer stationed at a military base in Khelvachauri, a town in the Ajarian Autonomous Republic, was summoned for questioning by the Department of Constitutional Security of the Ministry of the Interior ("the DCS"). When he returned home in the evening of the same day, he told the

applicant that the officers from the DCS had asked him questions regarding the role he had played, in his official military capacity, in the five-day war that had taken place between Georgian and Russian military forces a few days earlier, between 8 and 12 August 2008 ("the five-day war").

6. The following day, 16 August 2008, R.Sh. was arrested on a street in Batumi by, as it later transpired, a unit of security forces attached to the DSC. There were a number of independent eyewitnesses to his arrest who subsequently reported that more than twenty law-enforcement officers, heavily armed and wearing balaclava-like masks, had taken part in the operation to arrest the applicant's husband. According to the same eyewitnesses, the law-enforcement officers, prior to putting him in a police van, had ferociously beaten R.Sh. in the street, loudly shouting such statements as "a traitor to this country" and, apparently referring to the five-day war, "a scam responsible for the death of scores of our boys".

7. Approximately six hours after R.Sh.'s arrest, the applicant learnt from a local police officer that her husband was dead, and that his body had been taken to the town's morgue.

8. According to the applicant's version of events, which was disputed by the Government, her husband had been subjected to severe ill-treatment by the officers of the DCS after his arrest, as a result of which he had died. In support of that version, the applicant claimed that, after the authorities had returned the body of her dead husband to her, it had displayed clearly distinguishable marks of torture. Furthermore, she claimed that, shortly after her husband's death, she had started receiving regular telephone calls from unknown people who had either threatened her with "prison" if she attempted to press for details regarding her husband's death or offered her money in exchange for her silence.

9. According to the official version of the events, submitted by the Government, law-enforcement officers of the Ministry of the Interior had arrested R.Sh. on 16 August 2008 in relation to a drug offence. However, after they had taken him into custody and arranged for his escorting from Batumi to Tbilisi, R.Sh. had attempted an unlawful escape, and the escorting officers had been obliged to resort to lethal force, fatally injuring the suspect. No further details about the official version of the fatal incident were provided.

10. The applicant submitted a video-footage of the visual examination of R.Sh.'s body. The footage shows the naked body which bears bruise-like discolouration, with clearly distinguishable marks of a post-mortem autopsy of the thorax and abdomen. It also shows multiple penetrating wounds on the shoulders, chest, abdomen and both thighs of the body; the index and the middle fingers of the left hand appear to be severely deformed, suggesting possible fractures of the bones. The Government did not submit any parts of the investigative case-file. In particular, they did not produce a report on the forensic examination of R.Sh.'s body which, according to their own

account, had taken place at an early stage of the investigation (see paragraph 11 below).

II. INVESTIGATION INTO THE KILLING OF THE APPLICANT'S HUSBAND

11. On the same day, 16 August 2008, the Ministry of the Interior opened a criminal inquiry into the circumstances surrounding R.Sh.'s death, classifying it as murder under Article 108 of the Criminal Code. According to the Government (see also paragraph 30 below), all the preliminary investigative measures, including the questioning of the escorting officers and the forensic examination of R.Sh.'s body and of the scene where it had been discovered, were conducted over the following two days by the Ministry of the Interior's own investigators. As was further explained by the Government, the results of the initial investigative measures were transmitted to the Office of the Public Prosecutor of the Ajarian Autonomous Republic on 18 August 2008 ("the regional prosecutor's office"), which henceforth took charge of the investigation.

12. On 25 August 2008 the applicant requested to be granted civil-party status in relation to the investigation into her husband's killing. On 8 September 2008 the regional prosecutor's office replied that her request could not be granted, given the early stage of the investigation. She reiterated her request at least eight times in the period between September 2008 and January 2010, each time receiving identically worded answers from the prosecution authority to the effect that it was premature to decide on the question of civil-party status because a certain number of important investigative measures needed to be carried out first.

13. On 13 January 2010 the applicant inquired with the regional prosecutor's office about the progress in the investigation and requested access to the criminal case file. The authority replied on 16 January 2010 that her requests could not be examined because she was not a civil party in the proceedings.

14. Between September 2010 and May 2011 the applicant repeatedly complained to both the regional prosecutor's office and its hierarchical superior, the Chief Prosecutor's Office of Georgia, to be granted the requisite civil-party status that would enable her to be involved in the investigation of her husband's death, but the regional prosecutor's office always replied that her request was premature and that it could only be examined after a certain number of specific investigative measures had been carried out.

15. On 11 May 2011 the applicant requested the regional prosecutor's office to give her access if not to the entirety of the criminal case file then at least to the report on the forensic medical examination of her husband's body following its discovery on 16 August 2008. The regional prosecutor's

office replied in the form of a letter dated 18 May 2011, stating that in order to be able to consult the material in the criminal case file, the applicant first needed to obtain civil-party status.

16. Between September 2011 and December 2016, the applicant complained on numerous occasions to the Chief Prosecutor's Office of the inadequacy of the investigation conducted by the regional prosecutor's office, requesting it to speed up the proceedings.

17. According to the information in the case file, the investigation into the killing of the applicant's husband has still not been terminated. It is not apparent from the available material in the criminal case file whether, apart from the measures mentioned above (see paragraph 11 above), any other specific investigative steps have been taken and whether the applicant has been granted civil-party status.

RELEVANT LEGAL FRAMEWORK AND OTHER MATERIAL

I. CODE OF CRIMINAL PROCEDURE OF GEORGIA OF 20 FEBRUARY 1998 ("THE CCP")

18. Pursuant to Article 62 §§ 1 and 2 of the CCP, as in force at the material time, although criminal investigations were usually carried out by the Ministry of the Interior, an investigation into an offence implicating, *inter alia*, a police officer, an investigator or a senior military or special law-enforcement officer of the Ministry of the Interior was to be entrusted to the Public Prosecutor's Office.

19. Pursuant to Article 68 § 2 of the CCP, if a crime resulted in the death of the victim, civil-party status was to be granted to one of his or her close relatives.

20. The other relevant provisions of the CCP read as follows:

Article 25 § 1

"The civil party and their counsel shall have the right to join the proceedings brought by the public prosecutor."

Article 69

"The civil party ... shall have the right:

...

(i) to take part in the investigative measures carried out at their request;

(j) to have access to a copy of the full criminal case file and all the evidence once the case has been referred for trial;

...

(m) to take part in the judicial examination of the case, by submitting evidence and by examining the evidence produced by the other parties ..."

II. DOMESTIC REPORT ON HUMAN RIGHTS ABUSES

21. In 2009 the Human Rights Center of Georgia, a domestic non-governmental organisation specialising in the investigation of human rights abuses, published a report entitled "Licence to Kill" providing an overview of cases involving the excessive use of force by State agents in the period between 2004 and 2009. The relevant excerpt from the report, which concerned the killing of the applicant's husband, read as follows:

> "On 16 August 2009 officers from a special forces unit of the Ministry of the Interior arrested [R.Sh.], a military officer with the rank of sergeant, on a central street in Batumi and started to beat him on the spot. This occurred on the second day after [R.Sh.]'s discharge from the 2008 Russia-Georgia war in the South Ossetia region, where he had been serving in a special military intelligence department. After the special-forces officers had arrested [R.Sh.], his whereabouts were unknown. Later the same day he was found dead with marks of severe torture [on his person]. The authorities told the family that [R.Sh.] had been shot by the police in an attempt to prevent his fleeing from the scene of a drug-related crime. ...
>
> [As reported to the Human Rights Center by eyewitnesses to the arrest of R.Sh.], 'the law-enforcement officers were beating him so ruthlessly in the street that some of the passers-by wanted to intervene to stop the beating but the officers of the special forces shouted in reply that [R.Sh.] was a traitor and that many soldiers had died because of his treason'. The deceased's family members and their lawyer further reported that [R.Sh.]'s body had clear marks of ill-treatment – 'there were at least twenty-seven bullet holes in his body, his limbs were broken, and the flesh was torn off in several places'. ...
>
> [R.Sh.]'s widow told the Human Rights Center that her husband's army friends who had fought alongside him had refused to come to the funeral – 'So many lies were intentionally spread about his treason that many of his friends did not even come to say farewell to him. Some of them simply telephoned me to apologise for not coming to the funeral. ...'
>
> A criminal investigation has been opened into the death of [R.Sh.]. However, notwithstanding numerous requests, the investigative authorities have not yet granted civil-party status to the next of kin of R.Sh.; there exists no basis in the domestic law for denying this status to the deceased's next of kin, and by doing so the investigative authorities are effectively blocking the family access to the material in the case file ..., it is impossible for the family or for any third party to exercise public scrutiny of the actions of the investigative authorities."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

22. The applicant complained that her husband had died in police custody and that no effective investigation had been conducted into his death, in breach of Article 2 of the Convention, which reads as follows:

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

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

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Admissibility

23. The Government argued that the applicant had failed to demonstrate due diligence by taking the appropriate initiative to lodge her application with the Court with requisite expedition, as required by the six-month rule laid down in Article 35 § 1 of the Convention. They specified in that connection that, having received the prosecutorial decision of 18 May 2011, the applicant should have realised that the criminal investigation into the killing of her husband was ineffective and lodged her application with the Court within the following six months. However, the present application had been lodged as late as 1 November 2012.

24. The applicant disagreed, arguing that the relevant facts of the case clearly showed that she had been diligent in making regular enquiries about the progress in the investigation at the domestic level.

25. The Court reiterates that pursuant to the principle of legal certainty, which is a cornerstone of the six-month rule contained in Article 35 § 1 of the Convention, a victim of action allegedly in contravention of Articles 2 and 3 of the Convention must take steps to keep track of the relevant criminal proceedings or lack thereof, and lodge his or her application with due expedition once he or she becomes, or should have become, aware of the lack of any effective criminal investigation (see, among many other authorities, *Akhvlediani and Others v. Georgia* (dec.), no. 22026/10, §§ 23-29, 9 April 2013, and *Ekrem Baytap v. Turkey* (dec.), no. 17579/05, 29 April 2010). Where time is of the essence for resolving an issue in a case, there is a burden on the applicant to ensure that his or her claims are raised before both the relevant domestic authorities and the Court with the necessary expedition to ensure that they may be properly and fairly resolved (see, among other authorities, *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III). Indeed, with the lapse of time, memories of witnesses fade, witnesses may die or become untraceable, evidence deteriorates or ceases to exist, and the prospects that any effective investigation can be undertaken will increasingly diminish, and the Court's own examination and judgment may be deprived of meaningfulness and

effectiveness (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 161, ECHR 2009).

26. The Court observes that in the instant case a criminal investigation into the killing of the applicant's husband was opened immediately, and she made regular enquiries about the progress in the investigation from an early stage of the proceedings (see paragraphs 11-16 above). Thus, it cannot be said that she did not show an interest in having the relevant facts elucidated through a criminal investigation at the domestic level (contrast *Akhvlediani and Others*, cited above, § 25; *Manukyan v. Georgia* (dec.), no. 53073/07, § 30, 9 October 2012; and *Deari and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 54415/09, §§ 47-49, 6 March 2012). The Court is not convinced by the Government's claim that the six-month time-limit ought to be calculated from the prosecutorial decision of 18 May 2011. That decision was of a rather anodyne procedural nature, merely rejecting the applicant's request to have access to the criminal case file; it was not a decision on the final discontinuation of the proceedings, nor was it a decision undermining the eventual effectiveness of the investigation by prejudging its outcome (compare, for instance, *Sakvarelidze v. Georgia*, no. 40394/10, § 44, 6 February 2020, and contrast *Shavlokhova v. Georgia* (dec.) [Committee], no. 4800/10, § 23, 18 September 2018). Even after the prosecutorial decision of 18 May 2011 had been issued, and after lodging her application on 1 November 2012, in the following years the applicant made repeated attempts at regular intervals, inquiring about the investigation's progress in the hope of an effective outcome (compare *Huseynova v. Azerbaijan*, no. 10653/10, § 89, 13 April 2017, and *Malika Yusupova and Others v. Russia*, nos. 14705/09 and 4 others, §§ 164-66, 15 January 2015).

27. In the light of the circumstances of the present case, the Court does not consider that the applicant failed to fulfil her obligation to show due diligence. The date of 18 May 2011 is not relevant for the purpose of calculating the six-month time-limit, for the reasons stated above (see the preceding paragraph), and the Court finds that the applicant cannot be considered to have waited too long before realising that the investigation risked producing no effective results. The Government's objection must therefore be dismissed.

28. The Court further holds that the complaints under Article 2 of the Convention are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

29. The applicant maintained that State agents had tortured her husband to death and that the relevant authorities had failed in their obligation to

conduct an effective investigation through the identification and punishment of the perpetrators of the killing.

30. Apart from contesting the applicant's allegation that her husband had been tortured and intentionally killed and arguing instead that R.Sh. had died as a result of the use of lethal force necessary to prevent his escape from lawful arrest, the Government did not submit any other argument. They accounted for the sequence of the investigative actions that had been undertaken immediately after R.Sh.'s death (see paragraph 11 above), without, however, producing a copy of the relevant procedural documents that had formed the legal basis for those actions.

2. The Court's assessment

(a) General principles

31. The Court has previously emphasised that where an individual is taken into custody in good health and dies at the hands of the security forces, the obligation on the authorities to account for the treatment of that individual is particularly stringent (see *Meryem Çelik and Others v. Turkey*, no. 3598/03, § 61, 16 April 2013). In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in detention, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among other authorities, *Salman v. Turkey* [GC], no. 21986/93, §§ 97-100, ECHR 2000-VII, and *Aktaş v. Turkey*, no. 24351/94, §§ 289-91, ECHR 2003-V (extracts)).

32. The obligation to carry out an effective investigation into unlawful or suspicious deaths is well established in the Court's case-law. 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 for maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. 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, if appropriate, punishment of those responsible. This is an obligation which concerns the means to be employed and not the results to be achieved. The authorities must take reasonable steps available to them to secure the evidence concerning an 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, as a recent authority, *Vazagashvili and Shanava v. Georgia*, no. 50375/07, §§ 80-81, 18 July 2019, with further references). In a significant number of cases already 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 the final outcome of those proceedings (see, for example, *Merkulova v. Ukraine*, no. 21454/04, § 51, 3 March 2011, with further references).

33. 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 a practical independence. 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. 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 inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and, where appropriate, the identity of those responsible. The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 175, 14 April 2015, and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 183, ECHR 2012). While compliance with the procedural requirements of Article 2 is assessed on the basis of several essential parameters, including those mentioned above, these elements are interrelated and each of them, taken separately, does not amount to an end in itself. They are criteria which, when taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to this purpose of an effective investigation that any issues, including those of promptness and reasonable expediency, must be assessed (see, as a recent authority, *Kukhalashvili and Others v. Georgia*, nos. 8938/07 and 41891/07, § 131, 2 April 2020, with further references).

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

34. In the circumstances of the present case, the Court considers it appropriate to start its examination of the merits of the application by first addressing the complaint that the domestic investigation into the death of the applicant's husband was ineffective and then turning to the question of whether the State can be held responsible for the death.

35. The Court notes that the applicant's husband died on 16 August 2008 at the hands of officers of the Ministry of the Interior. However, the

very first investigative measures were carried out, in the immediate aftermath of his death, by investigators of the same authority, and not by the prosecution authority, contrary to what was required by the relevant domestic law (see paragraph 18 above). Although the prosecution authority took charge of the investigation at a later stage, the public prosecutors relied, as was acknowledged by the Government, exclusively on the evidence previously collected by the Ministry (see paragraph 11 above). That being so, the Court considers that the primary and most decisive investigative steps taken by the investigators of the Ministry of the Interior, apart from apparently constituting an unexplained deviation from the domestic procedural rules, manifestly fell foul of the requisite requirements of independence and impartiality under Article 2 of the Convention. Such a procedural deficiency could not but taint the subsequent developments in the investigation (see, for instance, *Vazagashvili and Shanava*, cited above, § 87, and *Enukidze and Girgvliani v. Georgia*, no. 25091/07, §§ 245-49, 26 April 2011). As regards the conduct of the investigation after it had been taken over by the regional prosecutor's office on 18 August 2008, the Court is particularly concerned by the latter authority's inexplicable, persistent and, therefore, possibly deliberate refusal to involve the applicant by allowing her to benefit fully from the civil-party status she was entitled to. Without that procedural standing, the applicant was not able to exercise any procedural rights at all (see paragraphs 18-20 above). She could not obtain any information about the investigation and was not even allowed to consult the report on the post-mortem forensic examination of her husband's body (see also paragraph 39 below, and compare with *Vazagashvili and Shanava*, cited above, § 88).

36. The Court further observes that, according to the case file, to date, the investigation into the killing of the applicant's husband – opened on 16 August 2008 – has not produced any conclusive findings. Such a prohibitive delay points to the domestic authorities' failure to comply with the requirements of promptness and reasonable expedition (see, for instance, *Starčević v. Croatia*, no. 80909/12, § 58, 13 November 2014). The Court cannot discern any particular reason for such a protracted investigation at the domestic level. This lack of due diligence, which in the eyes of the Court looks like a deliberate delay, is yet another indication that the criminal review has proved to be far from rigorous and has deprived the applicant of any possibility of obtaining redress (compare *Sakvarelidze*, cited above, § 54). In this connection, the Court reiterates that justice delayed is often justice denied, 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 (see, as a recent authority, *Vazagashvili and Shanava*, cited above, § 89).

37. Thus, having regard to the lack of independence and impartiality of the initial investigation, the exclusion of the deceased's next of kin from and the prohibitive delays in the proceedings, the Court considers that the criminal investigation into the death of the applicant's husband has been ineffective and in breach of the respondent State's procedural obligations under Article 2 of the Convention.

38. As regards the complaint under the substantive aspect of Article 2 of the Convention, the Court observes that it was not in dispute between the parties that R.Sh. had been killed by State agents, notably the officers of the Ministry of the Interior who had taken part in the arrest and escorting of R.Sh. The burden of proof is therefore on the Government to provide a satisfactory and convincing explanation as to how exactly the events in question unfolded (see, among many other authorities, *Khayrullina v Russia*, no. 29729/09, §§ 69-72, 19 December 2017), the absence of which will, according to the Court's well-established case-law, entail a violation of Article 2 of the Convention in its substantive part (see, among many other authorities, *Saribekyan and Balyan v. Azerbaijan*, no. 35746/11, §§ 68-70, 30 January 2020; *Gulyan v. Armenia*, no. 11244/12, § 91, 20 September 2018; and *Gaysanova v. Russia*, no. 62235/09, § 112, 12 May 2016).

39. In this connection, the Court observes that the domestic investigation has not come to a conclusion and is still ongoing (see paragraph 17 above). While the official version presented by the Government is that the law-enforcement officers resorted to the use of force in an attempt to prevent R.Sh.'s unlawful escape from police custody, this version has not been supported by any evidence. Since the next of kin of the deceased has not been given access to and, without any explanation, the Government have not provided the Court with the results of the post-mortem examination of the body of the applicant's husband despite its crucial relevance for explaining his injuries and establishing the cause of his death, the Court cannot accept the official version of the reasons behind the use of lethal force. In this connection, the Court also takes note of the eyewitness accounts of police brutality surrounding the arrest of the applicant's husband and of the nature of the injuries clearly visible on the video-footage of the deceased's body, observations which are hardly compatible with the Government's claim that the taking of R.Sh.'s life had been a result of the use of force necessary to prevent his escape from arrest (see paragraphs 8, 10 and 21 above, and compare *Vatsayeva v. Russia* [Committee], no. 44658/12, § 61, 21 January 2020).

40. All in all, the Court finds that the Government have not accounted for the circumstances of the taking of life of the applicant's husband and the respondent State's responsibility for his death is engaged (compare, as a recent authority, *Cantaragiu v. the Republic of Moldova*, no. 13013/11, § 29, 24 March 2020, and also *Tsintsabadze v. Georgia*, no. 35403/06, § 95, 15 February 2011).

41. It follows that there has been a violation of Article 2 of the Convention in both its procedural and substantive aspects.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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."

43. In respect of pecuniary damage, the applicant, without submitting any supporting documents, maintained that her late husband had been the sole breadwinner in their family and that the respondent State should thus compensate her for his lost wages from the time of his unlawful killing up to the present day.

44. The applicant further claimed an award in respect of non-pecuniary damage on account of the anxiety and distress caused by her husband's killing without, however, specifying a particular sum.

45. The applicant, without submitting any legal and/or financial documents in support, also claimed 10,000 United States dollars in respect of the costs and expenses incurred before the Court.

46. The Government submitted that the claims were either unsubstantiated or excessive.

47. The Court reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention, and that this may, in the appropriate case, include compensation in respect of loss of earnings (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 213, ECHR 2006-XIII (extracts)). However, having regard to the applicant's failure to submit any documents in support of her claim, it cannot be established with certainty that she was exclusively financially dependent on her deceased husband (compare, for instance, *Kukhalashvili and Others*, cited above, § 162; *Albekov and Others v. Russia*, no. 68216/01, §§ 125-27, 9 October 2008; and *İkincisoy v. Turkey*, no. 26144/95, § 137, 27 July 2004).

48. On the other hand, the Court accepts that the applicant must have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It finds it appropriate to award the applicant 40,000 euros under this head.

49. The Court reiterates that, according to its case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002). In the present case, regard being had to

the absence of any documents in support of the applicant's claim in respect of costs and expenses, the Court rejects it.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention in both its procedural and substantive aspects;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 40,000 (forty 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; and
   (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 November 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Síofra O'Leary
Registrar	President