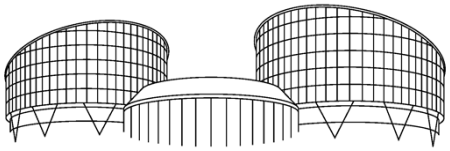

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF RIBCHEVA AND OTHERS v. BULGARIA

(Applications nos. 37801/16 and 2 others)

JUDGMENT

Art 2 (procedural) • Ineffective investigation into allegedly negligent planning and conduct of an operation against a dangerous individual, who killed an officer while being arrested • Obligation to investigate into negligence or omissions on the officials' part arising also in relation to police officers killed by private persons while performing their duties

Art 2 (substantive) • Scope and content of the State's positive obligation to take preventive operational measures to protect its own law-enforcement personnel against risks to their life • Authorities' precautions reasonable, despite some mistakes in the planning and conduct of the law-enforcement operation • Authorities afforded margin of appreciation and not to be subjected to an impossible or disproportionate burden in this context • Requirement to ensure proper training and preparation of officers taking part in dangerous operations

STRASBOURG

30 March 2021

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 Ribcheva and Others v. Bulgaria,

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

Tim Eicke, *President*,
Yonko Grozev,
Faris Vehabović,
Iulia Antoanella Motoc,
Armen Harutyunyan,
Gabriele Kucsko-Stadlmayer,
Ana Maria Guerra Martins, *judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the three applications (nos. 37801/16, 39549/16 and 40658/16) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Bulgarian nationals, Ms Vanya Petkova Ribcheva, Ms Milena Georgieva Ivanova-Sharkova and Ms Teodora Emilova Sharkova ("the applicants"), on 1 July 2016;

the decision to give the Bulgarian Government ("the Government") notice of the complaints concerning (a) the alleged failure of the authorities to prevent the death of Mr Emil Sharkov (who was, respectively, son, husband and father of the applicants); (b) the effectiveness of the investigation of any negligence by the authorities in relation to that death; and (c) the alleged lack of effective domestic remedies in respect of those matters, and to declare the remainder of the applications inadmissible;

the parties' submissions and additional submissions;

Having deliberated in private on 11 March 2021,

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

INTRODUCTION

1. The case concerns the questions whether the authorities were required by Article 2 of the Convention, and if so, in what form, to investigate whether they were responsible for not doing enough to protect the life of a police officer killed in the course of an operation by the person that he was trying to arrest. The case also concerns the question whether the authorities had an operational duty under the same provision to protect that officer's life and, if so, the scope and content of that duty.

THE FACTS

2. The three applicants were born in 1949, 1975 and 1999 respectively and live in Sofia. They were represented by Ms T. Petkova, a lawyer practising in Sofia.

3. The Government were represented by their Agents, Ms M. Kotseva, Ms A. Panova and Ms B. Simeonova of the Ministry of Justice.

4. The facts of the case, as submitted by the parties and as emerging on the basis of the materials submitted by them, may be summarised as follows.

I. THE OPERATION ON 14 MARCH 2014

5. The three applicants are the mother, widow and daughter of Mr Emil Sharkov, who was born in 1974 and had been an officer of the anti-terrorist squad of the Ministry of Internal Affairs since 1999. During an operation by the squad on 14 March 2014 in the town of Lyaskovets, Mr Sharkov was shot and killed by a Mr P.P. The purpose of that operation had been to arrest Mr P.P. and seize firearms that he had continued to keep even though his permits to do so had expired.

A. Events leading to the operation

6. Mr P.P., born in 1961, lived with his mother in a flat on the ground floor of a three-storey house in Lyaskovets. He stopped working in 2005.

7. In 2002 he passed an examination and was granted a licence to hunt, becoming a member of a local hunting club. His club membership and hunting licence expired in 2011 because he stopped paying the requisite fees. He did no hunting throughout the whole of the period of his membership.

8. In 2003 Mr P.P. applied for permission to acquire two hunting firearms. The head of the Gorna Oryahovitsa police rejected the application, apparently because he found that Mr P.P. was conflict-prone and had made threats against his neighbours. In February 2006 Mr P.P. renewed his application, and this time it was allowed. He then bought a smooth-bore semi-automatic shotgun and a hunting rifle. The authorities checked the place where he intended to keep the firearms and in June 2006 gave him a permit, valid for three years, to keep and carry them. In April 2009 Mr P.P. applied for and was granted permission to acquire another smooth-bore firearm for hunting, and bought a double-barrelled shotgun. In June 2009 his permit to keep and carry firearms for hunting was renewed for another three years. In 2010 he applied for and was granted permission to acquire one more hunting firearm, and bought another hunting rifle.

9. In early 2012 officers from the Gorna Oryahovitsa police force tried several times to check the conditions in which Mr P.P. kept his firearms, but he refused them entry to his flat. A neighbour told the officers that Mr P.P. and his mother never left the flat and just sat inside, watching passers-by through the windows. The police informed the Gorna Oryahovitsa district prosecutor's office of Mr P.P.'s refusal to admit them, and of his reclusive

behaviour. Shortly after that the prosecutor's office applied to the Gorna Oryahovitsa District Court for an order to commit Mr P.P. to a psychiatric hospital. The case was adjourned twice because Mr P.P. could not be summoned, and the judge eventually ordered the police to bring him to the court by force. After several rounds of planning, the latest of which involved the Ministry of Internal Affairs' anti-terrorist squad and the Ministry's psychology institute, in March 2012 the police came to the view that any attempt to arrest Mr P.P. would be too risky, and decided not to go ahead with the operation, but to check whether he could be made to go out of his flat through a tactic not involving the use of force. In view of the inability to ensure Mr P.P.'s presence in court, the committal proceedings were discontinued about a year later, in March 2013.

10. Meanwhile, in June 2012 Mr P.P. did not seek a renewal of the permits to keep and carry firearms, and they expired. In July 2012 an officer from the Gorna Oryahovitsa police force tried to contact him about that, but Mr P.P. remained inside his flat, refusing all communication with the officer. In July 2013 Mr P.P.'s neighbours complained to the police that he had threatened to kill them. This led to further attempts by the police to contact him and to seize his four firearms, to no avail. In October 2013 the Gorna Oryahovitsa district prosecutor's office opened criminal proceedings against Mr P.P. on suspicion that he had unlawfully possessed firearms since June 2012. The prosecutor's office ordered the police to seize his firearms, but the order could not be carried out as Mr P.P. refused to leave his flat and was armed and dangerous. Enquiries showed that he had not gone out of the flat since 2010 or 2011.

11. In January 2014 Mr P.P. wrote to the Gorna Oryahovitsa district prosecutor's office, complaining about his neighbours and of harassment by the police, and threatening that if that conduct did not stop, events would unfold worse than those in 2003, when a man had barricaded himself inside his house, shot at police officers who had tried to arrest him, and been killed following a siege by the police and the anti-terrorist squad (for more details about that police operation, see *Dimov and Others v. Bulgaria*, no. 30086/05, §§ 8-29, 6 November 2012). Between November 2013 and February 2014 Mr P.P. also wrote six letters to the headmaster of a school adjacent to his house, complaining about the pupils' conduct and making threats against them. Towards the end of February 2014, he telephoned the local police station and complained in an agitated manner about pupils who were making noise and throwing bottles and stones near his house. He threatened that he would go out in the street with a firearm and then "no one would pass by".

12. On 12 March 2014, after receiving a fresh threatening letter from Mr P.P., the school's headmaster restricted pupils' access to the parts of the school and schoolyard which lay close to Mr P.P.'s house and informed the police. On 13 March 2014 a police patrol was posted to prevent pupils from going close to Mr P.P.'s house.

B. The operation itself

1. Planning and preparation

13. In the meantime, in February 2014 the Gorna Oryahovitsa and Veliko Tarnovo police forces had started planning an operation to seize Mr P.P.'s firearms. Since that was thought likely to prompt a violent reaction from him, entailing a risk to the lives of any officers involved, Mr P.P.'s mother, and Mr P.P. himself, the police sought the help of the Ministry of Internal Affairs' anti-terrorist squad and the Ministry's psychology institute. The Ministry's Secretary General approved the request in late February, and on 28 February members of the anti-terrorist squad and the psychology institute met in Sofia to plan the operation. They discussed various ways of conducting the planned operation without coming to a definite conclusion. According to a memorandum not drawn up until 14 March 2014, the day of the operation, on the instructions of the psychology institute's head, the psychologists said that in view of Mr P.P.'s personality, any attempts to contact him in advance or negotiate with him would be counterproductive, and that it would be best to act swiftly and by surprise. They confirmed this in a working document they drew up a few days after the meeting, on 4 March. A second meeting took place on 7 March, this time without the participation of the psychologists, but with the participation of police officers from Veliko Tarnovo and Lyaskovets. The latter showed their Sofia colleagues photographs and plans of the house. The idea was mooted to make a video-recording of the building, so as to detect any reinforcement of the windows which could impede entry, but no final decision on that was taken. The tactical options envisaged during the meeting were either a quick attack to overawe Mr P.P. before he could barricade himself or flee or, failing that, a siege. No specific date was set for the operation.

14. In the meantime, between 28 February and 7 March 2014 the anti-terrorist squad carried out exercises to prepare for the operation.

15. The threats which Mr P.P. had made on 12 March 2014 against the pupils from the nearby school (see paragraph 12 above) spurred the authorities into action. The next day, 13 March, the Secretary General of the Ministry of Internal Affairs enquired whether the anti-terrorist squad's preparations were sufficiently advanced to carry out the operation the following day, and received a positive answer. In the afternoon the national police and the anti-terrorist squad drew up a plan for the operation. It was

approved by the Ministry's Secretary General, who also issued an order for the operation to proceed, putting the commander of the anti-terrorist squad and the head of the Ministry's criminal police directorate jointly in charge of it. Meanwhile, the Gorna Oryahovitsa district prosecutor's office obtained a judicial warrant to search Mr P.P.'s flat.

16. Later that day, the anti-terrorist squad drew up a more detailed plan for the operation, which was fixed for 6 a.m. the following morning. The two envisaged tactical options were, again, either a quick attack with an attempt to storm Mr P.P.'s flat using special devices and stun grenades, or, failing that, a siege. The squad officers due to take part in the operation – including about thirty officers, excluding the sniper team – participated in a briefing held at 6 p.m. in Sofia, at which each of them was assigned a specific task. Decisions were also made about the firearms and equipment which would be needed. It was also decided that two psychologists from the Ministry's psychology institute would be dispatched to Lyaskovets to assist in the operation if necessary. The sniper team were briefed at 6.30 p.m.

17. In the meantime, in the afternoon of 13 March two plain-clothes officers from the Veliko Tarnovo police force were sent by their superior to make a video-recording of Mr P.P.'s flat. They filmed the house from a distance and then gave the camera to a uniformed officer whom they met nearby, and he filmed the flat's entrance from up-close. It appears that the officers were spotted by Mr P.P. Once back at the police station, they sent the recording to the anti-terrorist squad, but it found that its quality was too poor to be of any help.

18. A second briefing of the squad was held in Sofia at 1 a.m. on 14 March. Final decisions were made about each officer's task and how to coordinate the different teams. The two psychologists were not given any specific tasks. The officers were shown photographs and plans of Mr P.P.'s flat.

19. A final briefing was held at 4.30 a.m. on 14 March in Veliko Tarnovo. The anti-terrorist squad discussed the operation with the Veliko Tarnovo and Gorna Oryahovitsa police forces, as well as with prosecutors from the Veliko Tarnovo and the Gorna Oryahovitsa prosecutor's offices and the investigator in charge of the criminal case against Mr P.P. The local police were entrusted with securing the outside perimeter and with ensuring the presence of emergency medical and firefighting teams. After the briefing, the members of the anti-terrorist squad assigned to carry out the operation and the two psychologists drove from Sofia to Veliko Tarnovo, where they held another briefing with the local police and prosecuting authorities, and then to Lyaskovets.

2. Execution

20. The members of the anti-terrorist squad and the two psychologists arrived in Lyaskovets at about 5.30 or 5.45 a.m. on 14 March, parking their vehicles a few hundred metres from Mr P.P.'s house. The two psychologists remained near the vehicles. The assault party, which only comprised squad members, checked their equipment and approached the house, accompanied by officers from the Veliko Tarnovo and Lyaskovets police forces. The squad's commander, another officer in charge of tactics, and a liaison officer remained about twenty metres from the house, as the five assault teams approached it. The first team, consisting of eight officers, equipped with a heavy ballistic shield and a hydraulic door breacher, entered the staircase corridor and stood in front of the flat's entrance door. The second and third teams, consisting of, respectively, six and five officers, positioned themselves around two balconies, and some of the officers climbed onto the balconies. Mr Sharkov was the second team's leader. Two smaller teams, consisting of two officers each, stood in front of the flat's windows. It is unclear what kind of firearms they had with them. The four-member sniper team were positioned a bit further afield, on all sides of the house.

21. The assault began at about 6 a.m. The two smaller teams fired blanks to distract Mr P.P., while the team at the flat's front door tried to force it open with a door breacher. They were unsuccessful, as it had been reinforced from the inside. The commander then ordered the assault party to regroup, and only three officers remained in front of the flat's front door, while the remaining officers went to the first balcony to assist the second team.

22. While the first team was continuing to try to break the front door, an officer from the second team (the one standing around the first balcony) climbed up, shouted "Police!", and tried to open the balcony door, which had been blocked from the inside with a ladder. He forced it open and two other officers entered the flat's dining room. It was dark and empty. The officers saw Mr P.P. and his mother move from the adjoining room, which was lit by an electric bulb, into a corridor. Mr P.P. was carrying a long-barrelled firearm. The officers shouted "Stop, police! Drop the weapon!" but Mr P.P. did not stop and opened fire. One of the officers was hit in the left arm. He took cover and returned fire. Mr P.P. kept on shooting, and the two officers retreated to the balcony. The other officer was hit in his bullet-proof vest. They were able to move out and the wounded officer was sent for medical treatment. The three remaining members of the team, including Mr Sharkov, remained on the balcony.

23. Meanwhile, one of the five officers from the third team (located near the second balcony) climbed up and broke open the balcony door, which had been blocked with a big box containing a television set. Three other officers from the same team then entered through the balcony in one of the flat's bedrooms. The three officers made a visual sweep of the bedroom, and

then one of them stepped into a corridor, holding his firearm extended in front of him. Mr P.P. shot him in the right arm, just above the wrist. The officer dropped his firearm and tried to throw a stun grenade towards Mr P.P. One of the other two officers, who were still inside the bedroom, helped him withdraw. After returning to the bedroom, the officer who had been shot started to put a dressing on his arm, while the two others, as well as the team leader, who had meanwhile also entered into the bedroom through the balcony, fired at Mr P.P. and shouted at him to surrender. Mr P.P. fired back at them from the corridor. The wounded officer was able to move back to the second balcony and was also sent for medical treatment.

24. After finding out that two officers had been wounded, the squad's commander ordered a partial disengagement, and the other officers took position on the two balconies, hiding behind the corners of walls and their ballistic shields. They continued exchanging shots with Mr P.P.

25. Mr Sharkov was among the officers positioned around the first balcony (the second team). When he learned that two officers had been wounded, he asked another officer to pass him a heavy ballistic shield, and one was fetched for him. He and two other officers knelt behind the shield, while Mr P.P. shot at them from inside the flat. Two of his shots hit the shield. One of the other officers returned fire. During a short lull Mr Sharkov and the other officer switched places. Throughout that time they shouted at Mr P.P. to come out and surrender. Mr P.P. said that he would, and the officers assured him that they would not shoot at him if he did. At that point Mr Sharkov raised his head above the shield. Mr P.P. opened fire and shot him above the left eyebrow, just under his helmet. Mr Sharkov fell back on the balcony and his helmet twisted to one side, covering the entry wound. Two officers fired at Mr P.P. to enable the others to move Mr Sharkov's body. An officer tried to find a pulse or a pupillary reflex, but there was none. Mr Sharkov's body was then stripped of its protective gear, put in an ambulance, and driven to a hospital in Veliko Tarnovo. The subsequent autopsy showed that the entry wound was just above the left eyebrow, three centimetres from the end, and that the exit wound, which measured six centimetres by four, was four centimetres behind the left ear. The medical experts said that the shot had caused immediate brain death and that the ensuing terminal state had lasted another ten to fifteen minutes. It would not have been possible to resuscitate Mr Sharkov even if he had had immediate specialist medical care.

26. After the shooting, a police officer carrying a ballistic shield moved into the room from the second balcony to help two other officers withdraw onto the balcony. The three hid behind a shield, exchanging fire with Mr P.P. One of them was hit in the right arm, which he had extended in front of the shield to be able to fire from a better position.

27. Mr P.P. then took position in a corridor, exchanging fire with the officers who had remained standing on the balconies and who had made no further attempt to enter the flat. The Ministry's Secretary General, informed of the way in which the operation was unfolding, arrived from Sofia at about 8.30 a.m. and took charge of it. The squad also asked for backup with better equipment and firearms.

28. At about 10 a.m., after several telephone conversations with the police, Mr P.P.'s mother came out of the flat. She told the officers that Mr P.P. was wounded, and that he had known that the authorities would come for him and had been waiting for them. Shortly after that, at about 10.25 a.m., Mr P.P. shouted from inside the flat that he was wounded and could not move, and asked for medical assistance. After some hesitation, at about 11 a.m. he crawled out of the flat onto the first balcony, at which point he was arrested and taken to a hospital. Specially equipped officers then searched the flat for explosive devices.

29. In the afternoon, the police again searched the flat, seizing, among other things, the four hunting firearms kept by Mr P.P., a revolver, and a considerable amount of ammunition for each of those firearms, all spread at various locations around the flat. Further searches of the flat were made on 15 and 21 March and 9 April 2014. The ensuing criminal proceedings (see paragraphs 32 to 37 below), found that during the operation against him Mr P.P. had used two of his four firearms (the second hunting rifle and the smooth-bore semi-automatic shotgun – see paragraph 8 above), and had fired at least twenty-four shots against the officers; six of those had been direct hits.

II. SUBSEQUENT PROCEEDINGS AND INVESTIGATIONS

A. Parliamentary hearing

30. Five days after the operation, on 19 March 2014, Parliament's Standing Committee on Domestic Security and Public Order questioned the Deputy Minister of Internal Affairs and the Ministry's Secretary General about the operation. The Committee asked them about the planning for the operation and the tactic used by the anti-terrorist squad. The Secretary General accepted that the operation had been a failure, and blamed the two Veliko Tarnovo police officers who had made the video-recording of Mr P.P.'s house the day before the operation (see paragraph 17 above). In the Secretary's view, that had tipped Mr P.P. off about the impending operation and had enabled him to prepare for it, in effect laying an ambush for the anti-terrorist squad.

B. Criminal proceedings against Mr P.P.

31. Mr P.P. was promptly charged with murdering Mr Sharkov and attempting to murder the five other officers of the anti-terrorist squad whom he had wounded, and with unlawfully possessing firearms. In December 2014 he was indicted.

32. His trial took place over several days in 2015. The Veliko Tarnovo Regional Court heard a number of witnesses and admitted a considerable number of expert reports. The applicants took part as private prosecutors alongside the public prosecutor, and also as civil claimants.

33. On 19 November 2015 the Veliko Tarnovo Regional Court found Mr P.P. guilty of aggravated murder and attempted murder, both characterised by premeditation, and the unlawful possession of firearms. It sentenced him to life imprisonment and ordered him to pay each of the three applicants 100,000 Bulgarian levs (BGN) (51,129 euros (EUR)), plus interest, in non-pecuniary damages. The court also made awards of damages in favour of Mr Sharkov's father and of one of the wounded officers.

34. In the reasons for its judgment, which ran to a hundred and seven pages, the court set out all developments relating to Mr P.P.: his firearms permits and purchases, his bizarre and aggressive conduct after 2010, and his interactions with the authorities after 2012, including the unsuccessful attempts to seize his firearms and commit him to a psychiatric hospital. The court also described in detail the preparation and execution of the operation against Mr P.P. It further analysed, apparently in response to arguments raised by counsel for Mr P.P., the reasons why the operation had been rendered necessary. Having analysed the steps taken by the authorities with respect to Mr P.P. and his conduct, the court concluded that the decision to deploy the anti-terrorist squad had been lawful and fully justified. However, it went on to note that the authorities' choice of the most appropriate method of dealing with Mr P.P. could not be reviewed by it, since that matter was not part of the criminal case against Mr P.P. The court nevertheless observed that in the circumstances the use of firearms against Mr P.P. had been justified, in particular because he had fired first.

35. The court further noted that Mr P.P. had fired on Mr Sharkov during a lull and following a brief dialogue with the officers. On that basis, it found that Mr P.P. had intended to kill Mr Sharkov rather than just fire at random during a heated exchange of shots with the police. Based on the meticulous manner in which Mr P.P. had fortified all entrances and windows of his flat and had readied his firearms, the court found that he had acted with premeditation. The court went on to discard the suggestion that Mr P.P. had acted in self-defence, on the basis of a misperception about the nature of the operation against him, or out of confusion. Having analysed in detail the sequence of events and the exact positions of all officers present at the scene, the court further ruled out the possibility that the shot which had

killed Mr Sharkov had been fired by another officer rather than Mr P.P. The court also found that the main reason why no other officer had suffered life-threatening injuries was that Mr P.P.'s shots against them had been stopped or blunted by their protective equipment (see прис. № 111 от 19.11.2015 г. по н. о. х. д. № 462/2014 г., ОС-Велико Търново).

36. Both Mr P.P. and the prosecution appealed. On 8 February 2017 the Veliko Tarnovo Court of Appeal upheld the lower court's judgment, fully agreeing with its findings. It likewise held that the decision to deploy the anti-terrorist squad had been wholly justified, in particular since Mr P.P. had been in possession of four firearms with expired permits and had been making credible threats towards others. However, the court said that the way in which the operation against Mr P.P. had been prepared and carried out – including the equipment used for it, the communication between the various teams and the commanders, and its timing – was a matter falling within the discretion of the police and was not amenable to review by the courts in the criminal case against Mr P.P., even though his counsel had made arguments in that regard and the lower court had touched on the point. The court concluded that the decision about which unit and how many officers had had to be deployed had been one for the Secretary General of the Ministry of Internal Affairs. The force used against Mr P.P. had been proportionate, and he could therefore not validly assert that he had acted in self-defence. That was especially true for his shot against Mr Sharkov, which he had fired when the officers had stopped their attack against Mr P.P. in the expectation that he would surrender, as announced by him. Mr P.P. had used that brief lull to pinpoint Mr Sharkov's position and shoot him in the only unprotected part of his body – his forehead (see реш. № 224 от 08.02.2017 г. по в. н. о. х. д. № 202/2016 г., АС-Велико Търново).

37. Mr P.P. appealed on points of law, but on 21 August 2017 the Supreme Court of Cassation upheld the appellate judgment. It likewise found that the decision to deploy the anti-terrorist squad had been wholly justified. It went on to say that the squad's attempt to storm into Mr P.P.'s flat in the manner chosen by them had been the only feasible option, since the element of surprise had already been lost. The force used against Mr P.P. had been proportionate in view of the "critical situation" deliberately created by him (see реш. № 112 от 21.08.2017 г. по н. д. № 402/2017 г., ВКС, III н. о.).

C. First internal investigation by the Ministry of Internal Affairs

1. The investigation

38. On the day of the operation, 14 March 2014, the Minister of Internal Affairs ordered an internal investigation by the Ministry's inspectorate. It was conducted by two inspectors, who were assisted by an officer from the arms-control and licensing division of the National Police. They

interviewed and obtained written statements from a number of officials and civilians involved in the operation and the events leading up to it, including twenty-three officers of the anti-terrorist squad who had taken part in the operation (all of whom were guaranteed anonymity), and various other materials.

2. The investigation report

39. The investigation report, which became ready three weeks later, on 4 April 2104, and ran to thirty-two pages, covered four points: (a) Mr P.P.'s firearms permits; (b) the aborted operation against him in March 2012 (see paragraph 10 above); (c) the actions of the police with respect to Mr P.P. between March 2012 and the planning of the operation on 14 March 2014; and (d) the planning and execution of the operation on 14 March 2014.

40. In relation to point (a), the report noted that in 2006 and 2009 there had been no grounds to reject Mr P.P.'s applications for firearms permits. It found that in mid-2012 the police officer from the firearms-control unit of the Gorna Oryahovitsa police force who had tried in vain to contact Mr P.P. with a view to persuading him to surrender his firearms after the expiry of the permits to keep them (see paragraph 10 above) had then failed to inform his superiors with a view to the information being passed to the prosecuting authorities. The officer had thus neglected his duties, and was to be reprimanded. That was, however, impossible, since in 2013 his employment with the police had ended. The report went on to say that the officer's superior had failed to investigate the matter and relay the information that Mr P.P. was continuing to keep firearms in spite of the expiry of his permits to the prosecuting authorities, in breach of his duties. He likewise deserved to be warned in writing, but the statutory time-limit for doing so had already expired. But his failure had also amounted to the criminal offence of misconduct in public office (see paragraph 84 below). The report further found that the prosecuting authorities had first learned that Mr P.P. was continuing to keep firearms despite the expiry of his permits – which was a serious criminal offence – in October 2013, when investigating complaints by his neighbours about his making threats against them. The failure to inform those authorities of Mr P.P.'s continuing to keep firearms in spite of the expiry of his permits for about a year and a quarter was also the fault of the head of the Gorna Oryahovitsa police force (who was also director *ad interim* of the Veliko Tarnovo regional police directorate). He thus deserved to be reprimanded for neglecting his general duty to oversee firearms in his area.

41. In relation to point (b), the report found that all steps relating to the aborted operation in March 2012 had been lawful.

42. In relation to point (c), the report found that for more than a year, between March 2012 and the planning of the operation on 14 March 2014, the Gorna Oryahovitsa police force had not made any serious efforts to get Mr P.P. to leave his flat or hand over his firearms. The only officer who had taken any initiatives in that regard had been the local constable. The heads of the Gorna Oryahovitsa police force and of the Veliko Tarnovo criminal police branch had thus neglected their duties, and had to be reprimanded and temporarily barred from promotion.

43. Lastly, in relation to point (d), the report found that the decisions to hold the operation on 14 March 2014 and involve the anti-terrorist squad had been in line with the applicable regulations. So had been its planning and preparation. The report then set out in some detail the operation's preparation and execution, and noted that there had been two elements which had not gone according to plan. The first had been the failure to break the front door of Mr P.P.'s flat. This failure had been caused by the absence of reconnaissance by the squad itself and to the lack of a properly equipped door breacher – since the one purchased for the squad had not come equipped with all the required accessories. The available door breacher had, however, been deemed fit for purpose. There had moreover been a fall-back option: to attempt entry through the flat's balconies. For its part, the squad's omission to do its own reconnaissance could reasonably be explained by the unavailability of properly trained officers, the risk of their being easily spotted in a small town like Lyaskovets, and the need to act urgently, within a day. The second aspect which had not gone to plan – and which had been the main reason for the operation's failure – had been the lack of surprise: the fact that Mr P.P. had become aware that the operation would take place, which had enabled him to prepare to repel it. The report laid the blame for that on the two officers from Veliko Tarnovo police force who had video-recorded Mr P.P.'s flat the previous day (see paragraph 17 above). The report found that they and their immediate superior had acted on their own initiative and had then not brought to the attention of their superiors that Mr P.P. had spotted them. The report therefore suggested that they be dismissed, noting that disciplinary proceedings had already been opened against all three.

44. The report went on to say that, according to the statements of the squad members, neither they nor their commanders had underestimated the situation. Planning and control had been adequate, without panic and a clear chain of command, even though that had been the first time in the squad's history that it had had to face such heavy fire. The level of training for such operations had also been satisfactory. The officers had, however, told the inspectors that they did not have modern training simulators and suitable firing ranges, that their video-acquisition equipment was scant and with limited technical capabilities, that they lacked thermal-imaging and night-vision devices, that all of their breaking-in equipment (battering rams,

pickaxes and ladders) had been hand-built by themselves, and that they did not have tactical dogs, which could be particularly useful for situations as the one at hand. The gas grenades available to the squad were chiefly suited for crowd control, and their stun grenades were ill-suited for special operations, especially operations involving children below six years of age and elderly people. Nearly all squad officers had also complained of their handgun holsters, which did not permit them to carry their handguns with the torchlights fitted. The report also pointed out that two of the assault teams had been given ballistic shields only during the course of the operation rather than from the outset. Lastly, the report noted that there were no regulations specifically governing special operations of the squad; the existing ones, dating from November 2012, only covered anti-terrorist operations, the defence of strategic installations, and the prevention and stopping of serious offences. The report accordingly recommended that the regulations governing the squad's operations be updated to encompass also special operations such as these, and that the need for additional equipment and firearms be considered.

3. Classification and declassification of the investigation report and action taken on its basis

45. The inspectors' report was immediately classified. After the proposals in it were approved by the Minister of Internal Affairs, full copies of the report were sent to the Ministry's Secretary General and to Parliament's Standing Committee on Domestic Security and Public Order; various excerpts were also sent to the Ministry's human resources department and the heads of the units in which the officers proposed for disciplinary punishments worked, the head of the anti-terrorist squad, and the Gorna Oryahovitsa prosecutor's office (in connection with the proposal to open criminal proceedings for misconduct in public office – see paragraph 40 above).

46. In May 2014 the heads of the Gorna Oryahovitsa and Veliko Tarnovo police forces were temporarily barred from promotion, as recommended by the report (see paragraph 42 above). Both sought judicial review, and in March 2015 the Supreme Administrative Court quashed their disciplinary punishments, finding that the disciplinary proceedings in the latter's case had been tainted by irregularities and that the disciplinary offences charged against both officers had not been made out (see реш. № 3287 от 25.03.2015 г. по адм. д. № 7621/2014 г., ВАС, V о., and реш. № 3284 от 25.03.2015 г. по адм. д. № 8879/2014 г., ВАС, V о.).

47. On 27 October 2014 the Gorna Oryahovitsa prosecutor's office refused to open criminal proceedings for misconduct in public office in connection with the failure to take action in relation to Mr P.P.'s firearms after July 2012 (see paragraph 40 above). It noted that, according to its inquiries, the officer alleged to have neglected his duties in that respect had not been duly tasked with doing anything in connection with that matter.

48. The inspectors' report was declassified on 11 September 2019, a little over five months after the expiry of the applicable five-year statutory period during which it had to remain classified. Following an enquiry from this Court, dated 13 December 2019, whether the report was still classified, it was provided to the Court on 29 June 2020 following a further check by the State Agency for National Security that it had been proper to declassify it. Up until that date, the Government were categorically opposed to any disclosure of the report, or even excerpts from it, to the applicants. Before disclosure of the report to the Court, the Minister of Internal Affairs nevertheless decided that the identities of all officers of the anti-terrorist squad mentioned in the report should remain secret, in order to protect their safety, and ordered that all passages capable of identifying them be redacted from the copy sent to the Court. The redacted report was forwarded to the applicants on 2 July 2020. More than six years and three months after the report had been drawn up, this was the first time the applicants became aware of its content.

D. Second internal investigation by the Ministry of Internal Affairs

1. The investigation

49. On 23 September 2014, in response to separate complaints made by Mr Sharkov's mother, Ms Ribcheva (the applicant in the first application), both to the prosecuting authorities (on 8 September – see paragraph 69 below) as well as to the Ministry of Internal Affairs, the Minister ordered a second internal investigation into the operation on 14 March 2014. The investigation was be carried out by two inspectors from the Ministry's inspectorate, the head of the Ministry's vice offences unit, and a senior officer from its anti-abduction unit. They were assisted by an expert from the Ministry's information technology division. The investigators interviewed and obtained written statements from a number of officials and civilians, including eighteen of the officers of the anti-terrorist squad who had taken part in the operation. It also gathered a significant amount of written evidence, and inspected Mr P.P.'s flat.

2. The investigation report

50. The report of this investigation was completed a month and a half later, on 7 November 2014, and ran to thirty-eight pages. It exhaustively set out Ms Ribcheva's allegations in relation to the operation (see paragraph 69 below), and then proceeded to examine whether each of those allegations had been confirmed by the evidence obtained during the investigation. It also described in detail both the planning and execution of the operation on 14 March 2014 and the events leading up to it.

51. The report first found that the officials of the psychology institute of the Ministry of Internal Affairs who had taken part in the meeting on 28 February 2014 (see paragraph 13 above) had subsequently failed to draw up a proper psychological portrait of Mr P.P., as required by the relevant internal rules, and had given their opinion based on outdated intelligence. It hence recommended that they be reprimanded. The report went on to find that the institute's head had then put undue pressure on her subordinates to write in the memorandum describing that meeting that they had stated that swift action against Mr P.P. would be the most feasible option (see paragraph 13 above), whereas that had not, in fact, been their advice. The institute's head had therefore abused her office and deserved to be dismissed.

52. Like the first report (see paragraph 43 above), that second report also found that the operation had been lawfully ordered. However, it noted that it was unclear why it had been carried out urgently rather than prepared more carefully, which would probably have prevented casualties. The report went on to say that not all units of the Ministry of Internal Affairs involved in the operation had been given clear enough tasks; the only unit provided with a concrete plan had been the anti-terrorist squad. The officer who had drawn up the first plan (see paragraph 15 above) (the head of the Ministry's criminal police directorate) had apparently not familiarised himself well enough with the specificities of the situation and the layout of Mr P.P.'s flat. That called for a reprimand. He had moreover stated in the plan that the psychology institute had drawn up a proper psychological portrait of Mr P.P., which had not been true, and had thus misled the Ministry's Secretary General into ordering, in error, that the primary tactic be an attempt quickly to subdue Mr P.P. That warranted dismissal. Moreover, the plan drawn up by the anti-terrorist squad (see paragraph 16 above) and the order of the squad's commander which had confirmed that plan had not set out in enough detail the equipment and firearms to be used in the operation. The officer who had drawn up the plan (the head of a unit in the squad) thus deserved a written warning, and the squad's commander – a reprimand.

53. The report also considered whether the primary tactic attempted with respect to Mr P.P. – to overawe him and then arrest him quickly – had been ill-suited to his personality. It noted that this had been a tactical choice of the operation's planners, and that it could be accepted that the manner in which the operation had been carried out had been consistent with the regulations. Yet, not all elements had been properly assessed, in particular the intelligence from the local police officers posted to observe Mr P.P.'s flat during the night preceding the operation that the lights in some rooms had been switched on.

54. Unlike the first report (see paragraph 43 above), the second report found that the absence of prior reconnaissance by the squad itself had not been justified. It noted that the last briefing relating to the operation had been held seven days earlier, on 7 March 2014, which had given the squad enough time to scout the location. They could have done so covertly with help from the local police. It had not been necessary to go ahead with the operation within a few hours; the information from the headmaster of the nearby school (see paragraph 12 above) had not justified such urgency, especially since Mr P.P. had made similar threats before and since the posting of a police patrol to prevent pupils from going close to his flat had been sufficient to avert any immediate risk to them. As a result, the squad had not been aware of the full extent of the modifications which Mr P.P. had made to his flat, in particular to its front door, with a view to being able to repel an attack.

55. Another oversight had been the failure to prepare a proper psychological portrait of Mr P.P. and obtain enough information about his and his mother's lifestyle. The local police's warning during the meeting on 7 March 2014 that he had barricaded himself inside his flat and was ready to defend himself had not been heeded.

56. A third mistake had been the delay in attempting to enter through the two balconies after the initial failure to breach the flat's front door, and the ensuing loss of initiative.

57. The report also found, like the first report (see paragraph 43 above), that the main problem had been the lack of surprise, which was essential in that type of operation. That had been due to the inept video-recording of Mr P.P.'s flat the previous day, but also to his constant vigilance and preparations, which had been going on for years.

58. A fifth mistake had been that Mr Sharkov's assault team had positioned themselves under the balcony in a way enabling Mr P.P. both to see them better and to fire at all of them at once.

59. A sixth omission had been that Mr P.P.'s neighbours had not been evacuated in due time, and that not enough effort had been made to evacuate his mother.

60. A seventh shortcoming, already noted in the first report (see paragraph 44 above), had been the lack of suitable breaking-in and imaging equipment and grenades.

61. The report went on to reiterate the first report's observations in relation to the late provision of ballistic shields and the absence of regulations specifically governing special operations of the squad (see paragraph 44 above).

62. According to the report, responsibility for all those mistakes lay with the squad's commander, who had had overall control over the operation. It was therefore appropriate to reprimand him and to refer him to the prosecuting authorities for an assessment whether he should be charged with neglecting his duties and thus causing deaths and injuries among his subordinates.

63. The report accordingly concluded that Ms Ribcheva's allegations of negligent errors in the preparation and conduct of the operation were well-founded.

3. Classification and declassification of the investigation report and action taken on its basis

64. Like the report from the first internal investigation (see paragraph 45 above), this report was immediately classified. On 19 November 2014 the Minister of Internal Affairs approved the report.

65. While it appears that all recommendations of the report for disciplinary action were followed (see paragraph 68 below), the Government did not provide any details in that respect. It is also unclear whether any of the disciplined officials challenged their disciplinary punishments.

66. The report was declassified on 8 November 2019, a day after the expiry of the applicable five-year statutory period during which it had to remain classified. Following an enquiry from this Court, dated 13 December 2019, whether the report was still classified, it was provided to the Court on 29 June 2020 following a further check by the State Agency for National Security that it had been proper to declassify it. Up until that date, the Government were categorically opposed to any disclosure of the report, or even excerpts from it, to the applicants. Before disclosure of the report to the Court, the Minister of Internal Affairs nevertheless decided, as he had done in relation to the report from the first investigation (see paragraph 45 above), that the identities of all officers of the anti-terrorist squad mentioned in the report should remain secret, in order to protect their safety, and ordered that all passages capable of identifying them be redacted from the copy sent to the Court. The redacted report was forwarded to the applicants on 2 July 2020. More than five years and eight months after the report had been drawn up, this was the first time the applicants became aware of its content.

4. Information given to Ms Ribcheva about the investigation

67. In December 2014 the Ministry of Internal Affairs told Ms Ribcheva that her September 2014 complaint (see paragraph 69 below) had led to a second internal investigation which had revealed shortcomings in the planning and execution of the operation against Mr P.P., that all officials responsible for those would be disciplined, and that the prosecuting authorities would investigate whether criminal offences had been committed by some of those officials.

68. In February and April 2015 Ms Ribcheva urged the Minister of Internal Affairs to revive the investigations, reiterating her allegations that higher officials, including the Ministry's Secretary General, had acted negligently in relation to the operation. She also asked to be informed of the names of the officials who had been disciplined, the punishment imposed on each of them, and the reasons for it. In September 2015 she renewed her request for information on that point, and asked for copies of the reports of all internal investigations. In response, in November 2015 the Ministry told Ms Ribcheva that the report of the (second) investigation spurred by her September 2014 contained classified information and could not be released to her. It was only possible to inform her that in total twelve officials had been disciplined in connection with the operation: the director of the Veliko Tarnovo regional police directorate; the head of the Veliko Tarnovo criminal police branch; a unit head in the Veliko Tarnovo anti-crime branch and an officer in that branch; a junior police inspector in Veliko Tarnovo; the anti-terrorist squad's commander and the head of a unit in the squad; the head of the Ministry's psychology institute and the head and two specialists of the institute's criminal psychology unit; and the head of the Ministry's criminal police directorate. The punishments had been dismissal, one-year bans on the possibility of promotion, reprimands, and written warnings. The officials' names were protected under personal data rules and could not be released.

E. Ms Ribcheva's requests for a criminal investigation into the way in which the operation had been planned and carried out

69. Meanwhile, about six months after the operation, on 8 September 2014, Ms Ribcheva asked the Sofia City prosecutor's office to investigate whether the Ministry's Secretary General and the anti-terrorist squad's commander had committed offences in relation to the operation. She said that she was not persuaded by the internal investigation's findings and had reasons to believe that the operation had been prepared recklessly. There had been no need for it in the first place. By law, the squad could only be used for certain tasks (see paragraph 82 below). The situation with Mr P.P. was not among those. He was not a terrorist but a paranoid recluse who had not previously attacked anyone. The threat posed by him, including to the

pupils in the nearby school, had been greatly exaggerated. By deploying the squad, the Secretary General had thus needlessly created a risk, broken the law, and exceeded his powers. Even if it had been necessary to involve the squad, its use had been hasty rather than properly planned. The ones at fault for that were the Secretary General and the squad's commander. There had been no need for urgent action as the issues with Mr P.P. had been known to the authorities for some time. A number of points about the operation remained unclear, but everything suggested that the squad's commander had gone about it irresponsibly and rashly and had failed to control it in a way that would have avoided loss of life, making poor tactical choices and failing to order a withdrawal when two officers had been wounded. She insisted that the Secretary General and the squad's commander be investigated for causing Mr Sharkov's death by negligently carrying out a dangerous regulated activity, contrary to Article 123 § 1 of the Criminal Code, and for misconducting themselves in public office, contrary to Article 387 of the Code (see paragraphs 83 and 84 below).

70. Eight days later, on 16 September 2014, the Sofia City prosecutor's office informed the Ministry of Internal Affairs of Ms Ribcheva's complaint and asked it to provide all materials relating to the case, including those from the first internal investigation (see paragraphs 38 to 43 above). Two days later the Ministry complied with the request. However, it appears that the Sofia City prosecutor's office did not then pursue the matter.

71. In October 2014 the Veliko Tarnovo regional prosecutor's office told Ms Ribcheva that the Sofia City prosecutor's office had sent the complaint to it, and that it had added it to the criminal case against Mr P.P.

72. In early December 2014 Ms Ribcheva was allowed to inspect the file of the criminal case against Mr P.P. and seek additional investigative steps. She reiterated her allegations against the Ministry's Secretary General and the squad's commander, complained that the planning and execution of the operation had not been properly investigated, and sought an expert report on that point. The Veliko Tarnovo regional prosecutor's office refused the request. It said that the criminal investigation had made findings about the planning and conduct of the operation on the basis of the internal documents, the interviews with all the officers involved, and the two reports by the inspectorate of the Ministry of Internal Affairs. The assault party's equipment had also been identified and subjected to examination by an expert. It had been established that Mr Sharkov's death had not been due to a lack of equipment. It did not appear that mistakes had been made in the planning or conduct of the operation. No further examination by experts was required, as the points raised by Ms Ribcheva concerned compliance with the applicable regulations, which was not something that experts could clarify. Nothing suggested that Mr Sharkov's death had been due to negligence in the carrying out of a dangerous regulated activity. Nor did the evidence indicate that the Ministry's Secretary General or the squad's

commander had misconducted themselves in office. Mr Sharkov's death had not resulted from unlawful conduct by them.

73. In September 2015 Ms Ribcheva asked the Veliko Tarnovo regional prosecutor's office to make a decision specifically in relation to her September 2014 complaint and say whether it would open separate criminal proceedings pursuant to it. In her view, the prosecuting authorities could not sidestep their duty to give a specific decision in relation to that complaint by adding it to the case against Mr P.P. or by deciding on the request for additional investigative steps. The rules of procedure required a specific decision whenever the prosecuting authorities wished to join two or more cases relating to different offences. That mattered because it was possible to appeal against such a specific decision to more senior prosecutors.

74. The Veliko Tarnovo regional prosecutor's office replied in October 2015. It said that the complaint had been added to the case against Mr P.P. because it concerned the same events. Ms Ribcheva's allegations of separate offences were misconceived. Mr Sharkov had not died owing to the negligent carrying out of a dangerous regulated activity, but as a result of a wilful act by Mr P.P. No offence under Article 123 § 1 of the Criminal Code could hence be made out. Misconduct in public office contrary to Article 387 of the Code likewise required that the "harmful consequences" directly result from an alleged breach of duties or abuse of power, which was not the case, since the direct cause of Mr Sharkov's death had been Mr P.P.'s shot.

75. Ms Ribcheva complained of those developments to the Chief Prosecutor, but her complaint was sent to the Veliko Tarnovo appellate prosecutor's office. In December 2015 it told her that since the September 2014 complaint had concerned offences allegedly committed in Sofia, the prosecutor's office competent to decide on her allegations was the Sofia City prosecutor's office. The complaint was accordingly sent to that office.

76. In January 2016 Ms Ribcheva asked the Sofia City prosecutor's office about the steps it had taken to investigate the matters of which she had complained (see paragraph 69 above). Apparently in reply to that request, on 21 January 2016 the Supreme Cassation Prosecutor's Office informed Ms Ribcheva that her September 2014 complaint had correctly been referred to the Veliko Tarnovo regional prosecutor's office and that that office had been right to add it to the case against Mr P.P. It had taken note of Ms Ribcheva's allegations and had ordered evidence to be gathered in relation to them. It had then correctly established what offences had been committed and by whom, and had sent Mr P.P. for trial. Prosecutors were competent to decide who had committed an offence and take steps to send him or her for trial; they did not have to determine separately that others had not committed the offence. Mr P.P. had been found guilty. That showed that the Veliko Tarnovo regional prosecutor's office had accurately classified the offence and identified its author.

77. In reply, Ms Ribcheva said that her complaint did not concern the offence allegedly committed by Mr P.P., but entirely different offences. She asked whether she had to take the previous letter from the prosecuting authorities as a direct refusal to open criminal proceedings in relation to those offences. On 4 February 2016 the Supreme Cassation Prosecutor's Office replied that its previous letter did not amount to such a refusal. It had merely informed Ms Ribcheva of the steps taken by the prosecuting authorities in connection with her September 2014 complaint. It reiterated that prosecutors were competent to decide who had committed an offence and to take steps to send him for trial, and that they did not have to determine separately that others had not committed the offence.

F. Indemnities paid to the applicants as a result of Mr Sharkov's death in the line of duty

78. In April 2014 the late Mr Sharkov's bank account was credited with BGN 19,201.84 (EUR 9,817.74), which was the end-of-service payment due to him under section 255(4) of the Ministry of Internal Affairs Act 2006 (see paragraph 93 below).

79. In July 2014 each of the three applicants was paid BGN 16,458.72 (EUR 8,415.21), which was the indemnity due to them under section 255(2) of the 2006 Act in their capacity as, respectively, surviving spouse, child and parent of Mr Sharkov (see paragraphs 93 below).

80. In 2013 Mr Sharkov had been insured by the Ministry against death, as required by section 208(1) of the 2006 Act (see paragraph 97 below). According to the Government, it had been open to the applicants to claim that insurance. The applicants did not say whether they had in fact done so.

RELEVANT LEGAL FRAMEWORK

I. OPERATIONS BY THE ANTI-TERRORIST SQUAD

81. The anti-terrorist squad of the Ministry of Internal Affairs was directly subordinate to the Ministry's Secretary General (section 24(2) and (3) of the Ministry of Internal Affairs Act 2006, superseded by section 44(4) of the Ministry of Internal Affairs Act 2014, in force between July 2014 and the end of September 2020). It was run by a commander (sections 37c and 37d(6)(1) of the 2006 Act, superseded by section 44(3) and (5)(1) of the 2014 Act). In October 2020 the squad was merged into the newly created gendarmerie command of the Ministry.

82. By regulation 150q(1) of the regulations for the application of the 2006 Act, the squad could be used to respond to terrorist acts, to protect strategic or other particularly important facilities, or to prevent or halt the commission of serious criminal offences. In carrying out its tasks, the squad

could (a) prevent or halt terrorist acts; (b) arrest or neutralise particularly dangerous offenders who put up or were likely to put up armed resistance; (c) free hostages; (d) protect units of the Ministry of Internal Affairs or other authorities; (e) take part in operations by the Ministry's central or regional directorates; (f) locate, identify and neutralise explosive devices; and (g) analyse explosive devices (regulation 150q(3)). It could only be deployed for such operations on the basis of a written order of the Ministry's Secretary General (regulation 150q(4)). In urgent cases, an oral order was enough at first, but a written one had to follow within twenty-four hours (regulation 150q(5)).

II. OFFENCES OF WHICH MS RIBCHEVA ACCUSED THE MINISTRY'S SECRETARY GENERAL AND THE ANTI-TERRORIST SQUAD'S COMMANDER

83. Article 123 § 1 of the Criminal Code – a special type of negligent homicide – makes it an offence to cause death by negligently carrying out a dangerous regulated activity.

84. Article 387 §§ 1 and 4 of the same Code, which by Article 371, as in force at the relevant time, applied not only to servicemen in the armed forces but also to officials at the Ministry of Internal Affairs, makes it an offence ("misconduct in public office") for an official to abuse his or her office or position, neglect to perform his or her duties, or exceed his or her powers, but only if that gives rise to harmful consequences. If the harmful consequences are serious, the offence is aggravated (Article 387 § 2).

III. LIABILITY OF THE AUTHORITIES FOR INJURIES SUFFERED BY POLICE OFFICERS

85. The Supreme Court of Cassation has held that officers of the Ministry of Internal Affairs injured while carrying out their duties can claim damages from the Ministry or its departments under the provision of the general law of tort which governs vicarious liability (section 49 of the Obligations and Contracts Act 1950 – "the 1950 Act") rather than under the special legislation which provides for liability of the authorities for unlawful administrative action, and has allowed such claims (see реш. № 669 от 07.10.2009 г. по гр. д. № 1284/2008 г., ВКС, III г. о. (claim allowed); опр. № 827 от 23.06.2011 г. по гр. д. № 361/2011 г., ВКС, III г. о. (claim found admissible but dismissed on the specific facts); and реш. № 200 от 16.06.2014 г. по гр. д. № 7353/2013 г., ВКС, IV г. о. (claim allowed)). Under the terms of section 49, any person who has entrusted another with a job is liable for the damage caused by that other person in the course of or in connection with that job.

86. Although liability under section 49 of the 1950 Act is premised on wrongful conduct and fault by the employee rather than by the employer, it can arise even if the specific employee who has caused the damage has not been identified (see пост. № 7 от 29.12.1958 г. по гр. д. № 7/1958 г., ВС, Пл.; пост. № 7 от 30.12.1959 г. по гр. д. № 7/1959 г., ВС, Пл., points 6 and 7; реш. № 27 от 01.03.1982 г. по гр. д. № 126/1981 г., ВС, ОСГК; and реш. № 130 от 01.03.2010 г. по гр. д. № 640/2009 г., ВКС, III г. о.). The damage must have been caused by acts connected with the task entrusted to the employee or by omissions to discharge duties flowing from the law, the relevant technical rules, or the character of the task, and it is no defence for the employer to assert that the employee has not followed rules or instructions (see пост. № 9 от 28.12.1966 г. по гр. д. № 8/1966 г., ВС, Пл., point 1; реш. № 166 от 10.03.2010 г. по гр. д. № 4284/2008 г., ВКС, IV г. о.; and опр. № 739 от 26.10.2017 г. по гр. д. № 1225/2017 г., ВКС, III г. о.). The fact that the immediate cause of the damage is the conduct of another person does not preclude liability under section 49 for actions or omissions by an employee which have also contributed to the damage (see опр. № 634 от 21.07.2020 г. по гр. д. № 1431/2020 г., ВКС, III г. о.).

87. In their submissions (see paragraph 109 below), the Government referred to five other cases under section 49 of the 1950 Act.

88. In the first case, in March 2020 the Sofia City Court examined a claim for damages against the Ministry of Internal Affairs with respect to injuries allegedly caused to a private person during his arrest by officers of the anti-terrorist squad. Although accepting that the Ministry could be liable for harm caused by the squad in an arrest operation, the court dismissed the claim, as it did not find it established that the claimant had indeed been mistreated (see реш. № 2083 от 19.03.2020 г. по гр. д. № 8899/2015 г., СГС, apparently final).

89. In the second case cited by the Government, in September 2015 the Sofia District Court allowed a claim for damages against the prosecuting authorities and the Ministry of Internal Affairs in relation to the loss of cash seized earlier in connection with criminal proceedings against the claimant. The court noted, in particular, that it was not necessary to establish which specific official had lost the cash (see реш. от 12.09.2015 г. по гр. д. № 14290/2014 г., СРС, unclear whether final).

90. In the third case cited by the Government, in March 2014 the Dobrich District Court allowed a claim for damages brought by the parents of a construction worker who had died while working on a site operated by his employer (see реш. № 67 от 04.03.2014 г. по гр. д. № 54/2013 г., ОС-Добрич, apparently final).

91. The last two cases cited by the Government concerned successful medical negligence claims by patients against hospitals (see реш. № 3579 от 21.05.2014 г. по гр. д. № 14058/2011 г., СГС, partly upheld by реш. № 913 от 05.05.2015 г. по в. гр. д. № 4105/2014 г., САС, apparently final, and реш. № 268 от 24.02.2016 г. по гр. д. № 2525/2015 г., ВКС, III т. о.).

92. The limitation period for tort claims under the 1950 Act is five years (section 110). Although in cases in which the tortfeasor is unknown it starts running from the moment when he or she has been identified (section 114(3) of the Act), the courts have held that this does not apply to vicarious-liability claims under section 49, because the identity of a legal person vicariously liable for acts or omissions by its employees is normally known from the outset, even if it is not certain which one(s) of those employees may have caused the damage (see реш. № 2733 от 25.10.1972 г. по гр. д. № 1271/1972 г., ВС, I г. о.; реш. № 2 от 25.01.1974 г. по гр. д. № 101/1973 г., ВС, ОСГК; реш. № 1399 от 03.04.1980 г. по гр. д. № 3374/1979 г., ВС, I г. о.; пост. № 2 от 21.12.1981 г., ВС, Пл., point 1; and опр. № 539 от 07.11.2016 г. по гр. д. № 50126/2016 г., ВКС, I г. о.).

IV. INDEMNITIES PAYABLE TO THE FAMILIES OF OFFICERS OF THE MINISTRY OF INTERNAL AFFAIRS WHO HAVE DIED IN THE LINE OF DUTY

93. By section 255(2) of the Ministry of Internal Affairs Act 2006, the surviving spouses, children and parents of Ministry officers who had died in the course of or in connection with the carrying out of their duties were entitled, each, to a one-off indemnity amounting to twelve monthly salaries of the dead officer. By section 255(4), they were also entitled to the officer's end-of-service payment. That payment amounted to one monthly salary for each year of service, up to a maximum of twenty (section 252(1)). Both payments were tax-free (section 256(2)).

94. In July 2014 those provisions were superseded, respectively, by sections 238(2) and (4), 234(1) and 239(2) of the Ministry of Internal Affairs Act 2014, which are almost identical.

95. The 2006 and 2014 Acts do not say whether the family members of officers who have died in the line of duty can claim compensation over and above those amounts. By contrast, section 233 of the Defence and Armed Forces Act 2009, which contains analogous provisions, provides, in subsection 5, that the family members of servicemen who have died in the line of duty may in addition seek compensation by way of a regular claim for damages, in which case the courts must reduce the award with the amount of the indemnity paid by the Ministry of Defence.

96. The absence of an express statutory provision has, however, not prevented the courts from awarding damages to injured officers of the Ministry of Internal Affairs who, by section 255(1) of the 2006 Act and section 238(1) of the 2014 Act, were entitled to a similar one-off indemnity (see paragraph 85 above). In a recent case, decided in December 2019 and concerning an injury caused to a police officer by the man he was arresting, the Plovdiv Regional Court held that the payment of the statutory indemnity was no bar to its being topped up by the courts in a subsequent action for compensation; in June 2020 that ruling was upheld by the Plovdiv Court of Appeal (see реш. № 1460 от 09.12.2019 г. по гр. д. № 1092/2019 г., ОС-Пловдив, upheld by реш. № 60 от 11.06.2020 г. по в. гр. д. № 90/2020 г., ПАС, itself not yet final). The Sofia City Court applied the same approach in a recent appellate judgment (see реш. № 3705 от 24.06.2020 г. по в. гр. д. № 5803/2019 г., СГС, unclear whether final). In a judgment given in late 2019, the Ruse Regional Court also applied the same approach, but expressly with reference to the one-off indemnity under section 238(2) of the 2014 Act due to the family of an officer who had died while carrying out his duties (see реш. № 454 от 26.11.2019 г. по гр. д. № 475/2019 г., ОС-Русе, unclear whether final).

97. By section 208(1) of the 2006 Act, all employees of the Ministry of Internal Affairs had to be insured, at the expense of the State, against the risk of death or injury. In July 2014 that provision was superseded by the identically worded section 184(1) of the 2014 Act.

V. DISCLOSURE OF DOCUMENTS HELD BY THE OPPOSING PARTY IN CIVIL LITIGATION

98. Article 190 § 1 of the 2007 Code of Civil Procedure provides that a party may ask the court to order the opposing party to disclose a document held by it, provided that it explains to the court why that document is relevant for its case. If the opposing party fails to disclose the document, the court may draw adverse inferences (Article 190 § 2 read in conjunction with Article 161). The opposing party may refuse to disclose a document if (a) its contents relate to its private or family life, or (b) its disclosure would bring that party or its relatives into disrepute or trigger a criminal prosecution against them (Article 191 § 1). If those considerations only apply to a part of the document, the opposing party may be required to present an excerpt of the document (Article 191 § 2).

99. According to a leading practical treatise on civil procedure, a party's request for the disclosure of a document must, so far as practicable, spell out its type, date, author and other distinguishing features (see *Граждански процесуален кодекс*, *Приложен коментар*, ИК „Труд и право", 2017 г., p. 318).

100. In June 2019 the Dobrich Regional Court held that a party's refusal to disclose documents to a court-appointed expert on the basis that they contained trade secrets had not been justified because there existed mechanisms to ensure that those secrets would not be leaked by the expert. The court also stated that the grounds on which a party could refuse to disclose documents had been set out in Article 191 in an exhaustive manner (see реш. № 141 от 12.06.2019 г. по в. гр. д. № 306/2019 г., ОС-Добрич, final).

101. It does not appear that there are any reported cases under those provisions in relation to classified documents.

THE LAW

I. JOINDER OF THE APPLICATIONS

102. In view of the identical subject matter of the three applications, the Court considers it appropriate to join them (Rule 42 § 1 of the Rules of Court).

II. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

103. The applicants complained that the authorities had not properly investigated the way in which the operation on 14 March 2014 in which Mr Sharkov lost his life had been planned and carried out.

104. The applicants also complained that the authorities had not done enough to protect Mr Sharkov's life.

105. In respect of both complaints, the applicants relied on Article 2 of the Convention. It provides, so far as relevant:

> "1. Everyone's right to life shall be protected by law. ..."

A. Admissibility

1. Exhaustion of domestic remedies

(a) The parties' submissions

(i) The Government's first objection

106. In their initial observations on the admissibility and merits of the cases, the Government submitted that the applicants had not exhausted domestic remedies because at the time when they had lodged their applications the criminal proceedings against Mr P.P. had still been pending at first instance.

107. The applicants replied that their complaints did not concern the criminal proceedings against Mr P.P. The issue in those proceedings had been whether Mr P.P. was criminally liable for killing Mr Sharkov and wounding five other officers, not whether the operation against him had been properly prepared and carried out. The judgments given in those proceedings had not addressed that point or touched on the applicants' grievances under Article 2 of the Convention.

(ii) The Government's second objection

108. In their initial observations on the admissibility and merits of the cases, the Government further contended that it had not been open to the applicants to seek damages under section 49 of the 1950 Act (see paragraphs 85 and 86 above), as such a claim would have had to be premised on wrongful conduct by the authorities – which, as established by the prosecuting authorities following Ms Ribcheva's allegations of criminal offences by officials, had not taken place. The successful claim for damages that the applicants had brought against Mr P.P. in the criminal proceedings against him had fully vindicated their rights under Article 2 of the Convention.

109. However, in their additional observations, submitted after the reports of the two internal investigations by the Ministry of Internal Affairs had been declassified (see paragraphs 48 and 66 above), the Government submitted that, based on the fresh information that the applicants had obtained from those reports, they could have brought a claim for damages against the Ministry under section 49 of the 1950 Act (see paragraphs 85 and 86 above). For the Government, such a claim would have stood a reasonable prospect of success, in particular because Ms Ribcheva had been told, already in 2014-15, that the investigations had resulted in disciplinary action. It was true that the names of the disciplined officials had been kept secret, but under the Bulgarian courts' case-law under section 49 it was not necessary to prove which specific employee had caused the damage for a vicarious-liability claim against the employer to succeed. Moreover, the civil court dealing with the claim could have requested the Ministry to disclose the reports from the two internal investigations and any other relevant documents. In support of their assertion, the Government cited five judgments given with respect to claims for damages under section 49 (see paragraphs 87 to 91 above).

110. In their observations in reply to those additional observations of the Government, the applicants noted that the person who had directly caused Mr Sharkov's death, Mr P.P., was not a Ministry employee. The Ministry could not therefore bear vicarious liability under section 49 of the 1950 Act with respect to Mr Sharkov's death. In the applicants' view, none of the cases cited by the Government showed that such a claim would have stood a chance of succeeding. Moreover, the grievances they had under Article 2 of

the Convention could not have been properly ventilated in proceedings under section 49 against the Ministry because these included allegations of omissions by other authorities, such as a failure to put in place a register of mentally disturbed people who should not be able to obtain a firearms permit. They would have also been precluded from bringing such a claim because they had received indemnities under section 255(2) and (4) of the Ministry of Internal Affairs Act 2006 (see paragraph 93 above). Lastly, they could not have brought such a claim without being acquainted with the reports from the Ministry's internal investigations. The Bulgarian courts' practice was to expect from a party seeking a court order to its opponent to disclose a document to describe that document with some specificity, which would not have been possible in their case, since they had been unaware of the reports before their declassification. That declassification had happened in September and November 2019 – after the expiry of the five-year limitation period for bringing a claim under section 49 of the 1950 Act – and solely as a result of this Court's intervention.

(b) The Court's assessment

(i) The Government's first non-exhaustion objection

111. The question whether the criminal proceedings against Mr P.P. were a suitable remedy with respect to the applicants' grievance that the authorities had not done enough to protect Mr Sharkov's life, and whether the applicants should have hence awaited their outcome before applying to the Court is intertwined with the questions – which go to the merits of the applicants' complaint under the procedural limb of Article 2 of the Convention – (a) what sort of procedural response was required in relation to the alleged failure of the authorities to do enough to protect Mr Sharkov's life, and (b) whether the criminal proceedings against Mr P.P. were a sufficient procedural response in that regard (see, *mutatis mutandis*, *Trapeznikova v. Russia*, no. 21539/02, § 78, 11 December 2008).

112. The objection must therefore be joined to the merits.

(ii) The Government's second non-exhaustion objection

113. The non-exhaustion objection based on the applicants' not having brought a claim for damages against the Ministry of Internal Affairs under section 49 of the 1950 Act was first raised by the Government in their additional observations, submitted after the reports of the two internal investigations by the Ministry had been declassified (see paragraph 109 above). In their original observations on the admissibility and merits of the case the Government maintained the contrary: that it had not been open to the applicants to bring such a claim (see paragraph 108 above)

114. It is thus open to question whether the Government were estopped from raising that objection: firstly because they did so belatedly (see

Khlaifia and Others v. Italy [GC], no. 16483/12, §§ 52-53, 15 December 2016; *Boris Kostadinov v. Bulgaria*, no. 61701/11, § 44, 21 January 2016; and *G.S. v. Bulgaria*, no. 36538/17, §§ 68-70, 4 April 2019), and secondly because it contradicted their earlier submissions on the point. But there is no need to resolve this issue, since the question whether it would have been possible for the applicants to bring a claim for damages under section 49 of the 1950 Act (see paragraphs 85 and 86 above) in relation to Mr Sharkov's death is closely bound up with the question – which goes to the merits of the applicants' complaint under the procedural limb of Article 2 of the Convention – what sort of procedural response was required in respect of the alleged failures by officials which according to the applicants had contributed to that death (see, *mutatis mutandis*, *Vovk and Bogdanov v. Russia*, no. 15613/10, §§ 51 and 58, 11 February 2020).

115. It follows that this objection must likewise be joined to the merits.

2. Victim status

(a) The parties' submissions

116. In their initial observations on the admissibility and merits of the cases, the Government submitted that, following Mr P.P.'s conviction and life sentence for murdering Mr Sharkov and the court order that he pay the applicants damages, the applicants could no longer claim to be victims of a breach of Article 2 of the Convention. For the Government, the criminal proceedings against Mr P.P., in which the applicants had participated effectively, including in their capacity as civil claimants, had fully vindicated their rights under that provision.

117. In their initial observations on the admissibility and merits of the cases, the applicants submitted that the courts dealing with the criminal case against Mr P.P. had not discussed their grievances or the alleged breach of their Convention rights. They also pointed out that Mr P.P., who was in prison for life, was not in a position to pay the damages awarded to them.

(b) The Court's assessment

118. The question whether the outcome of the criminal proceedings against Mr P.P. deprived the applicants of their status as victims in respect of their complaints under Article 2 of the Convention is closely linked with the questions – which go to the merits of the applicants' complaint under the procedural limb of that provision – (a) what sort of procedural response was required in relation to the alleged failure of the authorities to do enough to protect Mr Sharkov's life, and (b) whether the criminal proceedings against Mr P.P. were a sufficient procedural response in that regard (see, *mutatis mutandis*, *Palić v. Bosnia and Herzegovina*, no. 4704/04, § 59, 15 February 2011).

119. It follows that this objection must likewise be joined to the merits.

3. Conclusion regarding the admissibility of the complaints

120. The Government's objections that the complaints are inadmissible because the applicants no longer have the status of victims and because they failed to exhaust domestic remedies were joined to the merits. The complaints are, moreover, neither manifestly ill-founded nor inadmissible on other grounds. They must therefore be declared admissible.

B. Merits

1. The investigation of Mr Sharkov's death

(a) The parties' submissions

121. In their initial observations on the admissibility and merits of the cases, the Government submitted that the two internal investigations by the Ministry of Internal Affairs, whose findings they described in detail, had been impartial, thorough and comprehensive. Those investigations had obtained all the evidence relating to the operation against Mr P.P. and the earlier developments which had made that operation necessary, including statements from all officials involved in the operation and its planning, and had fully clarified those matters. The materials from the investigations had then been placed in the case file of the criminal proceedings against Mr P.P. For their part, the reports from the investigations had been presented to and approved by the Minister of Internal Affairs. Further fact-finding, based also on a number of expert reports, including a medical report on the cause of Mr Sharkov's death, had taken place in those criminal proceedings. The authorities had thus fulfilled their duty to investigate Mr Sharkov's death and the applicants' allegations with respect to it.

122. In their initial observations on the admissibility and merits of the cases, submitted before the reports of the two internal investigations by the Ministry of Internal Affairs had been declassified and provided to them (see paragraphs 48 and 66 above), the applicants claimed that the authorities had investigated only the acts of the person directly liable for Mr Sharkov's death, Mr P.P., while overlooking the conduct of the officials who had directed and planned the operation against Mr P.P., which in the applicants' view was the main cause of the tragic turn of events. For the applicants, the internal investigations – whose materials they had first seen after those had been submitted by the Government in the proceedings before the Court – had been one-sided, had only focused on lower officials, and had not truly attempted to clarify the events leading to Mr Sharkov's death. It was impossible to grasp why some officials had been disciplined whereas others had not even been interviewed. One point which had not been properly elucidated had been the lack of coordination between the local police and the anti-terrorist squad. Another omission had been the absence of inquiry into the failure to prepare a detailed psychological assessment of Mr P.P. It

had also remained unclear why the first wounding of an officer had not led those in charge of the operation to order the retreat of all other officers and opt for another tactic. It was furthermore uncertain whether the information that Mr P.P. had been awake before the assault, confirmed by the fact that his flat's lightning had been switched on since 5 a.m. that day, had been properly brought to the attention to all officers taking part in the operation.

123. In their additional observations, submitted after the reports of the two internal investigations by the Ministry of Internal Affairs had been declassified (see paragraphs 48 and 66 above), the Government further argued that the prosecuting authorities had duly addressed the applicants' allegations of misconduct in public office, noting in their October 2015 letter to Ms Ribcheva that Mr Sharkov's death had been due solely to the actions of Mr P.P. Ms Ribcheva could have appealed against that finding to the higher prosecutor's office. The Government also reiterated that the authorities had not only criminally prosecuted Mr P.P. but also carried out two internal investigations. They set out at some length the findings in the reports from those investigations, and insisted that the investigations had addressed all points raised by the applicants. The second investigation had found Ms Ribcheva's allegations partly well-founded, and had on that basis proposed to discipline some officials. The two investigations and the criminal proceedings against Mr P.P., in which the applicants had participated in their capacity as private prosecutors and civil claimants, had elucidated all aspects of the operation, including the role of each official involved directly or indirectly in it, and its planning. It had in addition been open to the applicants to bring a claim for damages under section 49 of the 1950 Act. According to the Court's case-law, it was not necessary to resort to criminal proceedings with respect to deaths caused through negligence. The present case did not concern a death inflicted by the authorities. In those circumstances, the internal investigations had been sufficient for the purposes of Article 2 of the Convention. Those investigations had been conducted by persons whose job had been precisely to oversee the activities of the officials of the Ministry of Internal Affairs. Their scope, the way in which they had been conducted, and their conclusions all showed that they had been adequate and comprehensive. Those investigations, coupled with the criminal proceedings against Mr P.P., had amounted to a sufficient procedural response to Mr Sharkov's death.

124. In their observations in reply to those additional observations of the Government, the applicants submitted that the investigations had not been thorough and effective. Moreover, the names of the responsible officials had been redacted from the versions of the reports made available to them. Even though the second investigation had been ordered as a result of a complaint by Ms Ribcheva, she had not been at all involved in it or properly informed

of its results. The applicants had obtained a copy of the investigation report solely as a result of their application to the Court.

(b) The Court's assessment

(i) Nature of the investigative duty at issue in the present case

125. The State's obligation under Article 2 § 1 of the Convention to protect the right to life requires by implication that there should be an effective official investigation when an individual has sustained life-threatening injuries in suspicious circumstances, even when the presumed perpetrator of the attack is not a State agent (see *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V; *Zashevi v. Bulgaria*, no. 19406/05, § 56, 2 December 2010, with many further references; and *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 171, 14 April 2015).

126. There are no grounds to hold that this investigative obligation does not apply when the victim of a lethal attack is a police officer carrying out his duties. By its terms, Article 2 § 1 protects "[e]veryone's right to life", and, by Article 1 of the Convention, the rights defined in it are to be secured to "everyone" within the jurisdiction of the Contracting States.

127. In any event, that obligation is not at issue in the present case. The applicants did not criticise the criminal proceedings against Mr Sharkov's killer, Mr P.P., as such, and nothing suggests that those proceedings were somehow deficient. They unfolded within a reasonable time, the applicants were able to participate in them effectively, and the courts which dealt with the case examined in detail the circumstances in which Mr P.P. had killed Mr Sharkov, meted out the harshest possible sentence, and allowed the applicants' claims for damages against Mr P.P. in full (see paragraphs 31 to 37 above, and compare with *Vosylius and Vosyliene v. the United Kingdom* (dec.), no. 61974/11, §§ 28-31, 3 September 2013).

128. The points for decision are rather whether the authorities were additionally required to investigate whether negligent acts or omissions on the part of officials had also directly contributed to Mr Sharkov's death, and, if so, whether the investigations carried out in this case, including the criminal proceedings against Mr P.P., were sufficient to discharge that duty.

129. Such investigation is required when lives have been lost in circumstances potentially engaging the responsibility of the State due to an alleged negligence in discharging its positive obligations under Article 2. It does not, however, necessarily need to be criminal in form; civil or disciplinary proceedings may be sufficient (see *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 89-90 and 94-96, ECHR 2002-VIII; *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 64, 15 January 2009; and *Maiorano and Others v. Italy*, no. 28634/06, §§ 127-28, 15 December 2009; in relation to alleged failures to protect people against violent acts by others, when the

assailants were under the authorities' control; *Kotilainen and Others v. Finland*, no. 62439/12, § 91, 17 September 2020, in relation to an alleged failure to seize the firearms kept by a mentally disturbed man; *Mikayil Mammadov v. Azerbaijan*, no. 4762/05, §§ 101 and 122, 17 December 2009, in relation to an alleged failure to protect a woman from self-harm during an forced eviction carried out by the police; and *Hayri Aslan v. Turkey* (dec.), no. 18751/05, 30 November 2010; *Akdemir and Evin v. Turkey*, nos. 58255/08 and 29725/09, §§ 53, 55 and 65, 17 March 2015; and *Özgüç v. Turkey* (dec.), no. 39649/10, §§ 45-46, 11 October 2016, in relation to alleged failures to protect people from unsecured explosives discarded by the armed forces).

130. There are no grounds to hold that this additional investigative duty does not arise in relation to police officers killed by private persons while performing their duties. Indeed, the Court has already examined the effectiveness of investigations relating to negligent deaths in the armed forces (see *Stoyanovi v. Bulgaria*, no. 42980/04, 9 November 2010 (soldier died during parachute-jumping exercise), and *Trofin v. Romania* (dec.), no. 4348/02, 21 February 2012 (military pilot injured when his plane malfunctioned in a training flight). Similar considerations apply in situations in which the allegation is that the authorities have not done enough to protect a police officer from a lethal attack by a private person whom he is trying to arrest or neutralise.

(ii) Did the investigations in the present case discharge that duty?

(1) The refusal to open criminal proceedings against officials

131. Since, as just noted, the investigation required under this additional investigative duty does not need to be criminal, the prosecuting authorities' reluctance to open criminal proceedings pursuant to Ms Ribcheva's complaints or the proposals in the reports from the internal investigations by the Ministry of Internal Affairs (see paragraphs 40, 47, 62 *in fine* and 69-77 above) did not amount, as such, to a failure to comply with Article 2.

(2) The criminal proceedings against Mr P.P.

132. The criminal proceedings against Mr P.P., in which the applicants brought claims for damages against him, were, for their part, not meant to inquire into or make good the alleged failure of the authorities to do enough to protect Mr Sharkov's life (see *Choreftakis and Choreftaki v. Greece*, no. 46846/08, § 37, 17 January 2012; *Sašo Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 49382/06, § 53, ECHR 2012 (extracts); and *Gerasimenko and Others v. Russia*, nos. 5821/10 and 65523/12, § 82, 1 December 2016). The subject-matter of those proceedings was Mr P.P.'s criminal liability for killing Mr Sharkov and wounding several other officers, not any liability of the authorities or of officials in relation to those

events. The fact that the applicants lodged their applications before those proceedings had come to an end did not therefore make their complaints under Article 2 of the Convention premature.

133. The Government's first non-exhaustion objection, which was joined to the merits (see paragraphs 106 and 111-112 above), must therefore be rejected.

134. The redress accorded to the applicants in those proceedings – awards of damages payable by Mr P.P. – was meant to make good the harm they had suffered on account of the act of Mr P.P., not any harm sustained as a result of acts or omissions by the authorities in connection with that (see, *mutatis mutandis*, *Tagayeva and Others v. Russia* (dec.), nos. 26562/07 and 6 others, § 505 *in fine*, 9 June 2015, and *Gerasimenko and Others*, cited above, §§ 81-83). Although the courts dealing with the criminal case against Mr P.P. touched upon the way in which the operation against him had been planned and organised, they did not come to any conclusions about possible shortcomings in that respect (see, *mutatis mutandis*, *Mirzoyan v. Armenia*, no. 57129/10, § 62 *in fine*, 23 May 2019). Indeed, those courts specifically noted that it was not for them to examine whether that operation had been correctly planned and carried out (see paragraphs 34 and 36 above).

135. It follows that those proceedings did not discharge the State's duty to investigate those matters.

136. It also follows that Mr P.P.'s conviction and sentence for murdering Mr Sharkov and the court order that he pay the applicants damages in respect of the suffering resulting from Mr Sharkov's death did not redress the applicants' grievance that the authorities had not done enough to protect Mr Sharkov's life and deprive them of their victim status in that respect.

137. The Government's objection that the applicants can no longer claim to be victims of a violation, which was joined to the merits (see paragraphs 116 and 118-119 above), must therefore be rejected as well.

(3) The internal investigations by the Ministry of Internal Affairs and the possibility to bring a civil claim against the authorities

138. It remains to be established whether the other procedures which took place (the two internal investigations by the Ministry of Internal Affairs), coupled with the would-be possibility for the applicants to bring a civil action, discharged the duty to investigate the alleged failure of the authorities to take reasonable steps to protect Mr Sharkov's life from Mr P.P.

139. The general position in the Court's case-law is that the form of investigation that will achieve the purposes of Article 2 may vary depending on the circumstances (see, among other authorities, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II, and *Branko Tomašić*, cited above, § 62). It cannot be said that there should be

one unified procedure satisfying all requirements: the tasks of fact-finding and ensuring accountability may be shared between different authorities, as long as the procedures as a whole provide for the necessary safeguards in an accessible and effective manner (see *McKerr v. the United Kingdom*, no. 28883/95, § 159, ECHR 2001-III; *Pearson v. the United Kingdom* (dec.), no. 40957/07, § 71, 13 December 2011; and *Dimitrovi v. Bulgaria* (dec.), no. 25776/05, § 57, 17 December 2013). An internal investigation by the authority in charge of the operation, the Ministry of Internal Affairs, cannot be regarded as inadequate as a first step. The characteristics which such an investigation must display to be seen as effective – independence, promptness, reasonable expedition, adequacy, thoroughness, objectivity and sufficient involvement of the next of kin – have been set out in, for instance, *Paul and Audrey Edwards* (cited above, §§ 70-73).

140. The two internal investigations were able to obtain a wealth of evidence about the planning and execution of the operation on 14 March 2014 and about the events which had led up to it (see paragraphs 38 and 49 above). The investigations, especially the second one, then made detailed findings in those respects (see paragraphs 39-44 and 50-63 above).

141. The commissions which carried out the investigations were sufficiently independent (for a detailed exposition of the principles governing that point, see *Mustafa Tunç and Fecire Tunç*, cited above, §§ 219-34). The first commission consisted of two inspectors from the Ministry's inspectorate, and the second of two other inspectors from that inspectorate and of two senior officers from departments of the Ministry who were sufficiently remote from those under investigation (see paragraphs 38 and 49 above). There is no indication that any of the investigators had hierarchical or other close professional links with the officials under investigation, or that when carrying out their inquiries they acted in a way which could raise doubts about their independence or impartiality.

142. It can also be accepted that the two commissions had the necessary expertise, and that, taken as a whole, their investigations were comprehensive and their conclusions, as they ultimately emerged – tenable and convincing (see, *mutatis mutandis*, *Stoyanovi*, cited above, § 64).

143. The investigations were also sufficiently prompt and were conducted with reasonable expedition (see *Paul and Audrey Edwards*, cited above, § 86). The first started immediately after the operation and was completed within three weeks, and the second started about six months after the operation and was completed within a month and a half (see paragraphs 38-39 and 49-50 above).

144. However, the investigations suffered from two flaws preventing them from fully meeting the requirements of Article 2.

145. Firstly, the second investigation, which was the one that examined in depth whether mistakes had been made, at all levels, in the organisation

of the operation, was not launched by the Ministry of Internal Affairs of its own motion, but only in response to a complaint by Ms Ribcheva (see paragraph 49 above). Even if a violent death has not been directly caused by the authorities, if they can also be held responsible for it they must act of their own motion rather than leave the initiative to the deceased's next-of-kin (see *Paul and Audrey Edwards*, cited above, §§ 69 and 74). This is particularly true in cases such as the present one, where the true circumstances of the death are largely confined within the knowledge of State officials or authorities. It is true that the authorities had already carried out one investigation of their own initiative, which is normally all that is required, but in this case it was or should have been evident to the authorities, as is amply confirmed by the lines of inquiry pursued by the second investigation and by its eventual findings, that the first investigation had been inadequate and that further aspects of the preparation and execution of the operation needed to be investigated.

146. Secondly and more importantly, both investigations were purely internal, and their reports remained classified for a number of years; the applicants were first able to see those reports, in redacted copies, in July 2020, as a result of the proceedings before the Court (see paragraphs 45, 48, 64 and 66 above). It is true that the disclosure or publication of police reports is not an automatic requirement under Article 2 (see *McKerr*, cited above, § 129; *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 304, ECHR 2011 (extracts); and *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 236, 30 March 2016). It is also true that the authorities could legitimately consider that some elements, such as the names of any officials involved and the precise modes of operation of the anti-terrorist squad, should not make their way into the public domain. But in this case no information was initially provided to the applicants in relation either to the first or to the second internal investigation. Ms Ribcheva was only told, in general terms, that the investigations had revealed mistakes in the planning and execution of the operation and that officials had been disciplined in connection with that (see paragraphs 67 and 68 above). The Court finds that this was clearly insufficient. Ms Ribcheva's subsequent requests to the prosecuting authorities did not yield more information (see paragraphs 72-77 above). Nor had more details emerged during the parliamentary hearing about the operation, which took place before the two investigations (see paragraph 30 above). In those circumstances, it cannot be said that the two internal investigations by the Ministry of Internal Affairs were attended by a sufficient degree of public scrutiny, or that they involved the next-of-kin of the deceased to the extent necessary to safeguard their legitimate interests, as required under Article 2 (see, *mutatis mutandis*, *Dimitrov and Others v. Bulgaria*, no. 77938/11, § 137, 1 July 2014).

147. That complete lack of publicity or of involvement of the applicants in the two investigations then reflected on the possibility for them to bring a claim for damages under section 49 of the 1950 Act.

148. A perusal of the Bulgarian courts' case-law under that provision shows that such a claim could in principle have led to a determination whether the authorities had been at fault for not taking enough care in planning and carrying out the operation in which Mr Sharkov lost his life, and to an award of damages if the courts found that the authorities had not discharged that duty (see paragraphs 85 and 86 above, and, *mutatis mutandis*, *Stoyanovi*, cited above, § 67). There is nothing to suggest that such a claim would have been destined to fail. In particular, it does not appear that the payment of the statutory indemnities due to the applicants in connection with Mr Sharkov's death would have prevented them from pursuing such a claim (see paragraph 96 above). Nor would the applicants have been required to name the specific officials alleged to have been at fault (see paragraph 86 above, and contrast *Oruk v. Turkey*, no. 33647/04, § 34, 4 February 2014).

149. However, it can hardly be said that the applicants were in practice in a position to bring such a claim. It is true that the second internal investigation confirmed some of Ms Ribcheva's allegations of mistakes in the planning and conduct of the operation (see paragraph 63 above). It could have thus served as a basis for a claim for damages against the Ministry of Internal Affairs (see, *mutatis mutandis*, *Stoyanovi*, cited above, § 67). But Ms Ribcheva and the other two applicants were only able to see a copy of the report of that investigation – and of the report of the first internal investigation – in July 2020, long after they had lodged their applications with the Court, and after the expiry of the five-year period during which those reports were to remain classified and of the five-year limitation period for bringing a claim under section 49 of the 1950 Act (see paragraphs 66 and 92 above, and contrast *Csiki v. Romania*, no. 11273/05, § 81, 5 July 2011). It appears that the Government agreed that the reports be disclosed to the applicants only because the statutory period for their classification had expired; before that they were categorically opposed to those reports, or even excerpts from them, being shown to the applicants (see paragraphs 48 and 66 above). The Government did not contend, and it is indeed highly unlikely, that the applicants would have been able to obtain those reports, or even excerpts or redacted versions of them, earlier. The rules governing the disclosure of documents held by the opposing party in civil litigation in Bulgaria do not say anything about the disclosure of classified documents, and there is no reported case-law on the point (see paragraphs 98-101 above). There is nothing to suggest that the Government's position on that matter would have been any different in domestic civil proceedings brought by the applicants. But even if the Bulgarian courts would have ordered the disclosure of the reports in the course of such proceedings, that would not

have been sufficient, since when launching the proceedings the applicants would have still been obliged to formulate their claim blindly, without being aware of the underlying evidence, with all the associated costs and the risk of further costs.

150. It follows that the Government's non-exhaustion objection based on the applicants' not having brought a claim for damages under section 49 of the 1950 Act, which was joined to the merits (see paragraphs 108 and 113 above), must be rejected.

151. It also follows that the available procedures did not properly discharge the Bulgarian State's obligation to investigate effectively whether any officials or authorities bore responsibility for failing to take reasonable steps to protect Mr Sharkov's life during the operation on 14 March 2014. There has therefore been a breach of Article 2 of the Convention in that respect.

2. Alleged failure to do enough to protect Mr Sharkov's life

(a) The parties' submissions

152. In their initial observations on the admissibility and merits of the cases, the Government contended that the choice to deploy the anti-terrorist squad against Mr P.P. and use force against him had been lawful and fully justified. In the circumstances, there had been no other way to arrest him, and he had been armed and dangerous. All steps taken during the operation, including the use of firearms against Mr P.P., had been lawful and wholly justified as well. The officers had been equipped with suitable protective gear, and that had saved the lives of all among them hit by bullets fired by Mr P.P. except for Mr Sharkov. When shot by Mr P.P., Mr Sharkov had been behind a ballistic shield and had been wearing a ballistic helmet. The fatal result had been entirely due to Mr P.P.'s risky and aggressive conduct, not to poor planning by the authorities. It had not been possible to predict or prevent that result, especially since Mr P.P.'s shot had touched the only unprotected bit of Mr Sharkov's body, at a time when he had raised his head above the ballistic shield. The equipment and weapons required for each operation of the anti-terrorist squad were being chosen by the leaders of each team, and in some cases even by the officers themselves, depending on the nature of the operation. It was true that Mr P.P. had had firearms and ammunition whose permits had expired, but it had been precisely the difficulties with recovering those from him that had made it necessary to call in the anti-terrorist squad. When planning and carrying out the operation, the authorities had taken all precautions necessary to minimise the risk to the lives of Mr P.P. and the officers.

153. In their initial observations on the admissibility and merits of the cases, submitted before the reports of the two internal investigations by the Ministry of Internal Affairs had been declassified and provided to them (see

paragraphs 48 and 66 above), the applicants argued that the authorities had not adequately planned and carried out the operation in which Mr Sharkov had lost his life. In particular, the anti-terrorist squad had not been equipped from the outset with proper long-barrel firearms or sturdy enough ballistic shields, owing to the perception that there was no risk that Mr P.P. would fire against them. The officers had at first only worn their handguns and small shields used in crowd control but incapable of stopping rifle bullets. A larger ballistic shield with a visor had been fetched and given to Mr Sharkov only later. The assault party had then requested a bigger shield with wheels. All these mistakes had been substantial, and the authorities could not hide behind the explanation that the situation had been unpredictable and out of control. The assault against Mr P.P. had been done hastily and without a suitable assessment of the risks to those involved, even though the authorities had had enough time to prepare properly. In that context, the assertion that Mr P.P.'s actions had been uncontrollable and unstoppable was risible.

154. In their additional observations, submitted after the reports of the two internal investigations by the Ministry of Internal Affairs had been declassified (see paragraphs 48 and 66 above), the Government argued that the findings of those investigations had a bearing on the question whether there had been a positive obligation to protect Mr Sharkov's life from Mr P.P. and on that obligation's scope and content. Mr Sharkov was serving in a unit – the anti-terrorist squad – whose tasks entailed a high level of risk. The Bulgarian State had met its duty to have appropriate regulations governing the squad's activities. Both investigations had concluded that the operation on 14 March 2014 had been ordered in line with those regulations. Although the investigations had revealed some shortcomings, they had also found that when planning the operation the authorities had not been in a position to predict the full extent of the risk posed by Mr P.P. It could not be overlooked in that connection that Mr Sharkov had been hit in the only spot not covered by his protective equipment.

155. In their observations in reply to those additional observations of the Government, the applicants claimed that Mr Sharkov's death could have been avoided if the authorities had analysed the situation more thoroughly. In their view, the reports of the two internal investigations confirmed their assertion that the operation against Mr P.P. had not been properly planned. For instance, the authorities had not properly evaluated Mr P.P.'s state of mind. Nor was it clear why they had considered that it had been urgent to act against him, which had been a key reason for the ensuing slip-ups. In any event, Mr P.P. should not have been allowed to own firearms in the first place – something that the authorities had overlooked for a number of years. Their earlier efforts to recover those firearms had been half-hearted.

(b) The Court's assessment

(i) The positive duty at issue

156. It is settled that the first sentence of Article 2 § 1 of the Convention requires States not only to refrain from intentionally taking life, but also to take appropriate steps to safeguard the lives of those within their jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports* 1998-III; *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII; and, more recently, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 134, 25 June 2019).

157. This positive obligation entails a primary duty to have in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life, and applies in the context of any activity, public or not, in which the right to life may be at stake (see *Nicolae Virgiliu Tănase*, cited above, § 135, with further references). This primary duty is not in issue in the present case.

158. There are also obligations to take preventive operational measures to protect life from lethal threats coming from other individuals. The first is to take steps to protect an identified individual, if the authorities know or ought to know of the existence of a real and immediate risk to his or her life from acts by others (see *Osman*, cited above, § 115). The second obligation, which has so far been held to arise in relation to (a) the release of violent prisoners on leave or on licence, (b) the supervision of a mentally disturbed person known to be predisposed to violence, and (c) a terrorist group suspected of preparing to attack unknown civilian targets in a given area, is to take steps to protect members of the public who cannot be identified in advance from a real and imminent risk of lethal acts emanating from such people (see *Mastromatteo*, cited above, §§ 69-79; *Maiorano and Others*, cited above, § 107; *Choreftakis and Choreftaki*, cited above, §§ 48 and 50-51, all in relation to violent prisoners; *Bljakaj and Others v. Croatia*, no. 74448/12, §§ 108-11 and 121, 18 September 2014, in relation to a mentally disturbed person predisposed to violence; and *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, §§ 482-93, 13 April 2017, in relation to a terrorist group).

159. Those preventive obligations are equally applicable to any activity in which the right to life may be at stake, such as the deactivation of an arms cache or training in the armed forces (see *Demiray v. Turkey*, no. 27308/95, §§ 45-46, ECHR 2000-XII; *Pankov v. Bulgaria*, no. 12773/03, §§ 61-62, 7 October 2010).

160. It is those preventive obligations which are at issue in the present case. Since the authorities clearly knew that Mr Sharkov's life could be at risk from Mr P.P. if he took part in an operation to arrest him (which can also be described as a dangerous activity organised by the State), the

question which arises is whether the authorities complied with their duty to protect Mr Sharkov in the context of that operation.

(ii) Standard according to which compliance with that duty must be assessed

161. While the specific preventive measures required in each situation of risk hinge on the origin of the threat and the extent to which it is susceptible to mitigation (see, albeit in other contexts, *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, § 137 *in fine*, ECHR 2008 (extracts); *Cavit Tınarlıoğlu v. Turkey*, no. 3648/04, § 90 *in fine*, 2 February 2016, and *Asma v. Turkey*, no. 47933/09, § 93, 20 November 2018), the duty incumbent on the authorities is, at its most general level, to do what can reasonably be expected of them to avert the risk, and that depends on the entirety of the circumstances of each case (see *Osman*, § 116 *in fine*; *Demiray*, § 45; and *Pankov*, § 62, all cited above).

162. A preliminary point which arises is whether the standard of reasonableness in such circumstances is the same as, or comparable to, the standard for assessing compliance with the obligation under Article 2 § 2 to refrain from using force which is "more than absolutely necessary" – that of strict proportionality, which governs not only the actions of the agents of the State who actually administer the force, but also all the planning and control of those actions (see, among many other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 149 and 194, Series A no. 324; *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports* 1997-VI; and *Giuliani and Gaggio*, cited above, § 176), to the exclusion of any margin of appreciation.

163. Since its first case under Article 2, *McCann and Others* (cited above), the Court has applied that standard in many cases in which the police or the security forces had used force, typically firearms, against armed or dangerous individuals (see *Dimov and Others v. Bulgaria*, no. 30086/05, § 69, 6 November 2012, with numerous further references, and, more recently, *Camekan v. Turkey*, no. 54241/08, §§ 45-50, 28 January 2014, and *Cangöz and Others v. Turkey*, no. 7469/06, §§ 105-39, 26 April 2016). As a result of the judgments in those cases, the principles governing the "use of force" by the authorities – which, as already noted, is not limited to the actual use of force, but includes also the conduct and planning of police operations – and the legislative, administrative and regulatory measures that the Contracting States need to adopt to reduce as far as possible the adverse consequences of the "use of force" have become well-settled in the Court's case-law. A detailed summary of those principles can be found in *Giuliani and Gaggio* (cited above, §§ 174-82, 208-10 and 244-50).

164. But that standard and those principles, which are based on the express prohibition in Article 2 § 2 to refrain from using force which is "more than absolutely necessary", cannot readily be transposed to cases, such as the one at hand, which involve the positive obligations arising under Article 2 § 1. As noted in paragraph 156 above, those obligations are derived from the State's general duty under that provision to "protect life". Moreover, they throw up different sorts of considerations, and it is settled that the Contracting States have a margin of appreciation in relation to them (see, albeit in different contexts, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 107, ECHR 2004-XII; *Gorovenky and Bugara v. Ukraine*, nos. 36146/05 and 42418/05, § 33, 12 January 2012; *Sašo Gorgiev*, cited above, § 44; *Lambert and Others v. France* [GC], no. 46043/14, §§ 144-48, ECHR 2015 (extracts); and *Gerasimenko and Others*, cited above, § 96).

165. The standard of reasonableness in such cases cannot therefore be as stringent as that of strict necessity, and compliance with it cannot be judged on the basis of the principles elaborated in cases relating to deprivation of life. The scope and content of the positive obligations at issue must rather be defined in a way which does not impose an impossible or disproportionate burden on the authorities, in appreciation of the choices which they face in terms of priorities and resources, and with reference to the unpredictability of human conduct (see *Osman*, § 116; *Öneryıldız*, § 107; *Pankov*, § 61, all cited above, as well as *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, § 209, ECHR 2011 (extracts)).

166. In recognition of these constraints, in two cases concerning accidents during military training the Court said that whenever a State undertakes or organises dangerous activities it must ensure through a system of rules and through sufficient control that the risk is reduced to a reasonable minimum, and that any damage that arises will not amount to a breach of the positive obligations under Article 2 § 1 if it was caused through the negligent conduct of an individual or the "concatenation of unfortunate events" (see *Stoyanovi*, § 61, and *Trofin*, § 49 (d), both cited above).

167. These points take on an added importance when it comes to active operations against armed and dangerous individuals, since in such situations the authorities have much less control over the course of events, and the risk to life is inherent. The scope and content of the positive obligations under Article 2 § 1 for the State to protect its own law-enforcement personnel against the risks to their life must not make it impossible to require them to engage in such operations, even if it is recognised that these may involve a heightened risk of getting fatally injured or killed. Nor must the obligations' scope and content make it unduly onerous for the authorities to organise such operations. Indeed, Article 2 cannot be interpreted as guaranteeing an absolute level of security in any activity in which the right to life may be at stake (see, albeit in different contexts, *Kalender v. Turkey*, no. 4314/02,

§ 49, 15 December 2009; *Koseva v. Bulgaria* (dec.), no. 6414/02, 22 June 2010; and *Cevrioğlu v. Turkey*, no. 69546/12, § 66, 4 October 2016). It must be borne in mind in that connection that law-enforcement personnel who have freely engaged themselves to serve – especially in specialised units whose tasks include dealing with terrorists and other dangerous criminals – must surely be aware that this may, on occasion, put them in situations where they will face lethal threats which might be difficult to contain. Indeed, that is the reason why in Bulgaria the close relatives of police officers who have died on the job are entitled to a special indemnity, and why police officers must be insured, at the expense of the State, against the risk of death or injury (see paragraphs 93 and 97 above). At the same time, however, the authorities must ensure that law-enforcement officers expected to take part in such operations are properly trained and prepared.

168. Another important consideration in this context is that when carrying out such operations, the authorities must fully comply with their negative obligations under Article 2 § 2 towards the people targeted by those operations and any other people who may be directly affected by them (see, *mutatis mutandis*, *Osman*, § 116, and *Bljakaj and Others*, § 122, both cited above). Appropriate training on the use of firearms is an important point in this context as well (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 97, ECHR 2005-VII; *Şimşek and Others v. Turkey*, nos. 35072/97 and 37194/97, § 109, 26 July 2005; and *Kakoulli v. Turkey*, no. 38595/97, § 110, 22 November 2005), especially when it comes to specialised units (see *Giuliani and Gaggio*, cited above, § 255).

(iii) Did the authorities do what was reasonably expected of them to avert the risk to Mr Sharkov's life?

169. It follows from the above that the mere fact that Mr Sharkov was ordered to take part in a police operation which entailed a heightened risk to his life was not contrary to Article 2. He had freely engaged himself to serve in the anti-terrorist squad, and it was not alleged that he had not been properly trained for such a task.

170. Nor can it be said that the authorities' choice to resort to an operation involving the use of force to arrest Mr P.P. and seize his firearms was unreasonable. Although other options, such as attempts to persuade or trick Mr P.P. into surrendering or handing over his firearms might have been feasible, the authorities had good grounds to use force to achieve those goals. It is not for the Court to discuss with the benefit of hindsight the merits of alternative tactics, or to substitute its views on the point for those of the competent authorities (see, *mutatis mutandis*, *Andronicou and Constantinou*, cited above, § 181). The question whether the operation was lawful in terms of Bulgarian law is not decisive in this context (see, *mutatis mutandis*, *Mikayil Mammadov*, cited above, §§ 111-12). In any

event, the internal investigations found that it had been lawfully ordered (see paragraphs 43 and 52 above).

171. For their part, the failure to mount a similar operation against Mr P.P. two years earlier, in March 2012, and the lack of sufficient efforts by the local police to seize his firearms after that (see paragraphs 40 and 42 above), while being links in the chain of events which led to Mr Sharkov's death, did not have a direct causal connection with it, since nothing suggests that Mr Sharkov would have come into contact with Mr P.P. and run a real and immediate risk of getting shot by him if he had not been ordered to take part in the operation against him. It is hence not necessary to analyse those points, and also the question whether it had been justified to grant Mr P.P. firearms permits in the first place (see paragraph 8 above).

172. It is not for the Court to analyse under this heading the equipment and firearms made available to the anti-terrorist squad. In a different domain, namely that of health care, the Court has consistently held that the allocation of public funds is not a matter on which it should take a stand, and that it is for the authorities of the Contracting States, which are better placed to evaluate the relevant demands and take responsibility for the choices which have to be made between worthy needs, to decide how their limited resources should be allocated (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 175, 19 December 2017, with further references). The same applies to the allocation of equipment and firearms to the police. In any event, this is not a case in which they were manifestly ill-equipped for their task.

173. Nor is the Court prepared to gainsay the choices made by the authorities about the equipment to be used in the specific operation in which Mr Sharkov lost his life. It is true that the types of weapons made available to the security forces for a given operation are to be taken into account when considering whether the force used by them was "no more than absolutely necessary" within the meaning of Article 2 § 2 (see *Güleç v. Turkey*, 27 July 1998, § 71, *Reports* 1998-IV; *Isayeva and Others v. Russia*, nos. 57947/00 and 2 others, § 195, 24 February 2005; *Giuliani and Gaggio*, cited above, § 216; and *Dimov and Others*, cited above, § 78). But, as noted in paragraph 164 above, different considerations apply when the State's positive obligations under Article 2 § 1 are at play. Indeed, as demonstrated by the facts of *Giuliani and Gaggio* and *Dimov and Others* (both cited above), these two duties may clash, since the use of more lethal weapons will normally ensure better protection of the lives of any officers involved in a law-enforcement operation, and at the same time increase the risk to the lives of the targets of that operation.

174. In any event, it can hardly be said that the unavailability of the various types of equipment noted in the reports of the internal investigations (see paragraphs 44 and 60 above) had a sufficient causal link with Mr Sharkov's death. The same goes for the late provision of ballistic shields (see paragraphs 44 and 61 above), since Mr Sharkov did have one when Mr P.P. shot him. He also had a helmet, and was hit just under it (see paragraph 25 above).

175. It remains to be seen whether any mistakes in the planning and control of the operation show that the authorities acted unreasonably.

176. The internal investigations, particularly the second one, noted several mistakes, and on that basis recommended disciplinary action (see paragraphs 40-44 and 51-63 above). But it is not apparent that the investigations did so in application of a standard comparable to that used by the Court (see, *mutatis mutandis*, *Van Colle v. the United Kingdom*, no. 7678/09, § 100, 13 November 2012, and *Sarıhan v. Turkey*, no. 55907/08, § 56, 6 December 2016). Moreover, unlike those investigations, the case at hand does not concern the operation as a whole, but is limited to assessing whether any failings in its organisation were linked directly to Mr Sharkov's death (see, *mutatis mutandis*, *Giuliani and Gaggio*, cited above, § 235).

177. Some of the issues noted in the investigation reports, such as the omission to specify the tasks of the other units involved in the operation, and the failure properly to evacuate the neighbours and Mr P.P.'s mother (see paragraphs 44 and 59 above), do not appear to have had any causal link with Mr Sharkov's death.

178. Two mistakes noted in the reports which can be said to have had a sufficient causal link with Mr Sharkov's death were the absence of enough prior reconnaissance (see paragraphs 43, 52 and 54 above), and the failure to evaluate carefully enough Mr P.P.'s likely reaction if faced with an attack (see paragraphs 51, 52, 53 and 55 above). Both of those appear to have significantly affected the anti-terrorist squad's tactical choices – to opt initially for a quick assault rather than a siege, and to try at first to storm into the flat through the front door rather than through the balconies. Two other mistakes noted in the reports that also had a sufficient link with Mr Sharkov's death were the failure to surprise Mr P.P. and then to act quickly enough to prevent him from putting up effective resistance (see paragraphs 43, 53, 56 and 57 above). A further such mistake was that Mr Sharkov's team positioned themselves under the balcony in a way which exposed them more to shots fired by Mr P.P. (see paragraph 58 above).

179. It can indeed be thought that better intelligence and planning, and the use of other tactics (more or less aggressive) would have prevented the turn of events which led to Mr Sharkov's death. Although the materials in the case file do not reveal much detail about this, the overall impression they convey is that the authorities, and in particular the command of the anti-terrorist squad, unduly rushed the operation, and underestimated the degree to which Mr P.P. had prepared to resist any attempt by the police to break into his flat and his determination to ward off any such operation by any means. It is, however, a matter of conjecture whether additional reconnaissance, in particular by the squad itself, or better efforts to predict Mr P.P.'s likely reaction would have enabled the authorities significantly to reduce the risk that he posed to the officers trying to arrest him. The fact remains that this was an operation fraught with danger, conducted against a heavily armed and determined man who had made great efforts to barricade his flat – that was, indeed, the very reason why the operation was carried out by the anti-terrorist squad rather than the regular police (see paragraph 13 above). In spite of their mistakes, the authorities did take precautions which could be perceived as reasonable at the time: they obtained intelligence about Mr P.P., discussed in some detail the available options, and drew up plans on how to go about arresting Mr P.P. and seizing his firearms (see paragraphs 13 to 19 above). They deployed a number of specially trained officers, and acted in a coordinated manner, with an unbroken chain of command at all times (see paragraphs 20 to 25 above). The Court, which is far removed from the events, must be extremely cautious about revisiting any of the choices that the authorities made in those respects with the wisdom of hindsight – something to be resisted even when examining whether the authorities have used force which was "more than absolutely necessary", where, as already noted, a much stricter standard applies (see *Bubbins v. the United Kingdom*, no. 50196/99, § 147, ECHR 2005-II (extracts); *Huohvanainen v. Finland*, no. 57389/00, § 104, 13 March 2007; and *Golubeva v. Russia*, no. 1062/03, § 110, 17 December 2009).

180. In sum, it cannot be said that, in spite of some regrettable mistakes, the Bulgarian authorities failed in their duty to take reasonable steps to protect Mr Sharkov's life. There has therefore been no breach of Article 2 of the Convention under that head.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

181. The applicants complained that they had not had effective remedies with respect to their grievances under Article 2 of the Convention. They relied on Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

182. In their initial observations on the admissibility and merits of the cases, the Government argued that the criminal proceedings against Mr P.P., in which the courts had assessed all facts relating to his acts, including the planning and execution of the operation against him, had amounted to an effective remedy with respect to the applicants' grievances under Article 2 of the Convention. Indeed, the courts had, based on their findings, fully allowed the applicants' claims for damages against Mr P.P. Moreover, in July 2014 all three applicants had been paid the indemnities due to them under section 255(2) of the Ministry of Internal Affairs Act 2006 in their capacity as, respectively, surviving spouse, child and parent of Mr Sharkov (see paragraphs 93 above); those had amounted to BGN 16,458.72 (EUR 8,415.21) each. Furthermore, in April 2014 the late Mr Sharkov's bank account had been credited with BGN 19,201.84 (EUR 9,817.74), which had been the end-of-service payment due to him under section 255(4) of the 2006 Act. Lastly, in 2013 Mr Sharkov had been insured by the Ministry against death, as required by section 208(1) of the 2006 Act. The applicants could also claim that insurance.

183. The applicants submitted that, as clear from information supplied by an enforcement agent, until September 2020 Mr P.P. had not paid any of the awards made in their favour. Since he was in prison for life, he would never be in a position to do so.

B. The Court's assessment

184. The complaint is not manifestly ill-founded or inadmissible on other grounds. It must therefore be declared admissible.

185. It was already noted that the criminal proceedings against Mr P.P. and the claims for damages against him were not – indeed, were not meant to be – a remedy with regard to the applicants' complaint that the authorities had not done enough to protect Mr Sharkov's life (see paragraph 132 above). The statutory indemnities automatically paid to the applicants as a result of Mr Sharkov's death in the line of duty, and the possibility for them to obtain an insurance payment for that death (see paragraphs 78-80, 93 and 97 above) were not remedies in that respect either.

186. The issue under Article 13 of the Convention is rather whether the applicants had at their disposal a procedure whereby they could obtain redress, such as damages, for the failure of the authorities to do enough to protect Mr Sharkov's life. But that question was already analysed with reference to the procedural limb of Article 2 of the Convention (see paragraphs 147 to 149 above). There is, then, no need to examine it also under Article 13 of the Convention (see, *mutatis mutandis*, *Finogenov and Others*, cited above, § 284).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

187. 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

188. The applicants claimed 50,000 euros (EUR) each in respect of the pain and suffering that they had endured as a result of Mr Sharkov's death and the absence of an effective investigation of its causes.

189. The Government were of the view that the claims were ill-founded. They drew attention to the awards of damages in favour of the applicants made by the courts in the criminal proceedings against Mr P.P., the indemnities which the applicants had obtained from the Ministry of Internal Affairs in connection with Mr Sharkov's death, and the possibility for them to claim Mr Sharkov's professional life insurance.

190. Under the terms of Article 41 of the Convention, the Court may only award just satisfaction to an applicant if it "finds that there has been a violation of the Convention or the Protocols thereto" with respect to that applicant (see, *mutatis mutandis*, *Neumeister v. Austria* (Article 50), 7 May 1974, § 30, Series A no. 17, and *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, § 21 (i), Series A no. 14), and then also finds that the damage alleged to have been suffered by that applicant stems from that particular violation. In this case, the only breach found was that of the

procedural obligation under Article 2 of the Convention to investigate whether officials bore responsibility for not doing enough to protect Mr Sharkov's life. That, as well as the nature of the breach, must reflect on the level of the award made by the Court. In view of its case-law in such cases, and the specific circumstances of this case, the Court awards each of the three applicants EUR 8,000 in respect of the anguish and frustration they must have suffered on account of the authorities' failure properly to discharge that obligation.

B. Costs and expenses

191. The applicants sought the reimbursement of EUR 2,000 each, said to be incurred for the services of their lawyer.

192. The Government pointed out that the claim was not supported by any documents.

193. The Court notes that the applicants did not submit any documents in support of their claim. In those circumstances, and bearing in mind the terms of Rule 60 §§ 2 and 3 of the Rules of Court, the Court makes no award under this head.

C. Default interest

194. 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. *Decides* to join the three applications;

2. *Joins* the Government's two non-exhaustion objections and their objection that the applicants can no longer claim to be victims of a violation of Article 2 of the Convention to the merits;

3. *Declares* the remainder of the three applications admissible;

4. *Holds* that there has been a violation of Article 2 of the Convention owing to the failure to investigate effectively whether any officials or authorities failed to take reasonable measures to protect Mr Sharkov's life, and *rejects* the Government's two non-exhaustion objections and their objection that the applicants can no longer claim to be victims of a violation of Article 2 of the Convention;

5. *Holds* that there has been no violation of Article 2 of the Convention with respect to the measures taken by the authorities to protect Mr Sharkov's life;

6. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

7. *Holds*
   (a) that the respondent State is to pay each of the applicants, in respect of non-pecuniary damage, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 30 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Tim Eicke
President