



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

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FIRST SECTION

**CASE OF MIKAYIL MAMMADOV v. AZERBAIJAN**

*(Application no. 4762/05)*

JUDGMENT

STRASBOURG

17 December 2009

**FINAL**

*17/03/2010*

*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 Mikayil Mammadov v. Azerbaijan,**

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

Christos Rozakis, *President*,

Nina Vajić,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 26 November 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 4762/05) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Mikayil Sattar oglu Mammadov (*Mikayıl Səttar oğlu Məmmədov* – "the applicant"), on 27 December 2004.

2. The applicant, who had been granted legal aid, was represented by Mr A.G. Mustafayev, a lawyer practising in Baku. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, relying on Article 2 of the Convention in particular, that the domestic authorities were responsible for the death of his wife. He also alleged that the authorities had failed to effectively investigate the circumstances of his wife's death.

4. On 15 May 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 in Gubadly and currently lives in Sumgayit.

#### **A. The background**

6. The applicant and his family are internally displaced persons from Gubadly. In 1993, during the occupation of the region by Armenian military forces, they fled their permanent place of residence and came to Sumgayit.

7. After their flight from Gubadly, the applicant's family of six (himself, his wife, three children and the applicant's mother-in-law) resided temporarily in various places in Sumgayit. Immediately prior to the events outlined below they lived in a room in a State-owned hostel.

8. From 17 June to 5 July 1999 the applicant's wife, Chichek Mammadova, underwent in-patient treatment in the Sumgayit City Emergency Hospital with a diagnosis of “closed craniocerebral injury, brain concussion; contusion of soft tissues of the crown of the head; hysterical psychosis”.

9. In late 2003 the applicant discovered that there were three vacant rooms in an old administrative building that belonged to the Sumgayit City Military Commissariat (the army recruitment office), which, however, no longer occupied the building. Part of the building was occupied by an association of war veterans, but the rooms that the applicant was interested in were abandoned and in a state of neglect. The rooms were located in auxiliary premises which had a separate entrance from the rear side of the building. The applicant occupied these rooms and conducted substantial repair work there for three months. According to him, the other occupants of the building were aware of his activities but did not object to them. Likewise, according to the applicant, there were no objections by any public authorities to the repair works carried out by him.

10. After completing the repair works, at the end of 2003 the applicant left his hostel room and moved into the new dwelling together with his family.

#### **B. Eviction of the applicant's family and his wife's death**

11. On 26 March 2004 two officials (E.G. and Y.A.) of the Sumgayit City Executive Authority (“the SCEA”), an employee of the local housing maintenance and utilities board (K.A.) and a number of police officers

arrived in the applicant's new dwelling. They had no court order for his eviction.

12. At an unspecified time after the arrival of the above-mentioned officials, the applicant's wife, Chichek Mammadova, poured some kerosene on herself and ignited it, apparently in protest at what she perceived as the authorities' intention to evict her family. It appears that at least one of the police officers helped put out the fire on her body, using a blanket he found inside the applicant's home. Chichek Mammadova's brother, who arrived slightly later, took her to hospital by taxi.

13. Following this incident, the police loaded the possessions of the applicant's family onto a lorry and transported them back to the hostel where the applicant's family had previously resided.

14. The applicant's wife suffered multiple second- and third-degree burns affecting 50% of the body surface. On 30 March 2004 she died in hospital of complications resulting from her injuries. The results of the autopsy released on 2 April 2004 confirmed that the death had been caused by the extensive burns to her body surface.

#### *1. The applicant's version of the events*

15. According to the applicant, prior to 26 March 2004 he was summoned several times to meet the SCEA officials, who orally demanded him to vacate the rooms in the old Commissariat building and even asked him for a bribe in order to allow him to stay there. He refused their demands.

16. On 26 March 2004 E.G., Y.A. and a large number of police officers arrived in the applicant's new dwelling and demanded that he and his family immediately vacate the premises. The applicant estimated the total number of police officers at around twenty-five to thirty, noting that most of them were equipped with batons. When the applicant and his family members refused, the police used force on the applicant and his mother-in-law.

17. At this time Chichek Mammadova experienced a state of shock and psychological anxiety. She poured some kerosene on herself and threatened to set fire to herself if the police officers did not leave immediately. However, the SCEA officials and police officers did not take her threats seriously. E.G. even offered her a box of matches, mockingly encouraging her to keep her word and set fire to herself.

18. At that moment, the applicant was outside trying to help one of his children, who had fainted a few moments earlier from fright. Therefore, the applicant could not immediately rescue his wife. According to the applicant, none of the police officers made an attempt to rescue her, because they were all busy carrying the applicant's possessions and loading them onto a lorry.

19. Only Chichek Mammadova's sister, who was also in the vicinity, came to her rescue and extinguished the fire. Only one police officer offered some belated assistance. By this time, Chichek Mammadova had already

suffered serious burns. Her brother, who arrived shortly after the incident, took her to hospital by taxi.

## *2. The Government's version of the events*

20. According to the Government, at 11 a.m. on 26 March 2004 two SCEA officials, accompanied by five police officers, visited the premises occupied by the applicant's family. The aim of the visit was merely to explain to the applicant that his family was occupying these premises illegally. The applicant immediately left, together with a child of his, and went to a post office to send a complaint against the SCEA officials and the police. After the applicant had left, his wife supposed that her family would be evicted by force. She became anxious and set fire to herself in protest. None of the State officials present had provoked her to do so. A few minutes later her close relatives took her to hospital.

21. Following this, the officials decided, on the spot, to move the applicant's family's belongings back to the hostel where they had previously resided.

## **C. Inquiry by the Sumgayit City Prosecutor's Office**

22. An investigator of the Sumgayit City Prosecutor's Office carried out a preliminary inquiry into the circumstances of Chichek Mammadova's death.

23. It appears that the investigator questioned a number of witnesses, including the applicant, his mother-in-law, his sister-in-law, the municipal employee K.A., the SCEA officials E.G. and Y.A., and seven police officers (J.M., C.V., N.A., E.N., N.G., N.I. and S.S.) (see summaries of the relevant witness testimonies in section F. below).

24. By a decision of 14 May 2004 an investigator of the Sumgayit City Prosecutor's Office decided not to institute criminal proceedings in connection with the death of the applicant's wife.

25. Based on the witness testimonies, the investigator concluded that there was no proof supporting the applicant's allegations that E.G. and Y.A. had entered the applicant's dwelling, that E.G. had offered matches to Chichek Mammadova, that E.G. had ever asked the applicant for a bribe, or that any police officers had used force against Chichek Mammadova. As there were no indications that any third persons had been in any way responsible for the fact that the applicant's wife had attempted suicide, there were no grounds to institute criminal proceedings.

26. Following this decision, the applicant sent a number of letters to the Sumgayit City Prosecutor's Office asking for a new investigation into the circumstances of his wife's death with a view to determining the responsibility of the SCEA officials and police officers involved in the incident. The Sumgayit City Prosecutor's Office replied, with similarly

worded letters, on 15 July, 20 July, 3 September and 28 September 2004. It was noted in these letters that Chichek Mammadova's death had been suicide and that the preliminary inquiry could not establish any responsibility on the part of the State officials in her death. It was also noted, however, that:

“... during the investigation into the circumstances of the death of Chichek [Mammadova], it was revealed that officials of the City Executive Authority and certain officers of the Sumgayit City Police Office had committed a number of errors [in performing their official duties. The matter has been referred] to the senior management of the City Executive Authority and the City Police Office with a view to eliminating such errors and ensuring that they are not repeated in the future, as well as taking relevant measures against the persons who have committed these errors. ...

... moreover, a report was submitted to the Sumgayit City Police Office in respect of the officers of the Sumgayit City Police Office who exceeded their authority by participating, without a relevant court order, in an operation to evict you from the building where you had settled illegally; the officers responsible for the misconduct have been punished under the disciplinary procedure.”

27. In March 2005 the applicant lodged a complaint with the Sumgayit City Court against the decision of the Sumgayit City Prosecutor's Office of 14 May 2004. On 1 April 2005 the Sumgayit City Court dismissed the applicant's complaint and upheld the decision of 14 May 2004. It noted that the inquiry did not reveal any evidence that a criminal offence had been committed and that, therefore, the decision of 14 May 2004 was lawful.

#### **D. Inquiry by the Binagadi District Prosecutor's Office**

28. On 25 May 2005 the Prosecutor General quashed the Sumgayit City Prosecutor's Office's decision of 14 May 2004 on the refusal to institute criminal proceedings. On 14 June 2005 the case was forwarded to the Binagadi District Prosecutor's Office for an additional inquiry into the circumstances of the case.

29. In the period from 24 June to 12 August 2005, the investigator of the Binagadi District Prosecutor's Office questioned a number of witnesses (mostly the same ones as those who had been questioned before) and obtained written testimonies from them (see section F. below).

30. On 20 July 2005 the investigator requested an expert opinion on Chichek Mammadova's mental condition prior to her death and how it might have affected her actions leading to the suicide. In an expert opinion of 10 August 2005 an expert psychiatrist, having studied Chichek Mammadova's medical records and comments by people who had known her, concluded as follows:

“No symptoms of a psychogenic-depressive reaction potentially causing her suicide can be observed in Chichek Mammadova's personality and mental traits. However, in

the period preceding Chichek Mammadova's death, she had experienced a state of emotional stress of a degree capable of influencing her behaviour.”

31. On 17 August 2005 the investigator issued a decision refusing to institute criminal proceedings. The decision stated, *inter alia*:

“[According to the expert opinion of 10 August 2005,] the act of self-immolation by Chichek Mammadova was carried out in an attempt to prevent [her family's eviction]. During the incident, she found herself in the extreme circumstances of facing eviction from the rooms that [her family] had occupied, and reacted inadequately by self-immolating in an ostentatious manner, having decided that it would attract the attention of those who were around her, evoke in them feelings of compassion towards herself, and help her resolve the conflict situation she encountered. In the period preceding her death, Chichek Mammadova had experienced emotional stress of a degree that could have influenced her subsequent actions.

... the additional inquiry revealed that no other person had incited Chichek Mammadova to commit suicide by means of either ill-treating her, debasing her dignity or intimidating her.

The claims of [the applicant] have not been confirmed during the additional inquiry ... It was established that the [SCEA and police] officials had carried out their official duties in a lawful manner, had given lawful instructions and had not committed any breaches of law when implementing those instructions, and that there had been no *corpus delicti* in [their] actions.

Therefore ... the institution of criminal proceedings should be refused.”

32. It appears that, following this decision, the applicant sent a number of letters to the Prosecutor General's Office, complaining that the investigation into the circumstances of his wife's death had been inadequate. In letters of 22 September and 10 October 2005 the Prosecutor General's Office responded that the inquiry by the Binagadi District Prosecutor's Office did not reveal any criminal elements in the actions of the State officials and that the applicant could challenge the decision of the Binagadi District Prosecutor's Office of 17 August 2005 in the courts. The applicant did not lodge a judicial complaint.

### **E. Institution of criminal proceedings and criminal investigation**

33. On 7 June 2006 the First Deputy to the Prosecutor General quashed the decision of the Binagadi District Prosecutor's Office of 17 August 2005 on the refusal to institute criminal proceedings. Having regard to the contradictory testimonies of key witnesses and indications of possible breaches of law by the SCEA and police officials, the First Deputy to the Prosecutor General found that the inquiry had been incomplete and instituted criminal proceedings under Article 125 (incitement to suicide) of the Criminal Code. The Binagadi District Prosecutor's Office was instructed to carry out the investigation.



34. On 10 June 2006 the applicant was given the procedural status of a “legal successor to a victim of crime”. In June and July 2006 the applicant submitted to the investigator a number of petitions requesting him, *inter alia*, to summon certain additional witnesses and to remove certain SCEA and police officials from their official posts during the investigation period. On 1 August 2006 the investigator rejected these petitions.

35. It appears that the investigator again questioned mostly the same group of witnesses who had been questioned before (see paragraphs 23 and 29 above and section F. below).

36. On 7 September 2006 the three-month investigation period was extended for another two months.

37. On 1 October 2006 the investigation was suspended. On 14 November 2006 it was resumed. No documents are available in the case file in respect of these procedural events.

38. On 15 November 2006 the investigator from the Binagadi District Prosecutor's Office again suspended the investigation, owing to the inability “to determine the perpetrator of the criminal offence” of incitement to suicide.

39. The applicant lodged a judicial complaint against the investigator's decision of 15 November 2006 to suspend the investigation. On 19 March 2007 the Binagadi District Court quashed the impugned decision and instructed the Binagadi District Prosecutor's Office to resume the investigation. The court noted, *inter alia*:

“It appears from the material in the case file that the criminal investigation has not been full and comprehensive, and there was no basis for suspending the criminal proceedings as no face-to-face confrontations between witnesses have been held, and it has not been determined whether there were lawful grounds for the [SCEA and police] officials to enter the residential premises and remove the victim's belongings from there, whether the police officers indeed went to the scene of the incident with the aim of carrying out prophylactic measures, whether such prophylactic measures were lawful, whether any physical force were used against the residents of the premises, and whether the [State officials] at the scene of the incident abused their official authority.”

40. On 9 April 2007 the investigation was resumed. However, on 25 April 2007 the investigator of the Binagadi District Prosecutor's Office decided to suspend the investigation again. In his decision he noted that, after the resumption of the investigation on 9 April 2007, “a number of investigative steps ha[d] been carried out”; however, it was still impossible to determine the perpetrator of the offence of incitement to suicide. The nature of such investigative acts was unspecified.

41. The applicant lodged a judicial complaint against the investigator's decision of 25 April 2007 to suspend the investigation. On 7 June 2007 the Binagadi District Court dismissed the applicant's complaint and upheld the investigator's decision. On 4 July 2007 the Court of Appeal upheld the Binagadi District Court's decision.

42. On 16 September 2008 the investigator of the Binagadi District Prosecutor's Office issued a decision terminating the criminal proceedings on account of the absence of *corpus delicti* for the purposes of Article 125 of the Criminal Code in the actions of any of the persons involved in the incident resulting in the applicant's wife's self-immolation. The decision contained, *inter alia*, the following findings:

“From 5 March 2004 the [SCEA] became aware of the fact that [the applicant and his family] had changed, of their own free will [without authorisation], their place of residence and were illegally residing in a State-owned non-residential building. Despite several early warnings given by [SCEA and police] officials, [the applicant and his family] continued to illegally reside in those non-residential premises.

At around 11 a.m. on 26 March 2004, pursuant to an instruction by the [SCEA's] senior administration, [SCEA officials E.G. and Y.A.], police officers [N.G., E.N., N.A., C.V.], and the Deputy Head of the Sumgayit City Police Office J.M. went ... to the above address to have a prophylactic conversation with [the applicant and his family].

During the prophylactic conversation ... Chichek Mammadova became anxious and, having presumed that [her family] would be evicted from the premises, poured kerosene on herself and ignited it; a state of tension ensued at the scene of the incident; Chichek Mammadova was taken to hospital by her relatives; her husband [the applicant] had left the scene prior to Chichek Mammadova's self-immolation to send a complaint by telegram; as a result, a process of eviction was started in accordance with an instruction given on the spot by [E.G. and Y.A.]; the police officers loaded [the applicant's] belongings onto a lorry and transported them to [the hostel where the applicant's family had previously lived] and delivered them to [R.N.], the superintendent of the hostel.

It has been determined that the senior administration of [the SCEA] sent [E.G. and Y.A.] with the purpose of carrying out prophylactic measures in respect of the internally displaced persons who were illegally occupying the State-owned non-residential premises in order to ensure that [the latter] vacated the premises voluntarily, and that the senior management of [the SCEA] did not instruct its officials to evict the internally displaced persons by force. However, after [the applicant's] wife Chichek Mammadova, who was suffering from a mental illness, had set fire to herself, [E.G. and Y.A.] instructed the police officers to move out the [applicant's] belongings, organised the transportation of those belongings to the hostel..., delivered them to the superintendent [R.N.] and signed a deed of delivery. ...

It has been determined that, pursuant to an oral instruction from [the SCEA], the police officers were sent to the above-mentioned address by the administration of the Sumgayit City Police Office in order to participate in carrying out the prophylactic measures and, after the act of self-immolation by Chichek Mammadova, received an instruction directly from [E.G. and Y.A.] to move [the applicant's] belongings.

[Summaries of witness testimonies and forensic evidence follow.]

Pursuant to Article 5 of the Law on Social Protection of Internally Displaced Persons and Individuals Equated to Them of 21 May 1999, the relevant local executive authorities are responsible for temporary housing of internally displaced

persons. Internally displaced persons may be allowed to settle temporarily on their own only if the rights and lawful interests of other persons are not infringed. Otherwise, the relevant executive authority must ensure resettlement of the internally displaced persons to other accommodation ...

Pursuant to clause 4 of the Regulations on Resettlement of Internally Displaced Persons to Other Accommodation, adopted in Cabinet of Ministers Resolution No. 200 of 24 December 1999, in cases where the temporary settling of internally displaced persons breaches the housing rights of other individuals, the local executive authorities must provide the former with other suitable accommodation.

According to a statement received from the Sumgayit City Court, there has been no judicial order for the eviction of [the applicant] from the premises where he had settled.

[A summary of the expert opinion on Chichek Mammadova's mental state follows.]

The investigation did not reveal evidence in support of [the applicant's] allegations that [the SCEA] officials demanded a bribe from him, abused or exceeded their authority, or unlawfully evicted [the applicant's family], or that the police officers ... abused or exceeded their authority, or used force against [the applicant] and his family members or his mother-in-law. The decisions and actions of [the SCEA and police] officials taken in connection with the premises illegally occupied [by the applicant's family] were lawful and did not transgress the limits specified by the legislation [in force]. The actions of [the SCEA and police] officials did not contain any elements of offences under Articles 308, 309, 311 and 125 of the Criminal Code or any other criminal offences.

Moreover, the investigation revealed no indications that Chichek Mammadova was driven to commit suicide by way of ill-treatment debasing her dignity or threatening her, and found no person guilty of such acts. No elements of an offence under Article 125 of the Criminal Code have been established in the actions of any person [in connection with this incident].”

## **F. Witness testimonies**

43. Below are summaries of testimonies of the witnesses questioned at various times by the investigation authorities in the course of the above-mentioned proceedings. The summaries have been derived either from copies of the witness depositions submitted by the Government in their observations or from the texts of the investigation authorities' decisions, or both. It appears that a number of the witnesses were questioned more than once; in such cases, the summary includes the content of all their testimonies.

### *1. The applicant, his mother-in-law and his sister-in-law*

44. The applicant testified that, prior to 26 March 2004, he had been called to the SCEA several times and had been demanded to vacate the

premises in the Sumgayit Commissariat. On one occasion, he had been accompanied to the SCEA by a police officer, C.V. The applicant claimed that, during these meetings with the SCEA officials, he had been asked for a bribe.

45. At 11 a.m. on 26 March 2004 K.A. knocked on the applicant's door and did not tell him the real reason for her visit when he asked. When he opened the door, K.A. entered the dwelling with E.G., followed by police officers N.I., S.S. and C.V. (whom the applicant identified by their first names), and several other police officers unknown to him. A "large number" of other unknown police officers remained outside. N.I., S.S. and C.V. used force on the applicant immediately after they had gone inside. The applicant's wife, who witnessed this, asked the police officers why they were doing this and threatened to set fire to herself. In reply, E.G. mockingly challenged her to do so. At that moment, the applicant was able to escape from the police officers and go outside in search of a phone to call his relatives for assistance. When he came back, he saw a burnt blanket at the entrance of the dwelling and found out that his wife had performed self-immolation and had been taken to hospital. He went to the hospital to see his wife. From the hospital he went to a post office to send telegrams to various authorities complaining about the incident. When he came back to his dwelling from the post office, he saw that his possessions had been removed.

46. The testimony of the applicant's mother-in-law mostly corroborated the applicant's statements. Unlike him, she was inside the dwelling during the entire incident. She estimated that there had been around twenty to twenty-five officials and police officers during the incident and noted that they all had entered the dwelling. She also noted that, at one point, police officer N.I. had used force on the applicant by twisting his arms. She further submitted that E.G. had gone inside the dwelling and provoked Chichek Mammadova by offering her a box of matches. Following this, Chichek went into another room and emerged from it burning. One of the police officers helped put out the fire by throwing a blanket and a carpet on Chichek Mammadova.

47. The applicant's sister-in-law was in accord with her mother's testimony.

## *2. E.G., an SCEA official*

48. E.G. stated that the applicant and his family members had been notified earlier about the illegality of their actions and had been asked to vacate their dwelling in the Commissariat building. On 25 March 2004 S.R., a head of department at the SCEA, instructed him and another colleague of his (F.K.) to participate, as "observers" from the SCEA, in the "prophylactic measures" that would be taken the next day in connection with the applicant's illegal occupation of part of the Commissariat building. On

26 March 2004 he went to that address together with Y.A., while F.K. joined them much later. There were already an unspecified number of police officers there. An unspecified number of unidentified relatives and friends of the applicant were also there. The latter verbally insulted him and Y.A. The Deputy Head of the Sumgayit City Police Office (J.M.) was also there and spoke to the applicant about vacating the premises.

49. E.G. specified that K.A. had knocked on the applicant's door and, immediately after it had been opened, several policemen had gone inside and spoken to the applicant. E.G. himself was standing, together with Y.A., outside the building, about 40-50 metres away from the entrance to the applicant's dwelling. "A little while later", he heard screams from inside the applicant's dwelling and saw the police officers bring out Chichek Mammadova, who was badly burnt and was then taken to hospital. The applicant was not there at this time, as he had gone away somewhere. After Chichek Mammadova had been driven away, the premises occupied by the applicant and his possessions were left unattended by his family members, so they were loaded onto a lorry and taken to a more "secure place", that is, the hostel where the applicant had lived before.

50. E.G. denied speaking to the applicant prior to the incident and asking for any bribe from him. He also denied offering any matches to Chichek Mammadova and repeatedly insisted that he had been standing outside when she had immolated herself. He noted that the police officers had not used any force against the applicant or his family members. He also denied issuing any instructions to move the applicant's possessions out of the dwelling and stated that the police officers had decided to do so by themselves.

### *3. Y.A., an SCEA official*

51. Y.A. testified that, on 26 March 2004, his colleagues E.G. and F.K. had asked him to accompany them to the premises that the applicant had illegally occupied. When they arrived, there were already an unspecified number of police officers and an unspecified number of the applicant's relatives and friends. He and E.G. were standing outside the building, a significant distance away from the entrance to the premises occupied by the applicant. A little while later, they heard a commotion inside the premises and saw several police officers run inside. The latter brought out a badly burnt woman and sent her to a hospital. One of the police officers, E.N., helped put out the fire and, as a result, suffered a burn injury to his hand. (However, in another deposition Y.A. slightly changed his recollection of the above events and specified that, after K.A. and several police officers had knocked on the applicant's door, they had all gone inside. A little while later, Y.A. heard screams from the inside and heard the police officers bring out Chichek Mammadova.)

52. The applicant, by this time, had gone away somewhere else and there was a state of confusion and disarray at the scene of the incident. Therefore, the applicant's possessions were loaded onto a lorry and taken to a more secure place (the hostel) for "temporary storage". Subsequently, the applicant reclaimed his possessions and took them back to the same premises in the Commissariat building that he had illegally occupied.

53. Y.A. insisted that he and E.G. had been standing outside when Chichek Mammadova had immolated herself and that E.G. had never offered any matches to her. He submitted that the police officers had not used any force against the applicant or his family members.

*4. F.K., an SCEA official*

54. F.K. testified that S.R., a head of department at the SCEA, had instructed him and E.G. to participate, as "observers" from the SCEA, in the "prophylactic measures" that would be taken the next day in connection with the applicant's illegal occupation of the premises in the Commissariat building. However, in the early morning of 26 March 2004 he was away on another assignment and arrived at the scene of the incident only after Chichek Mammadova had immolated herself. He had assisted in the transportation and delivery of the applicant's possessions to the hostel's superintendent.

*5. S.R., an SCEA official*

55. S.R. testified that, in early March 2004, he had received information that a family of internally displaced persons had illegally settled in the administrative building of the Sumgayit Commissariat. Thereafter, the applicant came to the SCEA to meet him personally and asked him to allow his family to stay in that building. However, S.R. refused, stating that the applicant's actions were illegal.

56. He further noted that, on 26 March 2004, he had instructed E.G. and Y.A. to go to the applicant's premises and have a "prophylactic conversation" with the latter. He also requested the Sumgayit City Police Office to send some police officers there in order to "avoid any incidents". However, S.R. insisted that he had not instructed either E.G. and Y.A. or the police officers to evict the applicant's family by force. The applicant's possessions were moved out of the premises only after the act of self-immolation by Chichek Mammadova pursuant to a decision taken on the spot by the SCEA officials, in order to preserve the possessions from possible theft in the atmosphere of confusion which ensued at the scene of the incident.

6. *J.M., Deputy Head of the Sumgayit City Police Office*

57. J.M. testified that he had received an oral instruction to carry out a “prophylactic conversation” with the applicant's family and to protect public order at the site during such “prophylactic” measures. For this purpose, he sent police officers E.N. and N.G. to the Commissariat building. He himself also went there at around noon on 26 March 2004 and talked to the applicant and the SCEA officials who were already there. About 5-10 minutes after his arrival, he heard screams from inside the applicant's dwelling and saw E.N. and N.G. go inside. The latter helped to put out the fire on Chichek Mammadova's body and to send her to hospital. Thereafter, he called more police officers to the scene in order to restore order and preserve the applicant's possessions.

7. *C.V., police officer*

58. C.V. testified that on 26 March 2004 he and his colleague N.A. had been told that the authorities would carry out a “prophylactic conversation” with the applicant and had been instructed to go to the Commissariat building with the aim of protecting public order. When they arrived at the site, there were four other police officers (J.M., E.N., N.G. and S.S.), as well as E.G., Y.A. and K.A. Then K.A. knocked on the door and the applicant came out. The applicant and J.M. engaged in a conversation. The other police officers, including himself, were standing nearby. E.G. and Y.A. were standing about 30 metres from the entrance to the dwelling. While J.M. and the applicant were talking, C.V. heard screams from inside. He and two other police officers (N.A. and E.N.) went inside and saw Chichek Mammadova on fire, coming out of a back room. The police officers, including himself, put out the fire on her body by throwing blankets on her. At this time, the applicant went away somewhere, possibly to a post office. About 15 minutes later, one of Chichek Mammadova's relatives arrived and took her to hospital. Out of the applicant's family, only the applicant's elderly mother-in-law remained at the scene and she was in a state of shock because of her daughter's suicide attempt. The applicant's home possessions were essentially left unattended at this moment, so they were loaded onto a lorry and taken to a more secure place.

59. C.V. denied applying any force or pressure on the applicant or his family members. He did not assist in moving out the applicant's possessions.

8. *N.A., police officer*

60. N.A. testified that on 26 March 2004 he had received an instruction from his superiors to go to the Commissariat building with the aim of protecting public order during the eviction of the applicant's family. He went there together with C.V., another police officer. At an unspecified moment, he heard screams from inside the applicant's premises, and he and

other police officers ran inside and saw Chichek Mammadova on fire. They helped put out the fire and took her to hospital. He returned to the scene around two hours later and saw that the applicant's possessions had been loaded onto a lorry. He denied applying any force or pressure on the applicant or his family members. According to him, E.G. was standing outside when Chichek Mammadova immolated herself, never went inside the applicant's premises and never offered her matches.

*9. E.N., police officer*

61. E.N. testified that on 26 March 2004 he had been told that the authorities would carry out a “prophylactic conversation” with the applicant and had been instructed to go to the Commissariat building with the aim of protecting public order. The aim of the “prophylactic conversation” was to persuade the applicant to vacate the illegally occupied premises voluntarily. There were a total of five police officers at the site (including himself, J.M., C.V., N.A. and N.G.). E.G. and Y.A. were also there and were standing some distance away from the premises, because the applicant's relatives and friends kept insulting them. During J.M.'s conversation with the applicant, E.N. heard screams from inside the premises and immediately ran there. He saw a woman on fire. He took a blanket and extinguished the fire on her body. While doing this, he himself was injured, suffering a burn to his hand.

62. E.N. denied applying any force or pressure on the applicant or his family members. He also did not assist in moving out the applicant's possessions, as he had to leave the scene to receive medical treatment for his injury.

*10. N.G., police officer*

63. N.G. testified that on 26 March 2004 he had been told that the authorities would carry out a “prophylactic conversation” with the applicant and had been instructed to go to the Commissariat building with the aim of protecting public order. He went there together with E.N., his colleague. While one of the police officers engaged in conversation with the applicant, E.G., Y.A. and all the police officers (including himself) were standing outside. At this moment, he heard screams from inside the premises. He and E.N. went inside. E.N. extinguished the fire on Chichek Mammadova's body and, while doing this, suffered an injury to his hand. He accompanied E.N., who needed medical treatment, to hospital. Chichek Mammadova was taken to hospital by her relatives. When he returned about an hour later, he saw that the applicant's possessions were being loaded onto a lorry by the applicant's own relatives and friends. Police officers were occasionally assisting them.

64. N.G. denied applying any force or pressure on the applicant or his family members. He insisted that all the police officers had been standing



outside the applicant's premises when Chichek Mammadova had set fire to herself inside the premises. E.G. and Y.A. were also outside, further away from the building. Police officers N.I. and S.S. were not at the scene of the incident at the time of Chichek Mammadova's suicide attempt and arrived only after the incident.

*11. N.I., police officer*

65. N.I. was a police officer whom the applicant and his mother-in-law specifically identified by first name in their statements, alleging that N.I. had used force against the applicant.

66. N.I. testified that at around noon on 26 March 2004 he had received information that a woman had immolated herself at the Commissariat building and that a large crowd of people had gathered there. He went to the Commissariat building and saw a lorry loaded with various household items. He enquired of the officials who were there what had happened. He then left the site.

67. N.I. insisted that he had not participated in this operation, that he had not been at the scene of the incident at the time when Chichek Mammadova had attempted suicide, that he had not met the applicant before, and that he was unaware of any reasons why the applicant had specifically mentioned his name in his complaints.

*12. S.S., police officer*

68. S.S. was a police officer whom the applicant identified by first name in his testimony, alleging that S.S. had used force against him.

69. S.S. testified that at around noon on 26 March 2004 he had received an instruction by portable radio to go to the Commissariat building. When he arrived there at around 12.30 p.m., he found out that a woman had committed an act of self-immolation and had been taken to hospital. Other police officers told him the entire story. After he arrived, he only witnessed how the applicant's possessions were being loaded onto a lorry by the applicant's own relatives and friends. Police officers were occasionally assisting them. Out of the applicant's family, only his elderly mother-in-law was there. The applicant and his child had gone.

70. S.S. insisted that he had not been at the scene of the incident at the time when Chichek Mammadova had attempted suicide and that neither he nor any other police officer had used any force against the applicant or his family members.

*13. K.A., employee of Housing Maintenance and Utilities Board No. 1*

71. K.A. stated that on 26 March 2004 her colleague at the Housing Maintenance and Utilities Board, B.I., had requested her to go to the applicant's dwelling following an instruction received from the SCEA.

When she arrived there, she saw E.G., Y.A. and five or six police officers. E.G. and Y.A. told her that they needed a female to knock on the applicant's door and asked her to do it. When the door was opened, both the police officers and the SCEA officials quickly entered inside. Before she knocked on the door, Y.A. had also instructed her to procure a lorry. Therefore, she immediately left the scene after knocking on the door. For this reason, she did not witness the act of self-immolation by the applicant's wife. When she returned to the scene of the incident about 30 minutes later, she heard that Chichek Mammadova had attempted suicide and had been taken to hospital. K.A. was then asked to enter the applicant's dwelling and write an itemised list of the applicant's household items that were being loaded onto the lorry. She did not want to do this, but did so under forceful orders from the SCEA officials.

*14. B.I., employee of Housing Maintenance and Utilities Board No. 1*

72. B.I. stated that he had gone to the applicant's dwelling together with K.A., but had left before all the events had happened because of other urgent business. During the short period when he was there, he saw five or six police officers standing near the Commissariat building and E.G. and Y.A. standing a little further away.

*15. T.M., television journalist*

73. T.M. testified that at around 1 p.m. on 26 March 2004 she had heard about the incident in the Commissariat building. She immediately went there together with a camera operator. However, when they arrived, everything was over and they could not get any video footage of the relevant events. Thereafter, she went to the hospital where Chichek Mammadova had been taken, but was not able to interview her.

*16. R.N., hostel superintendent*

74. R.N. was the superintendent of the State-owned hostel where the applicant's family used to live before they moved to the new dwelling at the Commissariat building. According to him, the applicant's family lived in his hostel from 1994 to January 2004. The applicant's wife suffered from a "nervous disease" and was "mentally unstable". In January 2004 the applicant's family left the hostel. On 26 March 2004 the SCEA officials and police officers brought the applicant's household possessions back to the hostel for "temporary storage" (as they explained). He signed the list of items and locked the applicant's possessions in a separate room. On 6 April 2004 the applicant reclaimed his possessions.

*17. N.Q., an acquaintance of the applicant*

75. N.Q. testified that, prior to the applicant's eviction from his dwelling, he had gone to the SCEA together with the applicant with the purpose of obtaining permission for the applicant to stay in the dwelling. He noted that, during that meeting, the SCEA officers had explained to the applicant that he was occupying the dwelling illegally. They had not demanded any bribes from the applicant in return for permission to stay there.

*18. S.B.*

76. S.B. was a member of an association of veterans which occupied part of the premises in the Commissariat building. He described in general how the applicant had carried out repair works in his dwelling. He noted that there had been no objections from any State authorities during the time when the applicant had carried out the work.

## II. RELEVANT DOMESTIC LAW

### **A. Relevant legal provisions on housing of refugees and internally displaced persons**

77. Article 2 of the Law on Social Protection of Internally Displaced Persons and Individuals Equated to Them of 21 May 1999 (“the IDP Social Protection Act”) provides as follows:

“Persons displaced from the place of their permanent residence in the territory of the Republic of Azerbaijan to other places within the territory of the country as a result of foreign military aggression, the occupation of certain territories or continuous gunfire shall be considered internally displaced persons subject to the provisions of this Law.”

78. Article 5 of the IDP Social Protection Act provides as follows:

“The relevant executive authority [the Cabinet of Ministers, the State Committee on Refugees' Affairs and local executive authorities, within the scope of their respective competence] shall deal with the housing of internally displaced persons. Residential, administrative and auxiliary buildings, as well as other buildings, shall be used for such housing purposes. Where there is no possibility of housing internally displaced persons in such buildings or where the population density in a specific settlement does not allow such a possibility, they shall be settled in camps specially set up for internally displaced persons. ...

Internally displaced persons may be allowed to temporarily settle on their own only if the rights and lawful interests of other persons are not infringed. Otherwise, the relevant executive authority must ensure resettlement of the internally displaced persons to other accommodation...”

79. Clause 4 of the Regulations on Resettlement of Internally Displaced Persons to Other Accommodation, adopted by the Cabinet of Ministers in

Resolution No. 200 of 24 December 1999 (“the IDP Resettlement Regulations”), provides:

“In cases where the temporary settling of internally displaced persons breaches the housing rights of other individuals, the former must be provided with other suitable accommodation.”

## **B. Criminal Code of 2000**

80. Article 125 (“Incitement to suicide”) of the Criminal Code provides as follows:

“Incitement of a person who is dependent on the inciter for material, service-related or other reasons to commit or attempt suicide by means of cruel treatment of this person, or by means of systematic denigration of his dignity, or by means of threats

shall be punishable by restraint of liberty for a term of up to three years or by imprisonment for a term of three to seven years.”

81. Articles 308, 309 and 311 of the Criminal Code deal respectively with the criminal offences of abuse of official authority, excess of official authority and bribe-taking.

## **C. Code of Criminal Procedure of 2000**

82. By Article 87.6 of the Code of Criminal Procedure (“the CCrP”), a person recognised as a “victim of crime” has, *inter alia*, the following procedural rights: to submit material to the criminal case file; to request the status of a private prosecutor at any pre-trial stage; to object to actions of the criminal prosecution authority; to lodge petitions; to have access to transcripts and documents in the case file; to be informed about and to obtain copies of the procedural decisions of the criminal prosecution authority (including a decision to discontinue the criminal proceedings); and to lodge appeals against procedural steps or decisions. In contrast, a person participating in the proceedings as a witness is entitled to have access only to those transcripts and documents which are related to him or her (Article 95.6.8).

83. On being informed about acts of a criminal character that are planned or have been carried out or on discovering a criminal event by himself or herself, a preliminary investigator, investigator or prosecutor must take the necessary steps to preserve and obtain the relevant evidence and must immediately begin an investigation (Article 38.1). The initial grounds for instituting criminal proceedings may be either statements about a planned or committed criminal offence submitted by individuals, or information received from companies, officials and the mass media, or

direct discovery of a criminal offence by a preliminary investigator, investigator or prosecutor (Article 46.2).

84. Parties to criminal proceedings (and other persons involved in such proceedings in cases specified in the CCrP) are entitled to complain about procedural steps or decisions by the criminal prosecution authority. Procedural steps or decisions by the preliminary investigator or the investigator may be appealed against to the supervising prosecutor and the procedural steps or decisions of the latter may be appealed against to the hierarchically superior prosecutor (Articles 122.2.1 and 122.2.2). Certain types of procedural steps or decisions (of the preliminary investigator, investigator or supervising prosecutor) specified in Article 449.3 of the CCrP may be appealed against directly to the supervising court (Article 122.2.3).

85. A decision not to institute criminal proceedings is taken by a preliminary investigator, investigator or supervising prosecutor when there are no lawful grounds for instituting criminal proceedings (Article 212.1). Within 24 hours after its issuance, this decision is sent to the supervising prosecutor as well as to the person who had informed the law-enforcement authorities about the alleged criminal offence (Article 212.2). A decision not to institute criminal proceedings may be appealed against to the supervising prosecutor, or a prosecutor hierarchically superior to the supervising prosecutor, or to the supervising court (Article 212.3). If an appeal is lodged with the supervising court, the latter may either (a) quash the decision and draw the supervising prosecutor's attention to any breaches of the CCrP's provisions concerning the procedure for criminal inquiries and requirements for instituting criminal proceedings, or (b) uphold the decision not to institute criminal proceedings (Article 212.4.2).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

86. Relying on Articles 2, 3, 6 and 13 of the Convention, the applicant complained that State officials and police officers had been responsible for his wife's death, because they had unlawfully entered his family's dwelling, used excessive force and failed to take immediate measures to rescue his wife when she had set herself on fire. He further complained that the investigation authorities had not properly investigated the circumstances of his wife's death. The Court considers that the present complaint falls to be examined solely under Article 2 of the Convention, which reads in its first sentence as follows:

“Everyone's right to life shall be protected by law. ...”

### **A. Admissibility**

87. The Government submitted that the applicant had not exhausted available domestic remedies. They noted that he had not lodged an appeal against the Sumgayit City Court's decision of 1 April 2005 upholding the investigator's decision not to institute criminal proceedings. Moreover, the applicant had not lodged any judicial complaints against the second decision refusing to institute criminal proceedings, given on 17 August 2005 by the investigator of the Binagadi District Prosecutor's Office, following the second criminal inquiry.

88. The applicant submitted that he had taken all the necessary steps to exhaust the domestic remedies. In particular, Article 212.3 of the CCrP provided for two options for appeal from the investigator's decisions: either an appeal to the supervising prosecutor or an appeal to the court. Following the second decision on the refusal to institute criminal proceedings, the applicant had chosen to appeal to the supervising prosecutor, by sending a letter of complaint to the Prosecutor General. The latter had upheld the investigator's decision. The applicant argued that using the other alternative (appeals to supervising courts) did not offer him any prospect of success as the courts routinely upheld decisions of the prosecution authorities. Moreover, the applicant argued that, in any event, since the prosecution authorities had in fact subsequently instituted criminal proceedings, he was absolved from the requirement to lodge appeals against the previous decisions not to institute criminal proceedings. Thereafter, in the context of the criminal investigation, he had duly lodged appeals against each of the investigators' decisions to suspend the criminal investigation, but his appeals had been unsuccessful.

89. The Court notes that the Government's objection is limited to the alleged failure by the applicant to exhaust all possible appeals to the supervising courts against the decisions of 14 May 2004 and 17 August 2005 not to institute criminal proceedings following the inquiries by the Sumgayit City Prosecutor's Office and the Binagadi District Prosecutor's Office respectively. The Court notes that, had these appeals been lodged and been successful, they would have resulted in the quashing of the relevant decision and a renewed inquiry, possibly followed by a decision to institute criminal proceedings. However, the Court observes that, in any event, on 7 June 2006, pursuant to a decision by the Deputy Prosecutor General, criminal proceedings were actually instituted in the present case. Even assuming that the remedies suggested by the Government were otherwise effective, the Court accepts the applicant's argument that the institution of criminal proceedings produced the same outcome as the remedies suggested by the Government, making it no longer necessary for the applicant to

pursue them. Moreover, the Court notes that, in the context of the criminal proceedings, the applicant repeatedly challenged various procedural decisions by the investigation authorities before the supervising courts, all of which challenges produced repetitive results, as the investigation was repeatedly suspended and his appeals were dismissed (except for one occasion when the supervising court instructed the investigation authorities to resume the investigation and ordered remedial measures, after which the investigation was in any event suspended again after a short period). Thus, in any event, the Court is not persuaded that any additional appeals would have made any difference in the present case.

90. For the above reasons, the applicant was absolved from the requirement to exhaust the remedies indicated by the Government. As the Government have not suggested any other specific remedies available to the applicant in theory or practice, there is no call for the Court to look further into this matter.

91. Accordingly, the Court dismisses the Government's objection. It further notes that this complaint is not otherwise manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

92. The Government argued that all necessary steps had been taken by the prosecution authorities to establish whether any person, other than Chichek Mammadova herself, had been responsible for her death. However, the inquiries and investigations carried out by the domestic authorities had conclusively established that the applicant's wife had committed suicide without the involvement of any other individuals. The Government maintained that the State was not responsible for the death of the applicant's wife and that the official investigation into the circumstances of her death had been complete and comprehensive.

93. The applicant submitted that, although he and his family had settled in the premises of an administrative building without prior permission, their actions were not unlawful, as the domestic law allowed them to find accommodation on their own initiative as long as they did not infringe the housing rights of other persons. In any event, on account of the high number of refugees and internally displaced persons in the country, the authorities were usually tolerant in cases when refugees and internally displaced persons settled of their own accord in various administrative or other premises. It was the obligation of the authorities, and in this case the SCEA, to provide the applicant and his family with suitable accommodation, and they had not done so. Therefore, the applicant and his family should have

not been evicted until they were provided with suitable accommodation for a large family.

94. The applicant further maintained that the operation conducted by the State agents had been unlawful. The local executive authorities and police had no competence under domestic law to evict anyone by force without a court order. By doing so in the present case, the SCEA officials and police officers involved in the operation had abused their authority, which was a criminal offence. Moreover, the State agents had known that the applicant's family were internally displaced persons and had housing problems. Therefore, they should have anticipated that their actions might cause an emotional reaction on the part of the applicant's family members. When the operation had commenced, the State agents had assumed full control of the situation in the applicant's dwelling. Chichek Mammadova's suicide threat might have seemed inadequate, but it was the "most accessible and appropriate way of defence" in the circumstances. There had been enough time between the moment when Chichek Mammadova had poured kerosene on herself and the moment she had ignited it for the State agents to take steps to save her life. They could, for example, have defused the tension by leaving the dwelling, or ripped off Chichek Mammadova's clothes soaked in kerosene, or stopped her from setting herself on fire. However, they had done nothing to stop her from carrying out her threat, and one of them had even mockingly encouraged her to do it by offering her a box of matches.

95. The investigations carried out into the circumstances of Chichek Mammadova's suicide had not been effective. No criminal inquiry had been conducted until after she had died. No one had questioned her while she was in hospital for three days and while she could still talk or communicate by other means. Subsequently, during the questioning, most of the implicated State agents had lied in their testimonies, in particular in respect of the question whether they had gone inside the dwelling. As a result, there were many contradictions between witness testimonies, and there were serious discrepancies even between the testimonies of the various State agents themselves. However, the investigators had done nothing to effectively address these contradictions, such as allowing the witnesses to be cross-examined. The applicant claimed that some of the written testimonies of the State agents had been written in the same handwriting and "belonged stylistically" to one of the investigators.

96. The applicant argued that, in general, the investigation had been "superficial and biased". On several occasions, the investigating authorities had failed to inform him about their procedural decisions and actions. Some of the decisions of supervising courts had been sent to the applicant late and he had therefore been unable to appeal against them. The applicant had generally not been given an opportunity to review and challenge any evidentiary material obtained by the investigating authorities. The delivery dates of some of the investigating authorities' procedural decisions had



allegedly been “falsified”. The applicant further claimed that the Government had failed to submit to the Court part of the material from the investigation.

97. The applicant also noted that the authorities had only carried out two brief and superficial criminal inquiries before he had lodged the present application with the Court. The criminal proceedings had been instituted only after the authorities had become aware of the Court proceedings.

## 2. *The Court's assessment*

### (a) **General principles**

#### (i) *Principles relating to the prevention of infringements of the right to life: the substantive aspect of Article 2*

98. Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which in peacetime no derogation is permitted under Article 15. Together with Article 3, it also enshrines one of the basic values of the democratic societies making up the Council of Europe. The circumstances in which deprivation of life may be justified must therefore be strictly construed. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146-147, Series A no. 324).

99. The Court reiterates that the first sentence of Article 2 enjoins the Contracting States not only to refrain from the taking of life “intentionally” or by the “use of force” disproportionate to the legitimate aims referred to in sub-paragraphs (a) to (c) of the second paragraph of that provision, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual from another individual or, in particular circumstances, from himself (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII; *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III; and *Renolde v. France*, no. 5608/05, § 81, ECHR 2008-...). However, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern

societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising (see *Osman*, cited above, § 116).

100. A failure to comply with the positive obligation will occur where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the acts of a third party (or, in particular circumstances, from self-harm) and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (*ibid.*; see also *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 51, ECHR 2009-...; see also, *mutatis mutandis*, *Tanribilir v. Turkey*, no. 21422/93, § 70, 16 November 2000, in respect of a positive obligation to protect from self-harm).

(ii) *Principles relating to the response required in the event of alleged infringements of the right to life: the procedural aspect of Article 2*

101. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 91, ECHR 2004-XII, and *Sergey Shevchenko v. Ukraine*, no. 32478/02, § 63, 4 April 2006). In that connection the Court has held that, if the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation to set up an “effective judicial system” does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims (see, for example, *Vo v. France* [GC], no. 53924/00, § 90, ECHR 2004-VII; *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002-I; and *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 90, 94 and 95, ECHR 2002-VIII). The minimum requirement for such a system is that the persons responsible for the investigation must be independent from those implicated in the events. This means hierarchical or institutional independence and also practical independence (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 70, ECHR 2002-II, and *Mastromatteo*, cited above, § 91).

102. The Court further reiterates that, in cases where individuals have been killed as a result of the use of force, the obligation to protect the right to life requires by implication some form of independent and impartial official investigation that satisfies certain minimum standards as to

effectiveness (see, among many other authorities, *Gül v. Turkey*, no. 22676/93, § 88, 14 December 2000; *Anguelova v. Bulgaria*, no. 38361/97, § 136, ECHR 2002-IV; and *Makaratzis v. Greece* [GC], no. 50385/99, § 73, ECHR 2004-XI). In the Court's opinion, the same standards also apply to investigations in cases where a person dies in suspicious circumstances in which the State's positive obligation under Article 2 is at stake (see, *mutatis mutandis*, *Trubnikov v. Russia*, no. 49790/99, §§ 87-88, 5 July 2005; *Paul and Audrey Edwards*, cited above, § 74; and *Slimani v. France*, no. 57671/00, § 30, ECHR 2004-IX).

103. Specifically, the essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. The kind of investigation that will achieve those purposes may vary according to the circumstances. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see, among other authorities, *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 221, ECHR 2004-III).

104. The investigation must also be effective in the sense that it is capable of ascertaining the circumstances in which the incident took place and leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see *McKerr v. the United Kingdom*, no. 28883/95, § 113, ECHR 2001-III, and *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 105, 23 February 2006).

105. A requirement of promptness and reasonable expedition is implicit in this context. It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating suspicious deaths may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, *mutatis mutandis*, *McKerr*, cited above, § 114, with further references). For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to

case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (ibid., § 115, with further references).

**(b) Application to the present case**

*(i) Whether the State agents were responsible for Chichek Mammadova's death*

106. It is undisputed that Chichek Mammadova's death was caused by suicide and was not caused by any lethal force used by any other person. She inflicted fatal injuries to herself by pouring a flammable liquid over herself and igniting it. According to all relevant witness testimonies and expert opinions, she did so in direct response to the police operation conducted in the dwelling where she and her family resided. In this context, the parties are in dispute as to the extent of the responsibility of the SCEA officials and police officers (hereafter, where necessary, collectively referred to as “the State agents”) for the incident leading to Chichek Mammadova's death. Therefore, the Court considers that it is necessary to have regard to the nature of this police operation and to determine the degree of control that the authorities exercised over the events in question. Furthermore, it is necessary to determine whether the circumstances of the case gave rise to a positive obligation on the part of the State agents to prevent the danger to Chichek Mammadova's life.

107. It is clear from the facts of the case that the applicant and his family settled in the dwelling of their own accord, without any official authorisation to settle inside an administrative building not designated for residential purposes. The Court is aware that, as a result of the Nagorno-Karabakh conflict, Azerbaijan has had to deal with the continuous problem of temporarily accommodating hundreds of thousands of refugees and internally displaced persons who have fled their permanent places of residence in Armenia and in the conflict zone. It is not an uncommon occurrence for some of these refugees and internally displaced persons to have attempted to find housing of their own accord, by occupying parts of administrative buildings or even private flats (compare *Akimova v. Azerbaijan*, no. 19853/03, §§ 8-10, 27 September 2007).

108. It is also clear that the occupation of the dwelling by the applicant's family was considered illegal by the SCEA, which had repeatedly demanded them to vacate it. As to the operation conducted by the SCEA and the police in the applicant's dwelling on 26 March, the parties disputed its nature and purpose.

109. The only explanation provided by the authorities (the SCEA and police officials, the investigation authorities, and the Government in their submissions in the present case) was that a number of public servants and police officers had been dispatched to the applicant's dwelling for “prophylactic measures” and that they had no intention of evicting the

applicant's family by force. Furthermore, according to the authorities, the decision to move the applicant's belongings out of the dwelling was taken on the spot, only after Chichek Mammadova had immolated herself, in order to guarantee the safety of these belongings in the absence of the applicant and the rest of his family (all of whom had presumably left to accompany Chichek Mammadova to hospital). However, the Court is not convinced by this explanation. It notes that at least five police officers and several other officials were involved in this operation. Some witnesses testified (see, for example, the testimony of K.A. in paragraph 71 above) that an order to bring a lorry had been given as soon as the authorities had arrived at the applicant's dwelling, prior to Chichek Mammadova's suicide attempt. No meaningful explanation was provided as to why so many police officers were needed and why a lorry was brought, if the authorities' only intention on that day was to have a "prophylactic conversation" with the applicant. Moreover, even assuming that the dwelling and the belongings of the applicant's family were left unattended by them after Chichek Mammadova's suicide attempt, it has not been explained why the SCEA officials had to move the belongings out of the dwelling and transport them to another location, apparently at the State's expense, and why they could not secure their safety by other, more effortless means. In the light of the above, the Court considers that the only reasonable explanation for engaging so many police officers and bringing a lorry to the scene was that, from the very beginning, the operation was aimed at having the applicant's family vacate the dwelling on that same day, either by persuading them to do so voluntarily or by evicting them by force. This conclusion is supported by the fact that their personal belongings were indeed moved out of the dwelling on that same day. In such circumstances, the Court cannot but conclude that, regardless of various vague terms such as "prophylactic measures" or "prophylactic conversation", which were subsequently used, the real aim of this operation was to evict the applicant's family from the dwelling.

110. Moreover, it is questionable whether this operation was conducted on a lawful basis. The Government have not provided any explanation as to the legal basis for the actions of the SCEA officials and police officers in the present case. According to the material in the case file, it appears that the SCEA officials and police officers acted merely on the basis of vaguely worded oral instructions coming from the SCEA administration. There was no court order authorising the SCEA and the police to evict the applicant's family. The domestic prosecuting authorities' and courts' decisions were not uniform in their assessment of the operation, with some finding that they acted within their competence (see paragraphs 31 and 42 above), and others casting doubt on the lawfulness of the authorities' actions (see paragraphs 26, 33 and 39 above).

111. Nevertheless, the Court considers that, for the purposes of the present complaint under Article 2, the question of whether there was a lawful basis for this operation is not crucial. The Court considers that, by conducting the operation to evict the applicant's family (whether lawfully or not), the authorities could not be considered to have intentionally put the life of the applicant's wife at risk or otherwise caused her to commit suicide. The Court considers that, reasonably speaking, self-immolation as a protest tactic does not constitute predictable or reasonable conduct in the context of eviction from an illegally occupied dwelling, even in a situation involving such a particularly vulnerable sector of the population as refugees and internally displaced persons. When deciding to send the police to the applicant's dwelling in order to evict his family, the authorities could not have reasonably anticipated that the applicant's wife might react by committing suicide. There is no evidence to suggest that, in advance of the operation, the State agents involved had been aware, or should have been aware, of Chichek Mammadova's state of mental health and her alleged propensity for erratic behaviour.

112. For the above reasons, the Court finds that the authorities' decision to evict the applicant's family from the dwelling (irrespective of whether or not it had a lawful basis) did not, in itself, engage the State's responsibility under Article 2 of the Convention. Moreover, having regard to the evidence before it, the Court considers that, despite the applicant's allegations, there is insufficient evidence to establish, to the requisite standard of proof, that the State agents involved incited or otherwise encouraged Chichek Mammadova to set fire to herself in the course of the eviction process.

113. However, the State's responsibility under Article 2 is not limited only to the above considerations. The Court considers that the principal issue in the present case stems from the fact that, during the process of eviction, the events unfolded in an unpredictable way and the State agents were suddenly confronted with a situation where their demands to vacate the dwelling were met with an act of self-immolation by the applicant's wife. In this context, it is necessary to determine whether this specific situation triggered the State's positive obligation under Article 2; that is, whether at some point during the course of the operation the State agents became aware or ought to have become aware that Chichek Mammadova posed a real and immediate risk of suicide and, if so, whether they did all that could reasonably have been expected of them to prevent that risk.

114. The Court notes that, as a general rule, in a police operation with the aim of eviction, as in any other police operation, the police are expected to place the flow of events under their control, to a certain degree. Moreover, in the present case, Chichek Mammadova's actions, however unpredictable or unreasonable they might have seemed, constituted a direct response to the State agents' demands and actions.

115. The Court considers that, in a situation where an individual threatens to take his or her own life in plain view of State agents and, moreover, where this threat is an emotional reaction directly induced by the State agents' actions or demands, the latter should treat this threat with the utmost seriousness as constituting an imminent risk to that individual's life, regardless of how unexpected that threat might have been. In the Court's opinion, in such a situation as in the present case, if the State agents become aware of such a threat a sufficient time in advance, a positive obligation arises under Article 2 requiring them to prevent this threat from materialising, by any means which are reasonable and feasible in the circumstances.

116. In the context of the present case, the Court notes that, depending on practical possibilities and the moment at which the State agents became aware of the threat, some of the hypothetical steps to be considered could have entailed, *inter alia*, calming down the situation by verbally persuading Chickek Mammadova to refrain from any actions threatening her life, or physically preventing her from taking hold of and pouring kerosene on herself, or physically preventing her from igniting it, or putting out the fire as soon as she set fire to herself. Such steps could also have included providing immediate first aid, calling an ambulance or assisting in hospitalising the victim. The Court acknowledges that, given the unpredictability of human conduct and the relatively short time span between the verbal threat and the act of self-immolation, there may indeed have been very limited time and facilities available to the State agents to react meaningfully.

117. The Court notes, however, that in the present case the exact factual circumstances surrounding the incident itself are heavily disputed and are far from being clear, making it difficult to determine whether the State agents should have known of the victim's intention to commit suicide prior to her actually setting fire to herself and, if so, what adequate measures could feasibly have been taken by the State agents in those circumstances. Owing to the contradictory nature of the witness testimonies, it is not clear exactly when the State agents became aware of the threat to Chickek Mammadova's life. More specifically, it is impossible to establish conclusively whether some or all of the State agents were inside or outside the applicant's dwelling during the period from the moment when Chickek Mammadova started preparing for her suicide attempt until the moment when she set herself on fire. It is therefore not clear whether any of the State agents heard the verbal threats made by her, whether they observed her preparations, or whether they only became aware of the suicide attempt after it was too late to prevent it. If there were any State agents inside, it is not clear how far away they were standing from the victim. If all the State agents were outside, it is not clear whether they could actually have observed Chickek Mammadova's relevant actions from where they were

situated. It is not clear how much time elapsed from the moment the threat was made until the moment the victim set fire to herself, and how much time elapsed while she was burning. Moreover, there is no information as to the floor plan and the interior and exterior features of the dwelling that could make it possible to determine whether there were any physical barriers obstructing quick and easy access to Chichek Mammadova by those who were in the vicinity.

118. For the same reasons, it is difficult to determine any specific steps that the State agents could have been expected to take in order to save her life in the specific circumstances of the present case. It appears that at least one police officer, E.N., possibly with the aid of other police officers, helped put out the fire on Chichek Mammadova's body after she had set fire to herself. By this time, however, she had already suffered serious life-threatening injuries. It further appears – and the Court finds this circumstance of particular concern – that none of the State agents attempted to call an ambulance or provided any assistance in transporting Chichek Mammadova to hospital. Nevertheless, having assessed the available information concerning the exact circumstances of the incident, the Court finds that it is so scarce and insufficient that it is unable to determine whether the State agents could have taken any additional measures to prevent Chichek Mammadova from carrying out her threat of suicide or at least to minimise the extent of the injuries she received.

119. The Court also notes that the situation in the present case cannot be equated to, for example, a situation involving a death in custody, where the burden may be regarded as fully resting on the State to provide a satisfactory and plausible explanation, in the absence of which inferences unfavourable to the State can be drawn.

120. In view of the above analysis, the Court considers that, owing to the lack of relevant factual details, doubts remain that the responsibility for Chichek Mammadova's death might have lain at least in part with the authorities. However, having assessed the available material, the Court finds those doubts insufficient to establish conclusively that the authorities acted in a manner incompatible with their positive obligations to guarantee the right to life.

121. It follows that there has been no violation of Article 2 of the Convention in this respect.

*(ii) Whether the investigation was adequate and effective*

122. Seeing that Chichek Mammadova's life was lost in circumstances potentially engaging the responsibility of the State agents, a procedural obligation arose under Article 2 of the Convention to carry out an effective and adequate investigation into the circumstances of the incident causing her death (compare *Sergey Shevchenko*, cited above, § 66, and *Trubnikov*, cited above, § 89).



123. The Court considers that the domestic investigation in the present case was inadequate, as it failed to seek answers to all the issues relevant for an assessment of the State agents' role and responsibility in the incident and therefore failed to establish the necessary factual details to determine whether they were under an obligation to safeguard Chichek Mammadova's life.

124. In particular, the investigation authorities appear to have limited their investigation only to the question of whether the State agents incited Chichek Mammadova to commit suicide, within the meaning of Article 125 of the Criminal Code, in other words whether they did something which directly caused her death. It appears that, once the answer to this question was found, no further inquiry was deemed necessary by the investigation authorities. However, in the present case, it was also necessary to investigate whether the State agents had at some point become aware of the suicide threat and whether, in the particular circumstances, they took all adequate and possible steps to protect Chichek Mammadova's life. However, as can be seen from the analysis below, this was not the case. Such an incorrect approach to the investigation led to a failure to clarify a number of crucial factual issues in the case.

125. It appears from the material in the case file that, as a general rule, the witnesses were simply asked to narrate the sequence of events as they recalled them and to focus only on the issue of whether any of the State agents had taken any steps provoking Chichek Mammadova to commit suicide. Apart from this particular aspect of the case, the investigation authorities did not appear to pay attention to clarifying other relevant factual circumstances or to ask any additional specific questions in an attempt to elicit more information in that respect. This resulted in rather brief and vague eyewitness evidence, lacking many specific details. The investigation authorities' factual findings as to the sequence of events were very sketchy and brief, and failed to cover a number of very important factual details.

126. Specifically, the Court notes at the outset that the manner in which the operation was conducted at the scene of the incident was a *prima facie* problematic issue in this case, and it was indeed regarded as such in some of the authorities' initial reactions to the applicant's complaints (see, for example, paragraph 26 above). This issue was relevant for assessing the adequacy of the State agents' actions under Article 2 and, therefore, should have been of primary concern for the investigation authorities. In the Court's view, the investigation authorities should have sought from their relevant police superiors a more detailed explanation as to the planning of the operation, as to how the chain of command had been organised on the scene, and as to what specific orders, if any, had been given to individual police officers after the police had arrived at the applicant's dwelling. Information of such nature might have helped to clarify the overall picture

of the circumstances surrounding the incident. However, none of the above steps were taken.

127. Another shortcoming of the investigation was the authorities' omission to attempt a reconstruction of the exact sequence and duration of the events and to address the discrepancies in witness testimonies. In the Court's opinion, it is obvious that, in order to determine the adequacy and appropriateness of the steps taken by the State agents to protect Chichek Mammadova's life, it was of paramount importance in the present case to establish whether any of them had been in her immediate vicinity. It was therefore incumbent on the investigation authorities to determine, *inter alia*, which specific State agents, if any, were in close proximity to Chichek Mammadova, whether they were physically able to take steps to interrupt her suicide attempt, and how much time elapsed from the moment she made a verbal threat until she soaked herself in kerosene and, further, until she set fire to herself.

128. There are serious discrepancies in the available witness testimonies as to precisely what happened, and in what order, after K.A. first knocked on the applicant's door. In particular, while the applicant and his family members claimed that the State agents had entered the premises and observed the suicide threats made by Chichek Mammadova, the majority of the State agents involved denied ever entering the dwelling and insisted that they had become aware of the suicide threat only after she had set fire to herself. On the other hand, some of the State agents, notably E.G., Y.A. and K.A., specifically stated that several police officers had entered the applicant's dwelling (see paragraphs 49, 51 and 71 above), although it is not clear from these statements whether the police officers were still in Chichek Mammadova's immediate vicinity at the time when she attempted suicide. Nevertheless, these statements support the plausibility of the applicant's account of the events.

129. The Court reiterates that the procedural obligation under Article 2 is not an obligation to achieve a particular result and that there may be situations when, owing to the lack of evidence or its contradictory nature, it is objectively impossible to reconstruct the exact circumstances and sequence of events. Such impossibility, however, must be effectively established by a thorough and comprehensive investigation. The Court notes that, in the present case, despite discrepancies in witness testimonies, the investigating authorities disregarded the importance of establishing the exact circumstances of the incident and did not take any effective steps to clarify the points on which various witnesses either disagreed or failed to provide a complete account. This could have been accomplished by, *inter alia*, posing specific questions to witnesses with a view to clarifying specific details of the sequence and timing of how events unfolded, conducting face-to-face confrontations between those witnesses who gave conflicting testimonies, and seeking to identify and question other

eyewitnesses to the incident such as the applicant's relatives and other onlookers whom most of the State agents mentioned in their respective testimonies. The investigating authorities' failure to take the above steps contributed to the investigation's inability to produce a complete and detailed factual picture of the incident.

130. Moreover, from the material available in the case file, it is unclear on what exact date the initial criminal inquiry was commenced. It is clear, however, that Chichek Mammadova was not questioned while she was in hospital for three days before she died, despite the applicant's claim that she had been physically able to communicate during that period. Obviously, obtaining the victim's testimony, if possible, was indispensable for the effectiveness of the investigation. After the incident, the authorities were aware of the fact that she had suffered life-threatening injuries making her survival uncertain and were therefore obliged to act in a prompt and diligent manner in order to try to obtain evidence which would no longer be available after her death. No explanation was provided by the Government or the domestic investigation authorities as to the reasons for the failure to do so. In the Court's view, this failure undermined the effectiveness of the investigation (compare *Esat Bayram v. Turkey*, no. 75535/01, § 49, 26 May 2009).

131. The above leads the Court to the next issue – that of the promptness of the investigation. As noted, the authorities failed to take immediate action and to interview the victim while this was possible. As to the overall length of the investigation, the Court notes that there were two “preliminary” criminal inquiries and one set of criminal proceedings in the present case, which, for the purposes of the procedural aspect of Article 2, should be examined as a whole. Thus, it should be noted that the overall length of the domestic investigation was more than four years. The investigation was adjourned and resumed a number of times without any evident progress in its effectiveness and without any substantive improvement in the adequacy of the investigative measures taken. While on several occasions the supervising prosecutors or courts criticised the deficiencies in the proceedings and ordered remedial measures (see, for example, paragraphs 33 and 39 above), those instructions were not complied with.

132. The Court notes, furthermore, that the criminal proceedings were instituted and the applicant was granted the status of a victim in the proceedings only in June 2006, more than two years after his wife's death. He was thereby denied the possibility of effectively intervening in the course of the investigative steps taken prior to that date (compare *Trubnikov*, cited above, § 93, and, *mutatis mutandis*, *Muradova v. Azerbaijan*, no. 22684/05, § 130, 2 April 2009). Accordingly, the Court cannot find that the investigation fully complied with the requirement to secure public accountability by safeguarding the legitimate interests of the next-of-kin.

133. For the above reasons, the Court concludes that there has been a violation of the respondent State's obligation under Article 2 of the Convention to conduct an adequate and effective investigation with a view to establishing the extent of the State agents' responsibility for Chichek Mammadova's death.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

### A. Alleged ill-treatment of the applicant

134. The applicant complained under Article 3 of the Convention that he had been beaten by the police officers during the events of 26 March 2004 and that, furthermore, having witnessed the events that had led to his wife's death, he had experienced serious anguish and distress.

135. As to the alleged beating by the police during the eviction, the Court notes that the evidence available in respect of this part of the complaint is not sufficient to enable it to examine the question of whether the applicant was subjected to ill-treatment.

136. As to the alleged suffering experienced by the applicant as a result of his wife's death, the Court reiterates that, on the basis of the information available, it was impossible to establish in the present case that the State agents were responsible, directly or indirectly, for the death of the applicant's wife (compare, for example, *Ülkü Ekinçi v. Turkey*, no. 27602/95, § 149, 16 July 2002). Although the inadequacy of the investigation into his wife's death may arguably have caused the applicant feelings of anguish and mental suffering, the Court does not find in the present case sufficient special features which would justify a separate examination of an alleged violation in respect of the applicant under Article 3 of the Convention (compare, *mutatis mutandis*, *Tahsin Acar*, cited above, § 239; *Uçar v. Turkey*, no. 52392/99, § 110, 11 April 2006; and *Çakıcı v. Turkey* [GC], no. 23657/94, §§ 98-99, ECHR 1999-IV).

137. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

### B. Alleged ill-treatment of the applicant's relatives

138. The applicant complained under Article 3 of the Convention that his son, mother-in-law and sister-in-law had also experienced serious anguish and distress after having witnessed the incident leading to Chichek Mammadova's death.

139. The Court notes that the applicant himself was not a victim of the violations alleged in the present complaint. None of the applicant's relatives

concerned by this complaint are parties to the present case or have personally lodged any complaints with the Court. It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

**C. Alleged violation of the applicant's right to respect for his private life and home**

140. The applicant complained under Article 8 of the Convention that, by evicting him and his family from their dwelling without a relevant court order, the domestic authorities had infringed his right to respect for his home and private life.

141. Even assuming that the issues complained of fall within the ambit of Article 8 and, in particular, that the dwelling in question could be considered the applicant's "home" within the meaning of this Convention provision, the Court considers that this complaint is inadmissible for the following reasons. It is true that, in the context of the criminal investigation into the circumstances of his wife's death, the applicant made the same or similar allegations concerning the alleged unlawfulness of the authorities' actions. However, within the scope and context of that investigation, those allegations could be relevant only for the purposes of establishing the State agents' responsibility for his wife's death. The investigation authorities had no competence to provide any redress in respect of any other matters and did not constitute an appropriate remedy for the alleged infringement of the applicant's right to respect for his home and private life. The Court notes that the applicant has not raised the present complaint before any other domestic authorities, and in particular the domestic civil courts, which would appear to be a more appropriate avenue of redress and where he could seek, *inter alia*, compensation for damage.

142. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

143. Article 41 of the Convention provides:

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

#### A. Damage

##### 1. *Pecuniary damage*

144. The applicant claimed the following amounts in respect of pecuniary damage: (a) 20,025 euros (EUR) for various expenses in connection with his wife's funeral; (b) EUR 3,740 for loss of earnings which he had incurred because, after his wife's death, he had had to work less in order to spend more time at home with his children; (c) EUR 18,640 for expenses related to past and future medical treatment and special education for his son, who had allegedly become affected with psychiatric problems after his mother's death; and (d) EUR 28,000 for expenses related to past and future medical treatment for his sister-in-law who had allegedly developed a brain tumour as a result of the “psychological shock” experienced after her sister's death.

145. The Government noted that the applicant had submitted no evidence of any pecuniary damage alleged.

146. The Court observes that, indeed, no evidence has been submitted in support of the above claims. In any event, the Court does not discern any causal link between the violation found and the pecuniary damage alleged. It therefore dismisses all of the above claims.

##### 2. *Non-pecuniary damage*

147. The applicant claimed (a) EUR 80,000 in respect of non-pecuniary damage suffered as a result of his wife's death and the inadequate investigation; (b) EUR 25,000 in respect of non-pecuniary damage suffered by him as a result of the alleged beating by the police; (c) EUR 18,000 in respect of non-pecuniary damage suffered by his family members; and (d) in addition to all of the above, EUR 92,000 for all alleged violations of the Convention, in order to “make the Government treat human rights with more respect in the future”.

148. The Government submitted that the amounts claimed were excessive and that a finding of a violation would constitute, in itself, sufficient just satisfaction in the present case.

149. As for the amounts claimed in points (b) and (c) above, the Court notes that they relate to the complaints it has declared inadmissible. As for the amount claimed in point (d) above, the Court reiterates that it has consistently rejected any claims for punitive damages. For these reasons, the Court dismisses those claims.

150. As for the part of the claims relating to the non-pecuniary damage suffered as a result of the authorities' failure to comply with their obligations under Article 2 of the Convention, the Court considers that the distress suffered by the applicant cannot be compensated solely by the finding of a violation. Ruling on an equitable basis, the Court awards the applicant EUR 20,000 in respect of non-pecuniary damage.

## **B. Costs and expenses**

151. The applicant also claimed EUR 3,100 for various types of costs and expenses incurred in the domestic proceedings and EUR 2,500 for those incurred in the proceedings before the Court (including EUR 1,500 for legal fees, EUR 800 for translation expenses and EUR 200 for stationery and postal expenses).

152. The Government noted that the applicant submitted evidence in support of only a part of the claim for postal expenses, and did not submit any evidence in support of the remainder of the claims.

153. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicant submitted supporting documents only in respect of a part of the claim for postal expenses, in the form of postal receipts for the total amount of approximately EUR 70. The remaining claims were not supported by any documents. The Court further notes that, in connection with the present case, the applicant has received EUR 850 in legal aid from the Council of Europe. Accordingly, regard being had to the information in its possession and the above criteria, the Court finds that there is no call to award the applicant any additional amount for costs and expenses.

## **C. Default interest**

154. The Court considers it appropriate that the default interest 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**

1. *Declares* unanimously the complaint under Article 2 admissible and the remainder of the application inadmissible;
2. *Holds* by five votes to two that there has been no violation of Article 2 of the Convention as regards the authorities' positive obligations to protect the right to life;
3. *Holds* unanimously that there has been a violation of Article 2 of the Convention as regards the authorities' failure to carry out an effective investigation with a view to establishing the extent of the State's responsibility for Chichek Mammadova's death;
4. *Holds* unanimously
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into New Azerbaijani manats at the rate applicable at the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judges Spielmann and Malinverni is annexed to this judgment.

C.L.R.  
S.N.



## DISSENTING OPINION OF JUDGES SPIELMANN AND MALINVERNI

(Translation)

We agree with the majority that there has in this case been a violation of the respondent State's obligation under Article 2 of the Convention to conduct an adequate and effective investigation with a view to establishing the extent of the State agents' responsibility for Chichek Mammadova's death.

However, unlike the majority, we are of the opinion that in this case the authorities were also responsible for a violation of Article 2 on grounds of failure to comply with the positive obligation incumbent on them to protect the applicant's wife's right to life.

In this connection we would like to reiterate that the first sentence of Article 2 enjoins the Contracting States 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 of Judgments and Decisions* 1998–III). This also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual from another individual or, in particular circumstances, from himself (see *Osman v. the United Kingdom*, 28 October 1998, § 115, 1998–VIII; *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001–III; and *Renolde v. France*, no. 5608/05, § 81, 16 October 2008–).

A failure to comply with this positive obligation will occur where it has been established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from self-harm and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 51, ECHR 2009–., and *Tanribilir v. Turkey*, no. 21422/93, § 70, 16 November 2000).

The principal issue in the present case is whether at some point during the course of the operation the State agents became aware or ought to have become aware that Chichek Mammadova posed a real and immediate risk of suicide and, if so, whether they did all that could reasonably have been expected of them to prevent that risk.

We would like to stress that, as a general rule, in any police operation the police are expected to place the flow of events under their control. In a situation where an individual threatens to take his or her own life in plain view of State agents and where this threat is an emotional reaction directly induced by the State agents' actions or demands, the latter should treat this threat with the utmost seriousness as constituting an imminent risk to that individual's life, regardless of how unexpected that threat might have been.

In our opinion, in a situation such as the present case, if the State agents become aware of such a threat a sufficient time in advance a positive obligation arises under Article 2 requiring them to prevent the threat from materialising by any means which are reasonable and feasible in the circumstances.

In the context of the present case, as soon as the State agents became aware of the threat, they could have tried to defuse the situation by verbally persuading Chickek Mammadova to refrain from any action threatening her life.

Subsequently, as soon as the poor woman had poured kerosene over herself they should have intervened and prevented her from igniting it. Instead, the police officers did not take her threats seriously. One of them even offered her a box of matches, mockingly encouraging her to keep her word and set fire to herself (see paragraph 17). Incidentally, this detail shows, moreover, that the police officers were near the victim at the time. Only one police officer took any steps to put out the fire by wrapping Chickek Mammadova in a blanket.

In addition, and this circumstance is of particular concern, none of the State agents attempted to call an ambulance or provide any assistance in transporting Chickek Mammadova to hospital.

These shortcomings lead us to the conclusion that the police officers failed to comply with the positive obligations incumbent on them under Article 2, and that there has therefore been a violation of that provision.