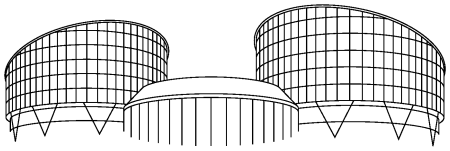

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TSALIKIDIS AND OTHERS v. GREECE

(Application no. 73974/14)

JUDGMENT

STRASBOURG

16 November 2017

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 Tsalikidis and Others v. Greece,

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

Kristina Pardalos, *President,*
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Krzysztof Wojtyczek,
Armen Harutyunyan,
Tim Eicke,
Jovan Ilievski, *judges,*
and Abel Campos, *Section Registrar,*

Having deliberated in private on 17 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 73974/14) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Greek nationals, whose names appear in the annexed list, on 19 November 2014. The applicants were represented by Mr S. Hoursolglou, a lawyer practising in Athens.

2. The Greek Government ("the Government") were represented by their Agent's delegates, Mrs S. Charitaki and Mrs A. Dimitrakopoulou, Legal Counsellor and Senior Advisor respectively at the State Legal Council.

3. The applicants alleged, in particular, that the domestic authorities had failed to carry out an effective investigation into the circumstances surrounding the death of Mr Costas Tsalikidis, brother of the first applicant and son of the second and third applicants.

4. On 3 March 2016 the complaints concerning the lack of an effective investigation into the death of Mr Tsalikidis and the lack of an effective remedy in respect thereof were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are the brother and the parents of Mr Costas Tsalikidis, who was found dead on 9 March 2005.

A. The death of Costas Tsalikidis and the initial investigation conducted by the domestic authorities

6. Mr Tsalikidis was Network Planning Manager for V., a mobile phone operator. On 9 March 2005 he was found dead in his apartment by his mother (the second applicant). He was found hanged by a rope tied to pipes above the bathroom door and a chair lay knocked over on the floor nearby. A little later his brother, the first applicant, arrived at the scene and used a knife to cut through the rope. He then placed his brother's body on the bed in his bedroom and took photographs of it.

7. The applicants called Kolonos Police Station and the police sergeant in charge, acting as an interrogation officer, arrived at the scene to conduct an on-site inspection. In his report he stated that there were no signs of forced entry at any of the entrances to the residence, and no footprints or other marks on the balcony. He also noted that there was no mess in the residence nor were there any suspicious packets of drugs or other substances in the apartment or in the refuse containers. He did not conduct a search for fingerprints. No photos were taken of the place of death and no DNA test was performed on the rope by which Mr Tsalikidis was hanged. There was no suicide note.

8. The body was transferred to the morgue, where an autopsy was performed on the body the next day by G.D.L., a coroner with the Forensic Medical Service of Athens. On 20 April 2005 he wrote an autopsy report in which he stated that there were no injuries to the body and that there were signs of pulmonary oedema. The rope mark encircled the cervical spine with a knot at the right of the occiput (*κυκλικά φερόμενη με κόμπο στη δεξιά ινιακή χώρα*). The toxicology examination showed a small amount of alcohol at 0.12%. The hyoid bone and larynx appeared normal. It was concluded that the cause of death was hanging by a noose (*απαγχονισμός δια βρόγχου*). No inspection of the place of death was performed by the coroner and in his report neither the temperature nor the weight of the body was recorded.

9. On 9 February 2006, following the public announcement concerning the wiretapping case (see §§ 14 – 17 below) and while the investigation into his brother's death was still ongoing, the first applicant lodged a criminal complaint with the public prosecutor's office, asking for the scope of the investigation to be expanded. He requested in particular that the authorities

examine the possible connection between his brother's death and the wiretapping case and investigate crimes that might possibly have been committed against him, such as homicide or extortion. He also requested the exhumation of his brother's body in order to search for specific poisons and other signs of homicide and declared his wish to join the proceedings as a civil party.

10. Various witness testimonies were taken from colleagues, friends and family members of the deceased. In her testimonies dated 12 and 17 March 2005 and 7 February 2006, his fiancée stated that she had spoken twice with him on the phone the night preceding his death without noticing anything particular. She expressed the view that he could not possibly have committed suicide, citing the fact that two days before he had asked her to book rooms for an excursion they were planning to make two weeks later and that he had expressed concerns about his mother's health. Lastly, she stated that about a month before his death he had confided to her that "it was a matter of life and death for him to leave his job with V." and that "V. was facing a serious problem that threatened its very existence".

11. From the testimonies of his colleagues and his fiancée it was evident that Mr Tsalikidis was sociable and had been well-respected in his work environment. Even though he had been under a lot of pressure at work, his colleagues expressed doubts as to whether stress could have driven him to suicide. He had expressed a wish to quit his job about a month before his death but had later changed his mind after a few days' leave. On the night of his death he had sent a work-related email to his colleagues at around 4.30 a.m. The content of the email was unremarkable. It was also alleged that on 7 March 2005 there had been a tense meeting at work in which he, amongst others, had been reprimanded by his superiors. His colleagues also testified that he had been responsible for holding monthly meetings with company E., one of V.'s providers, at which they discussed new versions of software and other technical issues.

12. Testimony was also taken from coroner F.K., the head of the Forensic Science Service of Athens University. In his statement dated 9 March 2006, he attempted to explain the lack of typical signs of hanging – such as injuries caused by body spasms or cyanosis of the face – by attributing the death to cardiac arrest caused by simultaneous pressure to the two carotid arteries. He also mentioned that the rope mark on the deceased man's neck had been typical in cases of hanging; it had been obliquely directed (*λοξά φερόμενη*) and the knot had been an "ordinary, everyday knot". In his view, a possible exhumation and/or toxicology test would be of no added value.

13. In the light of the foregoing testimonies and having taken all evidence into account, on 20 June 2006 the public prosecutor at the Athens Court of First Instance issued order no. 80/20-6-06 archiving the case, having concluded that there were no indications of any criminal acts

committed against Mr Tsalikidis, even though his death was causally linked with the wiretapping case. On 25 September 2006 the decision was upheld by order no. 565/25-9-06 issued by the public prosecutor at the Court of Appeal following an appeal against it by the first applicant.

B. The wiretapping affair

14. On 2 February 2006 the Minister of Public Order made a statement informing the public that since June 2004 (two months before the Olympic Games) the telephones of many state officials had been tapped through spyware that had been implanted in the network of phone operator V. The wiretap, installed by persons unknown, had targeted more than 100 of Greece's State officials, including the Prime Minister and many senior members of the Cabinet. The spyware diverted phone conversations made by V.'s subscribers to fourteen "shadow" pay-as-you-go mobile phones, allowing calls to be monitored.

15. Following a parliamentary investigation, it was made known that the unauthorised spyware had been implanted in a software provided by company E. to phone operator V. Mr Tsalikidis had been responsible for accepting the software from E. on behalf of V. and met representatives from E. on a monthly basis in order to discuss new versions of the software and other technical issues.

16. V. was informed by E. that their network had been used to wiretap State officials on 4 March 2005. On 8 March 2005 G.K., a senior manager with V., ordered that the newly discovered software be deactivated and removed from its systems. On 10 March 2005 he informed the Ministers of Justice and of Public Order and the director of the Prime Minister's office about the existence of the software. A criminal investigation was ordered but its conclusions are not apparent from the material in the Court's possession.

17. The wiretapping affair assumed large dimensions both within and outside Greece, and the investigation was widely reported in the media. Mr Tsalikidis' death occurred the day after the spyware had been removed from V.'s network and the day before the relevant ministers were informed and this fact was mentioned in all the newspaper articles, suggesting an association between his death and the wiretapping affair without his involvement in the case being established.

C. Supplementary investigation

18. On 8 February 2012, citing new evidence, the applicants requested that the public prosecutor at the Athens Court of First Instance reopen the case file for the purposes either of initiating criminal proceedings *in rem* for intentional homicide and/or exposure to peril and/or felonious extortion, or

for launching a supplementary preliminary investigation into the aforementioned offences or any other offence that might have been committed. The applicants also declared that they wished to join the proceedings as civil parties.

19. The first evidence submitted by the applicants was a forensic report dated 12 November 2010 prepared at their request by a British expert, Dr S.K. The expert wrote his report − in English − on the basis of his examination of a number of documents from the case file which had been translated into that language. The relevant parts of his report read as follows:

> "... 2. In forming my opinion I have had to rely on a relatively limited group of materials including the original autopsy report translated by Mr Peter Tsalikidis, a set of colour scene photographs (it is not clear to me who took these photographs), scans of white and black photos showing an unclothed body with a ligature mark on mid--neck (the detail is poor) and a website videos that were produced for an exposé produced by the Al-Jazeera network.
>
> ...
>
> 5. On April 8 I received two emails from Mr Tsalikidis. The first was an extract of comments taken from a report issued by the Forensic Institute in Athens. The report states that the ligature was "upwardly directed", a statement that appears to be contradicted by the photographs I have seen. Mr Tsalikidis also claims he was told that "the death was instant because of simultaneous pressure to the carotid bags (*sic* - this should be 'arteries')". This statement, too, is inconsistent with the normal colouration of the face as shown in the photographs.
>
> 6. On March 29 I was sent a link to a website dedicated to this case... The video also contains several images and statements that are confusing. These include (1) photograph of the suspensory knot – it is a complex knot, and definitely not the sort of knots seen in routine suicides. I do not know if the deceased possessed the requisite skills needed to tie such a complex knot. The video narrator stated that the body was hanging 3 inches from the floor. In spite of the short distance, it is possible for someone to hang themselves at this low height. In fact, it is not uncommon.
>
> ...
>
> 8. ... The photographs do show that the deceased was unclothed; they also showed an obvious ligature mark that was located in mid-neck, parallel to the shoulders.
>
> ...
>
> **Gross Autopsy Findings**
>
> 10. Neither the height nor the weight of the deceased was supplied. Neither the core temperature of the cadaver nor the ambient room temperature was recorded. It appears that the autopsy was performed the next day, but whether the cadaver was refrigerated is not stated and, since core temperature was not obtained, it would have been irrelevant anyway. No attempt whatsoever was made to identify the time of death... No fibres were taken from the ligature for identification and no tissue taken from the ligature were taken for microscopic examination.

Discussion

1. The position of the rope mark is more consistent with strangulation than hanging – in cases of strangulation the ligature mark, as it was here, tends to encircle the entire neck without deviation upward or downward, and almost invariable there is a gap where the rope suspends the body. Hanging marks are almost always higher on the neck than strangulation marks. The marks present here are more consistent with strangulation.

2. From the photographs I saw there was no evidence of hypostasis (accumulation of blood in the legs that is to be expected after a normal hanging). This argues strongly against hanging.

...

4. Perhaps more importantly, one expects to see some sort of soft tissue damage within the underlying neck. Injuries are present in at least 1/3 of hangings. No damage was seen within the neck, which is worrisome. The absence of soft tissue injury does not rule out hanging, but if it had been present, a much more convincing case for strangulation could have been made.

5. Damage to the lining of the great vessels in the neck is a frequent finding in strangulation, but that examination was never performed (in fact, no microscopic examination was performed). This means the autopsy was incomplete by U.S. and EU standards.

6. The colour of the face could only be described as normal; typically, victims of manual strangulation will have deeply congested haemorrhagic faces, but victims of hanging often have pale faces – in this particular instance the colour of the face is so normal that it almost appears that neither strangulation nor hanging occurred.

7. While adequate examination is not possible only from inspecting photographs, the knot used to anchor the rope appears quite complex. This might be expected if the deceased had nautical experience, but the family insists he did not.

8. Homicidal hanging is very rare, since it is very difficult for one person to hang another, unless of course they had been drugged first. The autopsy report says that blood and urine were tested for alcohol and that the results show the deceased had been drinking (post-mortem alcohol production of that magnitude does not occur that quickly). I think it would be very important to know if any other drugs were present. If testing was not done at the time of autopsy, exhumation and testing of the hair is still possible. The results, whether positive or negative, would be definitive.

9. The medical examiner commented on the presence of pulmonary oedema. Such may occur after hanging, but histological studies have shown that pulmonary oedema is much more common after strangulation.

10. There were no scratch marks on the neck, suggesting the deceased made no effort to claw the rope away from his neck. This is also consistent with his having been sedated.

Discussion

Obviously, there is no evidence of forceful strangulation and, in the absence of visible trauma, homicidal hanging would appear to be out of the question. The fact that there was minimal suspension does not rule out suicide. Having said that, the case has a number of disturbing features: (1) the autopsy was grossly inadequate, and even if signs of homicide had been present, they would have been missed; (2) the face was of normal colour – neither congested nor pale; this argues for death before hanging;

(3) there was no accumulation of blood in the lower extremities – this absence argues against hanging altogether; (4) the furrow around the neck is in a position more often seen in strangulation than suicide; (5) none of the normal scratch marks normally seen outside of the neck when individuals hang themselves were evident. Nor, according to the autopsy pathologist, there none of the soft tissue injuries that are normally expected in hanging. Two other issues are of concern: (1) was the deceased able to tie the complex knot used to support him, and (2) it appears that complete toxicology testing (was not) performed and that is a very serious omission. There are many poisons that are not detected by routine tests – they are only identified if they are specifically sought. In the absence to these questions, the possibility of murder must be strongly considered. The most likely scenario, based on the evidence at hand, is that the deceased was sedated/poisoned and hung after death."

20. The second evidence adduced by the applicants was an undated report produced at the applicants' request by Coroner Th.V. His report was prepared on the basis of the documents in the criminal case file.

21. Coroner Th.V. emphasised that any assessment of a forensic report should be done with great caution; nevertheless, he stressed that in the initial autopsy there had been serious omissions. He identified in particular the lack of reference to the existence or not of haemorrhagic infiltration where the rope was positioned, as well as the precise position of the rope with reference to the neck (obliquely or vertically directed). He further criticised the failure to search for injuries to the inner part of carotid arteries which could have shown whether Mr Tsalikidis had been hanged or strangled.

22. Coroner Th. V. included in his report a number of elements of evidence which precluded certain conclusions as to the cause of death. In particular, he stressed the absence of signs usually found in cases of hanging, that is to say cyanosis of the face, oedema of the face, and projection of the tongue, all of which were not present in this case. He furthermore described as strange, taking account of the place where the body was hanging, the complete absence of any injuries resulting from the usual body spasms, causing it to crash against nearby furniture and walls.

23. In respect of the written statement given by F.K., who attempted to explain the lack of typical signs of hanging by attributing Mr Tsalikidis' death to cardiac arrest, coroner Th. V. stated that such manner of death was not very probable as it usually occurs in cases of pressure applied to the neck with the hands. In any event, this cause of death is still much debated in the medical community.

24. Lastly, coroner Th.V. mentioned that a large number of poisons cannot be detected through routine examination. He opined that if exhumation of the body were to be ordered, then toxic substances could possibly be found as they can be detected even years later. A fresh examination of the place of death could also prove useful as long as the place was still intact. In any event, coroner Th. V. considered that the available evidence was not sufficient to allow it to be established whether Mr Tsalikidis' death had been the result of suicide or homicide.

25. As third evidence the applicants submitted a letter dated 15 June 2010 written by the President of the Committee on Institutions and Transparency of the Greek Parliament and addressed to the public prosecutor at the Court of Cassation in which the former expressed the view that there had not been sufficient investigation of the relationship between the death of Costas Tsalikidis and the wiretapping affair. They also cited a public statement made on 5 September 2011 by the former President of the Parliamentary Committee of Institutions and Transparency, who was then already Minister of Justice, that "the question of whether Costas Tsalikidis committed suicide or was murdered will always remain open".

26. In view of the above evidence, the applicants requested the reopening of the case file. They requested in particular that the following investigative measures be implemented: phone operator V. to be ordered to provide the minutes of the meeting that took place the day before Mr Tsalikidis was found dead, representatives of V. to confirm officially that Mr Tsalikidis was the person responsible for accepting on behalf of their company the legal software provided by company E. which was used to activate the program of wiretapping, a forensic examination of the place of death and a reconstruction of the circumstances of the death to be conducted, exhumation and new toxicology tests to be run, a cross-examination of the applicants' technical advisors together with coroners G.D.L. and F.K. to be organised, a new forensic report to be drawn up by another coroner, an expert report to be produced concerning the knot, technical advisors S.K. and Th. V. to be summoned to testify, and witness statements to be taken again in the light of the new evidence acquired. They stressed in particular that the scope of the investigation should include the deletion of the illegally installed software from the network of V. and why it was removed before the authorities had been informed.

27. By document no. E 2006/1200/29-2-2012, issued by the public prosecutor at the Athens Court of First Instance on 29 February 2012 and addressed to the public prosecutor at the Athens Court of Appeal, approval was sought to reopen the case file pursuant to Article 43 § 3 (a) and Article 47 § 3 of the Code of Criminal Procedure. On 7 March 2012 the request was granted and a supplementary preliminary investigation was ordered.

28. On 20 April 2012 the public prosecutor at the Athens Court of First Instance ordered the exhumation of Mr Tsalikidis' body, the conduct of a new forensic autopsy and the execution of all laboratory tests to be carried out in a laboratory in the presence of the technical advisors appointed by the applicants.

29. The exhumation took place on 3 May 2012 in the presence of coroners I.B., N.K. and Ch.S. and the applicants' technical advisor Th.V., and biological material was sent to the Universities of Athens and Crete for the purpose of conducting toxicology tests. According to toxicology report

no. 1313/7-12-2012, drawn up on 7 December 2012 by the Forensic Science Laboratory of the Toxicology Unit of the University of Crete, and forensic report no. 865/25-11-2013 on the exhumed body, drawn up on 25 November 2013 by the Forensic and Toxicology Laboratory of the School of Medicine of Athens University, the results were negative as regards the presence of poison or medication. However, in both reports it was stressed that the absence of a positive finding did not preclude the possibility of the administration of poison or medication to the deceased, since a number of factors, such as the lapse of time, could have affected the results.

30. According to histology report no. 889/12/26-2-2013 drawn up on 26 February 2013 by the First Pathological Anatomy Laboratory of the School of Medicine of Athens University, the deceased's hyoid bone was found to be broken. However, owing to the absence of surrounding soft tissue, it was not possible to say whether it had been broken *ante-mortem* or *post-mortem*.

31. On the basis of the above-mentioned findings, the three coroners each prepared a new forensic report. Coroners I.B. and N.K., in their reports numbered 1408/2561/30-4-2012/10-7-2013 and 1287/18-6-2013 and drawn up on 10 July 2013 and on 18 June 2013 respectively, commented on the findings of the toxicology reports and histology report and concluded that the cause of Mr Tsalikidis' death remained unclarified due to the passage of time. Coroner Ch.S. prepared a similar report dated 25 November 2013 commenting on the above-mentioned findings without any reference to the cause of death.

32. The applicants also requested that a psychiatric report be included in the case file, and one was duly prepared at their request. Dr A.D. studied the case file documents and conducted interviews with the first applicant and the deceased's fiancée. His report dated 12 April 2012 stated that the deceased did not betray any of the personality characteristics associated with a suicide risk. In addition, no other factors such as health issues or financial problems were detected as being of concern, and in general, no plausible grounds for suicide were identified. In the doctor's opinion, his support system of friends and family, his short-term (excursion) and long-term (wedding) plans, together with the absence of any risk factors, were all indications that Mr Tsalikidis did not commit suicide.

33. On 16 June 2014 the public prosecutor at the Athens Court of First Instance, with the approval of the public prosecutor at the Court of Appeal, closed the supplementary investigation, concluding that the above-mentioned reports, considered in conjunction with the evidence gathered during the main investigation, were sufficient to allow the case file to be archived, thereby upholding the conclusions of order 80/06 issued by the public prosecutor at the Athens Court of First Instance (order no. 14/3859/16-6-2014).

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure

34. The relevant articles of the Code of Criminal Procedure as in force at the material time read as follows:

Article 36
Criminal proceedings initiated of the authorities' own motion

"When a criminal complaint or a petition is not necessary, criminal prosecution may be initiated of the authorities' own motion following a report, a complaint or any other information indicating that an offence has been committed."

Article 43
Initiation of criminal proceedings

"1. A public prosecutor, upon receiving a complaint or a report, shall initiate criminal proceedings by ordering a preliminary investigation or a main investigation or, wherever applicable, by referring the case to the court by directly summoning the accused person. However in cases of felonies or misdemeanors punishable with prison sentences of at least three months, except for: a) ..., b) ..., c) ..., d) ..., and e) ... , criminal proceedings shall be initiated only upon the completion of a preliminary investigation, or preliminary operations under article 243 § 2 resulting in sufficient indications for initiating criminal proceedings ...

2. If the criminal complaint or report has no legal basis, or is manifestly unfounded on its merits, or is not subject to judicial assessment, the public prosecutor at the Court of First Instance shall archive it and submit a copy to the public prosecutor at the Court of Appeal, citing his reasons for deciding not to initiate criminal proceedings. The same actions shall be taken if, following a preliminary examination or preliminary measures pursuant to Article 243 § 2 or a sworn administrative investigation, the public prosecutor considers that there is not sufficient evidence to initiate criminal proceedings. The public prosecutor at the Court of Appeal has the right: a) in the case of the first subparagraph, to order a preliminary examination to be conducted by the public prosecutor at the Court of First Instance if the offence is a felony or a misdemeanour falling under the jurisdiction of the three-member Misdemeanour Court, or to order the initiation of criminal proceedings for the other offences; b) in the case of the second subparagraph, to order the initiation of criminal proceedings.

3. The competent public prosecutor shall take the case file out of the archive again only if new facts or evidence are referred to or emerge which, in his view, justify a re-examination of the case ..."

Article 46
Criminal complaint filed by the victim

"1. If the victim of a punishable offence wishes to request initiation of criminal proceedings, he or she shall file a criminal complaint (έγκληση) in accordance with Article 42 §§ 2, 3 and 4 ..."

Article 47
Rejection of the criminal complaint

"1. The public prosecutor shall examine the criminal complaint and if he considers that it has no legal basis, or that it is not subject to judicial assessment, or that it is unfounded on its merits, he shall reject it by means of a duly reasoned order which shall be served on the complainant.

2. If a preliminary investigation or preliminary measures pursuant to Article 243 § 2 or a sworn administrative investigation had been conducted and the public prosecutor considers that there is not sufficient evidence to initiate criminal proceedings, he shall act as described in the preceding paragraph.

..."

Article 48
Complainant's right to appeal

"A person who lodges the criminal complaint may, within fifteen days of the service of the public prosecutor's order under paras. 1 and 2 of the preceding article, lodge an appeal with the competent public prosecutor at the Court of Appeal against the order issued by the public prosecutor at the Court of First Instance .... If the public prosecutor grants the appeal, then the last subparagraph of Article 43 § 2 shall apply."

Article 180
When and how a forensic examination (*αυτοψία*) is performed

"1. A forensic examination may be performed at any stage of the proceedings on places, objects or persons with a view to verifying the commission of offences and the circumstances under which they were committed.

2. If there are no traces of the offence or other material evidence or if such evidence has been eliminated or altered, the person performing the forensic examination shall describe the current situation, investigating at the same time if possible the previous situation ..."

Article 183
When an expert evaluation is ordered

"If specialised scientific or cultural knowledge is required in order to obtain an accurate diagnosis and judgment of a certain event, those conducting the investigation or the court may of their own motion or at the request of one of the parties or of the public prosecutor order an expert opinion."

B. Introductory Law to Civil Code

35. Article 105 of the Introductory Law to the Civil Code provides as follows:

"The State shall be duty-bound to make good any damage caused by unlawful acts or omissions attributable to its organs in the exercise of public authority, except where such unlawful act or omission was in breach of an existing provision but was intended to serve the public interest. The person responsible and the State shall be jointly and severally liable, without prejudice to the special provisions on ministerial responsibility."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

36. Relying on Article 2 of the Convention, the applicants complained that the State authorities had failed to carry out an effective investigation into the death of Mr Tsalikidis. Article 2 reads, in so far as relevant, as follows:

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

37. The Government contested that argument.

A. Admissibility

1. The parties' submissions

38. The Government argued that the part of the application relating to the alleged deficiencies in the initial preliminary investigation conducted in 2005-2006 (E2006/1200) should be rejected as having been lodged out of time. The initial investigation was terminated on 20 June 2006 by order no. 80/2006 issued by the public prosecutor at the Athens Court of First Instance. Following an appeal against it by the first applicant, on 25 September 2006 order no. 565/2006 was issued by the public prosecutor at the Athens Court of Appeal, rejecting the appeal. In the Government's view, any deficiencies relating to the initial preliminary investigation should have been raised within six months of the date of last order completing the investigation. Any other interpretation would mean that applicants would be allowed to raise complaints about alleged deficiencies in the initial investigation even years later by submitting new evidence – whether real or fake – to the domestic authorities.

39. The Government also raised an objection concerning admissibility under Article 35 § 2 (b) of the Convention in respect of either the whole application or at least the part of the complaint relating to the initial preliminary criminal investigation. In particular, the Government pointed out that the first applicant had previously lodged application no. 13207/07 with the Court, which had been declared inadmissible. Even though they were not in position to scrutinise the similarity between that application and the application currently under examination – since the former had never been communicated to them – the Government submitted that the Court should consider whether the two applications were substantially similar and if that was the case, dismiss the current application or at least its relating to the initial criminal investigation under Article 35 § 2 (b) of the Convention.

40. The Government also raised two objections of non-exhaustion of domestic remedies. Firstly, they argued that it was only the first applicant

who had filed a criminal complaint on 9 February 2006 and had later challenged order no. 80/2006 issued by the public prosecutor at the Athens Court of First Instance by virtue of which the case had been archived. In the Government's view, filing a criminal complaint and – in the event that it was later archived – lodging an appeal against the public prosecutor's order were appropriate and effective remedies, as proven by the fact that the first applicant had used them. The second and third applicants should therefore also have availed themselves of these legal remedies, but as they had not done so, the application should accordingly be rejected in respect of the second and third applicants' complaints relating to the initial criminal investigation.

41. Secondly, the Government submitted that the application should be rejected in its entirety due to non-exhaustion of domestic remedies, as none of the applicants had submitted an application for damages under Article 105 of the Introductory Law to the Civil Code in conjunction with Article 2 of the Convention, which was directly applicable to the Greek legal order. Relying on a series of judgments issued by the Supreme Administrative Court, the Government claimed that an application for compensation in respect of damage caused by unlawful acts or omissions committed by the State could have resulted in an award of compensation in respect of pecuniary and non-pecuniary damage and it was therefore an appropriate and effective legal remedy that the applicants should have used. In the Government's view, the present case should be distinguished from the Court's judgments in *Papapetrou and Others v. Greece* (no. 17380/09, 12 July 2011) and *Zontul v. Greece* (no. 12294/07, 17 January 2012) in which the Court dismissed the Government's objection of non-exhaustion for failure to use the remedy under Article 105. In the former case the applicants had submitted an application for damages which was still pending at the time they applied to the Court and, in any event, no violation of Article 2 was found. In the latter, the Court had dismissed the Government's objection on the basis that the applicants had joined the proceedings as civil parties; however, in that case criminal proceedings had already been initiated. It should be also distinguished from other cases where an application for damages had been considered ineffective remedy for complaints under other articles of the Convention.

42. Lastly, the Government raised an objection alleging lack of victim status in respect of the second and third applicants. As the first applicant was the only one who had filed a criminal complaint – and later an appeal against the public prosecutor's order archiving the case file – the Government argued that the second and third applicants lacked victim status.

43. The applicants contested the Government's submissions. They submitted that their application had already been declared admissible. Furthermore, they argued that pursuant to Articles 43 §§ 5 and 57 of the

Code of Criminal Procedure, the archiving of a case file by the public prosecutor did not result in a *res judicata*; in the event of new facts or evidence, as in the present case, the investigation could be reopened. Referring to the Court's judgment in *Yotova v. Bulgaria* (no. 43606/04, 23 October 2012), the applicants argued that the criminal investigation should be seen as a whole and the time-limit for lodging an application with the Court should therefore have been counted from the end of the supplementary criminal investigation, that is to say 16 June 2014.

44. In reply to the Government's objection under Article 35 § 2 (b) of the Convention, the applicants submitted that the previous proceedings before the Court had only dealt with their complaint under Article 6 § 1 of the Convention, alleging deficiencies in the initial criminal investigation, and not with the complaint concerning an overall lack of effectiveness of the investigation under Article 2 of the Convention. The instant case was thus clearly concerned with different subject matter and also contained new facts, since it referred to deficiencies not only in the initial but also the supplementary preliminary investigation.

45. As regards the Government's objection alleging non-exhaustion of domestic remedies, the applicants referred to all the requests they had made in the context of both the initial and the supplementary preliminary investigation either all together or the first applicant separately. They also claimed that the domestic legislation had not provided for an effective remedy in respect of any deficiencies in the investigation. As regards an action for damages under Article 105 of the Introductory Law, the applicants argued that, on the one hand, such an action would have had very little prospect of success and, on the other hand, that it was not effective. In any event, they had already joined the criminal proceedings as civil parties and it would therefore have been pointless to submit an application for damages, since both legal remedies served the same goal and it would have been excessive to have to exhaust both penal and administrative remedies in relation to the same case. The applicants referred to several judgments of the Court to illustrate that it has on many occasions rejected the Government's argument that an action for damages constitutes an effective remedy for complaints related to various Articles of the Convention (*Yotova*, cited above, § 101; *Zontul v. Greece*, no 12294/07, § 73, 17 January 2012). They also pointed out that the domestic decisions relied on by the Government in their attempt to prove the effectiveness of an action for damages referred to cases where the deaths at issue had been caused by the actions of State agents and were therefore not comparable with the present case.

46. Lastly, in respect of the Government's objection alleging lack of victim status on the part of the second and third applicants, the applicants argued that classification as a victim is not dependent on the exercise of any legal remedies. Referring to a series of the Court's judgments in which

applications lodged by relatives of deceased persons were considered admissible, the applicants claimed that they were indirect victims and that the Government's objection should be rejected. In any event, the second and third applicants had actively participated in the preliminary investigation by submitting the application for the reopening of the case and by joining the proceedings as civil parties.

2. The Court's assessment

47. The Court notes at the outset that in the letter sent out by the Registry on 5 January 2015, the applicants' legal representative was informed only that a file had been opened and that he would be informed of any decision taken by the Court. At that stage it could only be said that the application had not been rejected on administrative grounds for failing to comply with the requirements set out in Rule 47 of the Rules of Court, which is not the same as confirming the admissibility of an application governed by Article 35 of the Convention which has not yet been examined by the Court (see *Podeschi v. San Marino*, no. 66357/14, § 88, 13 April 2017).

48. As regards the parties' submissions, the Court notes that the Government's objections can be separated in two parts: on the one hand, they have raised a number of objections in respect of the complaints concerning the initial criminal investigation, namely that they were filed outside the time-limit and that the second and third applicants had failed to exhaust the domestic legal remedies because they had not filed a criminal complaint. On the other hand, the Government raised some objections concerning the application as a whole, namely that the complaints were substantially the same as the ones raised in application no. 13207/07, that all the applicants had failed to exhaust the domestic legal remedies due to the fact that they had not submitted an application for damages under Article 105 of the Introductory Law to the Civil Code and also that the second and third applicants lacked victim status.

(a) Failure to comply with the six-month rule under Article 35 § 1 of the Convention

49. The Court reiterates that Article 35 § 1 of the Convention provides that it may only deal with a complaint which has been introduced within six months of the date of the final decision delivered in the course of exhausting the domestic remedies. The purpose of the six-month rule under Article 35 § 1 of the Convention is to promote legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time (see *Opuz v. Turkey*, no. 33401/02, § 110, ECHR 2009). It prevents the authorities and other persons concerned from being in a state of uncertainty for a prolonged period of time. Finally, it ensures that, in so far as possible, matters are examined while they are still fresh, before the

passage of time makes it difficult to ascertain the pertinent facts and renders a fair examination of the question at issue almost impossible (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 74, ECHR 2016). Where no effective remedy is available to the applicant, the period starts to run from the date of the acts or measures complained of, or from the date of cognisance of that act or its effect on or prejudice to the applicant (see *Blokhin v. Russia* [GC], no. 47152/06, § 106, ECHR 2016).

50. Turning to the present case, the Court notes that the preliminary investigation conducted by the domestic authorities took place in two distinct phases: one part was conducted between 2005 and 2006 and one was conducted between 2012 and 2014. The initial criminal investigation came to an end by virtue of order no. 565/25-9-2006 issued by the public prosecutor at the Athens Court of Appeal which upheld the conclusion of the public prosecutor at the Athens Court of First Instance that there were not sufficient indications of criminal wrongdoing to justify the initiation of a criminal prosecution *in rem*. The next procedural step was the applicants' request dated 8 February 2012 for the reopening of the investigation. Following this, a supplementary preliminary investigation was conducted between February 2012 and June 2014.

51. As is apparent from the foregoing, in the period between the two phases of the investigation the case file had been archived, owing to the fact that there had not been sufficient evidence of criminal wrongdoing to justify the initiation of criminal proceedings. According to the domestic legislation, that would have been the end of the investigation into the criminal complaint lodged by the first applicant unless new facts or evidence arose which, in the public prosecutor's view, would warrant a supplementary investigation.

52. The Court notes the applicants' argument that the preliminary criminal investigation should be regarded as a whole. However, in the Court's view, the two phases of the investigation were distinct. The applicants should have been aware of the ineffectiveness of the initial criminal investigation long before they petitioned the public prosecutor on 8 February 2012 and should have raised any objection regarding deficiencies in the initial investigation within six months of the date on which order no. 565/25-9-2006 was issued. The applicants could not rely on the possible reopening of the case file, which domestic legislation would only allow if new facts or evidence were presented, and even then would be left to the discretion of the public prosecutor. The period of more than five years which elapsed between the two phases of the preliminary criminal investigation – in respect of which the applicants provided no explanation detailing why it took so long to seek and introduce the new evidence – is sufficiently lengthy to have severed the link between the two distinct phases of the investigation. The applicants should have realised the ineffectiveness of the initial preliminary investigation as soon as the case was archived and

thus should have introduced their application in respect of that part of the investigation within six months of the date on which the public prosecutor of the Court of Appeal confirmed its archiving (see *Cerf v. Turkey*, no. 12938/07, §§ 62-64, 3 May 2016, and *Kadri Budak v. Turkey*, no. 44814/07, §§ 56-58, 9 December 2014).

53. The present case is, therefore, distinguishable from the Court's judgment in *Yotova* (cited above) which was relied on by the applicants. In that case the criminal investigation conducted by the public prosecutor was suspended four times and the case file was not archived but was sent back to the investigator for the necessary measures to be taken to identify the perpetrator of the crime (see *Yotova*, cited above, § 51). In addition, the criminal investigation by the public prosecutor was resumed following the successful challenge by the applicants of the decision to suspend the criminal investigation, whereas in the present case the first applicant's appeal against the public prosecutor's decision to archive the case file was unsuccessful and a supplementary preliminary investigation was not ordered until five years later, following the presentation of new evidence.

54. It follows from the foregoing that the applicants failed to comply with the six-month rule in respect of their complaints alleging deficiencies in the initial preliminary investigation conducted in 2005 and 2006 and this aspect of the case should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

55. In view of the above conclusion, the Court does not consider it necessary to examine the Government's other objection concerning the initial criminal investigation, namely that the second and third applicants failed to exhaust the domestic legal remedies because they did not file a criminal complaint.

(b) Application substantially the same as a matter that has already been examined by the Court

56. In preventing the Court from dealing with any application which is substantially the same as a matter already decided, the admissibility criterion under the first limb of Article 35 § 2 (b) of the Convention is intended to ensure the finality of the Court's decisions and to prevent applicants from seeking, through the lodging of a fresh application, to appeal against previous judgments or decisions of the Court (see *Harkins v. the United Kingdom* [GC], no. 71537/14, § 41, 10 July 2017; *Lowe v. the United Kingdom* (dec.), no. 12486/07, 8 September 2009 and *Kafkaris v. Cyprus* (dec.), no. 9644/09, § 67, 21 June 2011).

57. An application will generally fall foul of the first limb of Article 35 § 2 (b) where an applicant has previously brought an application which related essentially to the same person, the same facts and raised the same complaints (see *Vojnovic v. Croatia* (dec.), no. 4819/10, § 28, 26 June 2012; *Anthony Aquilina v. Malta*, no. 3851/12, § 34, 11 December 2014; and

X. v. Slovenia (dec.), no. 4473/14, § 40, 12 May 2015). It is insufficient for an applicant to allege relevant new information where he or she has merely sought to support his or her past complaints with new legal argument (see, for example, *I.J.L. v. the United Kingdom* (dec.), no. 39029/97, 6 July 1999 and *Kafkaris* (dec.), cited above, § 68). In order for the Court to consider an application which relates to the same facts as a previous application, the applicant must genuinely advance a new complaint or submit new information which has not previously been considered by the Court, within the six-month time-limit set out in Article 35 § 1 of the Convention (see *Lowe* (dec.) and *Kafkaris* (dec.), § 68, both cited above).

58. In view of the above considerations concerning the applicants' failure to comply with the six-month rule, the Court will consider the objection of admissibility under Article 35 § 2 (b) of the Convention only with regard to the supplementary investigation. In this respect, it is sufficient to say that the supplementary investigation took place between 2012 and 2014, that is long after application no. 13207/07 had been lodged with the Court, and, therefore, that part of the application does not refer to the same facts as the previous one.

59. It follows that the Government's objection should be dismissed in so far as the supplementary investigation is concerned.

(c) Non-exhaustion of domestic remedies

60. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants first to use the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints which it is intended subsequently to bring before the Court should have been made to the appropriate domestic body, at least in substance, and in compliance with the formal requirements laid down in domestic law, but that no recourse should have been had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV).

61. The Court emphasises that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 224, ECHR 2014 (extracts)). It has recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to take into account the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only

of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust the domestic remedies (see *Akdivar*, cited above, § 69, and *Aksoy*, cited above, §§ 53-54).

62. The Court observes that the Government claimed that the applicants should have submitted an application for compensation in respect of damage caused by the acts or omissions of the investigative authorities and in particular by the lack of an effective investigation into Mr Tsalikidis' death. In this respect, they relied on a number of domestic decisions in which compensation was awarded to relatives of deceased persons whose death was attributable to State officials. However, the Government did not refer to any examples where domestic courts had awarded compensation for damage caused by the procedural shortcomings of an investigation conducted by State authorities.

63. The Court considers that the Government's objection is closely linked to the substance of the applicants' complaints. It therefore joins the objection to the merits of the case.

(d) The second and third applicants' victim status

64. The Court reiterates that close family members, including siblings, of a person whose death is alleged to engage the responsibility of the State can themselves claim to be indirect victims of the alleged violation of Article 2 of the Convention, and the question of whether they were legal heirs of the deceased is not relevant (see *Velikova v. Bulgaria* (dec.), no. 41488/98, ECHR 1999-V (extracts), and *Van Colle v. the United Kingdom*, no. 7678/09, § 86, 13 November 2012). The Court considers that, as the parents of Mr Tsalikidis, the second and third applicants could legitimately claim to be victims of any deficiencies in the investigation of their son's death (see, for example, *Kurt v. Turkey*, 25 May 1998, § 134, *Reports* 1998-III, and *Emars v. Latvia*, no. 22412/08, § 51, 18 November 2014). In view of the foregoing, the Government's objection must be dismissed.

65. The Court notes that the rest of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's submissions

66. The applicants complained that very few steps had been taken by the national authorities during the investigation conducted from 2012 to 2014, and argued that those steps had not been sufficient to clarify the circumstances surrounding Mr Tsalikidis' death. In their opinion, it had not been proved that the deceased had committed suicide and the steps taken in the second investigation had not been sufficient to rectify the serious omissions identified during the initial investigation.

67. The applicants argued that during the supplementary investigation new evidence had emerged which had reinforced the scenario of homicide, whereas the scenario of suicide had become less probable. In this respect, they stressed the importance of the reports by the two new experts, namely S.K. and Th.V. – both of whom possessed excellent credentials – who had identified a number of disturbing features in the initial autopsy, such as the absence of typical signs of hanging, the divergences between coroners' testimonies as to the position of the rope mark and the inconsistencies concerning the cause of death. The applicants had informed the authorities of the contradictions that cast a shadow to the conclusions of the initial investigation, as soon as they had been made aware of them, with the assistance of their technical advisors. They also referred to the psychiatric report prepared at their request, which stated that the deceased had not betrayed any of the personality characteristics associated with a suicide risk.

68. Most importantly, they relied on the evidence discovered following the exhumation of the body, namely the broken hyoid bone, a phenomenon consistent with strangulation. Even though the lapse of time and the absence of surrounding soft tissue had made it impossible to conclude whether the hyoid bone had been broken *ante-mortem* or *post-mortem*, the applicants argued that it would have been highly improbable for all the other bones to have remained intact and the only one to be broken after death to be the hyoid bone. For the applicants, this evidence had been sufficient to call into question the conclusions of the initial investigation and to suggest homicide rather than suicide. In this regard, they cited the reports drawn up by the three coroners following the exhumation. Whereas during the initial investigation the death had been considered a suicide – for which reason the case file had been archived – the findings of the histology report had caused two out of the three coroners, namely I.B. and N.K, to conclude that the cause of death remained unclarified, meaning that homicide had not been excluded. The third coroner, Ch.S. had prepared a similar report without any reference to the cause of death.

69. The applicants cited a number of investigative measures which should have been taken in order for the investigation to have been effective. The biological material extracted following the exhumation of

Mr Tsalikidis' body should have been sent to laboratories abroad, which are better equipped than the laboratories in Greece for the identification of drugs or poison in a deceased's body. A forensic examination of the place of death and a reconstruction of the death should have been ordered to shed light on the circumstances of death and in particular to examine whether the body would have crashed against nearby furniture and therefore suffered injuries. A new forensic report should also have been drawn up by an independent coroner so as to clarify the inconsistencies and discrepancies observed between the other reports, in particular whether the rope mark was obliquely directed or encircled the deceased's cervical spine. A DNA test and a technical expert report on the knot, which had been preserved, should have been ordered so as to establish whether there were any other person's fingerprints on it and whether the deceased would have been capable of tying such a complex knot. Additionally, phone operator V. should have been asked to submit the minutes of the meeting that had allegedly taken place the day preceding Mr Tsalikidis' death and representatives of the company should have been requested to officially confirm that he had been the employee responsible for accepting on behalf of their company the legal software provided by company E. which had been used to activate the program of wiretapping. Lastly, the technical advisors S.K. and Th. V. should have been summoned to testify and cross-examined along with coroners G.D.L. and F.K., and fresh witness statements should have been taken in respect of the new evidence acquired.

70. The applicants also contested the conclusions of Dr Ch.S. contained in the document adduced by the Government in corroboration of their arguments (see paragraph 81 below). They maintained that this coroner had not been impartial, as she had initially been asked to draw up a report as an independent expert following the exhumation and at a later stage had acted as scientific counsellor on behalf of the Government for the purposes of the current application.

71. In the light of the above, the applicants argued that the domestic authorities had failed to take due account of the new evidence and to order further investigative measures which would have shed light on the circumstances surrounding Mr Tsalikidis' death. The steps taken in the new investigation indicated that there had been several shortcomings in the initial investigation, some of which could have been rectified during the supplementary investigation; however this did not happen. The public prosecutor had chosen to archive the case file without having taken any further investigative steps and without having provided adequate reasoning for his decision.

2. The Government's submissions

72. The Government claimed that a fully effective, thorough and prompt investigation had taken place into the circumstances surrounding

Mr Tsalikidis' death both at the initial stage and following the applicants' request for the reopening of the case file in 2012.

73. The Government maintained that the applicants were in essence complaining about the assessment of the evidence by the domestic authorities, disregarding the fact that the Court is not a court of fourth instance. The Government further argued that the applicants had based their allegations concerning the ineffectiveness of the investigation merely on a fragmentary assessment of the evidence collected whilst it was being conducted. However, the public prosecutor at the Athens Court of First Instance − who on 16 June 2014 upheld the conclusion set out in order 80/06 that there was no evidence of any criminal offence − had taken due account of all the evidence, including the reports drawn up – with great delay − by the applicants' technical advisors.

74. In addition, the two forensic reports prepared by S.K. and Th.V. had not been convincing as they had not been identical and had not included reliable evidence which could have called into question the conclusions of the first autopsy report drawn up by G.D.L. In particular, S.K. had relied on partial evidence, without having examined the body or having first-hand knowledge of the case file. He had included comments not normally found in forensic reports − such as the fact that the deceased had expressed fears for his safety during the weeks preceding his death − and he had disregarded some of the material in the case file. In particular, he had commented in his report the absence of cadaveric hypostases in the legs of the deceased as an indication that the deceased had not been hanged; however, he had failed to notice that the body had been found only few hours after hanging which could have explained the absence of any such signs. S.K.'s statement that the knot had been fairly complex had been based on pictures of dubious origin and clarity and had been contradictory to the statement by F.K., who had expressed the view that the knot had been a simple. In general, his conclusions had been ambiguous.

75. As regards the forensic report drawn up by Th.V, the Government claimed that it had been vague and had not provided specific evidence which could have called into question the conclusions of the initial autopsy. In addition, Th.V.'s remark that the lack of any injuries caused by after-death body spasms had been strange had not been well-founded since the body had not been hanging near walls which could have caused such injuries.

76. As regards the psychiatric report, the Government argued that it had been prepared by a psychiatrist who had never met Mr Tsalikidis and had been based on the testimonies of relatives and friends, without taking into account their psychological state following the death of a loved one. But even in those circumstances, the psychiatrist had not excluded the possibility that Mr Tsalikidis might have committed suicide.

77. Nevertheless, and despite the lack of sufficient evidence to demonstrate unequivocally the alleged deficiencies in the initial investigation, the public prosecutor had granted the applicants' request for a reopening of the proceedings – a fact indicative of the domestic authorities' diligence in examining the case – and had ordered the exhumation of Mr Tsalikidis' body. However, the exhumation did not reveal evidence corroborating the applicants' theory that he had not committed suicide, as no traces of poison or drugs were discovered in his body.

78. In respect of the hyoid bone, the Government argued that no safe conclusion could be drawn as to whether it had been broken *ante-mortem* or *post-mortem* during the exhumation. In the initial autopsy report coroner G.D.L. had stated that the hyoid bone had been intact, which was an indication that the bone could have been broken during the exhumation process. The fact that only the hyoid bone had been reported as broken following the exhumation could easily be explained by the fact that exhumation had been focused on only a few parts of the deceased's body. In any event, even if the hyoid bone had been broken *ante-mortem*, the applicants had not mentioned whether this phenomenon, whilst typical of strangulation, was also to be found in cases of hanging. Concerning the coroners' conclusion that the cause of death remained unclarified, the Government submitted that it would have been arbitrary to draw any other conclusion, given the time that had elapsed, and that the coroners' task had in any event not been to establish the cause of death.

79. As to the specific investigative measures that the applicants insisted should have been taken, the Government submitted that there had been no need to request assistance from laboratories abroad as Greek laboratories were fully equipped. As regards forensic examinations of the place of death and of the rope, they would not have been appropriate as the applicants had intervened at the place of death and had cut the rope from which the body had been hanging. They had therefore tampered with the evidence, whose value had hence become negligible. As regards minutes of the meeting allegedly held in phone operator V.'s premises the previous day, the Government argued that there was no evidence that such a meeting had in fact taken place or that minutes had been taken. In any event, such minutes could not have added anything to the investigative measures that had already been taken. Even if a causal link existed between the wiretapping affair and Mr Tsalikidis' death, that did not mean that the investigation had been ineffective.

80. The Government also argued that a third coroner's report was unnecessary because the conclusions drawn by coroners G.D.L. and F.K. during the initial investigation had not been contradictory, as the applicants erroneously maintained, but rather complementary. In particular, coroner G.D.L. had concluded that the rope had encircled Mr Tsalikidis' neck with a knot at the right of the occiput and coroner F.K. had made the observation

that the mark was obliquely directed. The fact that rope mark had been circular − that is to say encircling the neck completely − had not precluded its also being obliquely directed. Moreover, coroner G.D.L. had attributed Mr Tsalikidis' death to pulmonary oedema and coroner F.K. to cardiac arrest; however, these two statements were not contradictory as "cardiac arrest" meant loss of heart function and was synonymous with death. In addition, these alleged contradictions should have been brought up by the applicants following the end of the initial investigation.

81. By way of corroboration of their arguments, the Government presented a certificate dated 17 May 2016 issued by Ch.S, one of the three coroners who had drawn up reports following the exhumation, and who was also the Director of the Laboratory of Forensic Medicine and Toxicology in the School of Medicine of Athens National University. Dr Ch.S. stated that in her view both the initial and supplementary investigations had been complete and endorsed the Government's arguments as regards the cause of death, the hyoid bone, the reports drawn up by the applicants' technical experts, and the rope mark on the deceased's neck.

82. In conclusion, the Government maintained that the domestic authorities had conducted a thorough, prompt and impartial investigation, as proven by the extensive collected evidence. The applicants' involvement in the investigation had been evident and the authorities − which had responded immediately to the applicants' request for exhumation − had reached the decision to archive the file after assessing all the evidence in their possession.

3. The Court's assessment

(a) General principles

83. Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention and enshrines one of the basic values of the democratic societies making up the Council of Europe. The Court must subject any allegations of breaches of this provision to the most careful scrutiny (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 93, ECHR 2005-VII).

84. The Court observes at the outset that the applicants did not contend that the authorities of the respondent State had been responsible for the death of their relative; nor did they imply that the authorities knew or ought to have known that he was at risk of physical violence at the hands of third parties and had failed to take appropriate measures to safeguard him against such a risk. The present case should therefore be distinguished from cases involving the alleged use of lethal force either by agents of the State or by private parties with their collusion (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324; *Shanaghan v. the United Kingdom*, no. 37715/97, § 90, 4 May 2001; *Anguelova*

v. Bulgaria, no. 38361/97, ECHR 2002-IV; *Nachova and Others*, cited above; and *Ognyanova and Choban v. Bulgaria*, no. 46317/99, 23 February 2006) and cases in which the factual circumstances imposed an obligation on the authorities to protect an individual's life, for example where they had assumed responsibility for his or her welfare (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, ECHR 2002-II) or where they knew or ought to have known that his life was at risk (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII).

85. However, the absence of any direct State responsibility for the death of the applicants' relative does not exclude the applicability of Article 2 of the Convention. The Court reiterates that by requiring a State to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III, p. 1403, § 36), Article 2 § 1 of the Convention imposes a duty on that 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 (see *Osman*, cited above, § 115, and *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 93, 26 July 2007).

86. The Court reiterates that in the circumstances of the present case this obligation requires that there should be some form of effective official investigation when there is reason to believe that an individual has died in suspicious circumstances. The investigation should, in principle, be capable of leading to the establishment of the facts of the case (see *Başbilen v. Turkey*, no. 35872/08, § 70, 26 April 2016, and *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 172, 14 April 2015) and of identifying and – if appropriate – punishing those responsible (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 233, ECHR 2016). This is not an obligation as to results to be achieved, but as to means to be employed. Thus, the authorities must have taken the steps reasonably available to them to secure the evidence concerning the incident, including eye witness 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 or persons responsible will risk falling foul of this standard (see *Anguelova*, cited above, § 139; *Nachova and Others*, cited above, § 113; and *Ognyanova and Choban*, cited above, § 105).

87. The form of investigation that will achieve those purposes may vary in different 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 request particular lines of inquiry or investigative procedures (see *İlhan v. Turkey* [GC], no. 22277/93, § 63,

ECHR 2000-VII, and *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], cited above, §§ 173-74). Moreover, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice. In all cases, the victim's next of kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Aliyeva and Aliyev v. Azerbaijan*, no. 35587/08, § 70, 31 July 2014).

88. In particular, the investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements. Failing to follow an obvious line of inquiry undermines to a decisive extent the investigation's ability to establish the circumstances of the case and the identity of those responsible. Nevertheless, the nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case. The nature and degree of scrutiny must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. (see *Armani Da Silva v. the United Kingdom* [GC], cited above, § 234).

89. The Court has held that in some cases information purportedly casting new light on the circumstances of a killing may come into the public domain at a later stage. The issue then arises as to whether, and in what form, the procedural obligation to investigate is revived. To that end, the Court considered in its judgment in the case of *Brecknell v. the United Kingdom* (no. 32457/04, § 71, 27 November 2007) that, where there is a plausible or credible allegation, the discovery of any new piece of evidence or item of information relevant to the identification and eventual prosecution or punishment of the perpetrator of an unlawful killing would require the authorities to take further investigative measures. The steps which would be reasonable to take will vary considerably according to the facts of the situation. The lapse of time will, inevitably, be an obstacle as regards, for example, the location of witnesses and the ability of witnesses to recall events reliably. Such an investigation may in some cases, reasonably, be restricted to verifying the credibility of the source or of the purported new evidence (see *Gasyak and Others v. Turkey*, no. 27872/03, § 60, 13 October 2009).

90. The extent to which the requirements of effectiveness, independence, promptness and expedition, accessibility to the family and sufficient public scrutiny apply will again depend on the particular circumstances of the case, and may well be influenced by the passage of time as stated above. Where an allegation or new evidence tends to indicate police or security force collusion in an unlawful death, the criterion of independence will, generally, remain unchanged (see, for the importance of this criterion from the very earliest stage of the procedure, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§. 325, 333-341, ECHR 2007-II). Promptness will be unlikely to come into play in the same way, since, for example, there may be no urgency as regards the securing of a crime scene from contamination

or in obtaining witness statements while recollections are sharp. Reasonable expedition will remain a requirement, but what is reasonable is likely to be coloured by the investigative prospects and difficulties which exist at such a late stage (see *Brecknell v. the United Kingdom*, cited above, §§ 71-72).

(b) Application of the above-mentioned principles in the present case

91. The Court notes at the outset that the parties have devoted a large part of their submissions to the alleged deficiencies in the initial investigation, focusing mainly on the alleged omissions of coroner G.D.L. In view of the conclusion as regards the applicants' failure to observe the six-month rule under Article 35 § 1 of the Convention in respect of their complaints concerning the initial investigation, the Court will not deal with those arguments.

92. The Court will therefore examine whether the information provided by the applicants to the domestic authorities on 8 February 2012 amounted to the kind of new evidence which would entail the revival of the procedural obligation to investigate. In this connection the Court observes that a new investigation was started into the applicants' allegations by the authorities, who thereby discovered new leads and information about the killing. Furthermore, it is to be noted that, in the proceedings before the Court, the applicants not only challenged the effectiveness of the investigation carried out between March 2005 and June 2006, but also the effectiveness of the investigation conducted after February 2012.

93. In the light of the foregoing, the Court considers that the information submitted to the authorities by the applicants in February 2012 resulted in significant new developments and, as such, the procedural obligation to investigate the killing of the applicants' relative was revived after that date (see *Gasyak and Others*, cited above, § 63; see also, *mutatis mutandis*, *Kavak v. Turkey*, no. 53489/99, §§ 84-90, 6 July 2006).

94. The Court notes that, following the applicants' request for reopening the proceedings, a supplementary investigation was conducted by the public prosecutor's office without delay. The supplementary investigation resulted in the decision of 16 June 2014 not to initiate criminal proceedings and to uphold the conclusions of order 80/06, by which the initial investigation had been closed (see paragraphs 18 et seq. above).

95. It is clear to the Court that the supplementary investigation was reasonably prompt, as it was instituted immediately after the applicants' request for reopening, and lasted about two years. The Court also takes note of the fact that the entire investigation was conducted by the public prosecutor's office, an authority which was institutionally independent, and that the applicants were involved at the various stages of the proceedings – by having their technical advisor present during exhumation, for example.

96. It remains to be examined whether the investigation conducted was effective in the sense of being capable of ascertaining the circumstances in

which the incident occurred and identifying the person or persons responsible for the death in question.

97. The Court notes that it has been presented with contradictory arguments as regards the scientific value of some of the findings. In this connection, the Court reiterates that in the absence of elements indicating that the conclusions of the national authorities were arbitrary or that they had manifestly ignored relevant facts, the Court will not substitute its own interpretation for theirs (see *Seidova and Others v. Bulgaria*, no. 310/04, § 57, 18 November 2010). The Court will therefore assess the effectiveness of the investigation in the light of the above-mentioned principles.

98. In this respect, the Court notes that the applicants brought to the attention of the domestic authorities new evidence which called into question the conclusions drawn after the initial preliminary investigation. Both the forensic reports drawn up at the applicants' request identified a number of elements that were not consistent with a suicide and the psychiatric report concluded that the deceased's personality was not compatible with the profile of a person with suicidal tendencies. Following the reopening of the case, an exhumation took place and histology, toxicology and forensic reports were prepared which did not reveal any drugs or poison in the biological material extracted but did reveal that the hyoid bone was broken. In addition, two of the three coroners who prepared new forensic reports following the exhumation concluded that the cause of his death remained unclarified, as opposed to the outcome of the initial autopsy in which it was concluded that cause of death was hanging with a noose.

99. Following these developments, the public prosecutor in charge of the investigation, citing the reference numbers of the new toxicology, histology and forensic reports, decided to close the supplementary investigation and uphold the conclusions of order 80/06 by which the initial investigation had been archived.

100. Contrary to the affirmation of the prosecutor, the Court considers that the available evidence was inconclusive, suicide being only one of the possible explanations for Mr Tsalikidis' death. Although no poison or drugs were found in the biological material taken from Mr Tsalikidis' body following exhumation, the reports drawn up by the technical experts at the applicants' request identified a series of features inconsistent with the scenario of suicide, namely the lack of injuries which would have been caused by crashing against nearby furniture, the lack of cyanosis of the face, the contradictions concerning the position of the rope mark on the deceased's neck, the lack of clarity as regards the cause of death, as well as the complexity of the knot, which apparently would have required "sailing knowledge". Additionally, there was no apparent motive for suicide, as confirmed by the psychiatrist who prepared a report at the applicants' request, and also by the witness who had been examined during

the initial stage of the investigation. Most importantly, following the exhumation, the hyoid bone was found to be broken. According to the material brought to the attention of the Court by the applicants – which was not refuted by the Government – a broken hyoid bone is a finding consistent with strangulation. Besides this, the new forensic reports drawn up by the coroners following the exhumation of the body concluded that the cause of death remained unclarified, which is a striking difference compared to the initial forensic report.

101. In view of the above, one could reasonably have expected the domestic authorities to address the inconsistencies identified above. However, the public prosecutor decided to close the investigation, upholding the conclusions of order 80/06, and simply citing the relevant steps that had been taken during the supplementary investigation without addressing any of the above-mentioned findings and inconsistencies. The Court notes that it is not clear on what grounds the Athens public prosecutor based his decision not to prosecute or to order further investigative measures because the order contains no reasoning, merely a reference to the new reports.

102. The Court additionally notes that the applicants did not have at their disposal any remedy against the public prosecutor's decision to close the supplementary investigation. While the applicants could challenge order 80/06 by which the initial investigation was closed, a remedy used by the first applicant albeit unsuccessfully, it appears that the public prosecutor's order to put the case back to the archive was final and the applicants could not appeal against it or advance their arguments for further investigative measures.

103. The Court reiterates that Article 2 does not impose a duty on the investigating authorities to satisfy every request for a particular investigative measure made by a relative in the course of the investigation (see *Ramsahai and Others*, cited above, § 348). In the Court's view however, some of the investigative measures suggested by the applicants could have elucidated the circumstances surrounding the applicant's death. In particular, the Court notes that, although the cause of death had not been sufficiently elucidated, no reconstruction of the incident and no forensic examination of the place of death were ever ordered, despite the applicants' request and their technical advisors' suggestion to this effect. While the Government alleged that such a reconstruction would not have been appropriate as the applicants had tampered with the evidence at the place of death, the Court opines that a reconstruction and/or a forensic examination, even at a later stage, would have shed light on the possible proximity of the body to nearby furniture and would have provided answers as to whether his body should have suffered injury, given the position in which it was hanging.

104. The same considerations apply to the failure to obtain a new forensic report – which could have addressed the inconsistencies concerning the cause of death and the rope mark on the deceased's neck – and a technical expert report examining the complexity of the knot. Although the Government maintained that no inconsistencies existed between the coroners' opinions, the Court cannot fail to notice that the first coroner attributed Mr Tsalikidis' death to pulmonary edema and the second coroner to cardiac arrest, but both conclusions were strongly contested by the applicants' technical advisors. In addition, the conclusion of the initial autopsy was that Mr Tsalikidis had been hanged with a noose, whereas after the supplementary investigation the cause of death was noted by two of the three coroners as unclarified. The Court cannot share the Government's view that after so many years this was the only possible conclusion in respect of the cause of death and that establishing the cause of death had anyway not been the purpose of the exhumation. In the Court's view, the purpose of exhumation had been precisely to clarify the circumstances of Mr Tsalikidis' death and to identify any traces of criminal activity which could have led to it. If this had not been so, the coroners would not have stated the cause of death in their reports and would simply have commented on the findings or the absence thereof. Lastly, the knot was initially described as an "everyday, simple knot"; however, the applicants' technical advisor considered that it was particularly complex and would have required sailing knowledge to tie it.

105. The Court notes that the Government advanced various arguments as to why further investigative measures had not been necessary and tried to rebut the applicants' allegations, relying on the certificate prepared by coroner Dr Ch.S., amongst others. However, the Court considers that it was the task of the public prosecutor to explain why no further investigative measures were necessary and why he decided to uphold the conclusion of order 80/06 despite the new evidence which had come to light. The order by which the supplementary investigation was closed did not contain any presentation or analysis of the available evidence such as the new findings of the histology report or the conclusions of the forensic reports. The Court thus notes that the Athens public prosecutor did not attempt to resolve the inconsistencies revealed at the stage of the supplementary investigation and, in deciding to terminate the supplementary investigation, failed to adequately investigate or explain the patently obvious contradictions that ensued from it (compare *Başbilen v. Turkey*, cited above, § 73).

106. In reaching this conclusion, the Court attaches some weight to the fact that the Athens public prosecutor at the Court of First Instance in his order 80/06 mentioned that the death of Costas Tsalikidis had been causally linked with the wiretapping case (see paragraph 13 above). It was therefore even more important for the domestic authorities – which could not have

lost sight of the possible connection – to take all necessary measures to investigate Mr Tsalikidis' death and the circumstances surrounding it.

107. In the light of the foregoing, the Court considers that the national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the death of Mr Tsalikidis. The Court observes, in particular, that the difficulty in determining whether there was any substance in the applicants' claim that their relative was unlawfully killed rests with the failure of the authorities adequately to investigate the circumstances of the death (see *Esat Bayram v. Turkey*, no. 75535/01, § 52, 26 May 2009) in breach of the procedural obligations imposed under Article 2 of the Convention.

108. That said, the Court does not consider that the applicants acted inappropriately when choosing to pursue the case under the Code of Criminal Procedure. In particular, the Court notes that, as far as the supplementary investigation is concerned, the applicants submitted an application to the public prosecutor requesting the reopening of the investigation on the basis of new evidence. At the same time, they expressed their wish to join the proceedings as civil parties. Apart from the possibility of requesting compensation in respect of non-pecuniary damage, as civil parties and by virtue of the Code of Criminal Procedure, the applicants had the right to participate in the criminal procedure and to request that certain investigative acts be conducted by the investigating authorities and to have technical experts present when the investigative acts were carried out (see *Papapetrou and Others*, cited above, § 39, 12 July 2011). The Court observes that the applicants duly made use of the above-mentioned possibilities provided to them by law. The Court's conclusion that these proceedings turned out to be ineffective cannot be held against them (see *Elena Cojocaru v. Romania*, no. 74114/12, § 123, 22 March 2016).

109. As regards the applicants' ability to bring an action for damages against the investigative authorities who conducted the investigation into the death of Costas Tsalikidis, the Court reiterates that when there has been no intentional taking of life, an award of damages through civil or administrative proceedings may offer appropriate redress (see, among other authorities, *Mustafa Tunç and Fecire Tunç v. Turkey [GC]*, cited above, § 131). However, in cases of fatal assault, the breach of Article 2 cannot be remedied exclusively through an award of compensation to the relatives of the victim (see, among other authorities, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 79, ECHR 1999 IV). Consequently, the award of damages is not sufficient in such cases to remedy the violation of Article 2 of the Convention and to deprive the applicant of his status as a victim (see *Erkan v. Turkey* (dec.), no. 41792/10, § 61, 28 January 2014).

110. In cases where it is not clearly established from the outset that the death has resulted from an accident or another unintentional act, and where the hypothesis of unlawful killing is at least arguable on the facts, the

Convention requires that an investigation which satisfies the minimum threshold of effectiveness be conducted in order to shed light on the circumstances of the death. The fact that the investigation ultimately accepts the hypothesis of an accident has no bearing on this issue, since the obligation to investigate is specifically intended to refute or confirm one or other hypothesis (see *Mustafa Tunç and Fecire Tunç v. Turkey [GC]*, cited above, § 133).

111. In the present case, the circumstances of Costas Tsalikidis death were not established from the outset in a sufficiently clear manner. Various explanations were possible, and none of them was manifestly implausible in the initial stages (see paragraphs 9-12 above). Thus, the State was under an obligation to conduct an investigation and the applicants were not required to have recourse to an action for damages in the circumstances of the present case.

112. In the light of the foregoing, the Court finds that the applicants exhausted the domestic remedies and were not obliged to pursue the civil remedies suggested by the Government in order to exhaust them. The Court thus considers that the Government's objection of non-exhaustion of available domestic remedies should be dismissed and that the applicants were not provided with effective legal procedures compatible with the procedural requirements of Article 2 of the Convention.

113. Therefore, there has been a violation of Article 2 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 2 OF THE CONVENTION

114. The applicants complained that they did not have an effective remedy in connection with their complaint about the lack of effective investigation into the murder of their relative. They relied on Article 13, which reads:

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

A. Admissibility

115. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible as far as the supplementary investigation is concerned.

B. Merits

116. The applicants claimed that they had had no effective remedy concerning their complaints under Article 2 about the ineffectiveness of the investigation conducted by the domestic authorities. In this respect, they argued that filing a criminal complaint under Article 46 of the Code of Criminal Procedure and lodging an appeal against its possible rejection with the public prosecutor at the Court of Appeal had not constituted effective remedies which could have provided redress in respect of a violation under the procedural limb of Article 2. In fact, they had been part of the procedure during which the violation of their rights had taken place. Additionally, relying on the Court's judgment in *Yotova* (cited above) and on various other cases against Greece, they claimed that an action for damages under Article 105 of the Introductory Law to the Civil Code would not have been an effective remedy. On the one hand, they had already expressed their wish to join the proceedings as civil parties, producing an effect similar to that of submitting an application for damages and, on the other hand, such an action would have had very little prospect of success.

117. The Government submitted that the applicants had had at their disposal two effective remedies, which could have been used either cumulatively or separately. Firstly, the applicants should have filed a criminal complaint pursuant to Article 46 of the Code of Criminal procedure. This would have given them the opportunity to put forward their arguments and, if their complaint had been rejected, they could have challenged the public prosecutor's conclusions by lodging an appeal with the public prosecutor at the Court of Appeal. In the Government's view, the effectiveness of this remedy had been proven by the fact that the first applicant had used it during the initial investigation, irrespective of the unfavourable outcome for him. Secondly, the Government argued that the applicants should have submitted an application for damages under Article 105 of the Introductory Law to the Civil Code. In this respect, they cited decision 1501/2014 of the Supreme Administrative Court by which it was held that an application for damages could be submitted even when the damage in question had been caused by a manifest error of judgment on the part of the judicial organs.

118. The Court observes that in the present case the essence of the applicants' complaint concerns the absence of a remedy in relation to their complaint about the non-effectiveness of the supplementary investigation conducted into their relative's death. In view of the parties' submissions of the applicant in the present case and of the grounds on which it has found a violation of Article 2 in relation to its procedural aspect, the Court considers that no separate issue arises under Article 13 of the Convention (see *Nachova and Others v. Bulgaria* [GC], cited above, §§ 120-123, and *Makaratzis v. Greece* [GC], no. 50385/99, §§ 84-86, ECHR 2004-XI).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

119. 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

120. The applicants claimed 300,000 euros (EUR) each in respect of non-pecuniary damage, claiming that the amount was justified by the nature of the violation and the widespread publicity about the case in the media.

121. The Government contended that the finding of a violation of the Convention would constitute sufficient just satisfaction and that, in any case, the amount requested was excessive taking into account the financial situation in Greece; nor did it correspond to the awards made by the Court in its judgments. In addition, the publicity that the case attracted was not causally linked with the alleged violation of the Convention and therefore should not be taken into account for the purposes of assessing compensation.

122. Having regard to all the circumstances of the present case, the Court accepts that the applicants have suffered non-pecuniary damage which cannot be compensated solely by the findings of a violation. Making its assessment on an equitable basis, the Court awards the applicants EUR 50,000 jointly, plus any tax that may be chargeable to them.

B. Costs and expenses

123. The applicants claimed jointly a sum of EUR 5,772.20 in respect of the costs and expenses incurred before the Court. In particular, they estimated the time spent on the case by their representative at forty-nine hours' work, at an hourly rate of EUR 95 plus VAT (24%). In that connection they produced a document setting out the details of the time their representative had spent on preparing their application and observations before the Court and a receipt for the amount of EUR 1,240. The remaining sum of EUR 4,532.20, which had not yet been paid, was to be paid by the applicants under a contractual obligation in respect of representation before the Court and a copy of the contract was provided to the Court.

124. The Government found this claim excessive and unsubstantiated, especially in view of the fact that no hearing had taken place.

125. 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 are reasonable as

to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the initial preliminary investigation conducted in 2005 and 2006 inadmissible and the remainder of the application admissible;

2. *Joins* the Government's objection as to the non-exhaustion of domestic remedies to the merits of the complaint under Article 2 of the Convention and *dismisses* it;

3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural limb;

4. *Holds* that no separate issue arises under Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 50,000 (fifty thousand euros) jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,000 (four thousand euros) jointly, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 16 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Registrar	Kristina Pardalos President

APPENDIX

1. Panagiotis TSALIKIDIS is a Greek national who was born in 1963
2. Georgia TSALIKIDI is a Greek national who was born in 1926
3. Georgios TSALIKIDIS is a Greek national who was born in 1926