



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

THIRD SECTION

**CASE OF MAZEPA AND OTHERS v. RUSSIA**

*(Application no. 15086/07)*

JUDGMENT

STRASBOURG

17 July 2018

*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 Mazepa and Others v. Russia,**

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

Helena Jäderblom, *President*,

Branko Lubarda,

Helen Keller,

Dmitry Dedov,

Alena Poláčková,

Georgios A. Serghides,

Jolien Schukking, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 19 June 2018,

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

**PROCEDURE**

1. The case originated in an application (no. 15086/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Russian nationals, whose names and dates of birth are listed in the Appendix (“the applicants”), on 6 April 2007.

2. The applicants live in Moscow. They were represented by Ms K. Moskalenko and Ms A. Stavitskaya, lawyers practising in Strasbourg and Moscow, respectively. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicants alleged, in particular, that the criminal investigation into the assassination of their close relative, Ms Anna Politkovskaya, had not been effective, contrary to the guarantees of Article 2 of the Convention.

4. On 2 November 2015 the complaint concerning the promptness and reasonable expedition of the investigation was 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

### THE CIRCUMSTANCES OF THE CASE

5. The applicants live in Moscow. The first applicant is the mother of the second applicant and of Ms Anna Politkovskaya, who was born in 1958 and died in 2006. The third and fourth applicants are Anna Politkovskaya's children.

#### **A. Anna Politkovskaya's killing and the initial investigation into it**

6. Anna Politkovskaya was a well-known investigative journalist who made a name for herself covering alleged violations of human rights in the Chechen Republic committed in the course of the counterterrorism operation in the region, an operation widely known as the "Second Chechen War". Ms Politkovskaya was also an adamant critic of President Putin's politics.

7. On 7 October 2006 Anna Politkovskaya was fatally shot in the lift in her block of flats in Moscow. A Makarov pistol with a silencer and bullet cartridges were found on the stairs.

8. On the same date the prosecutor's office of Moscow opened a criminal investigation in case no. 18/377485-06 under Article 105 § 2 (b) of the Russian Criminal Code ("murder of a person committed in connection with his or her professional or civic duties"). Later, the case was transferred to the department for the investigation of particularly important cases of the Prosecutor General's Office for investigation.

9. At an early stage of the investigation investigators inspected the crime scene, collected footage from surveillance cameras located in the vicinity, and examined logs of telephone connections made in the area around the time of the killing.

10. On 9 October 2006 forensic experts established that the death had been caused by gunshot wounds to the victim's head, chest and right leg. On the same date a death certificate was issued.

11. On 12 October 2006 the fourth applicant was granted victim status. Later, the third applicant received such status as well.

12. Seeking to discern the motive for the crime, the investigation studied Anna Politkovskaya's critical publications to establish against whom they had been targeted. They also questioned Ms Politkovskaya's colleagues, friends and family as witnesses. In the Government's submission, as a result of such actions, the investigation established that Anna Politkovskaya had met "a well-known Russian former politician" in London, and that unnamed person had proposed that she publish articles "to discredit the leadership of the Russian State, which she [had] refused to do, to his dislike".

13. On 27 August 2007 the Prosecutor General of Russia stated at a press conference that there had been serious progress in the investigation of Ms Politkovskaya's killing, and that ten people had been arrested in connection with the investigation. Another official of the Prosecutor General's Office stated that a certain P.R. had been arrested. On 28 August 2007 the *Tvoy Den'* newspaper ("*Твой День*") published a list of people arrested in connection with Ms Politkovskaya's murder, and commented that there were known hitmen among those detained. On 29 August 2007 a press officer of the Moscow City Court ("the City Court") disclosed to the public a list of ten people detained in connection with Anna Politkovskaya's assassination.

14. In the course of August 2007 four people, D.M., I.M., S.Kh. and P.R., were arrested in connection with the assassination. Two brothers, D.M. and I.M., had made phone calls near Ms Politkovskaya's building; their car had been seen leaving the area on the day of the killing. Later, the investigation established that fibres found in their car were identical to those left on the murder weapon. S.Kh., a police officer, was arrested on the basis of a witness statement by D.P., also a police officer. P.R. was an officer of the FSB (Federal Security Service) who had known S.Kh. for a long time.

15. In June 2008 D.M., I.M. and S.Kh. were formally charged with contract killing in conspiracy with others. S.Kh. was regarded as the leader of the organised criminal group. P.R. was charged in the same set of proceedings with abuse of powers and extortion.

16. At some point R.M., a brother of D.M. and I.M. whom the investigation suspected to be implicated in the assassination, fled Russia on a forged passport. As appears from the applicants' and the Government's respective submissions, the forged passport was issued by staff of a department of the interior.

17. At some point R.M.'s name was put on an international wanted list. On 16 June 2008 a criminal case against R.M. was severed from the case against S.Kh., P.R., D.M. and I.M.

18. In June 2008 the investigators prepared a case against S.Kh., P.R., D.M. and I.M. to be transferred to a court. The applicants requested that the case file remain with the investigators. In their view, the investigation was incomplete, and sending the case file to a court would be premature. Nevertheless, the case file was transferred to the Moscow Circuit Military Court ("the Circuit Court") for a jury trial.

## **B. First set of court proceedings**

19. In the course of court hearings in the period 2008-09 D.P., a high-ranking officer of the Moscow City Department of the Interior, was questioned as a witness for the prosecution. He submitted that, acting in his professional capacity, he had organised and conducted surveillance on Anna

Politkovskaya shortly prior to her assassination. A certain L.-A.G. was also questioned as a witness.

20. At an unspecified point in time in the period 2008-09, the investigation included a summary of its findings in the case material, which the applicants referred to as a “presentation”. In particular, the summary contained details regarding Anna Politkovskaya, including the fact that she had had American nationality. The “presentation” was never shown to the jury.

21. On 19 February 2009, having heard the prosecution and the defence, the jury delivered a not-guilty verdict in respect of S.Kh., P.R., D.M. and I.M.

22. On 20 February 2009 the Circuit Court acquitted S.Kh., P.R., D.M. and I.M. The prosecution appealed. The third and fourth applicants decided not to appeal against the acquittal.

23. On 25 June 2009, in the appeal proceedings, the Supreme Court of Russia quashed the judgment of 20 February 2009 and remitted the case to the Circuit Court for fresh examination.

24. On 5 August 2009 the third and fourth applicants requested that the Circuit Court remit the case to the prosecutor’s office for further investigation. On 7 August 2009 the Circuit Court dismissed the application. The applicants appealed.

25. On 3 September 2009 the Supreme Court granted the third and fourth applicants’ application, and the case was transferred to the prosecutor’s office for further investigation.

### **C. Further investigation and ensuing events**

26. On unspecified dates the charges against P.R. were dropped; L.-A.G. was indicted.

27. On 31 May 2011 R.M., who had spent some time hiding in Belgium, was arrested in the Chechen Republic.

28. According to the applicants, at an unspecified point in time a certain O.G. informed them that he had information which was crucial for the investigation, and that he was willing to testify as a witness. At the applicants’ request, an investigator questioned him. O.G. stated that D.P. was implicated in the murder. According to the Government, the investigator in charge of the case attempted to find O.G., but could only gather evidence from him after he had been informed of the witness’s whereabouts in Ukraine.

29. On 26 August 2011 the Basmannyy District Court of Moscow (“the District Court”) ordered D.P.’s placement in custody.

30. On 31 August 2011 D.P. entered a guilty plea with the investigating authorities. He claimed that his acquaintances, L.-A.G. and S.Kh., had proposed that he organise unauthorised surveillance of Ms Politkovskaya.

L.-A.G. had expressed his intention to kill the journalist and had said that D.P. could take part in the preparation for the assassination for a fee, which D.P. had accepted. Having received a large sum of money and instructions from L.-A.G., he had bought a pistol with a silencer from a stranger and passed it on to R.M. In the Government's submission, L.-A.G. had not reported the motives for the killing, but had "mentioned that the crime [had been] ordered by a well-known person living in the United Kingdom".

31. On 29 August 2012 the criminal case against D.P. was severed and a separate investigation was created; the applicants disagreed with that decision. On 14 December 2012 the Moscow City Court ("the City Court") sentenced D.P. to eleven years' imprisonment. The applicants appealed against the judgment, arguing that the sentence was too lenient. On an unspecified date D.P.'s conviction was upheld on appeal.

32. At some point the case file against S.Kh., R.M., D.M., I.M. and L.-A.G. was transferred to the City Court for trial.

#### **D. Second set of court proceedings**

33. On 20 June 2013 the City Court commenced a jury trial of S.Kh., R.M., D.M., I.M. and L.-A.G.

34. On 14 November 2013 the jury was dismissed for the reason that only eleven jurors out of twelve appeared in the courtroom.

35. On 14 January 2014 hearings before a new composition of the jury commenced.

36. On 29 May 2014 the jury delivered a verdict finding all five co-accused guilty of Anna Politkovskaya's murder. They also found R.M. guilty of kidnapping a third party in October 1996.

37. On 9 June 2014 the City Court delivered a judgment. It found that L.-A.G. had "accepted an offer from an unidentified person who had been dissatisfied with publications by Anna Politkovskaya in *Novaya Gazeta* concerning violations of human rights, the embezzlement of State property, and abuse of public office by civil servants" – an offer of a fee of at least 150,000 United States dollars to organise the journalist's killing. L.-A.G. had then involved his nephews, R.M., D.M., and I.M., as well as "a person in respect of whom the criminal case had been severed" and his acquaintance S.Kh. in the preparation for the killing. On the basis of the jury's guilty verdict, the City Court characterised the murder as one committed by an organised group for a fee in connection with the victim's performance of her professional and civic duties. It also found that L.-A.G., R.M. and D.M. were guilty of illegal arms operations. It refused to terminate the proceedings against R.M. regarding the events of 1996 under the statute of limitations, because the latter had been wanted in connection with those events since 1997, and found him guilty of kidnapping and extortion. The City Court sentenced L.-A.G. – regarded as the organiser of

the killing – and R.M. – regarded as the hitman – to life imprisonment. D.M. and I.M. were sentenced to fourteen and twelve years’ imprisonment respectively. S.Kh. was sentenced to twenty years’ imprisonment. Civil claims by the third and fourth applicants were resolved as follows. The third and fourth applicants were each awarded 700,000 Russian roubles ((RUB) – approximately 14,790 euros (EUR)) to be paid by L.-A.G. and R.M. respectively, RUB 500,000 (approximately EUR 10,570) to be paid by S.Kh., and RUB 300,000 (approximately EUR 6,340) to be paid by D.M. and I.M. respectively.

38. The defendants appealed against the conviction.

39. On 26 June 2015, in the appeal proceedings, the Supreme Court of Russia found that the guilty verdict was based on a thorough examination of the evidence. Upholding the conviction as a whole, the Supreme Court slightly mitigated the sentence regarding illegal arms operations in respect of L.-A.G., R.M. and D.M. However, pursuant to the rules on combining sentences for multiple offences, this did not affect L.-A.G.’s and R.M.’s life sentences. D.M.’s term of imprisonment was reduced to thirteen years and nine months.

40. In the Government’s submission, the investigation into Anna Politkovskaya’s killing has not been terminated. They provided copies of the City Court’s judgment of 9 June 2014 and the Supreme Court’s appeal judgment of 26 June 2015.

## THE LAW

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

41. The applicants complained under Article 2 of the Convention in its procedural limb that the investigation into Anna Politkovskaya’s assassination had been ineffective, because it had been pending since 2006 yet had failed to identify those who had commissioned and financed the crime. The relevant part of this Article reads as follows:

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

#### **A. The parties’ submissions**

##### *1. The Government*

42. The Government submitted at the outset that the applicants could no longer claim to be victims of the alleged violation. Firstly, the applicants had not provided the Court with copies of the first-instance judgment convicting the culprits or subsequent court decisions. Secondly, the third



and fourth applicants, who had been granted victim status in the domestic proceedings, had failed to inform the Court that their civil claims in respect of damage caused by the crime in question had been granted. The Government summarised the argument, claiming that the applicants had lost their victim status because the proceedings had resulted in convictions and that the applicants, as civil claimants, had been awarded damages.

43. As to the merits of the complaint, the Government submitted that the domestic authorities had complied with their obligation to carry out an effective investigation into Anna Politkovskaya's killing. The criminal investigation had been opened on the day of the killing and had been carried out by the department for the investigation of particularly important cases of the Prosecutor General's Office. The third and fourth applicants had been granted victim status. The applicants' lawyers had been admitted to the pre-trial investigative proceedings. The third and fourth applicants had been involved in the investigation; their applications had been lawfully resolved and they had had a real opportunity to challenge the investigating authorities' decisions. The investigation had never been suspended or terminated from the moment of institution of the proceedings.

44. The Government further submitted that the investigation into Anna Politkovskaya's killing had been particularly complex for a number of reasons, mostly relating to the contract nature of the killing. A large number of people had been involved in the crime, and they had put effort into concealing their activities. The authorities had questioned 1,500 witnesses and ordered dozens of expert examinations and reconstructions. The case file had comprised more than a hundred volumes. R.M. had been hiding in Belgium for years, which had affected the overall length of the investigation.

45. The investigation had not identified with certainty the person who had commissioned the contract killing for a number of reasons, in particular because international requests for legal assistance had not been fully complied with and because the suspect, to whom they referred to as "a well-known Russian former politician" and "the organiser of the murder", who had been residing in the United Kingdom, had died in 2013. Furthermore, contract killings were particularly difficult to investigate because of their nature, because people commissioning killings rarely contacted hitmen directly and used intermediaries instead. "The important feature of investigations into contract killing is a multi-theory nature of their conduct. The need to consider several theories involves the compulsory and simultaneous examination of all of them." However, the most probable theories in respect of which there was more information available needed to be examined first. Not infrequently, such investigations, despite identifying a hitman, could never find the person who had commissioned the killing.

46. The immediate perpetrators' motives had been purely pecuniary, as they had wanted to receive payment for their crime, and had not been based "on the political agenda or misinterpreted interests of the State".

47. The Government submitted that an investigation into R.M. being issued with a forged passport had established that "certain officers of the regional departments of the interior ... [had] unlawfully issued the other person's national and international passports to R.M.", and that the information about such actions had been forwarded to the heads of regional departments of the interior. The Government did not specify whether any sanctions had been applied to those "certain officers". The Government further submitted that the police officers who had followed Anna Politkovskaya on D.P.'s instructions had later been dismissed from the police force. Lacking evidence of their involvement in the killing, they had not been prosecuted.

48. The Government concluded that the domestic authorities had complied with their obligation to carry out an effective investigation into the killing. The investigation had been complete, thorough and prompt, in view of the complex nature of the crime, and had resulted in the criminal conviction of five people involved in the offence.

## *2. The applicants*

49. Reiterating the arguments they had advanced before the case had been communicated to the Government, the applicants insisted that the domestic authorities had failed to protect Anna Politkovskaya's right to life. They also argued that "the Russian Federation [had] failed to fulfil its negative obligation under Article 2 of the Convention in this case as numerous officers and agents of the Federal Security Service and the police [had] organised the surveillance of the victim as well as assisted the perpetrators in carrying out the assassination". Accordingly, the applicants asked the Court to recommunicate the application and put questions to the Government regarding the positive obligations to protect life and the negative obligation to abstain from taking life under Article 2 of the Convention.

50. Regarding the Government's objections pertaining to their victim status, the applicants submitted that the convictions of the five perpetrators could be overturned on appeal or reviewed at a later stage following the proceedings before the Court, because the convicted men had brought their own applications to Strasbourg. In any event, in the applicants' view, the conviction of those men had not been sufficient to discharge the obligation to carry out an effective investigation, because the people who had commissioned them to carry out the killing had not been identified. They further submitted that, despite the significant amount of compensation awarded to them, this would never be enforced because the people who

were to pay them the compensation had been sentenced to life imprisonment and were thus insolvent.

51. The applicants claimed that the investigators had “made direct effort to gloss over the role and involvement of State agents in the crime”, and that “the protracted investigation had created an opportunity for those involved in the murder to escape justice”.

52. The applicants further insisted that the people behind the killing who had employed the hitmen and financed the assassination had not been identified, despite the fact that the investigation had gone on for almost ten years.

53. The applicants submitted that, when referring to the unnamed person residing in the United Kingdom in their submissions, the Government had meant B.B. In the applicants’ view, the hypothesis of B.B.’s involvement in the killing was not credible. The investigation had not looked into at least three hypotheses regarding the killing which the applicants perceived as plausible: the involvement of friends of a police officer who had been prosecuted for inflicting serious bodily injuries on a detainee in the Chechen Republic following Ms Politkovskaya’s publications; the involvement of Ramzan Kadyrov, the President of the Chechen Republic; and the possibility that D.M. and I.M., whose actions the applicants described as amateurish, had merely created a smokescreen, diverting surveillance cameras’ attention “in order to allow professional assassins” to kill Ms Politkovskaya.

54. In particular, the applicants listed the following alleged deficiencies in the investigation.

(a) R.M. had been at large because he had received a fake passport from “representatives of the Russian authorities”.

(b) As established during the court proceedings, R.M. and D.M. had been FSB agents, yet the investigation had not verified this.

(c) Six named people, as well as some “others”, had been arrested with D.M. and I.M. but had been released without charge later without the victims of the crime being consulted.

(d) The secret services had leaked important information regarding the case to the press, which, in the applicants’ view, had adversely affected the effectiveness of the investigation and had proved “the security services’ involvement, in one degree or another, in the organisation and execution of the killing”.

(e) D.P. and L.-A.G. had merely been witnesses for the prosecution in the course of the first jury trial, yet later they had been prosecuted for their involvement in the crime.

(f) The investigation had presented a weak case during the first jury trial, in particular miscalculating the time necessary to carry out the killing. The acquittal of 20 February 2009 had been “a consequence of the investigation

deliberately inserting false and poor-quality evidence in the case-file”, and had further protracted the investigation.

(g) D.P. had become a suspect only because of the applicants’ efforts to attract the investigation’s attention to O.G.’s witness statement implicating him.

(h) The applicants had strongly objected to the plea D.P. had entered and to the case against him being severed from the main investigation. D.P. had not been telling the truth when naming, in the course of his first interviews as a suspect, two men, B.B. and A.Z., as people who had commissioned the assassination. Later in the investigation, he had refused to give the names of the people who had commissioned the killing, allegedly out of fear for his safety.

(i) During the jury selection in preparation for the second jury trial, the judge dealing with the case had refused to adjourn a hearing on account of the third and fourth applicants’ inability to attend, thus breaching the victims’ rights. The dismissal of the jury had also contributed to the duration of the proceedings.

(j) The domestic courts had breached the victims’ and the culprits’ right to a fair trial.

55. During the first months of the investigation, the victims of the crime had not had access to the case material, and all the applications they had lodged had been denied.

56. The applicants also argued that the investigation had lacked impartiality. To prove their point, they referred to the following.

(a) D.P. and L.-A.G., a police officer and an FSB officer, had been prosecuted only at the insistence of the victims.

(b) P.R., an FSB officer, had not been retried following his acquittal.

(c) In the period 2008-09, the case material had included a summary of the investigation’s findings referred to as “a presentation”, which had been prepared by the investigating authorities. In the applicants’ view, the summary had portrayed Ms Politkovskaya in an unflattering manner, as it had referred to her American nationality, allegedly for the purpose of precluding the jury from empathising with the victim. The applicants claimed that, “given the special features of this ‘opus’, it [had] clearly [been] a brainchild of the secret services who [had been] ... involved in some capacity in the killing.”

57. Contesting the Government’s claim that the investigation had been particularly complex, the applicants submitted that “the major obstacle to investigating the case [had been] the lack of will to carry [the investigation] out effectively and expeditiously”.

58. In sum, the applicants insisted that the investigation could not be regarded “effective”, because the people behind the killing had never been identified and prosecuted.

## **B. The Court's assessment**

### *1. Admissibility*

#### **(a) Scope of the case**

59. The Court first turns to the applicants' comments regarding the scope of the case (see paragraph 49 above): the applicants insisted that it should include not only the procedural obligation to investigate a violent death, but two other obligations inherent in Article 2 of the Convention, namely the positive obligation to protect life and the substantive obligation to abstain from taking it.

60. The Court reiterates in this connection that the State's obligation to carry out an effective investigation has been considered in the Court's case-law as an obligation inherent in Article 2, which requires, *inter alia*, that the right to life be "protected by law". Although the failure to comply with such an obligation may have consequences for the right protected under Article 13, the procedural obligation of Article 2 is seen as a distinct obligation. It can give rise to a finding of a separate and independent "interference" (see, with further references, *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 231, ECHR 2016).

61. When communicating the application in the present case to the respondent Government, the Court put a question to the parties pertaining exclusively to the procedural obligation to carry out an effective investigation. The President of the Section, sitting in a single-judge formation, declared the remainder of the application inadmissible (see paragraph 4 above).

62. Emphasising that a single judge's decision to declare an application inadmissible is final under Article 27 § 2 of the Convention, the Court concludes that the applicants' request to put additional questions to the Government, seen as a request to widen the scope of the case, should be dismissed.

#### **(b) Alleged loss of victim status**

63. The Court now turns to the Government's objection regarding the applicants' alleged loss of victim status (see paragraph 42 above). Their argument was twofold: firstly, the applicants had lost their victim status because they had failed to supply the Court with copies of certain documents; secondly, the applicants had been awarded compensation in the domestic criminal proceedings against the perpetrators.

64. As to the first part of the argument, the Court does not agree that a failure to provide it with certain material may have a bearing on its assessment of whether an applicant has lost victim status.

65. As to the second part of the argument, the Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient

to deprive him or her of his or her status as a “victim” unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 49, 20 December 2007).

66. The Court would note that the compensation awarded by the City Court concerned only the third and fourth applicants, while the first and second applicants did not receive any such compensation. More importantly, the Court reiterates that the aspect of the application which was communicated to the Government specifically concerns the State’s obligation to carry out an effective investigation. It notes, however, that the Russian domestic authorities have never acknowledged, either expressly or in substance, a breach of the applicants’ rights under Article 2 of the Convention in its procedural limb. The compensation awarded to the third and fourth applicants as civil claimants in the criminal proceedings against the five men charged with Anna Politkovskaya’s killing could not be regarded as redress for a procedural violation of Article 2 of the Convention. Those criminal proceedings did not in any way assess the effectiveness of the investigation into the killing, a matter that clearly fell outside the scope of the proceedings.

67. Accordingly, the Court concludes that the Government’s objection regarding the alleged lack of victim status must be rejected (see, *mutatis mutandis*, *Gerasimenko and Others v. Russia*, nos. 5821/10 and 65523/12, §§ 82-83, 1 December 2016).

#### (c) Conclusion as to admissibility

68. The Court notes that the complaint under Article 2 of the Convention in its procedural limb 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.

#### 2. Merits

69. The Court reiterates at the outset that the obligation to protect life under Article 2 of the Convention requires that there should be some form of effective official investigation when individuals have been killed as a result of the use of force, either by State officials or private individuals (see *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 62, 15 January 2009). The essential purpose of an investigation is to “secure the effective implementation of the domestic laws which protect the right to life” and ensure the accountability of those responsible. In order to be effective, an investigation must firstly be adequate, that is, capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible. The obligation to conduct an effective investigation is an obligation not of result but of means (see *Mustafa Tunç and Fecire Tunç v. Turkey* ([GC], no. 24014/05, §§ 172-73, 14 April 2015).

Any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible will risk falling foul of the required standard of effectiveness (see *Armani Da Silva*, cited above, § 233). 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. The nature and degree of scrutiny which satisfy the minimum threshold of the investigation's effectiveness depend on the circumstances of the particular case and must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (*ibid.*, § 234). Where the official investigation has led to the institution of proceedings in the national courts, the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law. It should in no way be inferred from the foregoing that Article 2 may entail the right for an applicant to have third parties prosecuted or sentenced for a criminal offence or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence. On the other hand, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 95-96, ECHR 2004-XII).

70. The Court further reiterates that it assesses compliance with the procedural requirement of Article 2 on the basis of several essential parameters: the adequacy of the investigative measures, the promptness and reasonable expedition of the investigation, the involvement of the deceased person's family and the independence of the investigation. These elements are inter-related and each of them, taken separately, does not amount to an end in itself. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed (see, *mutatis mutandis*, *Mustafa Tunç and Fecire Tunç*, cited above, § 225).

71. The Court will now assess whether the investigation into the killing of Anna Politkovskaya met these requirements.

72. The Court would note at the outset that, assessing the proceedings as a whole, it is not convinced that Ms Politkovskaya's relatives were excluded from the investigation to the extent that they were deprived of the opportunity to participate effectively in the proceedings. It reiterates in this connection that Article 2 of the Convention 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 v. the Netherlands* [GC], no. 52391/99, § 348, ECHR 2007-II).

73. The Court observes that the pivotal issue in the present case is the respondent State's compliance with its obligation to carry out an effective

investigation into the contract killing of an investigative journalist. The Court would reiterate that, in cases where the victim of a killing is a journalist, it is of utmost importance to check a possible connection of the crime to the journalist's professional activity. In this connection, the Court would also refer to Recommendation CM/Rec (2016) 4 on the protection of journalism and safety of journalists and other media actors, in which the Committee of Ministers recommended in paragraph 19 that the conclusions of an investigation must be based on a thorough, objective and impartial analysis of all the relevant elements, including the establishment of whether there is a connection between the threats and violence against journalists and other media actors and the exercise of journalistic activities or contributing in similar ways to public debate.

74. In so far as adequacy of the investigation into Anna Politkovskaya's killing is concerned, the Court observes the following. As it repeatedly stated in cases concerning deaths that occurred under various circumstances, the procedural obligation under Article 2 of the Convention is not an obligation of results, but of means (see, for example, in the context of alleged medical negligence, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 221, ECHR 2017; in that of armed conflict, *Jaloud v. the Netherlands* [GC], no. 47708/08, § 186, ECHR 2014, and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 166, ECHR 2011; in that of an alleged unlawful killing by State agents, *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 223, ECHR 2004-III).

75. The Court emphasises that the investigation in the present case brought tangible results as it led to the conviction of five persons directly responsible for the killing. At the same time, the Court takes the view that the investigation into a contract killing cannot be considered adequate to the extent of discharging the obligation of means implicit in the procedural limb of Article 2 in the absence of genuine and serious investigative efforts taken with the view to identifying the intellectual author of the crime, that is, the person or people who commissioned the assassination. The domestic authorities' scrutiny in the case concerning a contract killing must aim to go beyond identification of a hitman and it is incumbent on the Court to satisfy itself that the investigation in the present case has addressed this important point (see, for example, *Gongadze v. Ukraine*, no. 34056/02, § 176, ECHR 2005-XI and *Huseynova v. Azerbaijan*, no. 10653/10, §§ 115-16, 13 April 2017).

76. The Court notes that it possesses scarcely any information regarding the scope of the investigation in the present case in so far as it has concerned identification of those who commissioned the crime. The Russian Government did not provide it with any documents from the investigation file. The only materials they submitted were copies of the domestic courts' judgments convicting the five perpetrators after the second round of judicial proceedings (see paragraph 40 above). The Government merely stated that



the investigation had never been suspended or terminated from the moment it had commenced (see paragraph 43 above). The Government did not put forward any explanation as to their failure to provide copies of the investigation file although they stated that the investigation had produced an abundance of case materials (see paragraph 44 above). The Court's capacity to assess the nature and degree of the investigation's scrutiny in the present case is thus greatly diminished and is restricted to the analysis of the parties' written submissions before it.

77. The Court observes that, as follows from the Government's submissions before it, the domestic investigation's only hypothesis regarding the identity of the person who had commissioned the killing was that it had been "a well-known Russian former politician in London". This person to whom the Government referred in the affirmative terms as "the organiser of the murder" died in 2013 (see paragraph 45 above). The Government claimed that the investigators had sent international requests for information and assistance to the competent authorities of the United Kingdom and that "until now those requests have not been performed in full". Yet the Government have not provided any further details about those requests or any reasons given by those authorities for not meeting them and offered no explanation as to which investigative steps were taken to elucidate his role in Anna Politkovskaya's killing in the several years following his death. Neither have they explained why the investigation chose to focus for a considerable number of years on this single line of inquiry. Contrary to the Government's claims that "the important feature of investigations into contract killing is a multi-theory nature of their conduct" and that "the need to consider several theories involves the compulsory and simultaneous examination of all of them" (*ibid.*), the domestic investigation in the present case appears to have satisfied itself with one and only hypothesis which, however, has remained unsupported by tangible proof for many years.

78. The investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements (see, *mutatis mutandis*, *Kolevi v. Bulgaria*, no. 1108/02, §§ 200-01, 5 November 2009). The Court reiterates in this respect that, while it is not its role to express views about the soundness of the applicants' allegations that FSB officials or those of the administration of the Chechen Republic were implicated in Anna Politkovskaya's murder (see paragraph 53 above), to comply with the requirements of the procedural limb of Article 2 in the context of the present case the domestic investigative authorities should have explored these allegations, even if they were eventually to prove unfounded. This is especially true given Anna Politkovskaya's journalistic work covering the conflict in Chechnya.

79. In view of the above, the Court is not persuaded that the investigation into Anna Politkovskaya's killing has met the adequacy requirement.

80. The Court will now consider the requirement that an investigation be carried out promptly and with reasonable expedition (see *Armani Da Silva*, cited above, § 240). While this requirement under Article 2 should not be examined in isolation and irrespective of the other parameters, the combination of which makes an investigation effective (see, *mutatis mutandis*, *Sarbyanova-Pashaliyska and Pashaliyska*, no. 3524/14, § 41, 12 January 2017, and *Mustafa Tunç and Fecire Tunç*, cited above, § 225), the Court has recently observed, in the context of an Article 2 case concerning the proceedings instituted to elucidate the circumstances of an individual's death in a hospital setting, that the lengthiness of proceedings is a strong indication that the proceedings were defective to the point of constituting a violation of the respondent State's positive obligations under the Convention, unless the State has provided highly convincing and plausible reasons to justify the length of the proceedings (see, with further references, *Lopes de Sousa Fernandes*, cited above, § 219).

81. In the circumstances of the present case, where the criminal investigations started on 7 October 2006 (see paragraph 8 above) and have not yet been terminated (see paragraph 40 above), the Court is not convinced that the Russian Government have provided convincing and plausible reasons to justify the length of the proceedings. In particular, their reference to the number of volumes of the investigative file and that of witnesses questioned (see paragraph 44 above) appears irrelevant in the absence of tangible results in the investigation in respect of those who commissioned the killing that has protracted for many years.

82. The Court notes that it previously found a violation of Article 2 of the Convention in its procedural limb in the case concerning the assassination of a political figure on account of the length of the investigation that had led to convictions of several culprits yet had protracted for a number of years. Dismissing the respondent Government's argument that the criminal proceedings in that case had been complex on account of the lack of justification of the delays, the Court observed that the excessive delay in the investigation of itself entailed the conclusion that the investigation had been ineffective for the purposes of Article 2 of the Convention (see *Cerf v. Turkey*, no. 12938/07, §§ 80-81, 3 May 2016). It is prepared to follow such line of reasoning in the circumstances of the present case and concludes, in the absence of highly plausible and convincing reasons capable of justifying it, that the length of the proceedings concerning the investigation into Anna Politkovskaya's killing has been in breach of the promptness and reasonable expedition requirement of the procedural obligation under Article 2 of the Convention.

83. In the Court's view, its findings in respect of the adequacy of the investigation and its promptness and reasonable expedition suffice to conclude that the investigation into Anna Politkovskaya's killing has not been effective, as required by Article 2 of the Convention. In such circumstances the Court does not deem it necessary to consider the issue of independence of the investigation.

84. There has accordingly been a violation of Article 2 of the Convention in its procedural limb.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicants claimed 5,000,000 Russian roubles (RUB) (approximately 71,740 euros (EUR)) in non-pecuniary damages to be awarded to them jointly. They argued that this amount had been awarded to the victims of the crime in the national proceedings to be paid by the perpetrators of the killing. However, in their view, such award would never be paid out owing to the respondent State's failure to identify those who commissioned the crime.

87. The Government submitted that Article 41 should be applied in accordance with the Court's established case-law and noted that it would be inappropriate to award the amount already awarded at the national level.

88. The Court considers that the applicants sustained non-pecuniary damage on account of the violation of Article 2 of the Convention in its procedural limb. Having regard to the particular circumstances of the case and making its assessment on an equitable basis as required by Article 41 of the Convention, the Court awards 20,000 euros (EUR) to the applicants jointly in respect of non-pecuniary damage.

### B. Costs and expenses

89. The applicants requested the Court to award Ms Moskalenko and Ms Stavitskaya, “without breaking down the contribution each of [their] representatives made” in preparation of various submissions before it, including the preliminary application, application form, additional submissions and observations on behalf of the applicants, “the amount equal to fifty standard lawyer's hours charged at the rate of EUR 150 per hour”,

that is, EUR 7,500 each, and to pay these amounts directly to the representatives' banking accounts. They did not submit any documents or an itemised schedule in support of their claims.

90. 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 applicants' claims and the above criteria, the Court rejects the claims for costs and expenses for the proceedings before it as unsubstantiated.

### **C. Default interest**

91. 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**

1. *Declares*, unanimously, the complaint under Article 2 of the Convention in its procedural limb admissible;
2. *Holds*, by five votes, to two that there has been a violation of Article 2 of the Convention in its procedural limb;
3. *Holds*, by five votes to two,
  - (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Registrar

Helena Jäderblom  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) Joint concurring opinion of Judges Jäderblom and Keller;
- (b) Joint dissenting opinion of Judges Dedov and Poláčková.

H.J.  
J.S.P.

## JOINT CONCURRING OPINION OF JUDGES JÄDERBLOM AND KELLER

### I. Introduction

1. For the reasons set out in paragraphs 69-85 of the judgment we are in full agreement with the majority of our colleagues that the investigation into Anna Politkovskaya's killing was not effective, as required by Article 2 of the Convention, and that as such there has been a violation of this Article in its procedural limb. However, we believe the Court missed an opportunity to elaborate on what would amount to an independent investigation and what elements would need to be present in order to satisfy this parameter of an effective investigation.

2. An effective investigation's compliance with the procedural requirement of Article 2 rests on several essential parameters: (1) the adequacy of the investigative measures; (2) the promptness and reasonable expedition of the investigation; (3) the involvement of the deceased person's family; and (4) the independence of the investigation (see paragraph 70 of the judgment).

3. While the majority in the present case was not convinced that Ms Politkovskaya's relatives were excluded from the investigation to such an extent that they were deprived of the opportunity to participate effectively in the proceedings, it concluded that the investigation did not meet the adequacy requirement and that the length of the proceedings was in breach of the promptness and reasonable expedition requirement, and thus in breach of Article 2.

4. Our colleagues in the majority, however, deem it unnecessary to consider the issue of independence of the investigation, since they find that the investigation failed the adequately and promptness prongs of the analysis and thus amounted to a breach. While we agree with this overall conclusion, we believe that the independence parameter is an equally important element of a truly effective investigation and that the Court should have assessed it in the present case, especially in light of the allegations made by the applicants implicating State authorities.

### II. The Court's case-law

5. The Court's case-law has established that an investigation must be independent if it is to meet the requirements of Article 2. While the Court has hesitated in enumerating the exact elements needed for an independent investigation, and its assessment takes into account the particular context of the individual case, the Court has identified some ways through which a

State could ensure that investigations are independent even when allegations are leveled against State agents.

6. The notion that an investigation must be independent was first introduced in *Kaya v. Turkey* (19 February 1998, *Reports of Judgments and Decisions* 1998-I), where the Court held that “the procedural protection of the right to life inherent in Article 2 of the Convention secures the accountability of agents of the State for their use of lethal force by subjecting their actions to some form of independent and public scrutiny capable of leading to a determination of whether the force used was or was not justified in a particular set of circumstances” (ibid., § 87). In four judgments against the United Kingdom in 2001<sup>1</sup>, the Court developed this obligation and laid down the blueprint for the duty to investigate. In those cases, concerning killings in Northern Ireland, the Court found a number of shortcomings in the investigation by the UK authorities, including a lack of independence on the part of the police officers investigating the incident from other officers implicated in the incident.

7. The Court has held that it is not for it to identify the specific procedures a State must adopt in order to secure an effective and impartial investigation, but has, through its case-law, developed some standardised requirements. And although the scope of these requirements remains open to interpretation and is determined by the context of individual cases, the Court has provided member States with guidelines that could help ensure an independent investigation.

8. In *Kolevi v. Bulgaria*, (no. 1108/02, 5 November 2009), a case which raised issues regarding the institutional and procedural guarantees to ensure the independence and effectiveness of an investigation where the Chief Public Prosecutor was a suspect in the murder of a high-ranking prosecutor, the Court provided guidelines as to what would ensure independence and impartiality of an investigation, holding that:

“Independence and impartiality in cases involving high-ranking prosecutors or other officials may be secured by different means, such as investigation and prosecution by a separate body outside the prosecution system, special guarantees for independent decision-making despite hierarchical dependence, public scrutiny, judicial control or other measures. It is not the Court’s task to determine which system best meets the requirements of the Convention. The system chosen by the member State concerned must however guarantee, in law and in practice, the investigation’s independence and objectivity in all circumstances and regardless of whether those involved are public figures” (ibid. § 208).

9. In an investigation into a death, especially one for which State agents or authorities are allegedly responsible, it may be necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. The Court has further emphasized that this

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1. *McKerr v. the United Kingdom*, no. 28883/95, ECHR 2001-III; *Kelly and Others v. the United Kingdom*, no. 30054/96, 4 May 2001; *Shanaghan v. the United Kingdom*, no. 37715/97, 4 May 2001; and *Hugh Jordan v. the United Kingdom*, no. 24746/94, ECHR 2001-III (extracts).

encompasses not only a lack of hierarchical or institutional connection, but also a practical independence.<sup>2</sup> In this respect, the Court must engage in a concrete, rather than an abstract, examination of the independence of the investigation in its entirety (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 222, 14 April 2015 and *Ramsahai and Others v. the Netherlands* [GC], cited in footnote 2, § 324).

10. In *Finucane v. the United Kingdom* (no. 29178/95, ECHR 2003-VIII), a case where the applicant complained that the investigation into her husband's death was ineffective, in part because there were suspicions of collusion between the security forces and his killers, the Court held, *inter alia*, that “[i]n so far therefore as the investigation was conducted by RUC officers, they were part of the police force which was suspected by the applicant and other members of the community of issuing threats against [the applicant's husband]” and found that “there was a lack of independence attaching to this aspect of the investigative procedures, which also raises serious doubts as to the thoroughness or effectiveness with which the possibility of collusion was pursued” (*ibid.*, § 76).

11. The Court has, other times, found that a loose connection between the investigators and those they are investigating did not automatically jeopardize the independence of the investigation. For example, in the case of *Jaloud v. the Netherlands* ([GC], no. 47708/08, § 189, ECHR 2014), in the particular context of military operations conducted abroad, the Court considered that the mere fact that the investigators and the investigated were sharing living quarters was not in itself an issue as regards the independence of an investigation.

### III. Comparative assessment

12. States have taken various approaches to guaranteeing the independence of an investigation when allegations are levelled against State agents.

13. Certain member States of the Council of Europe provide guarantees in cases involving investigations into criminal offences allegedly committed by high-ranking prosecutors. In several member States, including Russia, as well as Croatia and Switzerland, the opening of a criminal investigation against high-ranking prosecutors is subject to authorization. In this context in Russia, criminal proceedings against the Prosecutor General may be instituted by the Head of the Investigation Committee on the basis of a conclusion by a panel of three Supreme Court judges, following a request by the President of Russia. The President's proposal is examined by the

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2. See *Hugh Jordan v. the United Kingdom*, cited above, § 105; *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 300, ECHR 2011 (extracts); *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-II; and *Mastromatteo v. Italy* [GC], no. 37703/97, § 91, ECHR 2002-VIII.



judges within 10 days, in closed session and in the presence of the suspects and/or their lawyers. If the suspect is another prosecutor or investigator, the proceedings are instituted by an investigator who is hierarchically superior.

14. In other States, such as Malta and Sweden, the criminal investigation may be assigned to a special investigative body. In Malta, in addition to the ordinary procedure of investigation, the Prime Minister may assign the inquiry to an *ad hoc* body in cases which concern the conduct of public officers.

15. In other member States investigations into crimes allegedly committed by high-ranking prosecutors are carried out in accordance with the ordinary rules of criminal procedure. States such as France, Germany, Greece or Ireland do not have special provisions, but several principles based on the Constitution, conventions or legal provisions do guarantee the effectiveness and independence of criminal investigations in general.

#### **IV. Application to the present case**

16. In the present case, the applicants argued that the domestic authorities had failed to protect Ms Politkovskaya's right to life and that "the Russian Federation [had] failed to fulfil its negative obligation under Article 2 of the Convention in this case as numerous officers and agents of the Federal Security Service and the police [had] organised the surveillance of the victim as well as assisted the perpetrators in carrying out the assassination" (see paragraph 49 of the judgment). Furthermore, the applicants claimed that the investigators had "made direct effort to gloss over the role and involvement of State agents in the crime", and that "the protracted investigation had created an opportunity for those involved in the murder to escape justice" (see paragraph 51).

17. The applicants noted that P.R., an officer of the FSB (Federal Security Service) who had known another suspect S.Kh for a long time, was charged in the same set of proceedings with abuse of power and extortion. After the case made its way through the court system, and was eventually transferred to the prosecutor's office for further investigation, the "charges against P.R. were dropped" without any explanation (see paragraph 26 of the judgment).

18. Additionally, the applicants noted that one of the alleged perpetrators, R.M., received a fake passport from "representatives of the Russian authorities" (see paragraph 54(a) of the judgment), and while the Government submitted that the information received "had been forwarded to the heads of regional departments of the interior", they did not specify whether any sanctions had been applied to those officers (see paragraph 47 of the judgment).

19. During the first few years of the investigation D.P., a police officer, was a witness *for* the prosecution. During his testimony he admitted that, in

his professional capacity, he had organized surveillance of Ms Politkovskaya. He was only later prosecuted for his involvement in the crime and became a suspect only after the applicants drew the attention of investigators to O.G.'s witness statement and requested that he be questioned (see paragraphs 19, 28 and 54 of the judgment).

20. When the applicants raised concerns about the impartiality of the investigations during the domestic proceedings, the national authorities did not react to the allegations made and failed to take any steps to ensure the independence of the investigation. Similarly, the allegations made before the Court regarding the possible lack of independence on the part of the State authorities were not acknowledged or assessed in any way.

## **V. Conclusion**

21. It seems clear to us that there are several factors which raise concerns about the independence of the investigation in the present case. In previous cases the Court, by considering the specific context and circumstances, has both judged whether or not an investigation was independent and suggested ways that States could guarantee independence. Several countries have implemented various methods for ensuring the impartiality and independence of an investigation when allegations are made against State agents. Russia, for its part, has established special procedures when high-level officials are accused of criminal offences, and was thus in a position to take into account the allegations levelled at lower-level State employees and establish procedural guarantees to ensure the independence of the investigation.

22. The Court should have assessed this parameter in order to draw attention to the problem of independence in this and similar cases. By failing to make this assessment, the Court has effectively bypassed analysis of an important element of an effective investigation and failed to examine the allegations fully.

## JOINT DISSENTING OPINION OF JUDGES DEDOV AND POLÁČKOVÁ

1. To our regret, we have been unable to vote with the majority in finding that the investigation into Anna Politkovskaya's killing did not reach the minimum threshold of effectiveness required by Article 2 of the Convention, for the following reasons.

2. We are in agreement with the reasoning and conclusions of the majority with respect to the preliminary objections raised by the Government concerning the scope of the case and the applicants' alleged loss of victim status. We also fully share the majority's reasoning that in cases where the victim of a killing is a journalist, it is of the utmost importance to check a possible connection between the crime and the journalist's professional activity, and that the conclusions of an investigation must be based on a thorough, objective and impartial analysis of all the relevant elements, including the establishment of whether there is a connection between the threats and violence against journalists and other media actors and the exercise of journalistic activities or activities contributing in similar ways to public debate.

3. We regret, however, that we are unable to subscribe to the findings by our colleagues in the majority that there has been a violation of Article 2 in its procedural limb. That finding was based on the conclusion that the investigation into Anna Politkovskaya's killing did not meet the adequacy requirement.

4. First of all we would like to note that at the end of the proceedings the authorities achieved the essential purpose of the investigation into Anna Politkovskaya's killing. The investigation identified both the cause of the victim's death and the persons directly responsible for the killing (compare *Sarbyanova-Pashaliyska and Pashaliyska v. Bulgaria*, no. 3524/14, § 42, 12 January 2017). Five people were convicted and sentenced to a term of imprisonment in a final judgment, and the third and fourth applicants were awarded damages.

5. The thrust of the applicants' arguments concerning the alleged ineffectiveness of the investigation is the authorities' failure to identify and prosecute the people who commissioned the contract killing. We understand that it must be frustrating for the applicants that those behind the killing have not been identified. However, we are not convinced that this in itself would suffice to conclude that the investigation into Anna Politkovskaya's killing did not meet the Convention standard. The fact that the investigation did not succeed in identifying those who commissioned the killing does not necessarily mean that it was ineffective (see, *mutatis mutandis*, *Trivkanović v. Croatia*, no. 12986/13, § 79, 6 July 2017). In our opinion there were no concrete pieces of evidence in the present case that could have led the investigation in the direction of any person in particular, nor were there any

identifiable potential witnesses who, if interviewed, could have shed light on the identities of those who had commissioned the killing (see, by contrast, *Enukidze and Girgvliani v. Georgia*, no. 25091/07, §§ 254 and 261, 26 April 2011).

6. It is clear from the case files that the applicants had their own theories regarding who could have been behind the killing. However, we would like to stress in this connection that Article 2 cannot be interpreted so as to impose a requirement on the authorities to launch a prosecution irrespective of the evidence which is available (see *Gürtekin and Others v. Cyprus* (dec.), nos. 60441/13 and 2 others, § 27, 11 March 2014). A prosecution, particularly the prosecution of such a serious charge as involvement in a killing, should never be embarked upon lightly. Given the presumption of innocence enshrined in Article 6 § 2 of the Convention, it can never be assumed that a particular person is so tainted with suspicion that the standard of evidence to be applied is an irrelevance. Speculation is a dangerous basis on which to base any steps that can potentially devastate a person's life (see, *mutatis mutandis*, *Borojević and Others v. Croatia*, no. 70273/11, § 58, 4 April 2017).

7. Overall, regarding the adequacy of the steps taken by the Russian authorities, we are not persuaded by the applicants' detailed submissions that there were significant oversights or omissions. In the circumstances, we cannot criticise the authorities for any culpable disregard, discernible bad faith or lack of will (see *Zdjelar and Others v. Croatia*, no. 80960/12, § 89, 6 July 2017). In our opinion, it cannot be said that the alleged leaks from the secret services referred to by the applicants affected the overall effectiveness of the investigation.

8. As to the requirement that an investigation be carried out promptly and with reasonable expedition (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 240, ECHR 2016), we would like to point out that the criminal case was opened on the day of the killing. Initial investigative measures, such as the inspection of the scene of the incident and the collection of material evidence from it, as well as the collection of surveillance footage from the cameras in the vicinity, were taken without delay. Therefore we can accept that the authorities took sufficient measures to collect and secure evidence relating to the killing. As for the duration of the investigation in the present case, the period of almost ten years for an investigation and two subsequent sets of judicial proceedings over two levels of jurisdiction may be excessive according to the Court's standards under Article 6 of the Convention. However, the purpose of the Court's analysis under Article 2 is different. The requirement of promptness and reasonable expedition under Article 2 should not be examined in isolation and irrespective of the other parameters the combination of which makes an investigation effective (see, *mutatis mutandis*, *Sarbyanova-Pashaliyska and Pashaliyska*, cited above, § 41, and *Mustafa Tunç and Fecire Tunç*

*v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015). In view of the complexity inherent in the investigation of a contract killing, and in the absence of any indicators pointing at periods of conspicuous inactivity on the part of the investigators, we are of the opinion that the investigation and the court proceedings in the present case did not breach the promptness and reasonable expedition requirement.

9. Furthermore, assessing the proceedings as a whole, it cannot be said that Anna Politkovskaya's relatives were excluded from the investigation to the extent that they were deprived of the opportunity to participate effectively in the proceedings. Article 2 of the Convention 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 v. the Netherlands* [GC], no. 52391/99, § 348, ECHR 2007-II).

10. Nor are we inclined to agree with the applicants' arguments that the investigation lacked independence, arguments which are essentially limited to an assertion that police and FSB officers were among the individuals investigated. Article 2 does not require that the individuals and bodies responsible for an investigation enjoy absolute independence, but rather that they are sufficiently independent of the individuals and structures whose responsibility is likely to be engaged (see *Ramsahai and Others*, cited above, §§ 343-44). The adequacy of the degree of independence is assessed in the light of all the circumstances, which are necessarily specific to each case (see *Mustafa Tunç and Fecire Tunç*, cited above, § 223). The investigation was carried out by the Prosecutor General's Office, a body that enjoys sufficient structural autonomy and independence from other law-enforcement agencies. The applicants' allegations to the contrary were not supported by specific evidence.

11. The foregoing considerations are sufficient to enable us to conclude that the investigation into Anna Politkovskaya's killing has not been shown to have infringed the Convention standard.

**APPENDIX**

1. Ms Raisa Aleksandrovna MAZEPA, born in 1929;
2. Ms Yelena Stepanovna KUDIMOVA, born in 1957;
3. Ms Vera Aleksandrovna POLITKOVSKAYA, born in 1980;
4. Mr Ilya Aleksandrovich POLITKOVSKIY, born in 1978.