
2019-2020

Team: 9

EUROPEAN HUMAN RIGHTS MOOT COURT COMPETITION

Fiori v Zephyria

Fiori
(Applicant)

VS

The State of Zephyria
(Respondent)

Submission of the Applicant

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2. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004
3. Corfu Channel Case (United Kingdom v. Albania); Assessment of Compensation, 15 XII 49, International Court of Justice (ICJ), 15 December 1949, p. 22
4. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment. I.C.J. Reports 1986, p. 112, para. 215
5. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226
6. Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005

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List of Abbreviations

— Act on State Responsibility for Violations of Human Rights	Act on State Responsibility
— Article of the Convention	Article
— European Convention on Human Rights	the Convention
— European Court of Human Rights	the Court
— International Court of Justice	ICJ
— International Humanitarian Law	IHL
— International Human Rights' Law	IHRL

Summary of Submissions

- The Applicants submit that the present case falls within the jurisdiction of Zephyria on two grounds: first, the Zephyrian armed forces have established a *de facto* military occupation over the town of Neyra; and second, Zephyria has established a jurisdictional link on the grounds of the conducted investigation into the violations of Articles 2 and 3 as well as in respect of the civil limb of Article 6.
- The Applicants contend that the rules of IHRL take precedence over those of IHL because of the common legal space of the Convention over the belligerent States and their lack of derogation of any Convention provisions. Alternatively, violations of the Convention should be assessed in the light of the principles of IHL.
- Accordingly, the Applicants maintain that the military attack conducted by Zephyria falls short of the lower standards of IHL, and even more so of the protection provided by Article 2. Hence, the deaths of the Applicants' family members as well as the serious injuries inflicted on the Applicants as a result of the unlawful military strike constitute a violation of the substantive head of Article 2.
- The Applicants alternatively complain that if their bodily harm does not fall within the ambit of Article 2, then it amounts to inhuman treatment contrary to Article 3. The Applicants further maintain that their forced witnessing of the death of their relatives constitutes a breach of Article 3 since their deceased family members are victims of a violation of Article 2, as underlined above.
- The Applicants submit that the investigation into the military operation was ineffective because it was not conducted with the required diligence, thus denoting a violation of the procedural aspects of Articles 2 and 3.
- The Applicants contend that their right to a reasoned judgment and to a hearing within a reasonable time has been violated under Article 6.
- The Applicants maintain that there has been an unjustified interference with their right to respect for private life and home under Article 8 and with their right to protection of property under Article 1 of Protocol No. 1.
- The Applicants complain that the investigation and the compensation proceedings did not provide an effective remedy to their violated fundamental rights, thus constituting a breach of Article 13 in conjunction with Articles 2 and 3.

Submissions

I. PRELIMINARY REMARKS

1. THE STATE OF ZEPHYRIA HAS JURISDICTION UNDER ARTICLE 1 OF THE CONVENTION WITH RESPECT TO THE APPLICANTS' COMPLAINTS

The present case concerns the consequences of a missile attack conducted during an ongoing conflict situation between two Council of Europe Member states.¹ Respectively, it poses the question whether the matters complained of by the Applicants fall within the jurisdiction of Zephyria even though the events occurred outside its national territory. The Applicants submit that Zephyria has established jurisdiction over them on two grounds: first, the Zephyrian authorities established a *de facto* military occupation over the Applicants' town; and second, the Zephyrian authorities established a jurisdictional link by conducting investigation of the operation within the meaning of Articles 2 and 3 and by examining on the merits the compensation claim under Article 6 of the Convention.

1.1. Zephyria has been exercising “effective control” over the Applicants’ town

The Applicants maintain that the actions of the Zephyrian army call for an extra-territorial application of the Convention since they amount to an occupation of the town of Neyra. Due to the fact that the Convention has primarily territorial application, the scope of the “jurisdiction” for the purposes of Article 1 usually corresponds to the jurisdiction exercised by states on their territory.² Nevertheless, a state can exercise jurisdiction extraterritorially provided that it establishes “effective control” or “state agent authority and control” over an area outside its national territory.³ Whereas the principle of state agent authority applies in cases of physical power and control of state agents over individuals outside of that state’s territory and is usually related to arrest and detention,⁴ the principle of effective control is invoked when control is actually exercised over a foreign territory as in the case of occupation.⁵ The Court has emphasized in its case law that effective overall control is evident when a large

¹ The Case, paras. 4, 24

² Al-Skeini and Others v the United Kingdom, app. no. 55721/07, § 131-132

³ Al-Skeini and Others v the United Kingdom, app. no. 55721/07, § 133-140; Jaloud v the Netherlands, app. no. 47708/08, § 139

⁴ Al-Skeini and Others v the United Kingdom, app. no. 55721/07, § 136; Öcalan v Turkey, app. no. 46221/99, § 91; Al-Saadoon and Mufdhi v the United Kingdom, app. no. 61498/08, § 87; Razvozzhayev v Russia and Ukraine and Udaltsov v Russia, app. nos. 75734/12 2695/15 55325/15, § 158

⁵ Banković and Others v Belgium and Others, app. no. 52207/99, §§ 70-71; Catan and Others v the Republic of Moldova and Russia, app. nos. 43370/04, 18454/06, 8252/05, § 106; Cyprus v Turkey, app. no. 25781/94, § 76

number of troops are engaged in active duties on a foreign territory.⁶ In this case determination of detailed control of the state over the policies and actions of the authorities is not necessary.⁷

In the case at hand, the Zephyrian army's military presence in the Applicants' town of Neyra consists of approximately 1,000 soldiers.⁸ In the case of *Ilaşcu and Others v Moldova and Russia* the Court acknowledged that the Russian troops in Transdnistria exercised effective overall control even though they numbered between 1,500 and 2,200 throughout a whole region that had hundreds of thousands inhabitants.⁹ In the present case, the Applicants claim that Zephyria exercised effective control over the area of and around Neyra which has only around 10,000 inhabitants on account of the great number of ground forces deployed there. In addition to the considerable military presence in Neyra, the Zephyrian army has also located heavy artillery there.¹⁰ In *Ilaşcu and Others* the Court has also paid due regard to the large quantity of arms and ammunitions at Russian disposal.¹¹ Moreover, the Court has underlined in its jurisprudence that a military occupation over the territory of one Convention state invokes the accountability of the occupying state for breaches under the Convention within the occupied territory since the opposite would result in a "vacuum" of protection within the "legal space of the Convention".¹² Consequently, Zephyria's jurisdiction is extended to securing the entire range of substantive Convention rights in the town where the Applicants lived.

1.2. Zephyria has established a jurisdictional link on the grounds of the procedural aspects of Article 2, Article 3 and the civil limb of Article 6

The Applicants further submit that there is a jurisdictional link for the purposes of Article 1 of the Convention in respect of the proceedings brought by the Applicants before the Zephyrian authorities. The commencement of civil proceedings at national level involves the exercise of jurisdiction by the state and imposes an obligation for respect for the rights protected by Article 6.¹³ This approach is also adopted when the national authorities conduct an investigation into alleged violations of Articles 2 and 3 of the Convention.¹⁴ Jurisdictional

⁶ *Loizidou v Turkey* (merits), app. no. 15318/89, § 56; *Ilaşcu and Others v Moldova and Russia*, app. no. 48787/99, § 387

⁷ *Loizidou v Turkey* (merits), app. no. 15318/89, § 56; *Güzelyurtlu and Others v Cyprus and Turkey*, app. no. 36925/07, § 179

⁸ The Case, para. 4

⁹ *Ilaşcu and Others v Moldova and Russia*, app. no. 48787/99, § 131

¹⁰ The Case, para. 4

¹¹ *Ilaşcu and Others v Moldova and Russia*, app. no. 48787/99, § 131

¹² *Al-Skeini and Others v the United Kingdom*, app. no. 55721/07, § 142

¹³ *Marković and Others v Italy*, app. no. 1398/03, § 54

¹⁴ *Güzelyurtlu and Others v Cyprus and Turkey*, app. no. 36925/07, § 188; *Assenov and Others v Bulgaria*, app. no. 24760/94, § 102; *Gafgen v Germany*, app. no. 22978/05, § 117; *Razvozhayev v Russia and Ukraine and Udaltsov v Russia*, app. nos. 75734/12 2695/15 55325/15, § 170

link is established between the State and the Applicants regardless of the fact that the death or the ill-treatment occurred outside the State's jurisdiction.¹⁵ In the case at hand, Zephyria has conducted investigation into the military operation, has allowed the Aetherian Applicants to lodge an appeal against the discontinuation of the military investigation and has examined their civil action on the merits.¹⁶ Therefore, the Applicants' complaints concerning the procedural aspects of Article 2 and Article 3 as well as the civil limb of Article 6 fall within Zephyria's jurisdiction. Consequently, the Government are accountable for violations of the Applicants' rights thereof.

In conclusion, the present case is an exception to the principle of territoriality. Despite the fact that the disputed events occurred outside Zephyria's national boundaries, the Applicants were within its jurisdiction on the basis of the two grounds stated above. Therefore, the Applicants' complaints engage Zephyria's responsibility under the Convention.

2. THE RULES OF INTERNATIONAL HUMAN RIGHTS LAW TAKE PRECEDENCE OVER THOSE OF INTERNATIONAL HUMANITARIAN LAW

The exceptional nature of the present case is explained by the situation of an ongoing international armed conflict.¹⁷ Since it was already established under the previous section that Zephyria exercises extraterritorial jurisdiction for the purposes of Article 1, it is to be held responsible for violations of the Applicants' Convention rights.¹⁸ As a Party to an armed conflict, Zephyria is also bound by obligations under IHL. The ICJ has repeatedly stated in its case law that in such circumstances IHRL does not cease to apply in times of war which leads to its simultaneous application together with IHL.¹⁹ As for the relationship between those two branches of International Law, the ICJ has pointed out that while some rights are exclusively matters of IHL and others – matters of IHRL, there are situations which will require their complementary application.²⁰

Further, by joining the Convention the Contracting states have agreed upon a higher standard of protection of the covered rights and freedoms. Thus, the Applicants submit, that

¹⁵ *Güzelyurtlu and Others v Cyprus and Turkey*, app. no. 36925/07, § 189

¹⁶ The Case, paras. 26, 29

¹⁷ The Case, para. 4

¹⁸ *Loizidou v Turkey* (preliminary objections), app. no. 15318/89, §§ 61, 64

¹⁹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, § 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, § 106; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, Judgment, I.C.J. Reports 2005, p. 168, § 216

²⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, § 106

due to the fact that both States are Council of Europe Member states²¹, they fall within the legal space of the Convention which is governed by the pivotal principle of protection of human rights. Despite the military context of the case at hand and the relevance of the IHL, the Convention standards cannot be disregarded and should be applied. It is noteworthy that Zephyria did not make a derogation under Article 15 of the Convention.²² By reference to the case of *Hassan v the United Kingdom*²³, para. 107, and in the absence of a formal derogation, the Applicants maintain that the provisions of the Convention may be interpreted and applied in the light of the relevant provisions of IHL only exceptionally and where this is specifically maintained by the respondent State. Further, the Applicants submit that the application of the case of *Hassan v the United Kingdom* by analogy would be unreasonable as it concerned complaints under Article 5, whereas the present case touches upon the fundamental right to life. The Applicants underline in this respect that a State cannot freely modify the commitments which it has undertaken by ratifying the Convention and therefore the Convention should apply in its entire scope and full force. The Applicants will provide their observation as to why the relevant Convention provisions were breached below.

In case the Court decides as in case of *Hassan v the United Kingdom* that the Convention will be interpreted and applied in the light of the relevant principles of IHL, then nevertheless those IHL provisions were also violated by the Respondent State. The assessment of violations of the Convention rights should be made considering the main principles, applied in armed conflict situation – the principle of distinction,²⁴ the principle of proportionality²⁵ and the principle of military necessity and precaution²⁶. The principle of distinction stipulates that parties to the conflict must distinguish between the civilian population and fighters, and between civilian objects and military objectives.²⁷ The principle of proportionality prohibits the parties to the conflict from launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. The principle of military necessity requires that the parties to the conflict only adopt measures necessary to weaken the enemy and achieve military advantage.²⁸ The principle of precaution

²¹ The Case, para. 24

²² The Case, para. 24

²³ *Hassan v the United Kingdom*, app. no. 29750/09

²⁴ Article 48 of Additional Protocol I to the Geneva Conventions; Crawford, *Pert* (2015), pp.104-106

²⁵ Article 51 (5) (b) of Additional Protocol I to the Geneva Conventions

²⁶ Article 57 of Additional Protocol I to the Geneva Conventions; Henckerts, *Doswald-Beck* (2005), pp. 51-55

²⁷ Article 52(2) Additional Protocol I to the Geneva Conventions

²⁸ Crawford, *Pert* (2015), p. 78

obliges the states to take constant care to spare the civilian population, civilians and civilian objects in the conduct of military operations.

The principles set in the texts of the Geneva Conventions of 1949 and the Additional Protocols to them codify customary international law as they specify pre-existing norms and have not been disputed by any of the states to the Geneva Conventions.²⁹ Moreover, when applying general principles of international law, “elementary considerations of humanity”³⁰ should be fully used, as emphasised by the ICJ.

In conclusion, the circumstances of the case at hand, in particular the spread of the legal space of the Convention over the belligerent States and their lack of derogation of any Convention provisions, require the application of the Convention in its entirety. Alternatively, violations of the Convention should be assessed in the light of the principles of IHL.

II. ADMISSIBILITY OF THE APPLICANTS’ COMPLAINTS

The Applicants - Ms Iris Fiori, Mr Peter Fiori and Ms Chloe Fiori are among the 8 survivors of the military attack which took place in Neyra on 2 September 2015.³¹ They and their deceased relatives qualify as victims since they are affected by the violations of the Respondent State.³² It is evident that the actions of the Respondent State affected them negatively – their lives were put at risk and they suffered severe injuries from the attack³³ and their home was completely destroyed. Therefore, they are direct victims in respect of the complaints under Articles 2, 3, 6 and 8, Article 1 of Protocol No. 1, as well as Article 13 of the Convention.

The Applicants point out to the fact that the Court has held that the next-of-kin of a deceased person have standing before the Court when the death was a result of a violation of Article 2 of the Convention.³⁴ In the present case, the Applicants’ family members Ms Eva Doré and Mr Philip Doré, Ms Leto Fiori and Mr Arys Fiori died during or shortly after the attack. Therefore, the Applicants avail themselves of the opportunity to lodge a complaint on behalf of their deceased relatives claiming that the latter’s right to life has been violated by the

²⁹ Prosecutor v Kupreškić, Case No. IT-95-16-T, § 524

³⁰ Corfu Channel Case (United Kingdom v Albania); Assessment of Compensation, 15 XII 49, International Court of Justice (ICJ), 15 December 1949, p. 22; Military and Paramilitary Activities in und against Nicaragua (Nicaragua v United States of America). Merits, Judgment. I.C.J. Reports 1986, p. 112, § 215; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226, International Court of Justice (ICJ), 8 July 1996, p. 257, § 79

³¹ The Case, para. 8

³² Vallianatos and Others v Greece, app. no. 29381/09, 32684/09, § 47

³³ The Case, paras. 8, 10-12

³⁴ Yaşa v Turkey, app. no. 22495/93, § 66; Varnava and Others v Turkey, app. nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90, 16073/90, § 112

Respondent State.

Having established their standing, the Applicants maintain that they exhausted all available domestic remedies and the application is lodged within the six-month time-limit from the date of the final judgments of the domestic courts.³⁵ The application is not-manifestly ill-founded and the Applicants have suffered a significant disadvantage in view of the fundamental character of the rights violated by the Respondent State.

III. MERITS

1. VIOLATIONS OF ARTICLES 2 AND 3 OF THE CONVENTION

The Applicants submit that the Respondent State has failed to fulfil its obligations under Article 2 of the Convention to protect their lives and the lives of their close relatives. The Applicants maintain that the death of their relatives was caused by agents of the Respondent State and was in breach of Article 2. In addition, they submit that the serious injuries the Applicants sustained due to the attack constitute threat to their lives contrary to Article 2. Alternatively, if the Court does not find a violation of Article 2 on behalf of the Applicants, then their physical and psychological harm amounts to a violation of Article 3. The Applicants also contend that the authorities failed to conduct an effective criminal investigation in breach of the procedural limbs of both Article 2 and Article 3.

1.1. The State of Zephyria has violated the substantive limb of Article 2

The Applicants maintain that their right to life and that of their deceased relatives has been violated by the failure of the Respondent State to take adequate measures for the protection of the civilians' lives during the armed conflict.

As established in the Court's case law the use of force which may result in the deprivation of life may be justified only for the achievement of one of the purposes set out in Article 2 § 2 (a), (b) and (c).³⁶ When assessing whether the deliberate use of lethal force was "absolutely necessary"³⁷ for the aim pursued, the Court takes into consideration all relevant circumstances, such as the planning and control of the state's actions complained of.³⁸ In any case, the provisions of the Convention do not primarily define instances in which the intentional deprivation of life is allowed. Rather, it enlists the circumstances in which killing as an

³⁵ The Case, paras. 19, 20

³⁶ McCann and Others v the United Kingdom, app. no. 18984/91, §§ 146-50; Esmukhambetov and Others v Russia, app. no. 23445/03, § 138

³⁷ Kavaklioglu and Others v Turkey, app. no. 15397/02, § 161

³⁸ McCann and Others v the United Kingdom, app. no. 18984/91, §§ 146-50; Esmukhambetov and Others v Russia, app. no. 23445/03, § 138

unintended outcome caused by the use of force may be justified.³⁹

The Applicants submit that the use of missiles was not “absolutely necessary”, contrary to Article 2, and it further constitutes an internationally wrongful act as it was not conducted in compliance with the rules of IHL. The Applicants will now prove that the attack falls short of the lower standards of IHL, and even more so of the protection provided by Article 2. In particular the military operation was indiscriminate and did not comply with the principles of distinction, proportionality and precaution.

First, the principle of distinction established in Article 51 of Additional Protocol I to the Geneva Conventions was manifestly breached by the Respondent State as the bombing could not be solely restricted to the area of the former school campus thus rendering the attack indiscriminate.

Second, the Zephyrian authorities failed to comply with the proportionality principle, set in Article 57 of Additional Protocol I to the Geneva Conventions. The State was clearly aware that the lives of over a hundred civilians would be exposed to a lethal use of force during the attack and, nevertheless, the attack was allowed.⁴⁰ Furthermore, the military actions were disproportionate due to their intensity and excessive duration.⁴¹ Even though modern missiles have extremely high level of accuracy and perform at great velocity⁴², the attack went on for full 50 minutes.⁴³ The massive and unrestricted bombardment inevitably led to the high number of deaths and pecuniary damage.

Third, the Applicants maintain that the principle of precautions in attack was also violated by the Respondent State since alternative means were available whereby Zephyria could have achieved military advantage. The ratio between Zephyrian ground forces deployed in and around Neyra, together with their heavy artillery, and those of Aetheria was in favour of the Respondent State. Zephyrian soldiers greatly outnumbered the Aetherian local troop.⁴⁴ Therefore, the Respondent State could have considered a different approach to gain military advantage without affecting the lives of civilians. It is inconceivable that the aim pursued could not have been achieved by ground forces. Moreover, the Zephyrian military had received information for the expected relocation of the Aetherian troops⁴⁵ and could have conducted the

³⁹ Ergi v Turkey, app. no. 23818/94 (66/1997/850/1057), § 79

⁴⁰ The Case, para. 6

⁴¹ The Case, para. 7

⁴² An average covering of more than 10 000 km per half an hour, see: National Research Council (2012), pp. 19-73

⁴³ The Case, para. 7

⁴⁴ The Case, paras. 4, 5

⁴⁵ The Case, para. 5

attack at a different time, outside of the village, in order to minimize its effect on the civilian population. Therefore, the bombardment constituted grossly disproportionate action on the part of the Respondent State.

In the light of the above, the Applicants maintain that the lethal force used by the Respondent State did not meet the standard of the IHL principles which is lower than the one established by the Convention. *A fortiori*, it does not meet the “absolute necessity” criterion of Article 2 of the Convention and thus Zephyria has breached its obligations under the substantive limb of Article 2.

1.2. The State of Zephyria has violated the substantive limb of Article 3 of the Convention

Shall the Court declare that the injuries the Applicants sustained do not constitute a violation of Article 2, the Applicants maintain that their bodily harm is contrary to Article 3 of the Convention. Moreover, the State of Zephyria has infringed upon their right not to be subjected to inhuman treatment under Article 3 of the Convention also by forcing them to witness the death of their relatives.

As it enshrines one of the most fundamental values of democratic society,⁴⁶ Article 3 contains an absolute prohibition of torture and inhuman or degrading treatment or punishment and no derogation from it is permissible under Article 15 § 2 even in the event of war or other public emergency threatening the life of the nation⁴⁷. In order to invoke violation of Article 3, the ill-treatment must attain a minimum level of severity⁴⁸ and it must cause “either actual bodily injury or intense physical or mental suffering”⁴⁹, which depends on, *inter alia*, the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.⁵⁰

It is evident from the facts of the case that the Applicants sustained devastating physical damages as a result of the missile attack. In particular, the military operation led to neurological, cognitive, eye, gastrointestinal, skin, and reproductive injuries for the

⁴⁶ Selmouni v France, app. no. 25803/94, § 95; Aksoy v Turkey, app. no. 21987/93, § 62; Ireland v the United Kingdom, app. no. 5310/70, § 163; Soering v the United Kingdom, app. no. 14038/88, § 88; Chahal v the United Kingdom, app. no. 22414/93, § 79

⁴⁷ Selmouni v France, app. no. 25803/94, § 95; Aksoy v Turkey, app. no. 21987/93, § 62; Ireland v the United Kingdom, app. no. 5310/70, § 163; Soering v the United Kingdom, app. no. 14038/88, § 88; Chahal v the United Kingdom, app. no. 22414/93, § 79

⁴⁸ Ireland v the United Kingdom, app. no. 5310/70, § 162; Hasan İlhan v Turkey, app. no. 22494/93, § 106; Kudla v Poland, app. no. 30210/96, § 91; Raninen v Finland, app. no. 20972/92, § 55

⁴⁹ Kudla v Poland, app. no. 30210/96, § 92

⁵⁰ Ireland v the United Kingdom, app. no. 5310/70, § 162; Hasan İlhan v Turkey, app. no. 22494/93, § 106; Kudla v Poland, app. no. 30210/96, § 91; Raninen v Finland, app. no. 20972/92, § 55

Applicants.⁵¹ In addition to the lifelong consequences on their health, they also witnessed the death of their relatives⁵² which caused them profound psychological distress. The presented medical and psychological reports were capable of laying the basis of an arguable claim in respect of Article 3.⁵³

The Court has pointed out in its case law that a greater firmness is required when assessing violations of the most fundamental values of democratic societies.⁵⁴ As iterated in the previous section, the operation in the present case has not been planned and conducted in compliance with IHL, thus constituting a violation of Article 2 of the Convention. Bearing in mind the absolute nature of Article 3, no suffering of the magnitude experienced by the Applicants and caused by unlawful military action can be compatible with the Convention.⁵⁵ Therefore, the physical injuries as well as the acute psychological traumas borne by the Applicants' are of nature amounting to inhuman treatment prohibited by Article 3.

Furthermore, since the death of the Applicants' family members is in violation of their right to life under Article 2, the direct witnessing of it has given rise to ill-treatment of the Applicants.⁵⁶ The Court considers several factors in order to decide whether the suffering in such cases is beyond the one inevitably caused to relatives of a victim of a serious human rights violation.⁵⁷ Such factors are, *inter alia*, the proximity of the family tie, the particular circumstances of the relationship and the extent to which the family member witnessed the events in question.⁵⁸ The Applicants had strong family ties with their deceased relatives and, moreover, the parent-child bond gives additional weight to the assessment of the circumstances of the case.⁵⁹ Similarly, in the case of *Esmukhambetov and Others v Russia* the applicant witnessed the instantaneous death of his children and his wife in result of an indiscriminate aerial strike. The Court acknowledged that the shock experienced by him should be categorised as inhuman treatment within the meaning of Article 3. The distress is all the more serious in respect to the prolonged witnessing of the death of Arys Fiori who passed away 5 hours after the launching of the attack.⁶⁰ Therefore, the mental suffering endured by the Applicants on

⁵¹ The Case, paras. 10-12

⁵² The Case, para. 20

⁵³ The Case, para. 20; *Labita v Italy*, app. no. 26772/95, § 121

⁵⁴ *Selmouni v France*, app. no. 25803/94, § 102

⁵⁵ *Zabiyeva and Others v Russia*, app. no. 35052/04, §§ 125-126

⁵⁶ *Janowiec and Others v Russia*, app. no. 55508/07, 29520/09, § 181; *Esmukhambetov and Others v Russia*, app. no. 23445/03, § 190; *Musayev and Others v Russia*, app. nos. 57941/00, 58699/00 and 60403/00, § 169

⁵⁷ *İpek v Turkey*, app. no. 25760/94, § 181

⁵⁸ *Çakici v Turkey*, app. no. 23657/94, § 98; *Orhan v Turkey*, app. no. 25656/94, § 358

⁵⁹ *Salakhov and Islyamova v Ukraine*, app. no. 28005/08, § 204; *İpek v Turkey*, app. no. 25760/94, § 181; *Akkum and Others v Turkey*, app. no. 21894/93, § 258

⁶⁰ The Case, para. 9

account of the forced witnessing of the deaths of their family members amounts to a violation of Article 3 of the Convention.

Consequently, the Applicants invite the Court to find that their immense pain of physical and psychological character amounts to inhuman treatment contrary to Article 3 of the Convention.

1.3. The State of Zephyria has not complied with its procedural obligations under Articles 2 and 3

The Applicants maintain that the investigation into the military operation which caused the death of the Applicants' relatives and the severe injuries of the Applicants' was ineffective in breach of the procedural aspects of Articles 2 and 3 of the Convention. As the procedural aspects of Articles 2 and 3 have the same scope and purpose⁶¹ and as in the present case the scope of the investigation has completely overlapped for both Articles, they should be examined jointly by the Court.

According to the Court's case law, an effective investigation should be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible.⁶² The authorities are obliged to initiate an investigation *ex proprio motu* once the matter has come to their attention.⁶³ The Court has stated that the involvement of the next-of-kin of the victim is of great value in criminal investigations.⁶⁴ It forms the minimum degree of public scrutiny required in such cases.⁶⁵ The non-compliance with this rule leads to ineffectiveness of the investigation proceedings as a whole.⁶⁶ Further, the investigation must be conducted in an expeditious and prompt manner.⁶⁷

In the present case, the investigation began only after the impugned military operation received widespread media coverage.⁶⁸ Moreover, it was initiated as late as 13 days after the operation. As to the *ex proprio motu* criterion, it is inconceivable that the investigative body remained unaware of the operation until the 15 September 2015, especially as it forms part of the military and the attack was communicated through the relevant military channels prior to

⁶¹ Assenov and Others v Bulgaria, 24760/94, § 102

⁶² Paul and Audrey Edwards v the United Kingdom, app. no. 46477/99, § 71; Labita v Italy, app. no. 26772/95, § 131; Nachova and Others v Bulgaria, app. nos. 43577/98, 43579/98, § 113

⁶³ Al-Skeini v the United Kingdom, app. no. 55721/07, § 165

⁶⁴ McKerr v the United Kingdom, app. no. 28883/95, § 108-115

⁶⁵ Perevedentsevi v Russia, app. no. 39583/05, § 105; Harris, O'Boyle, Warbrick (2014), p. 217

⁶⁶ Ogur v Turkey, app. no. 21594/93; § 91-93; Case of El-Masri v "The Former Yugoslav Republic of Macedonia", app. no. 39630/09, § 192

⁶⁷ Damayev v Russia, app. no. 36150/04, § 78

⁶⁸ The Case, para. 14

its commencement.⁶⁹ Moreover, the enormous delay was in itself prone to impeding the overall effectiveness of the investigation, as it could have prevented the collection of crucial evidence. This is corroborated by the similar findings of the Court in the case of *Damayev v Russia* where a delay of only 8 days was considered excessive. Moreover, the Applicants' possibility to adequately participate in the investigation was impeded. They were granted only partial access to information, despite having filed several requests in this respect.⁷⁰ They received no response to their inquiries on the development of the investigations for almost a year.⁷¹ As established in the Court's case law, the authorities are obliged to provide the next-of-kin of the victims with information necessary to safeguard their legitimate interests.⁷² Even though the situation of an ongoing armed conflict deterred the progress of the investigation, the prompt response by the Zephyrian authorities was essential for maintaining public confidence in the rule of law.⁷³ Considering the doubts expressed by the Zephyria Military Investigation Board with regard to the adequate planning and carrying out of the military operation⁷⁴, the Zephyrian authorities should have acted with greater diligence and transparency when conducting the criminal investigation. Furthermore, the investigation of murder calls for greater promptness and diligence.⁷⁵ The Applicants' prolonged expectation for the outcome of the investigations together with the lack of information, have further increased their hardship and suffering.

Therefore, the investigation was ineffective and consequently in violation of the procedural limbs of Articles 2 and 3 of the Convention.

For all the aforementioned reasons, the Applicants contend that both the substantive and procedural heads of Articles 2 and 3 have been breached by the Respondent State.

2. VIOLATIONS OF ARTICLE 8 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL NO. 1

The Applicants maintain that the State of Zephyria acted contrary to Article 8 and of Article 1 of Protocol No. 1 by disproportionately interfering with their right to respect for private life, the right to respect for their home and the right to protection of property.

⁶⁹ The Case, para. 6

⁷⁰ The Case, paras. 16, 17

⁷¹ The Case, para. 17

⁷² *McKerr v the United Kingdom*, app. no. 28883/95, § 115;

⁷³ *McKerr v the United Kingdom*, app. no. 28883/95, § 114; *Hugh Jordan v the United Kingdom*, app. no. 24746/94, § 108; *Ergi v Turkey*, app. no. 23818/94, § 79-85

⁷⁴ The Case, para. 14

⁷⁵ *Al-Skeini and Others v the United Kingdom*, app. no. 55721/07, § 167

2.1. There has been an interference with regard to the right to respect for private life of the Applicants

Should the Court decide not to review the complaints of the physical injuries and psychological trauma suffered by the Applicants under Articles 2 and 3, then Article 8 should be applicable in this regard. The Applicants contend that the injuries they have sustained together with their psychological traumas constitute an interference with the right to respect for private life within the scope of Article 8.

As a person's body is an intimate aspect of his or her private life⁷⁶, the physical and moral integrity of a person fall within the notion of private life as set out in Article 8.⁷⁷ Even a minor interference with the physical integrity of an individual must be regarded as an interference in the private sphere of life under Article 8, if it is carried out against the individual's will.⁷⁸ The Court has further affirmed that mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity.⁷⁹ A sound mental state is a significant prerequisite for the effective exercise of the right to respect for private life.⁸⁰

In the present case, the Applicants were severely wounded as a result of the military attack of the Respondent State.⁸¹ It was later established that the Applicants suffered from post-traumatic stress disorder.⁸² The submitted detailed medical and psychological reports indicated the extent to which the actions of the Respondent State affected negatively their private life⁸³. Therefore, the impugned measure incontestably falls within the scope of Article 8 § 1.

Consequently, there has been an interference with the right to respect for private life as provided in Article 8 § 1.

2.2. There has been an interference with the right to respect for home and the right to protection of property of the Applicants

The loss of one's home is one of the most extreme forms of interference with the right to respect for home.⁸⁴ Deliberate destruction of homes by the authorities is a classic example of an interference with the right to respect for home.⁸⁵ For the purposes of Article 1 of Protocol No. 1, the term "possessions" includes immovable property. In the context of armed conflict,

⁷⁶ Y. F. v Turkey, app. no. 24209/94, § 33

⁷⁷ X and Y v the Netherlands, app. no. 8978/80, § 22

⁷⁸ Storck v Germany, app. no. 61603/00, § 143

⁷⁹ Bensaid v the United Kingdom, app. no. 44599/98, § 47

⁸⁰ Bensaid v the United Kingdom, app. no. 44599/98, § 47

⁸¹ The Case, paras. 10-12

⁸² The Case, para. 13

⁸³ The Case, para. 20

⁸⁴ McCann v the United Kingdom, app. no. 19009/04, § 50

⁸⁵ Menteş and Others v Turkey, app. no. 58/1996/677/867, § 73

claims under this article must be substantiated at least by *prima facie* evidence.⁸⁶

In the case at hand, the Applicants and their relatives lived together in a residential building in Neyra as a family⁸⁷ and they were inhabiting their own property. It is evident from the facts of the case that the destroyed house of the Applicants falls within the notion of “home” as recognized by Article 8 of the Convention. The Applicants’ house also constitutes a property within the meaning of Article 1 of Protocol No. 1 of the Convention. Thus, the Respondent State interfered with the Applicants’ right to respect for home under Article 8 § 1 and right to protection of property protected under Article 1 of Protocol No. 1.

2.3. The interference was not justified under Article 8 § 2 and Article 1 of Protocol No. 1 of the Convention

Pursuant to the second paragraphs of Article 8 and Article 1 of Protocol No. 1, any infringement on the free exercise of the right to respect for private life and home and the right to protection of property must be conducted in accordance with the law. The interference must pursue a legitimate aim and must be necessary in a democratic society.⁸⁸ In this regard the interference must answer a “pressing social need” and, in particular, it must be proportionate to the legitimate aim pursued.⁸⁹ These aspects must be assessed *in concreto*, on a case by case basis.⁹⁰

In the current case, the interference was not prescribed by law. The military operation was in breach of the principles of distinction, proportionality, military necessity and precautions in attack and qualifies as an indiscriminate attack, prohibited by IHL as elaborated in Section III, 1.1. Furthermore, the interference was not necessary in a democratic society. The Zephyrian authorities could have adopted a different approach to achieve the military advantage sought. Had they used their ground forces no danger would have been present for the civilian population of Neyra. Moreover, the operation could have been conducted at a later stage when the Aetherian troops were to relocate. As to the impugned military operation, it targeted a former school campus with 30 people military personnel and eventually caused the deaths of 22 civilians and 8 others were left with life-long effects including the Applicants.⁹¹ Furthermore, the property of the victims and, more importantly, their homes were demolished as a consequence.⁹² Indeed, the applicants received 5,000 EUR for the destruction of their

⁸⁶ Damayev v Russia, app. no. 36150/04, §§ 108-111

⁸⁷ The Case, para. 6, 21

⁸⁸ Blyudik v Russia, app. no. 46401/08, § 74

⁸⁹ Chapman v the United Kingdom, app. no. 27238/95, § 90

⁹⁰ Belgian Linguistics Case No. 2, app. nos. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, § 7

⁹¹ The Case, para. 8

⁹² The Case, para. 8

home. However this redress is manifestly disproportionate as the amount equals to only 50% of the market value of their home.⁹³ In comparison, in the case of *Esmukhambetov and Others v Russia*, the Court awarded to the applicants with substantiated claims a sum amounting to approximately 91% of the highest average market value (22,000 EUR) of the housing in the region at the relevant time.⁹⁴ In the present case, the Gedru court did not take into consideration the Applicants' dire personal need when awarding them the compensation. All of them suffered greatly, lost their family and were required to seek further medical interventions.⁹⁵

For these reasons, the Applicants maintain that the impugned action of the Respondent State has been unjustified as it has been unlawful and disproportionate to the aim pursued. Thus, there has been a violation of Article 8 and Article 1 of Protocol No. 1 of the Convention.

3. VIOLATION OF THE RIGHT TO A FAIR TRIAL UNDER ARTICLE 6 OF THE CONVENTION

The Applicants maintain that the failure of the domestic courts to provide any reasons for rejecting their request for non-pecuniary damage combined with the excessive length of the compensation proceedings breached Article 6 § 1 of the Convention.

3.1. The Applicants' right to a reasoned judgement was violated by the domestic courts

The Applicants contend that their right to a reasoned judgement has been violated by the domestic courts' failure to respond to their main plea and to provide the required rigour and care.

Although not expressly stated, the notion of a fair trial enshrined in Article 6 § 1 of the Convention imposes on national courts the obligation to give sufficient reasons for their decisions.⁹⁶ It is one of the guarantees that shows the parties that their complaints have truly been considered and demonstrates to the public the court's adherence to the rule of law. Specific scrutiny on behalf of the domestic courts is required where a party's plea concerns rights and freedoms guaranteed by the Convention and the Protocol thereto.⁹⁷

In accordance with the Act on State Responsibility the Applicants initiated compensation proceedings before the Zephyrian courts in order to obtain compensation for the damage suffered as a result of the attack.⁹⁸ They complained, *inter alia*, that their right to life and that of their deceased relatives has been violated by the Respondent State. Moreover, they adduced

⁹³ The Case, para. 21

⁹⁴ *Esmukhambetov and others v Russia*, app. no. 23445/03, § 207

⁹⁵ The Case, para. 13

⁹⁶ *H. v Belgium*, app. no. 8950/80, § 53

⁹⁷ *Wagner and J.M.W.L. v Luxembourg*, app. no. 76240/01, § 96; *Fabris v France*, app. no. 16574/08, § 72

⁹⁸ The Case, para. 20

evidence for a violation of Article 8, Article 1 of Protocol No. 1 in respect of their destructed property and complained of a treatment prohibited by Article 3 of the Convention.⁹⁹ The complaints were consistent, clear and precise. They were substantiated with numerous medical reports of the Applicants' physical and psychological state. Nevertheless, the domestic courts did not provide any reasons for rejecting the Applicants' claims as regards to Article 2, 3 and 8 of the Convention. Although Article 6 § 1 does not require a detailed answer to every argument¹⁰⁰, the domestic courts are obliged to examine with particular rigour and care alleged violations of Convention rights¹⁰¹. Since the Applicants' submission concerned some of the core Convention rights, the lack of reasoning is not justifiable. The serious nature of the Applicants' complaints made it all the more necessary for the court to give sufficient reasoning on the issue of non-pecuniary damage compensation. Although the first-instance court recognized the Respondent State's responsibility as regards to the Applicants' destructed property, it does not suffice to answer to the Convention requirements. On the contrary, it renders the decision contradictory on the merits and further proves the reluctance of the domestic courts to deal with the Applicants' complaints related to Article 2, 3 and 8 of the Convention. The Supreme Court, moreover, upheld the lower court's reasoning without any further ado, thus failing to remedy the flaw of the proceedings.¹⁰²

In the light of the lack of sufficient reasoning for the courts' decisions, the Applicants submit that their case has not been sufficiently considered and as a result their right to a fair trial under Article 6 has been violated by the Respondent State.

3.2. There has been a violation of the Applicants' right to a hearing within a reasonable time

The Applicants submit that their right to a fair hearing within a reasonable time has been violated as the overall period of the compensation proceedings was unjustifiably prolonged considering the issues at stake in the present case.

The Court has stated on numerous occasions that justice should be administered without delays that might jeopardize its effectiveness and credibility.¹⁰³ States are obliged to organize their judicial system in such a way so as to guarantee everyone's right to a final decision within a reasonable time on disputes concerning civil rights and obligations.¹⁰⁴ When assessing the

⁹⁹ The Case, para. 20

¹⁰⁰ Ramos Nunes de Carvalho e Sá v Portugal, app. no. 55391/13, 57728/13, 74041/13, § 185

¹⁰¹ Wagner and J.M.W.L. v Luxembourg, app. no. 76240/01, § 96; Fabris v France, app. no. 16574/08, § 72

¹⁰² The Case, para. 22

¹⁰³ H v France, app. no. 10073/82, § 58; Scordino v Italy (no. 1), app. no. 36813/97, § 224; Lupeni Greek Catholic Parish and Others v Romania, app. no. 76943/11, § 142;

¹⁰⁴ H v France, app. no. 10073/82, § 58; Scordino v Italy (no. 1), app. no. 36813/97, § 224; Lupeni Greek Catholic

reasonableness of the length of the proceedings the Court takes into account several factors - the complexity of the case, the conduct of the parties and of the relevant authorities, as well as what was at stake for the applicant.¹⁰⁵ In the case of *X v France*¹⁰⁶ the Court stated that where the applicant suffers from incurable disease, exceptional diligence and promptness are required on behalf of the competent authorities, notwithstanding the number of pending cases. The Court decided that a period of almost 3 years for 2 instances was beyond the reasonable time limit in the light of what was at stake in the contested proceedings.

In the present case the period to be taken into consideration is almost 3 years for the proceedings before the first-instance court and the Supreme Court – from the moment when the Applicants initiated the compensation proceedings (16 November 2016) to the moment when the final judgement of the Supreme Court was delivered (30 August 2019). Hence, the Applicants maintain that the length of the proceedings went beyond the reasonable time-limit.

The authorities were well aware of the Applicants' deteriorated health and of the fact that their home was destroyed. Therefore, deciding their case was a matter of urgency as any delay might have rendered the decision devoid of purpose considering the life-threatening consequences borne by the Applicants. However, they did not provide the required exceptional diligence. The case was pending before the first-instance court for more than 2 years without any plausible explanation. As the duration of the proceedings had already exceeded the reasonable time-limit by the time the Gedru Regional Court delivered its judgement, the lack of delay during the subsequent proceedings before the Supreme Court could not remedy the flaw of the proceedings. The length was unjustifiable considering the Applicants' reduced life expectancy and the loss of their home. For the reasons that the domestic courts failed to give due regard to the importance of what was at stake for the Applicants in the compensation proceedings, the period of almost 3 years has been unreasonable and denotes a violation of Article 6 § 1 of the Convention.

In conclusion, the failure of both domestic courts to give reasons for their decisions in respect of the Applicants' claim for non-pecuniary damage, as well as the lengthy period of the compensation proceedings amount to a violation of Article 6 § 1 of the Convention.

Parish and Others v Romania, app. no. 76943/11, § 142;

¹⁰⁵ X v France, app. no. 18020/91, § 32; Lupeni Greek Catholic Parish and Others v Romania, app. no. 76943/11, § 143

¹⁰⁶ X v France, app. no. 18020/91, § 47

4. VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLES 2 AND 3 OF THE CONVENTION

The Applicants submit that the Respondent State has violated Article 13 in conjunction with Articles 2 and 3 of the Convention due to the lack of an effective remedy for the violations of Articles 2 and 3 of the Convention.

4.1. The investigation was not effective within the meaning of Article 13

The subsidiary nature of Article 13 requires as a prerequisite the existence of an arguable claim under another provision of the Convention. Even if the Court finds no violation of this complaint, this does not preclude it from finding a breach of Article 13.¹⁰⁷ In respect of its accessory character, Article 13 guarantees the enforcement of other substantive rights secured in the Convention.¹⁰⁸ It requires the availability of an effective remedy, which depends on the nature of the violated right.¹⁰⁹ In the present case, Article 13 in relation to Articles 2 and 3 requires an effective criminal investigation, “including effective access for the complainant to the investigation procedure”¹¹⁰ and a civil remedy capable of providing redress for the pecuniary and non-pecuniary damages sustained¹¹¹. In order for a remedy to be considered appropriate, it must be effective in practice as well as in law.¹¹²

Article 13 has a wider scope than the procedural aspects of Articles 2 and 3 of the Convention in terms of what constitutes an effective remedy.¹¹³ The payment of compensation where appropriate is not the only redress considered as effective. A thorough and effective investigation capable of leading to the identification and punishment of those responsible has to be carried out as well.¹¹⁴ Therefore, even if the Court does not find a violation of the procedural aspects of Articles 2 and 3, the Applicants submit that a violation of Article 13 in conjunction with Articles 2 and 3 has occurred. As it was established in Section III, 1.3 the investigation into the military operation was not conducted in an expeditious and prompt manner, the Applicants were not kept duly informed and there were discrepancies between the conclusions of the Military Investigation Board and the Prosecutor. The ineffective investigations affected negatively the Applicants’ possibility to defend their best interests.¹¹⁵

¹⁰⁷ Schabas (2015), p. 551

¹⁰⁸ *Angelova v Bulgaria*, app. no. 38361/97, § 161

¹⁰⁹ *Tanrikulu v Turkey*, app. no. 23763/94, § 117

¹¹⁰ *Angelova v Bulgaria*, app. no. 38361/97, § 161

¹¹¹ *Kaya v Turkey*, app. no. 22729/93 (158/1996/777/978), § 107

¹¹² *Case of Kudla v Poland*, app. no. 30210/96, § 157

¹¹³ *Tanrikulu v Turkey*, app. no. 23763/94, § 119; *Khashiyev and Akayeva v Russia*, 57942/00, 57945/00, § 183

¹¹⁴ *Bazorkina v Russia*, app. no. 69481/01, § 161

¹¹⁵ *Sarli v Turkey*, app. no. 24490/94, §§ 235-236

Moreover, within the compensation proceedings, the Zephyrian courts relied only on the non-classified findings of the Prosecutor General¹¹⁶, thus, it was precluded from assessing the case in its entirety. Additionally, the deficiencies of the findings in the investigation were transferred to the civil proceedings. The discontinuation of the investigation predetermined the result of the appeal, which relied on a procedure proven to be ineffective as elaborated above. The Applicants were not compensated for the material and psychological damages that they have suffered from the violation of their human rights. Hence, the defects in the investigations corroborated the ineffectiveness of the civil remedy which was at the Applicants' disposal.¹¹⁷

4.2. The compensation proceedings did not provide an effective remedy

Furthermore, the Applicants brought a civil action before the Zephyrian courts on the basis of the Zephyria Act on State Responsibility, alleging violations of their fundamental rights under Articles 2 and 3.¹¹⁸ As it was established by the Court in *Kudla v Poland*¹¹⁹, a remedy may be rendered ineffective in practice, when it is established in law, but its *de facto* implementation is impeded. For instance, it is demonstrated by the reluctance of the State to consider the Applicants' complaints and respectively to compensate them.¹²⁰ In the case at hand both judicial instances failed to address the substance of the Applicants' complaints as they primarily focused on the lawfulness of the impugned operation.¹²¹ An approach of this kind demonstrates solely the denial of the Zephyrian courts to adjudicate on violations of human rights and to objectively evaluate state officials' actions. This approach is further in contradiction with their assessment of the damage sustained to their home.

As to the individual responsibility, in the present case the colonels acted in their capacity of state agents and their actions abroad have engaged the State's responsibility under International Law. The effects from the attack which arose on the territory of Aetheria, have established jurisdictional link for the purposes of the Convention. Hence, Zephyria bears full responsibility for ensuring the protection of human rights, as has been previously elaborated on.

Moreover, the Zephyrian Courts failed to recognize the pecuniary and non-pecuniary damages the Applicants have suffered as a result from the attack. Thus, the simple existence of a procedure did not constitute an effective remedy within the meaning of the Convention.

¹¹⁶ The Case, para. 21

¹¹⁷ *Klass and Others v Germany*, app. no. 5029/71, § 64

¹¹⁸ The Case, para. 20

¹¹⁹ *Kudla v Poland*, app. no. 30210/96, § 157

¹²⁰ *Mutatis mutandis* *Petkov and Others v Bulgaria*, app. no. 77568/01, 178/02, 505/02, § 74-79

¹²¹ The Case, paras. 21-22

Therefore, there has been a breach of Article 13 in conjunction with Article 2 and 3 under this head.

In conclusion, Zephyria has not provided effective domestic remedies in respect of the Applicants' violations of their fundamental rights under Articles 2 and 3. Since the Applicants' complaints were not addressed in their substance and since the ineffective investigation affected negatively the civil proceedings available to them, there has been a breach of Article 13 in conjunction with Articles 2 and 3 of the Convention.

IV. CONCLUSION

For the reasons stated above, the Applicants respectfully request the Court:

- to declare the Application admissible,
- to adjudge and declare that the State of Zephyria has violated the Applicants' rights under Article 2, Article 3, Article 6, Article 8, Article 13, and Article 1 of Protocol No. 1 of the Convention, as well as the right to life of their deceased relatives under Article 2 of the Convention,
- to award just satisfaction under Article 41 of the Convention, in respect to the Applicants' pecuniary and non-pecuniary damages, and order the reimbursement of the full costs and expenses incurred.