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2019-2020

Team: 9

# EUROPEAN HUMAN RIGHTS MOOT COURT COMPETITION

## **Fiori v Zephyria**

*Fiori*  
(Applicant)

VS

*The State of Zephyria*  
(Respondent)

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## **Submission of the Respondent**

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## List of Abbreviations

— Zephyria’s Act on State Responsibility for Violations of Human Rights	<b>Act on State Responsibility</b>
— Article of the Convention	<b>Article</b>
— European Convention on Human Rights	<b>the Convention</b>
— European Court of Human Rights	<b>the Court</b>
— International Humanitarian Law	<b>IHL</b>
— International Human Rights’ Law	<b>IHRL</b>



## Summary of Submissions

- The Respondent objects the application as inadmissible on grounds of lack of jurisdiction. No exceptions to the territoriality principle apply in the present case. The Government maintain that if the Court decides that a jurisdictional link has been established, it concerns solely the procedural aspects of Article 2 and 3, as well as Article 6 § 1 in its civil limb.
- The Respondent invites the Court to consider the present case in the light of the principles of International Humanitarian Law, applying them concurrently to the Convention.
- It is the Government's submission that if the Court decides to examine the complaints of the Applicants under Articles 2 and 3, they should be declared inadmissible as manifestly ill-founded on grounds that they do not disclose any appearance of a violation.
- The Respondent contends that no separate issue arises under Article 3 of the Convention and the Applicants' complaints shall be considered solely under Article 2. The only exception to this is the matter of the Applicants witnessing the deaths of their relatives.
- The Government submit that the interference with the Applicants' rights under Article 2 was a consequence of lawful use of force, thus meeting the "absolutely necessary" criterion under the substantive aspect of Article 2.
- The Government maintain that the national authorities have fulfilled their positive obligation to conduct effective investigations under Article 2.
- The Government contest the Applicants' claim that witnessing the deaths of their relatives amounted to treatment prohibited by Article 3 as ungrounded.
- The Government object the admissibility of the Applicants' claims under Article 8 on grounds of the victim status of the deceased relatives of the Applicants.
- The State of Zephyria maintains that the interference with the Applicants' right to respect for private and family life and home has been justified under Article 8 § 2 of the Convention.
- The Respondent submits that it has complied with the exigencies of the right to fair trial as secured by Article 6 § 1 of the Convention.
- The Government contend that the Applicants do not have an arguable claim under Article 13 of the Convention. If the Court, however, declares the complaints admissible, the Respondent State submits that the remedies available to the Applicants were effective in practice as well as in law.

## Submissions

### I. PRELIMINARY REMARKS

The present case concerns the ongoing armed conflict between Zephyria and its neighbouring State – Aetheria, in which both States have been conducting military operations. The Applicants complain that the military attack, held on 2<sup>nd</sup> September 2015, was in breach of their rights under the Convention. It is the Government’s submission that the Applicants’ claims do not fall within the scope of the State’s jurisdiction. First, there are no exceptions to the territoriality principle in the present case, and second, there is no jurisdictional link between the Applicants and the State. The victim status of the Applicants, however, is a distinct matter of admissibility and does not corroborate the existence of jurisdiction *per se*.<sup>1</sup>

#### 1. The present case provides for no exceptions to the territoriality principle

According to the Convention the responsibility of states is engaged in so far as matters fall within their jurisdiction. The jurisdiction established for the purposes of Article 1 is in principle territorial.<sup>2</sup> The Applicants are neither nationals of Zephyria, nor do they reside in its territory. It is the Government’s submission that no exceptions to the territoriality principle on grounds of effective control or state agent authority and control<sup>3</sup> apply in the present case. Thus, no jurisdiction has been established.

First, the principle of effective control concerns control of an area outside a state’s national territory.<sup>4</sup> Such control is recognised in situations of military occupations<sup>5</sup> or when a state exercises all or some of the public powers of the foreign government through the consent, invitation or acquiescence of the latter.<sup>6</sup> It should be considered that the control over the territory of Neyra remains under the jurisdiction of Aetheria since no such circumstances occur in the present case.<sup>7</sup> The presence of Zephyrian soldiers in the area does not justify the establishment of jurisdiction on its own, based on the principle of effective control. Even

<sup>1</sup> Andrejeva v Latvia, app. no. 55707/00, § 56

<sup>2</sup> Banković and Others v Belgium and Others, app. no. 52207/99, § 59; Schabas (2015), p. 95

<sup>3</sup> Banković and Others v Belgium and Others, app. no. 52207/99, § 67; Ilaşcu and Others v Moldova and Russia, app. no. 48787/99, § 314; Catan and Others v the Republic of Moldova and Russia, app. nos. 43370/04, 18454/06, 8252/05, § 104

<sup>4</sup> Banković and Others v Belgium and Others, app. no. 52207/99, § 70; 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

<sup>5</sup> Loizidou v Turkey (preliminary objections), app. no. 15318/89, § 62

<sup>6</sup> Banković and Others v Belgium and Others, app. no. 52207/99, § 71

<sup>7</sup> Sargsyan v Azerbaijan, app. no. 40167/06, § 139; Ilaşcu and Others v Moldova and Russia, app. no. 48787/99, § 312

though the Court has attached in its case law some weight to the number of soldiers deployed, it has also underlined that at the core of effective overall control is the exercise of public powers.<sup>8</sup> It is evident from the facts of the present case that the Zephyrian army has not performed such functions and has not prevented Aetheria in any way from exercising its jurisdiction and control over that area.<sup>9</sup> Hence, Zephyria has not established effective control over Neyra and the Applicants' submission in this respect is incompatible *ratione loci*.

Second, state agent authority and control is displayed when state's agents operating abroad bring an individual under the control of the state's authorities.<sup>10</sup> The Court has applied this principle in cases of arrest<sup>11</sup> and detention<sup>12</sup> of individuals handed over to state's agents outside the state's territory. None of these grounds for extraterritorial competence of the State has been established in the present case. Moreover, as the Court has emphasised in *Banković and Others v Belgium and Others*, the mere fact of being a victim of an extraterritorial state action does not suffice to bring a person within the jurisdiction of that state.<sup>13</sup> The existence of a jurisdictional link is a threshold criterion, as established in the case law of the Court.<sup>14</sup> Zephyria's military attack, as similar to the one conducted in the *Banković and Others* case, does not meet this baseline and the Respondent cannot be held responsible for acts and omissions under the Convention. Therefore, the Applicants' claim shall be considered incompatible *ratione personae*.

With regard to the abovementioned, the Government maintain that the exceptions to the territorial application of states' jurisdiction within the meaning of the Convention should remain narrow. The contrary would lead to excessive and unpredictable broadening of the scope of the Convention and additional obligations on the Contracting states. Such a reasoning would also compromise the principle of legal certainty.<sup>15</sup> In conclusion, the State submits that there has been no jurisdiction exercised by Zephyria over the territory of Neyra. Therefore, the Applicants do not fall under its jurisdiction either and cannot claim to be victims of an alleged violations. The application shall be declared inadmissible under Article 35 § 4 of the Convention as incompatible *ratione loci* and *ratione personae* respectively.

<sup>8</sup> *Loizidou v Turkey* (preliminary objections), app. no. 15318/89, § 62; *Güzelyurtlu and Others v Cyprus and Turkey*, app. no. 36925/07, § 179; *Cyprus v Turkey*, app. no. 25781/94, § 76; *Ilaşcu and Others v Moldova and Russia*, app. no. 48787/99, §§ 314-316

<sup>9</sup> See for example *The Case*, paras. 5 and 9

<sup>10</sup> *Al-Skeini and Others v the United Kingdom*, app. no. 55721/07, § 136

<sup>11</sup> *Öcalan v Turkey*, app. no. 46221/99, § 91

<sup>12</sup> *Al-Saadoon and Mufdhi v the United Kingdom*, app. no. 61498/08, § 87

<sup>13</sup> *Banković and Others v Belgium and Others*, app. no. 52207/99, § 75

<sup>14</sup> *Ilaşcu and Others v Moldova and Russia*, app. no. 48787/99, § 311

<sup>15</sup> *Miller* (2010), p. 1225; *Banković and Others v Belgium and Others*, app. no. 52207/99, § 80

**2. Whether there is a jurisdictional link with regard to the procedural aspects of Articles 2 and 3 and Article 6 under its civil limb in the present case**

The Respondent State maintains that no jurisdictional link was created on the strength of the investigative actions of the authorities and the recognition of the civil court of its own jurisdiction. It was a matter of the good will of the domestic authorities to initiate an investigation and to examine the claims of the applicants, in their capacity of innocent civilians. If the Court however decides to accept such a jurisdictional link, the Government will provide their observations on these issues below.

**II. ADMISSIBILITY AND MERITS OF THE APPLICANTS' COMPLAINTS**

**1. THE APPLICANTS' COMPLAINTS UNDER ARTICLES 2 AND 3 ARE MANIFESTLY ILL-FOUNDED**

Should the Court declare that the Applicants' complaints under both aspects of Articles 2 and 3 are compatible with the Convention, and that the Applicants fall within the jurisdiction of the State, the Government submit that they are inadmissible as manifestly ill-founded as they do not disclose any appearance of a violation of Convention rights.

In accordance with the principle of subsidiarity, which is at the base of the Convention system<sup>16</sup>, it is on the domestic courts to ensure the observance with the fundamental rights enshrined in the Convention<sup>17</sup>. Therefore, the Court is to satisfy itself with assessing the fairness of the decision-making process resulting in the impugned act and to assure itself it was not arbitrary.

In the present case, the Applicants' complaints regarding Articles 2 and 3 were examined by the competent authorities and the proceedings were conducted in accordance with the national legislation. Moreover, the Applicants actively participated in the criminal investigation, as well as in the civil proceedings by presenting their evidence and arguments which were diligently examined in substance.<sup>18</sup> As a result, both sets of proceedings ended with reasoned judgments which were revised by the Supreme Court and further guaranteed the fairness of the proceedings. Lastly, the Government reiterate that it is not for the Court to review the domestic decisions as a fourth instance.<sup>19</sup> For these reasons, the Applicants' complaints should be declared inadmissible as manifestly ill-founded.

<sup>16</sup> Kudla v Poland, app. no. 30210/96, § 152; Selmouni v France, app. no. 25803/94, § 74

<sup>17</sup> 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, § 164

<sup>18</sup> The Case, paras. 15-19 and 20-22

<sup>19</sup> García Ruiz v Spain, app. no. 30544/96, § 28

## **2. THE RESPONDENT STATE HAS NOT VIOLATED ARTICLES 2 AND 3 OF THE CONVENTION**

### **2.1. The complaints of the Applicants concerning their physical injuries should be found to fall solely within Article 2 of the Convention**

The Respondent maintains that the complaints submitted by the Applicants under Article 3 are derived from their claim that the State has violated Article 2 of the Convention. In similar cases the Court has accepted that no separate issues arise under Article 3.<sup>20</sup> In the present case, the only exception in this respect is the witnessing of the death of their relatives, which will be examined individually. Save for the aforementioned exception under Article 3, the Government consider that the Court should assess the remaining complaints under Article 2 only and in the lights of the standards of the IHL.

### **2.2. Application of the Convention in the light of International Humanitarian Law**

The State of Zephyria maintains that in the state of a military conflict and the particular circumstances of the present case the complaints under Articles 2, 3, 8 below should be examined in the light of the IHL.

The Government strongly underline that the case at hand concerns a situation of an international armed conflict between two Council of Europe Member states. Nevertheless, having in mind that Zephyria is in a state of an armed conflict, the Respondent invites the Court to consider the present case in the light of and according to the principles of IHL which govern the conduct of such hostilities.

The standards of IHL apply to actions of a state which form part of the hostilities with a limited application of the Convention standards. The Court has accepted, for example, that actions, such as the detention of an individual, shall not be contrary to the Convention when they comply with the standards of IHL.<sup>21</sup> Although the judgment in *Hassan v the United Kingdom* concerns the interpretation of Article 5, it serves as guidance for understanding the Court's reasoning on the relation between the two branches of International Law. Considering that Article 5 § 1 together with Articles 2 and 3 form part of the body of the so-called "core rights"<sup>22</sup> of the Convention and that their protection requires particular scrutiny on behalf of the Court,<sup>23</sup> there are grounds to conclude that the same principles apply within this group of

<sup>20</sup> Isayeva, Yusupova and Bazayeva v Russia, app. nos. 57947/00, 57948/00, 57949/00, §§ 226-229

<sup>21</sup> Hassan v the United Kingdom, app. no. 29750/09, § 105

<sup>22</sup> Gäfgen v Germany, app. no. 22978/05, § 124; Jalloh v Germany, app. no. 54810/00, § 104 and § 107; Ibrahim and Others v the United Kingdom, app. nos. 50541/08, 50571/08, 50573/08, 40351/09, Joint Partly Dissenting Opinion of Judges Hajiyev, Yudkivska, Lemmens, Mahoney, Silvis and O'Leary, § 3

<sup>23</sup> Aslakhanova and Others v Russia, app. nos. 2944/06, 8300/07, 50184/07, 332/08, 42509/10, § 96

rights. Furthermore, based on the same considerations the principles of IHL apply also to the complaints under Article 8.

As part of the IHL regulation framework, the Geneva Conventions of 1949 and the Additional Protocols thereto regulate the usage of weapons and measures in order to limit the extent of their impact on civilians and civilian objects. 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 Convention.<sup>24</sup> The most relevant standards governing the conduct of hostilities include the principles of distinction<sup>25</sup> and prohibition of indiscriminate attacks<sup>26</sup>, proportionality<sup>27</sup>, military necessity and feasible precautions<sup>28</sup>.

First, the principle of distinction, as set in Article 48 of Additional Protocol I to the Geneva conventions of 1949, constitutes the most fundamental difference between IHL and IHRL. While IHRL is based on the idea that all human beings benefit from the equal protection of all human rights, the main idea enshrined in the principle of distinction is that the level of protection differentiates based on the status of individuals. The principle of distinction is closely related to the notion of an indiscriminate attack within the meaning of Article 51 (1) of Additional Protocol I to the Geneva Conventions of 1949, which prohibits in absolute terms the targeting of civilians. Pursuant to this principle, the parties to a conflict must in all times distinguish civilian objects and military objectives. Indiscriminate attacks are attacks which are not directed at a specific military objective; which employ a method or means of combat that cannot be directed at a specific military objective; or which employ a method or means of combat the effects of which cannot be limited.<sup>29</sup>

Second, the principle of military necessity permits measures which are in fact necessary to accomplish a legitimate military purpose and are not otherwise prohibited by IHL. In a case of an armed conflict, such as the case at hand, the only legitimate military purpose is to weaken the military capacity of the other parties to the conflict.<sup>30</sup> This principle is not enshrined in either the Geneva Conventions of 1949 or Additional Protocol I and the essence of it is derived from the third principle – the principle of proportionality.<sup>31</sup>

<sup>24</sup> Prosecutor v Kupreškić, Case No. IT-95-16-T, para. 524

<sup>25</sup> Article 48 of Additional Protocol I to the Geneva Conventions of 1949

<sup>26</sup> Article 51 (4) and (5) (a) of Additional Protocol I to the Geneva Conventions of 1949

<sup>27</sup> Article 51 (5) (b) of Additional Protocol I to the Geneva Conventions of 1949

<sup>28</sup> Article 57 of Additional Protocol I to the Geneva Conventions of 1949; Henckaerts, Doswald-Beck (2005), pp. 51-55

<sup>29</sup> Article 51 (4) of Additional Protocol I to the Geneva Conventions of 1949

<sup>30</sup> Report of the International Expert Meeting (2016), p. 11

<sup>31</sup> Crawford, Pert (2015), p. 78

Finally, according to the principle of proportionality, an attack is prohibited when it is expected to cause incidental loss of civilian lives, injuries to civilians or damage to civilian objects that would be excessive compared to the military advantage anticipated.<sup>32</sup>

The Respondent State will further discuss the Applicants' complaints on the merits in the light of the abovementioned considerations.

### **2.3. There has been no violation of the Applicants' rights with regard to the substantive aspect of Article 2 of the Convention**

The Respondent State submits that the attack was proportionate – it brought distinct military advantage to the State, it was in no way indiscriminate and all feasible precautions have been taken. The events in the present case occurred as a consequence from the lawful use of force under the requirements of Article 2 as interpreted in the light of IHL. Therefore, it meets the “absolutely necessary” criterion established in the Court's case law<sup>33</sup> and there is no violation of Article 2 of the Convention by the Respondent State.

First, as the intelligence at disposal of the Zephyria's military suggested, the targeted former school classified as a military objective as it was virtually used for military purposes.<sup>34</sup> In this regard, the military attack has been consistent with the requirements of IHL. Moreover, the guided missiles which were employed are a weapon whose nature allows for the strike of a specific target.<sup>35</sup> They have an estimated range and trajectory that does limit the inevitable effects of the attack to the maximum extent possible. Therefore, the attack cannot be rendered indiscriminate on the grounds of Article 51, § 4 (b) of Additional Protocol I.

Second, the attack complied with the principle of military necessity as the State gained significant military advantage. <sup>36</sup> The result of the operation, namely two tanks destroyed, warehouse and ammunition store demolished<sup>37</sup>, was substantial as it deprived the opponent State from the benefits of the objects targeted.<sup>38</sup> The weakened military capacity of Aetheria was further recognized by the national and international media.<sup>39</sup> Such a great military advantage could not have been achieved by the usage of any other means available to the Respondent State. The possible employment of ground troops could result in even more losses

<sup>32</sup> Article 51 (5) (b) of Additional Protocol I to the Geneva Conventions of 1949

<sup>33</sup> Al-Skeini and Others v the United Kingdom, app. no. 55721/07, § 162; McCann and others v the United Kingdom, app. no. 18984/91, §§ 146-148

<sup>34</sup> The Case, para. 5

<sup>35</sup> Douglas (2019) <https://www.iiss.org/blogs/analysis/2019/03/trends-in-missile-technologies>, last access on 15.12.2019

<sup>36</sup> Article 52 (2) of Additional Protocol I to the Geneva conventions of 1949

<sup>37</sup> The Case, para. 7

<sup>38</sup> Report of the International Expert Meeting (2016), p. 11

<sup>39</sup> The Case, para. 7



for both sides, as the clash of armed forces could become excessive.

Third, regarding the proportionality criterion, the Respondent State maintains that the calculated collateral damage did not exceed the anticipated military advantage. On the contrary, the actual number of affected civilians was more than three times below the expected losses. Comparable and even more extensive civilian casualties are considered acceptable if they coincide with significant military advantage of the attack concerned. Even large numbers of civilian workers killed during an attack on an ammunition factory are accepted as justified in similar circumstance.<sup>40</sup> Moreover, had the attack been delayed, it would have caused even further damage, as additional troops were due to arrive.<sup>41</sup> The measures considered and employed by the Respondent State for the attack were of such nature as to limit the collateral damage to the maximum extent possible. In connection to the precautions, the operation was carried out with the authorization of the relevant military channels with considerations as to the weapons, the exact timing, the expected civilian losses, the predicted collateral damage and the anticipated military advantage.<sup>42</sup> Its crucial character required for expedition and did not allow the commanders in chief to take even more elaborate preventive measures so as to further minimize the collateral damage.

In the light of the abovementioned, the Government submit that the impugned military operation was in line with the relevant principles of IHL and in accordance to the substantive aspect of Article 2. Therefore, the Government invite the Court to conclude that there has been no violation of the substantive limb of Article 2 of the Convention.

#### **2.4. The Respondent State has fulfilled its obligation under Article 2 to conduct an effective investigation**

In respect of this complaint, the Court may consider that there is a jurisdictional link established on account of the criminal and civil proceedings in which the Applicants were a party before the Zephyrian courts. On the one hand, as established in the Court' case law the procedural obligations of the State are autonomous notions which are detachable from the substantive aspect of the provisions.<sup>43</sup> Hence, a jurisdictional link can be established only regarding the procedural obligations of a state under Articles 2 and 3 with the commencement of criminal investigation. On the other hand, once a person brings a civil action in the courts or tribunals of a state, the state is required to secure in those proceedings respect for the rights

<sup>40</sup> Dinstein (2004), p. 121; Otto (2012), p. 315

<sup>41</sup> The Case, para. 6

<sup>42</sup> The Case, para. 6

<sup>43</sup> *Güzelyurtlu and Others v Cyprus and Turkey*, app. no. 36925/07, §§ 188-190



protected by Article 6 § 1 of the Convention.<sup>44</sup> The Applicants - Ms Iris Fiori, Mr Peter Fiori and Ms Chloe Fiori, participated in the criminal investigation as witnesses and were provided with information within the investigation proceedings as close relatives to the victims.<sup>45</sup> They were also a party to the compensation proceedings under the Zephyria's Act on State Responsibility. This state of affairs creates a limited jurisdictional link regarding the complaints under Articles 2, 3 and 6. In the light of these considerations, the Respondent State will provide arguments as to the efficiency of the domestic proceedings below.

The Government submit that the national authorities have fulfilled their positive obligation to conduct an effective investigation under Article 2. When construed in conjunction with the general obligation in Article 1 to "secure" Convention rights, Article 2 also imposes a procedural obligation on states to investigate cases of deaths.<sup>46</sup> States should secure the effective implementation of the domestic laws and conduct an investigation capable of leading to the identification and the punishment of those responsible.<sup>47</sup> For an investigation to be effective, it has to be independent<sup>48</sup> and conducted with reasonable expedition.<sup>49</sup> Concrete constraints and obstacles may cause a delay when an investigation is conducted in a particular situation<sup>50</sup>, such as an international armed conflict.<sup>51</sup> There must be a sufficient element of public scrutiny of the investigation.<sup>52</sup> In some cases it may be sufficient that the investigation is conducted in private, provided that the report is made public.<sup>53</sup> Lastly, the obligation to investigate is not one of result, but one of means.<sup>54</sup>

The Government contend that the investigation in the present case fulfilled the abovementioned requirements of the Convention. It is important to underline that the investigation was conducted in a highly complicated context, involving military action, tactics and national security considerations. Nevertheless, the authorities acted promptly and with the required diligence. First, the Military Investigation Board opened an investigation into crimes

<sup>44</sup> *Güzelyurtlu and Others v Cyprus and Turkey*, app. no. 36925/07, § 187; *Marković and Others v Italy*, app. no. 1398/03, § 53-54

<sup>45</sup> The Case, paras. 15 and 16

<sup>46</sup> *McCann and others v the United Kingdom*, app. no. 18984/91, § 161

<sup>47</sup> *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; *Anguelova v Bulgaria*, app. no. 38361/97, § 137

<sup>48</sup> *Öğur v Turkey*, app. no. 21954/93, §§ 91-92

<sup>49</sup> *Hugh Jordan v the United Kingdom*, app. no. 24746/94, § 108

<sup>50</sup> *Bazorkina v Russia*, app. no. 69481/01, § 119

<sup>51</sup> *Esmukhambetov and Others v Russia*, app. no. 23445/03, § 117

<sup>52</sup> *McKerr v the United Kingdom*, app. no. 28883/95, § 115

<sup>53</sup> Harris, O'Boyle, Warbrick (2014), p. 217

<sup>54</sup> *Al-Skeini and others v the United Kingdom*, app. no. 55721/07, § 166

potentially committed by the military personnel *ex proprio motu* only 13 days after the attack.<sup>55</sup> Second, the investigation was conducted by the Prosecutor General, an independent and impartial authority<sup>56</sup>, who gathered and examined various evidence with the aim to establish whether the use of force was justified.

With regard to the principle of public scrutiny, it must be strongly underlined that the investigated circumstances pertained to the national security of Zephyria and therefore called for a degree of discretion. It should be noted, however, that the public was not completely excluded as the Prosecutor General provided the Applicants with access to certain materials and informed them of the progress of the investigation upon request.<sup>57</sup> Moreover, he served the Applicants with the discontinuation decision, thus acting in compliance with the requirements of public scrutiny and involvement of the next-of-kin of the victims.<sup>58</sup> The Applicants lodged an appeal against the decision and were able to appear before a court and to obtain judicial examination of their grievances. The fact that the investigations did not lead to a satisfactory result for the Applicants is not sufficient to engage the responsibility of the Respondent State.

In the light of the above considerations, the Respondent State submits that it has fulfilled its procedural obligation under Article 2 as the investigation was comprehensive and objective, conducted within a reasonable time and by an independent authority.

### **2.5. The Respondent State has not violated Article 3 with regard to the Applicants witnessing the deaths of their relatives**

The Government contest the Applicants' claim, brought in the course of the domestic proceedings, that witnessing the deaths of their relatives amounted to treatment prohibited by Article 3.<sup>59</sup> Undisputedly, this unfortunate experience brought to Ms Iris Fiori, Mr Peter Fiori and Ms Chloe Fiori tremendous grief. However, the Government maintain that there are no reasons for a finding of a violation of Article 3 on this ground.

Although Article 3 enshrines one of the most fundamental values of democratic society,<sup>60</sup> in order to invoke violation of Article 3, the ill-treatment must attain a minimum level of

<sup>55</sup> The Case, para. 14

<sup>56</sup> The Case, para. 15

<sup>57</sup> The Case, paras. 16 and 17

<sup>58</sup> *Khamzayev and Others v Russia*, app. no. 1503/02, § 196; *Hugh Jordan v the United Kingdom*, app. no. 24746/94, § 109

<sup>59</sup> The Case, para. 20

<sup>60</sup> *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

severity<sup>61</sup>. It must cause “either actual bodily injury or intense physical or mental suffering”.<sup>62</sup> These criteria depend 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.<sup>63</sup> In contrast, in the present case the suffering inflicted was not of greater severity than the one typically occurring in analogous situations <sup>64</sup> and, thus, no violation of the rights enshrined in Article 3 should be found.

Moreover, the application of Article 3 to family members of victims of serious violations of human rights is possible only if their suffering features special factors which justify it. For instance, in the case of *Musayev and Others v Russia*, a decisive factor was the fact that the applicant himself was subjected to acts of deliberate violence on behalf of the state agents, while eye witnessing the execution of his relatives and neighbours.<sup>65</sup> In the case of *Esmukhambetov and Others v Russia* the Court found a violation of Article 3 in respect of the first applicant for having witnessed the deaths of his loved ones, caused by an indiscriminate attack conducted by Russia. In any event, the essence of a violation of Article 3 in respect of a family member of a deceased or a disappeared person mostly concerns the authorities’ reactions and attitude in the aftermath of the events.<sup>66</sup> Therefore, only some cases of profound suffering are of nature amounting to inhuman treatment prohibited by the Convention.

The mental suffering of the Applicants in the present case does not trigger the application of Article 3. First, unlike in the case of *Esmukhambetov and Others v Russia*, <sup>67</sup> the attack conducted by the Respondent State was lawful and in compliance with all the IHL standards. Second, the mental suffering caused to the Applicants did not result from an act of empty violence as in the case of *Musayev and Others v Russia*. As already outlined above the actions of the State had the sole purpose of gaining military advantage. Hence, none of the suffering of the Applicants was inflicted intentionally by the Respondent State. Moreover, in the aftermath of the attack, the authorities responded adequately and efficiently so as to mitigate the Applicants’ suffering. They did not pose any obstacles to humanitarian personnel reaching the area<sup>68</sup> and conducted a thorough and efficient investigation which further proved for the

<sup>61</sup> 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

<sup>62</sup> Kudla v Poland, app. no. 30210/96, § 92

<sup>63</sup> 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

<sup>64</sup> Cangöz and Others v Turkey, app. no. 7469/06, § 168

<sup>65</sup> Musayev and Others v Turkey, app. no. 57941/00, 58699/00, 60403/00, § 169

<sup>66</sup> Akkum and Others v Turkey, app. no. 21894/93, § 258

<sup>67</sup> Esmukhambetov and Others v Russia, app. no. 23445/03, § 148

<sup>68</sup> The Case, para. 9

military personnel to take adequate measures for diminishing the collateral damage of the attack<sup>69</sup>.

In the light of the abovementioned, the Government submit that the Applicants' suffering does not go beyond the emotional distress which inevitably stems from comparable situations. Therefore, there has been no violation of Article 3 of the Convention in respect of the Applicants for having witnessed the death of their family members.

### **3. THE RESPONDENT STATE HAS NOT VIOLATED THE APPLICANTS' RIGHTS TO RESPECT FOR PRIVATE AND FAMILY LIFE AND HOME UNDER ARTICLE 8**

The Applicants submit that the military attack has infringed upon their rights as set in Article 8 of the Convention. Even though the Government acknowledge that the operation has affected the Applicants by causing them regretful personal losses and certain pecuniary damage, it is the Respondent's claim that in the present case Zephyria cannot be held responsible for acts and omissions under this provision.

#### **3.1. Preliminary remarks on the admissibility of the Applicants' claim under Article 8 of the Convention**

The Government raise an objection regarding the admissibility of the complaints under Article 8. Concerning the victim status of the Applicants, the State submits that only Ms Iris Fiori, Mr Peter Fiori and Ms Chloe Fiori are eligible to bring a claim before the Court for alleged infringement of Article 8 of the Convention. The Court admits applications on behalf of death persons only when they concern alleged violations of Articles 2, 3 and 5 of the Convention.<sup>70</sup> The rights embodied in Article 8 are non-transferable<sup>71</sup>, hence, there is no possibility to allege a violation *post mortem*.<sup>72</sup> Consequently, the living Applicants cannot claim a violation of Article 8 on behalf of their relatives and this part of the application is inadmissible.

#### **3.2. There has been no violation of Article 8 regarding the Applicants' right to private and family life**

Should the Court declare the complaints admissible, it is the Respondent State's submission that the interference by the State with the Applicants' right to private and family

<sup>69</sup> The Case, para. 15

<sup>70</sup> Khayrullina v Russia, app. no 29729/09, § 91-92

<sup>71</sup> Centre for legal resources on behalf of Valentin Câmpeanu v Romania, app. no. 47848/08, § 100

<sup>72</sup> 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, § 111; Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania, app. no. 47848/08, § 96

life and home has been in accordance with Article 8 § 2 of the Convention. It has been conducted as prescribed by law<sup>73</sup>, pursued a legitimate aim<sup>74</sup> and was necessary in a democratic society<sup>75</sup>.

First, the interference was conducted in accordance with the law regulating the conduct of international armed conflict. As the Geneva Conventions and the Additional protocols thereto are an integral part of the Zephyrian legislation, the relevant rules were foreseeable, accessible and sufficiently precise so as to regulate the conduct of such hostilities efficiently. Moreover, the plan for the attack was initially approved by the relevant military channels as being in line with the corresponding guidelines.<sup>76</sup>

Second, the attack pursued the legitimate aim of protecting national security of the country. As recognized, any armed conflict often challenges and threatens a state's basic common national security interests – the survival of its government, territorial integrity, political sovereignty and the well-being of its population.<sup>77</sup> Accordingly, any measure that a state takes to deal with an armed conflict could be assumed to be dictated by the need to preserve its national security.<sup>78</sup> As evident from the facts of the present case, the launch of the attack was of crucial importance for the overall course of the conflict, since Zephyria had not gained any significant military advantage before<sup>79</sup>.

Finally, as to the necessity and proportionality of the impugned measure the Government maintain that there were no alternative means which would have interfered less severely with the Applicants' right under Article 8 while at the same time achieving the aim pursued. Even though the Respondent acknowledges the fact that the Applicants have suffered severe injuries<sup>80</sup>, the Government contend that the operation did not constitute an arbitrary interference with their right as it corresponded to the pressing social need of the State to gain military advantage in the name of the safety of Zephyria's population.

In the light of the above considerations, the Respondent State maintains that its actions constituted a justifiable interference with the Applicants' right to respect for private and family life.

<sup>73</sup> *Silver and Others v The United Kingdom*, app. no. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75; § 85

<sup>74</sup> *S.A.S. v France*, app. no. 43835/11, § 113

<sup>75</sup> *Handyside v. The United Kingdom*, app. no. 5493/72, § 48;

<sup>76</sup> *The Case*, para. 6

<sup>77</sup> *Teferra* (2016), pp. 961-993; *Sassoli* (2009), p. 7

<sup>78</sup> *Ibid.*

<sup>79</sup> *The Case*, para. 7

<sup>80</sup> *The Case*, paras. 9-13

### **3.3. There has been no violation of the Applicants' rights to respect for home**

With regard to the Applicants' complaints regarding the alleged violation of their right to respect for home, the State submits that the interference can be justified under Article 8 § 2 of the Convention.

The pecuniary damage that the Applicants have sustained, and which the Government acknowledge, has been the result of collateral damage suffered due to the destruction of a military objective. The requirements as to the lawfulness of the interference enshrined in Article 8 § 2 have been complied with as already established under the State's submission regarding the right to respect for private and family life.

Moreover, the Applicants had recourse to Zephyrian courts with regard to their complaint of the factual destruction of their homes and their claims were considered accordingly.<sup>81</sup> Since it was established by the national courts that the State's responsibility cannot be engaged for the alleged violations of the Applicants, the State of Zephyria was not obliged to provide them with compensation for their hardship. Nevertheless, the domestic courts granted the Applicants with partial monetary redress for the pecuniary damage suffered as a result of the destruction. Since there is not an established standard for calculation of the redress for pecuniary damages, the principles of fairness and equity are those which govern the compensation of the Applicants' losses.<sup>82</sup> In this regard, the Government maintain that the State of Zephyria has indemnified the material damage affecting the Applicants' property accordingly to the specific circumstances of the case and even in the absence of responsibility regarding the complaints. The sum of 5 000 EUR which was granted to the Applicants is a fair redress to compensate their losses.

Therefore, the interference with the Applicants' right to respect for home has been conducted in compliance with the Convention and the applicable standards of International law.

For the abovementioned reasons, the State of Zephyria invites the Court to find that there has been no violation of the Applicants' rights under Article 8 of the Convention.

## **4. THE RESPONDENT STATE HAS NOT VIOLATED THE RIGHT TO A FAIR TRIAL ENSHRINED IN ARTICLE 6**

The State of Zephyria maintains that it has not violated the Applicants' right to a fair trial under Article 6 of the Convention since the civil proceedings were conducted in compliance

<sup>81</sup> The Case, paras. 21-22

<sup>82</sup> Sargsyan v Azerbaijan, app. no. 40167/06, § 36-39

with all the requirements of Article 6 § 1.

#### **4.1. Article 6 § 1 is applicable in the present case only under its civil limb**

The Respondent State does not contest the applicability of Article 6 under its civil limb in the case at hand. The dispute, which has basis in the domestic law of Zephyria, concerns the right to compensation for a violation of human rights which is of a civil nature.<sup>83</sup> The result of the domestic proceedings is directly decisive for the Applicants' civil rights.<sup>84</sup> Therefore, the Respondent is bound by the safeguards enshrined in the civil limb of Article 6 § 1.

#### **4.2. The domestic proceedings have met all requirements as to the fairness of the civil proceedings**

The right to a fair trial within the meaning of the Convention holds a prominent place in any democratic society.<sup>85</sup> A set of institutional and procedural requirements serves as a guarantee for compliance with the standards of the Convention. States are responsible for the proper administration of justice by independent and impartial tribunals established by law, which abide by the principles of adversarial proceedings and equality of arms and provide individuals with a public and fair hearing within a reasonable time.

First, the right to a fair hearing is generally secured by ensuring the independence and impartiality of the domestic courts. A judicial institution should be independent from influence not only from outside the judiciary but also from within<sup>86</sup> and should act without any prejudice or bias.<sup>87</sup> In the present case the domestic courts fulfilled the requirements of Article 6 § 1 of the Convention and were sufficiently independent and impartial. They conducted an autonomous assessment of the facts, which was independent from the criminal investigation. Moreover, the Supreme Court has provided a "sufficient review"<sup>88</sup> of the first-instance court's decision as a further guarantee to the right to a fair trial. Therefore, there is no evidence capable of arousing objectively justified fears as to the independence and impartiality of the domestic courts.<sup>89</sup>

Second, the equality of arms principle has been complied with in the present case since the Applicants had the opportunity to present their case without being placed at a substantial

<sup>83</sup> The Case, para. 26; *Užkauskas v Lithuania*, app. no. 16965/04, § 32

<sup>84</sup> *Regner v the Czech Republic*, app. no. 35289/11, § 99

<sup>85</sup> *Airey v Ireland*, app. no. 6289/73, § 24; *Stanev v Bulgaria*, app. no. 36760/06, § 231

<sup>86</sup> *Agrokompleks v Ukraine*, app. no. 23465/03, § 137

<sup>87</sup> *Nicholas v Cyprus*, app. no. 63246/10, § 49; *Ramos Nunes de Carvalho e Sá v Portugal*, app. nos. 55391/13, 57728/13, 74041/13, § 145

<sup>88</sup> *Mutatis mutandis* *Denisov v Ukraine*, app. no. 76639/11, § 67 and § 72

<sup>89</sup> *Mutatis mutandis* *Ramos Nunes de Carvalho e Sá v Portuga*, app. nos. 55391/13, 57728/13, 74041/13, §156



disadvantage *vis-à-vis* the other party.<sup>90</sup> Despite the Applicants' poor health condition, they were able to present their arguments in written form and they were represented by a lawyer during the proceedings, which fulfils the requirements of the Convention for a public hearing.<sup>91</sup> They had also have access to all the evidence adduced to the domestic courts and were able to get acquainted with it and comment on it<sup>92</sup>, as required by the principles of adversarial proceedings<sup>93</sup>.

Third, the reasoning of the delivered judgements shows that the domestic courts examined the Applicants' claims with due rigour and care. As the Court has pointed out in its case law, the national authorities are obliged to justify their activities by giving reasons for their decisions.<sup>94</sup> Their function is not only to guarantee that the parties have been heard, but also to provide the Applicants with an effective use of the right of appeal and ensures public scrutiny of the administration of justice.<sup>95</sup> However, the extent of justification in courts' reasoning may vary according to the nature of the case.<sup>96</sup> The present case demands the Applicants' claims to be evaluated in the light of IHL due to the armed conflict situation, notwithstanding the fact that the Applicants have sustained utterly serious damages as a result. In the light of the specific circumstances of the present case, the lawfulness of the attack could not have been disregarded as the primary issue underlying the Applicants' complaints. Only then the courts could establish responsibility for the alleged wrong-doings and respectively the alleged violations of the Applicants' rights. Since the status of the military attack was at the core of the court's assessment, its reasoning regarding the lawfulness of the action was sufficient for the purposes of Article 6 § 1. In principle, the obligation for a reasoned judgment does not require a detailed answer to every argument.<sup>97</sup> Nevertheless, the Supreme Court of Zephyria gave an extended reasoning clearly addressing that there is no ground for finding a violation of the human rights of the Applicants and their relatives.<sup>98</sup> Therefore, the State acted with due rigour and care in deciding upon the Applicants' claims.<sup>99</sup>

With regard to the abovementioned, the Respondent State submits that it has observed its

<sup>90</sup> *Dombo Beheer B.V. v the Netherlands*, app. no. 14448/88, § 33

<sup>91</sup> *Malhous v the Czech Republic*, app. no. 33071/96, §55

<sup>92</sup> The Case, para. 21

<sup>93</sup> *Ruiz-Mateos v Spain*, app. no. 12952/87, § 63

<sup>94</sup> *Suominen v Finland*, app. no. 37801/97, § 36

<sup>95</sup> *Hirvisaari v Finland*, app. no. 49684/99, § 30; *Suominen v Finland*, app. no. 37801/97, § 37

<sup>96</sup> *Hiro Balani v Spain*, app. no. 18064/91, § 27; *Hirvisaari v Finland*, app. no. 49684/99, § 30

<sup>97</sup> *Hirvisaari v Finland*, app. no. 49684/99, § 30; *Van de Hurk v the Netherlands*, app. no. 16034/90, § 61; *García Ruiz v Spain*, app. no. 30544/96, § 26

<sup>98</sup> The Case, para. 22

<sup>99</sup> The Case, paras. 21, 22



procedural obligations and secured the interests of the parties and those of the proper administration of justice, thus complying with Article 6 of the Convention.

#### **4.3. The proceedings have been conducted within reasonable time**

The Government maintain that the compensation proceedings were conducted without any unreasonable delay. In order to determine whether the length of the proceedings was reasonable the Court takes into account the overall circumstances of the case, for instance – its complexity, the behaviour of the applicant and the authorities' conduct.<sup>100</sup> The present case is particularly complex due to its military nature and the lack of domestic precedents<sup>101</sup>. It requires gathering various evidence on the planning and conduct of the military attack and its careful scrutiny.<sup>102</sup> The final decision in the case at hand was delivered only 2 years and 9 months after the commencement of two-stage proceedings.<sup>103</sup> In contrast, in another case of such a complex character – the case of *Nicolae Virgiliu Tănase v Romania*, the Court was satisfied by the fact that the domestic authorities were active in gathering evidence and, therefore, justified the duration of nearly 8 years for compensation proceedings for damages.<sup>104</sup> In the light of the complexity of the present case and of authorities' constant efforts to clarify all the circumstances concerning it, the Respondent State submits that the case was treated with the necessary expedition required by Article 6 § 1.

For the reasons that the national courts fulfilled all of the procedural requirements imposed by Article 6 § 1 during the compensation proceedings and examined the Applicants' case with exceptional diligence and promptness, the Respondent State submits that there has been no violation of Article 6 § 1 of the Convention.

### **5. THE RESPONDENT STATE HAD NOT VIOLATED ARTICLE 13 IN CONJUNCTION WITH ARTICLES 2 AND 3**

#### **5.1. The complaint under Article 13 in conjunction with Articles 2 and 3 of the Convention is inadmissible**

The Respondent State contends that the submission of the Applicants under Article 13 in relation to Articles 2 and 3 shall be declared inadmissible as manifestly ill-founded. The Court's approach to manifestly ill-founded complaints consists in examining the merits of the complaint, finding that there is no appearance of a violation and declaring the application

<sup>100</sup> Obermeier v Austria, app. no. 11761/85, § 72; X v France, app. no. 18020/91, § 32

<sup>101</sup> *Mutatis mutandis* Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland, app. no. 931/13, § 212

<sup>102</sup> The Case, para. 21; *Mutatis mutandis* Humen v Poland, app. no. 26614/95, § 63

<sup>103</sup> The Case, paras. 20-22

<sup>104</sup> *Nicolae Virgiliu Tănase v Romania*, app. no. 41720/13, §§ 208-214

inadmissible.<sup>105</sup> As the Court stated in *Silver v the United Kingdom*<sup>106</sup> Article 13 is applicable only where there is an “arguable claim” for a violation of any other of the rights guaranteed in the Convention.<sup>107</sup> No definition of what constitutes an arguable claim is established. Rather the Court would examine each case individually.<sup>108</sup>

The Government submit that in the present case the Applicants do not have an arguable claim under Article 13 in conjunction with Articles 2 and 3. Their complaints related to the alleged violations of Articles 2 and 3 were diligently and thoroughly examined by competent national authorities and the proceedings were conducted in accordance with the domestic legislation. Therefore, the Applicants’ complaint related to Article 13 in conjunction with Articles 2 and 3 does not disclose any appearance of a violation of the rights protected by the Convention. Lastly, the Respondent State maintains that the principles of subsidiarity, established in the Court’s abundant practice<sup>109</sup>, should be complied with in the present case. The domestic authorities are in a better position to adequately enforce the rights recognized in the Convention. For these reasons, the Government invite the Court to declare the Applicants’ complaints inadmissible in this part as manifestly ill-founded.

## **5.2. The remedies provided to the Applicants were effective**

In the alternative, if the Court decides to declare the complaints of the Applicants under Article 13 in conjunction with Articles 2 and 3 admissible, the Respondent State submits that the remedies available to the Applicants were effective in practice as well as in law. To satisfy the criteria established in the case law of the Court, the remedy must be enforceable, it must be able to grant appropriate redress and, lastly, it must be granted by an independent and impartial state body.<sup>110</sup> There is no requirement that the available remedies lead to a favourable result for the applicant.<sup>111</sup> In practice a remedy would be rendered ineffective if it is not of such nature as to provide for timely prevention or to grant adequate redress.<sup>112</sup> In the present case the national legislation envisaged both criminal and civil remedies as regards to the Applicants complaints under Articles 2 and 3.

<sup>105</sup> *Korban v Ukraine*, app. no. 26744/12, §§ 102-112

<sup>106</sup> *Silver v the United Kingdom*, app. nos. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75, § 113

<sup>107</sup> *Boyle and Rice v the United Kingdom*, app. nos. 9659/82; 9658/82, § 55; *MA v Cyprus*, app. no. 41872/10, § 117

<sup>108</sup> *Tanrikulu v Turkey*, app. no. 23763/94, § 117

<sup>109</sup> *Hadzhieva v Bulgaria*, app. no. 45285/12, § 16

<sup>110</sup> *Khatsiyeva and Others v Russia*, app. nos. 5108/02, §§ 111-113; *Silver and Others v the United Kingdom*, app. nos. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75, §§ 111-113

<sup>111</sup> *Salah Sheekh v the Netherlands*, app. no. 1948/04, § 154

<sup>112</sup> *Kudla v Poland*, app. no. 30210/96, §§ 158-159; *Petkov and Others v Bulgaria*, app. nos. 77568/01, 178/02, 505/02, § 74

On the one hand, the criminal investigation of the conduct of State officials during the military operation was closely related to the Applicants' submissions. It was initiated *ex officio* and with compliance with the broad standards of Article 13<sup>113</sup>. The investigation was instituted shortly after the attack by the competent military body<sup>114</sup> and was further carried out by authority of the highest rank, namely the Prosecutor General who took into consideration all appropriate evidence. Despite the specific situation of an ongoing international armed conflict, the respective authorities acted with promptness and provided transparency to the Applicants to the extent to which national security allowed for.<sup>115</sup> It was only after the Applicants had received access to some of the case files of the investigation, that they lodged their civil complaint with the Gedru Regional Court. Moreover, an additional safeguard for the effectiveness of the investigation was applied in respect of the Applicants as they had the opportunity to appeal before two judicial instances the decision for the discontinuation of the investigation. The Government reiterates that the obligation of the State is of means and not of result.<sup>116</sup> The fact that the outcome of the proceedings was not satisfactory for the Applicants, does not render the remedy ineffective. Therefore, the acts of the State authorities during the investigation did not in any way hinder the Applicants to avail themselves of the available effective remedies.

Further, the domestic courts during the civil proceedings examined carefully the Applicants' complaints in substance as required by the Convention.<sup>117</sup> The Gedru Regional Court conducted an independent and thorough investigation based on the Applicants' claims<sup>118</sup> as provided by the Act on State Responsibility<sup>119</sup>. As part of the judiciary system of Zephyria the courts satisfied the requirement for being sufficiently independent.<sup>120</sup> The right to an adequate redress for the harm suffered was also envisaged in the domestic legislation in case a violation of the Applicants' rights was established.<sup>121</sup> Moreover, the Applicants had the opportunity to appeal the first-instance court's decision before the Supreme Court, which serves as a further guarantee that their complaints were addressed. The latter upheld the lower

<sup>113</sup> Husayn (Abu Zabuydah) v Poland, app. no. 7511/13, § 542; El-Masri v The Former Yugoslav Republic of Macedonia, app. no. 39630/09, § 255

<sup>114</sup> The Case, para. 14

<sup>115</sup> The Case, para. 16

<sup>116</sup> Avşar v Turkey, app. no. 25657/94, § 394

<sup>117</sup> Tanrikulu v Turkey, app. no. 23763/94, § 117

<sup>118</sup> The Case, para. 21

<sup>119</sup> The Case, para. 27

<sup>120</sup> Silver v the United Kingdom, app. nos. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75, § 116

<sup>121</sup> The Case, para. 27

court's decision, corroborating it with the findings of the military investigation which had been discontinued in the meantime.<sup>122</sup> The fact that the Applicants received compensation for some of their complaints and not for all of them does not render the remedy ineffective.

For the reasons that the legislation of the Respondent State envisaged effective remedies for the Applicants' complaints, the Government maintain that there has been no violation of Article 13 in conjunction with Articles 2 and Article 3 of the Convention.

### **III. CONCLUSION**

It is for all of the above reasons that the Respondent State respectfully invites the Court to declare the Applicants' complaints as incompatible with the Convention or inadmissible. Should the Court find any of the Applicants' claims to be admissible the Respondent State respectfully invites the Court to adjudge and declare that the Respondent State has not violated any of the Applicants' rights under Articles 2, 3, 8, 6 and 13.

<sup>122</sup> The Case, para. 22