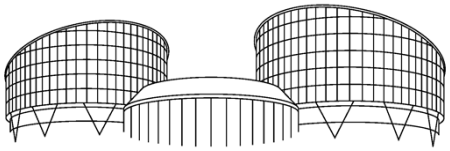

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ALIYEVA AND ALIYEV v. AZERBAIJAN

(Application no. 35587/08)

JUDGMENT

STRASBOURG

31 July 2014

FINAL

31/10/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Aliyeva and Aliyev v. Azerbaijan,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 8 July 2014,

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

PROCEDURE

1. The case originated in an application (no. 35587/08) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Azerbaijani nationals, Ms Samaya Shukur gizi Aliyeva (*Səmayə Şükür qızı Əliyeva* – "the first applicant") and Mr Faday Damirkhan oglu Aliyev (*Fəday Dəmirxan oğlu Əliyev* – "the second applicant"), on 16 July 2008.

2. The applicants were represented by E. Guliyev, a lawyer practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicants alleged that the domestic authorities had failed to carry out an effective investigation into their son's death.

4. On 9 March 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1947 and 1942 respectively and live in Baku.

6. The applicants' son, E.A., was born in 1971 and was an Azerbaijani national. He had his own business in Ukraine and lived in Kiev at the time of the events.

A. Murder of the applicants' son and the institution of criminal proceedings in Ukraine

7. At around 4 a.m. on 1 June 2001 E.A. was stabbed with a knife outside a cafe in Kiev, Ukraine. He died as a result of the stabbing.

8. On the same day the Shevchenko District Police instituted criminal proceedings in connection with E.A.'s death.

9. On 9 June 2001 an investigator from the Shevchenko District Police decided to charge G.A., an Azerbaijani national working at the Azerbaijani embassy in Ukraine at the time of the events, on suspicion of E.A.'s murder.

10. It appears that on the same date G.A. was arrested by the Ukrainian law-enforcement authorities and on 12 June 2001 was remanded in custody. During the investigation, G.A. denied that he had murdered E.A., but refused to testify in connection with his stabbing.

11. On 11 July 2001 a forensic expert established that the stab wound to E.A.'s body had been caused by a knife with a blade 22 centimetres long and 2 centimetres wide.

12. On 17 July 2001 the Shevchenko District Court ordered G.A.'s release from custody on account of serious illness. On an unspecified date he left Ukraine for Azerbaijan.

13. It transpires that in the course of the investigation, the Ukrainian authorities also considered the possible involvement of another person in E.A.'s murder. In this connection, they requested the Azerbaijani authorities to question R.A., a major general of the Azerbaijani army who had been on an educational mission to Ukraine at the time of the events.

14. On 5 January 2002 the Azerbaijani prosecution authorities questioned R.A. as a witness in connection with E.A.'s stabbing. According to the record of questioning of the same date, R.A. denied any involvement. He stated that he knew G.A. who was an employee of the Azerbaijani embassy in Ukraine and that he had met E.A. there, but had not known him very well. As regards his whereabouts on 1 June 2001, R.A. stated that he did not remember exactly where he had been that day. He further stated that he had learned about E.A.'s death from employees at the Azerbaijani embassy.

B. First transfer of the criminal case to the Azerbaijani authorities

15. On 30 January 2002 an investigator from the Shevchenko District Prosecutor's Office decided to transfer the criminal case to the Prosecutor General's Office of the Republic of Azerbaijan for further investigation, relying on the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 January 1993 ("the 1993 Minsk Convention"). The investigator substantiated the transfer by the fact that the two Azerbaijani nationals (G.A. and R.A.) who had been identified by

witnesses as the people involved in E.A.'s murder on 1 June 2001, were on Azerbaijani soil.

16. The relevant part of that decision reads as follows:

> "M.S., who was questioned within the framework of the investigation, indicated that on 1 June 2001 he had been with E.A. at Cafe Sikora. When he had left the cafe, he had seen E.A. having an argument with two Azerbaijani nationals he did not know. One of the two men had then stabbed E.A. in the thorax.
>
> Subsequently, among the photographs submitted for identification, M.S. recognised R.A's photograph and identified him as the person who had stabbed E.A.
>
> It was established that R.A., born on 4 June 1965, married, an Azerbaijani national, who had no criminal record, a degree holder, a major general, a head of the Army Corps, who resided in Baku ... was in Kiev between 28 March and 4 July 2001 on an educational mission at the National Academy of Defence of Ukraine.
>
> Among other photographs submitted for his identification, M.S. also identified G.A., indicating that he very much looked like the person who was with R.A. at the time of E.A.'s murder.
>
> Another eyewitness, S.N., who saw the events from a distance, clearly identified G.A ... during the identification procedure and indicated that [he] had been involved in the argument between the Azerbaijanis at Cafe Sikora and on the street outside the cafe at the time of E.A.'s murder..."

17. On 27 February 2002 the Deputy Prosecutor General of the Republic of Azerbaijan decided to return the criminal case to the Ukrainian authorities. He substantiated his decision by alleging failure on the part of the Ukrainian authorities to carry out the relevant investigative actions. In particular, he noted that the Ukrainian authorities had not identified and questioned all possible witnesses to the crime, such as customers and employees of the cafe on 1 June 2001, nor had they tried to establish the whereabouts of G.A. and R.A. on that day. He further noted that there were contradictions between the evidence given by eyewitnesses M.S. and S.N. in the investigation, and that the clothes G.A. and R.A. had been wearing on 1 June 2001 had not been examined by a forensic expert.

C. Second transfer of the criminal case to the Azerbaijani authorities and the institution of criminal proceedings in Azerbaijan

18. On 26 February 2003 the investigator from the Shevchenko District Prosecutor's Office terminated criminal proceedings against G.A. and on the same day instituted criminal proceedings against R.A, relying in particular on the evidence given by M.S., who had insisted that R.A. was the person who had stabbed E.A. on 1 June 2001.

19. On 27 February 2003 the investigator from the Shevchenko District Prosecutor's Office relying on Articles 72 and 73 of the 1993 Minsk Convention, decided to transfer the criminal case to the Prosecutor General's Office of the Republic of Azerbaijan for further investigation in

accordance with Azerbaijani law. He concluded that R.A. was the person who had stabbed E.A. on 1 June 2001. The relevant part of his decision reads as follows:

> "Among the photographs submitted for identification, M.S. clearly identified R.A. and indicated that [he] was the person who had stabbed E.A. Moreover, M.S. indicated ... that G.A. looked like the person who had been with R.A. at the time of the commission of the crime; however, he could not confirm for definite that [he] had been there.
>
> It was established that R.A., born on 4 June 1965, married, an Azerbaijani national, who had no criminal record, a degree holder, a major general, a head of the Army Corps, who resided in Baku ... was in Kiev between 28 March 2001 and 4 July 2001 on [an educational] mission at the National Academy of Defence of Ukraine.
>
> In the course of the investigation, therefore, it was established that the Azerbaijani national E.A. was not murdered by G.A., but by R.A., an Azerbaijani national."

20. On 8 April 2003 the criminal case was assigned to the Military Prosecutor's Office of the Republic of Azerbaijan and criminal proceedings were instituted in Azerbaijan.

21. Following the institution of the criminal proceedings in Azerbaijan on 8 April 2003, the applicants wrote on several occasions, in particular on 12 July 2003, on 29 July 2003, on 2 August 2003, on 28 August 2003 and on 10 September 2003, to the Prosecutor General's Office asking for an effective investigation into their son's death. In particular, they alleged that although R.A. had murdered their son, he had not faced prosecution and had enjoyed *de facto* protection.

22. On 18 September 2003 an investigator from the Military Prosecutor's Office dismissed the criminal proceedings against R.A., finding that there was insufficient evidence to prove that he had been involved in E.A.'s murder. He also decided to continue the investigation in connection with the murder. The relevant part of his decision reads as follows:

> "Without clarifying the contradiction between the statements in the case file and carrying out the investigative steps necessary to establish which of them are true, and without identifying two people other than E.A. and M.S. who were at Cafe Sikora and examining other factual circumstances of the case, and without categorically identifying who murdered E.A., and despite the fact that there was not any reliable evidence to prove that R.A. had murdered [him], the investigator instituted unjustified and unlawful criminal proceedings against R.A., concluding that [he had] murdered E.A.
>
> In the course of the criminal investigation of the case carried out in the Military Prosecutor's Office, no reliable evidence was obtained to prove that R.A. had murdered E.A.
>
> For this reason, the criminal proceedings instituted under Article 115 § 1 of the Criminal Code of Ukraine against R.A. should be terminated, as [he] did not have anything to do with the commission of the crime, and the criminal investigation in connection with E.A.'s murder should be completely, in detail and objectively

continued in accordance with Article 120 of the Criminal Code of the Republic of Azerbaijan and the perpetrator of the crime identified and prosecuted."

23. The applicants were not informed of this decision.

24. As the applicants were not informed of the investigator's decision of 18 September 2003, they continued to write to the Prosecutor General's Office asking for an effective investigation into the death of their son. In reply to their letters, the applicants received the replies from the prosecution authorities which were all worded in a similar fashion. In particular, by letters dated 17 October 2003, 3 November 2003, 11 November 2003, 5 December 2013 and 7 January 2004, the prosecution authorities informed the applicants that the investigation would be carried out effectively and that they would be informed of its results. However, the prosecution authorities did not mention in their letters the existence of the investigator's decision of 18 September 2003.

25. On 24 February 2004 the criminal case was assigned to the Serious Crimes Unit of the Prosecutor General's Office.

26. On 28 June 2004 the investigator in charge of the case in Azerbaijan asked the Kiev City Prosecutor's Office for legal assistance, with a view to questioning witnesses and obtaining other evidence. Following this request, an Azerbaijani investigator was sent on a mission to Ukraine from 2 September to 23 September 2004 and from 14 October to 21 October 2004.

27. By a letter of 19 May 2005 the Prosecutor General's Office informed the applicants that in September and October 2004 an Azerbaijani investigator had been sent on a mission to Ukraine but it had not been possible to establish the whereabouts of the relevant witnesses or to question them. The relevant part of the letter reads as follows:

"On 28 June 2004 the investigator [R.H.] sent a request to the Kiev City Prosecutor's Office for legal assistance within the framework of the criminal case no. 803636/0363 in connection with the murder of E.A. and in September-October 2004 [R.H.] was on a mission in Kiev and participated in several investigative actions carried out by the Shevchenko District Prosecutor's Office.

However, as police officers of the Kiev City Shevchenko District Police Office failed to bring before the investigating authorities several witnesses whose statements were of particular importance to the investigation, it was not possible to question them and to carry out other investigative actions.

An operational request was sent to the relevant Ukrainian authorities in order to take relevant steps for bringing the relevant witnesses before the investigating authorities by establishing their whereabouts.

As the investigative actions were carried out on the territory of another State and some witnesses were not timely identified, it was not possible to complete the investigation and for this reason the period of investigation was extended in accordance with Article 218 of the Code of Criminal Procedure of the Republic of Azerbaijan..."

28. In reply to their further letters addressed to the prosecution authorities about the progress of the investigation, the applicants received two letters dated 7 September 2005 and 6 April 2006 from the Prosecutor General's Office. The content of these letters were almost identical to the letter of 19 May 2005.

29. By letters dated 11 July 2005 and 21 November 2006 respectively, the Prosecutor General and Deputy Prosecutor General of the Republic of Azerbaijan asked their Ukrainian counterparts to establish the whereabouts of some witnesses and to question them in connection with E.A.'s stabbing.

30. On an unspecified date in 2006 the applicants asked the investigator to remove R.A. from office until the termination of the criminal proceedings.

31. On 11 September 2006 the investigator dismissed the applicants' request, holding that such a preventive measure could be applied only in respect of a suspect or an accused person, of which R.A. was neither. The relevant part of the decision reads as follows:

> "In accordance with Articles 154 and 155 of the Code of Criminal Procedure of the Republic of Azerbaijan, the preventive measure of removal from office during the investigation may be applied only in respect of a suspect or an accused.
>
> However, it appears from the case file that R.A. was neither arrested as a suspect, nor adopted a decision recognising him as an accused.
>
> In these circumstances, there is no basis to apply the preventive measure of removal from office in respect of him..."

32. On 3 July 2007 the applicants wrote to the Prosecutor General again, complaining of the ineffectiveness of the investigation and the investigating authorities' failure to secure evidence concerning the incident. In this connection, they submitted that G.A., who had been involved in the crime, had died in unclear circumstances.

33. By a letter of 6 July 2007 the Prosecutor General's Office informed the applicants that the circumstances of G.A.'s death were not unclear, as he had died of heart disease.

D. Domestic proceedings concerning the alleged ineffectiveness of the investigation

34. On 28 December 2007 the applicants lodged an application with the Nasimi District Court, complaining of inactivity on the part of the investigating authorities and the ineffectiveness of the investigation. In particular, they alleged that the investigation of their son's murder had been unlawfully extended for years, and that despite R.A. having been identified as the perpetrator of the crime, he had not faced prosecution. They also argued that they had not been informed of the progress of the investigation.

35. At a hearing before the Nasimi District Court, the applicants and their representative reiterated their complaints, stating that they had not been informed of the procedural decisions taken during the investigation, and that the investigation had been extended, despite the perpetrator of the crime having been identified.

36. On 1 February 2008 the court dismissed the application, considering that the investigating authorities had not acted unlawfully and that the relevant investigative steps had been taken by the prosecution authorities. The court held that prosecutors were entitled to extend investigations and that this kind of decision could not be challenged before the courts. The relevant part of the decision reads as follows:

> "Article 218.11 of the same Code [the Code of Criminal Procedure] provides that the time limit for conducting the investigation into an unsolved criminal case may be extended several times by the Prosecutor General of the Republic of Azerbaijan, until the case is solved in accordance with Articles 218.8 and 218.9 of the Code of Criminal Procedure...
>
> As it transpires from the legislation the extension of the time limit for conducting the preliminary investigation is the right of the prosecutor supervising the investigation...
>
> Moreover, Article 449 of the Code of Criminal Procedure of the Republic of Azerbaijan lays down the procedure by which actions or decisions of the prosecuting authorities could be challenged before a court. This Article clearly establishes the extent of actions and decisions which could be challenged. This Article does not provide the possibility to challenge under the procedure of judicial review the investigating authorities' decision to extend the time limit for conducting the investigation ..."

The court further held that at that moment there was insufficient evidence to charge anyone with E.A.'s murder. However, it also found that the applicants had not been duly informed by the prosecution authorities, who had failed to provide them with all the relevant decisions. The relevant part of the decision reads as follows:

> "It was established during the court investigation that several rights of the victim in this case were not fully secured by the investigating authority, that he was not informed in detail of the progress of the investigation, and that he was not provided with some of the decisions [on the criminal case] ...
>
> In accordance with Article 87.6.13 of the Code of Criminal Procedure of the Republic of Azerbaijan, the victim, in circumstances and pursuant to the rules provided for in the Code of Criminal Procedure, is entitled to be informed of the decisions taken by the investigating authorities which have affected his rights and lawful interests, and to obtain copies of these decisions at his request.
>
> The court takes into account the facts that the investigator R.M. admitted these violations during the court investigation, and that the victim was provided with copies of several important decisions on the criminal case during the examination of this complaint."

37. On 23 February 2008 the applicants appealed against this decision, reiterating their previous complaints.

38. On 13 March 2008 the Baku Court of Appeal dismissed their appeal and upheld the Nasimi District Court's decision.

39. On 3 June 2008 the Supreme Court refused to admit the applicants' cassation appeal holding that the Baku Court of Appeal's decision was final and not subject to appeal.

40. On 14 December 2010 an investigator from the Serious Crimes Unit of the Prosecutor General's Office issued a decision suspending the criminal proceedings in connection with E.A.'s death. The investigator substantiated the decision by the fact that although all possible investigative steps had been taken, it had not been possible to determine who had killed E.A. The relevant part of the decision reads as follows:

> "As it was not possible to determine the person (persons) who committed the crime despite the fact that at the time being all possible operational investigative measures were taken, it is appropriate to suspend the criminal proceedings."

E. Further developments following the communication of the application to the Government

41. On an unspecified date in 2013 the applicants lodged a complaint with the Nasimi District Court asking the court to quash the investigator's decisions of 18 September 2003 and 14 December 2010. The applicants noted that they had not been informed of the investigator's decision of 14 December 2010 suspending the criminal proceedings in connection with their son's murder and they had learned about this decision only when the Government submitted to the Court a copy of the decision in question in their observations within the framework of the examination of their complaint by the Court. The applicants also submitted that they were never provided with a copy of the investigator's decision of 18 September 2003.

42. On 31 May 2013 the Nasimi District Court granted partially the applicants' claim and quashed the investigator's decision of 14 December 2010 suspending the criminal proceedings in connection with the murder of the applicants' son. In this connection, the court held that the prosecution authorities failed to prove that they had informed the applicants of the decision of 14 December 2010. The court further found that the prosecution authorities' failure to inform the applicants of the decision of 14 December 2010 had been unlawful and had deprived the applicants of the exercise of their right to challenge the decision in question. Thus, it appears that the criminal proceedings are still pending, whereas the Court has not been informed of any further developments.

43. As to the part of the applicants' claim concerning the investigator's decision of 18 September 2003, the Nasimi District Court considered that this claim fell outside its jurisdiction and decided to transfer it for an

examination to the Baku Military Court. The court held in this respect that the decision of 18 September 2003 was delivered by an investigator from the Military Prosecutor's Office and therefore the decision in question could be challenged before a military court.

44. On 23 October 2013 the Baku Military Court dismissed the applicants' claim considering it unjustified without further explanation.

45. On 5 November 2013 the Baku Court of Appeal upheld the Baku Military Court's decision of 23 October 2013.

II. RELEVANT DOMESTIC LAW

46. In accordance with Article 115 § 1 of the Criminal Code of Ukraine murder is a crime punishable by imprisonment for a term of seven to fifteen years. Article 120 § 1 of the Criminal Code of Azerbaijan provides that murder is a crime punishable by imprisonment for a term of seven to twelve years.

47. By virtue of Article 87 § 6 of the Code of Criminal Procedure of Azerbaijan ("the CCrP"), a person recognised as a victim has various procedural rights, and is entitled to submit material to the criminal case file, object to actions of the criminal prosecution authority, lodge applications, have access to transcripts and documents in the case file, be informed and obtain copies of any procedural decision of the criminal prosecution authority affecting his rights and interests (including a decision to discontinue proceedings), and lodge appeals against procedural steps or decisions.

48. Article 502 of the CCrP provides that the prosecution authority of the Republic of Azerbaijan must, upon an official request by the competent authority of a foreign State, and in accordance with Azerbaijani law, institute criminal proceedings against any citizen of the Republic of Azerbaijan suspected of committing a criminal offence on the territory of the requesting State.

49. Article 503 § 3 of the CCrP provides that if the criminal case transferred was instituted by the competent authority of the foreign State, the Azerbaijani prosecution authority to which the request was addressed shall pursue the investigation of the case in accordance with Azerbaijani law.

III. RELEVANT INTERNATIONAL DOCUMENTS

50. The CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993 ("the 1993 Minsk Convention") was signed on 22 January 1993 in Minsk, to which both Azerbaijan and Ukraine are parties.

51. Article 72 provides that each Contracting Party is obliged, by the commission of another Contracting Party, to institute criminal proceedings against its own citizens suspected of committing a criminal offence on the territory of the requesting Contracting Party. If the requesting Contracting party transfers a criminal case which has already been instituted to the requested Contracting Party, the latter must continue the investigation in accordance with its own legislation (Article 73).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

52. The applicants complained under Articles 2, 6 and 13 of the Convention of the ineffectiveness of the criminal investigation conducted by the Azerbaijani prosecution authorities in connection with their son's murder, and of the lack of independence and impartiality of the Azerbaijani courts and prosecution authorities. The Court considers that the present complaint falls to be examined solely under Article 2 of the Convention, the relevant part of which reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life..."

A. Admissibility

1. The parties' submissions

53. The Government submitted that the applicants' complaint concerning the ineffectiveness of the criminal investigation should be declared inadmissible, since it fell outside the Court's jurisdiction *ratione temporis*. The Government submitted that the applicants' son had been murdered on 1 June 2001, while the Convention did not enter into force in respect of Azerbaijan until 15 April 2002. In support of this argument, they relied on the Court's decisions in the cases of *Moldovan and others v. Romania* (no. 41138/98, 13 March 2001) and *Kholodovy v. Russia* (no. 30651/05, 14 September 2006).

54. The Government further submitted that the Court's findings in the case of *Šilih v. Slovenia* ([GC], no. 71463/01, 9 April 2009) could not be applicable in the present case, since unlike in that case, the main investigative measures had been carried out before the date of entry into force of the Convention ("the critical date"). In particular, they submitted that the criminal proceedings in connection with the murder of the applicants' son had been instituted on 1 June 2001, that the witnesses had

been interrogated before 15 April 2002, and that the case had been transferred to Azerbaijan on 30 January 2002.

55. The applicants disagreed with the Government's objection to the Court's competence *ratione temporis*. In particular, they asserted that although the murder had taken place in June 2001, the criminal investigation had been instituted in Azerbaijan in February 2003, after the entry into force of the Convention.

2. The Court's assessment

56. The Court observes at the outset that no objection was raised as to its competence *ratione loci* in the present case. Although the applicants' son was murdered on 1 June 2001 in Ukraine and criminal proceedings were instituted by the Ukrainian authorities in connection with the crime the same day, following the second transfer of the criminal case to Azerbaijan in accordance with the 1993 Minsk Convention, on 8 April 2003 the Azerbaijani authorities instituted their own criminal proceedings in connection with the murder in question.

57. The Court therefore considers that, regardless of where the death occurred, in so far as Azerbaijan assumed the obligation of conducting the investigation under the 1993 Minsk Convention and agreed to continue the criminal investigation commenced by the Ukrainian authorities, it was bound to conduct such an investigation in compliance with the procedural obligation under Article 2.

58. As for the objection concerning its competence *ratione temporis*, the Court reiterates that the procedural obligation to carry out an effective and prompt investigation under Article 2 has evolved into a separate and autonomous duty. Although it is triggered by acts concerning the substantive aspects of Article 2, it can give rise to a finding of a separate and independent "interference". In this sense it can be considered to be a detachable obligation, arising out of Article 2 and capable of binding the State, even when the substantive act took place before the critical date (see *Šilih*, cited above, § 159, and *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 138, 18 September 2009).

59. However, having regard to the principle of legal certainty, the Court's temporal jurisdiction as regards compliance with the procedural obligation of Article 2 in respect of deaths that occur before the critical date is not open-ended. Firstly, it is clear that where the death occurred before the critical date, only procedural acts and/or omissions occurring after that date can fall within the Court's temporal jurisdiction. Secondly, there must exist a genuine connection between the death and the entry into force of the Convention in respect of the respondent State for the procedural obligations imposed by Article 2 to come into effect. Thus a significant proportion of the procedural steps required by this provision – which include not only an

effective investigation into the death of the person concerned, but also the institution of appropriate proceedings for the purposes of determining the cause of death and holding those responsible to account – will have been, or ought to have been, carried out after the critical date. However, the Court would not exclude that in certain circumstances the connection could also be based on the need to ensure that the guarantees and underlying values of the Convention are protected in a real and effective manner (*Šilih*, cited above, §§ 161-163).

60. The Court further notes that it also recently had an opportunity to clarify the above-mentioned criteria, and found that for a "genuine connection" to be established, both criteria must be satisfied: the period of time between the death as the triggering event and the entry into force of the Convention must have been reasonably short, and a major part of the investigation must have been carried out, or ought to have been carried out, after the entry into force (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 148, ECHR 2013).

61. Turning to the circumstances of the present case, the Court observes that the applicants' son was murdered on 1 June 2001 in Ukraine, ten and a half months before 15 April 2002, the date of entry into force of the Convention in respect of Azerbaijan; however, the criminal proceedings into the circumstances of this murder were instituted in Azerbaijan on 8 April 2003 and are apparently still pending (see paragraphs 20-42 above). It appears therefore that the entire criminal investigation in Azerbaijan took place after 15 April 2002.

62. The Court considers that there exists a genuine connection between the death and the entry into force of the Convention in respect of Azerbaijan for the procedural obligations imposed by Article 2 to come into effect. The period of time between the death as the triggering event and the entry into force of the Convention – ten and a half months – was reasonably short (compare *Lyubov Efimenko v. Ukraine*, no. 75726/01, § 65, 25 November 2010; *Igor Shevchenko v. Ukraine,* no. 22737/04, §§ 45-48, 12 January 2012; *Dimovi v. Bulgaria*, no. 52744/07, §§ 36-45, 6 November 2012; and *Bajić v. Croatia*, no. 41108/10, § 62, 13 November 2012), and the entire criminal investigation in Azerbaijan, which has so far lasted more than eleven years, was carried out after the critical date.

63. The Government argued that the main investigative steps had been carried out before the critical date and referred to the investigative steps taken either by the Ukrainian authorities before the transfer of the criminal case to Azerbaijan, or those taken by the Azerbaijani authorities at the request of their Ukrainian counterparts before the institution of criminal proceedings in Azerbaijan, such as the questioning of R.A. as a witness on 5 January 2002. However, as stated above, the criminal proceedings were not instituted in Azerbaijan until 8 April 2003, which was clearly after the

entry into force of the Convention in respect of that State for which reason the Government's arguments are without relevance.

64. In view of the above, the Court finds that the alleged violation of Article 2 in its procedural aspect falls within its temporal jurisdiction. It further notes that this complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

65. The Government submitted that the failure of the Ukrainian authorities to carry out all the necessary investigative steps and to provide the Azerbaijani authorities with effective legal assistance had prevented the latter from carrying out an effective investigation. They pointed out that the Ukrainian authorities had failed to identify and question relevant witnesses, and had hastily and wrongly accused G.A. and R.A. of the murder of the applicants' son without any relevant evidence.

66. The Government further submitted that despite the letters the Prosecutor General's Office had sent to its Ukrainian counterparts in 2005 and 2006 asking for their legal assistance, no action had been taken by the Ukrainian authorities. They also confirmed that an Azerbaijani investigator had been sent on a mission to Ukraine in 2004 but it had not been possible to identify the places of residence of the relevant witnesses or to question them.

67. The applicants maintained that the criminal investigation in Azerbaijan had been ineffective. They pointed out that the Government's reliance on the Ukrainian authorities' alleged failure to provide appropriate legal assistance was merely a pretext, and could not explain the unreasonable extension and ineffectiveness of the investigation in Azerbaijan. In particular, they noted that although the Ukrainian authorities had identified R.A. as their son's murderer, the Azerbaijani authorities had protected him because of his senior position within the army, and he had not even been questioned by the prosecution authorities during the criminal proceedings.

68. The applicants further submitted that the investigating authorities had remained inactive for years, and that they had not been duly informed of the progress of the investigation. They submitted that, despite their numerous requests, they had not been informed of the investigator's decision of 18 September 2003 by which the criminal proceedings against R.A. were dismissed.

2. The Court's assessment

(a) General principles

69. The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force, either by State officials or private individuals (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 103, ECHR 1999-IV; *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V; and *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 62, 15 January 2009). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II).

70. The investigation must be effective in the sense that it is capable of leading to the identification and punishment of those responsible (see *Oğur v. Turkey* [GC], no. 21594/93, § 88, ECHR 1999-III). This is not an obligation of result, but of means. The authorities must take the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death, or identify the person or people responsible, will risk falling foul of this standard. Whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention (see, for example, *mutatis mutandis*, *Ilhan v. Turkey* [GC], no. 22277/93, ECHR 2000-VII, § 63). Moreover, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice. In all cases, the next of kin of the victim must be involved in the procedure to such an extent as is necessary to safeguard his or her legitimate interests (see *Tsintsabadze v. Georgia*, no. 35403/06, § 76, 15 February 2011).

71. A requirement of promptness and reasonable expedition is implicit in this context (see *Yaşa v. Turkey*, 2 September 1998, §§ 102-104, *Reports of Judgments and Decisions* 1998-VI, and *Adalı v. Turkey*, no. 38187/97, § 224, 31 March 2005). It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

(b) Application to the present case

72. Turning to the circumstances of the present case, the Court observes that the applicants made a number of allegations concerning the inadequacy of the investigation carried out by the authorities, while the Government claimed that the investigation in question met the requirements of Article 2 of the Convention.

73. The Court notes that the Government relied on the Ukrainian authorities' alleged failure to secure all the relevant and necessary evidence to carry out an effective investigation of the murder of the applicants' son, submitting that the Ukrainian authorities' ineffective conduct of the criminal investigation and their lack of cooperation with the Azerbaijani authorities had prevented the latter from identifying the perpetrator of the crime.

74. In so far as the Government's submissions concern the Ukrainian authorities' alleged reluctance to cooperate with their Azerbaijani counterparts, the Court reiterates that it is competent to assure that the text of the European Convention on Human Rights is respected, but not any other international agreement. In the circumstances of the present case, any possible failure on the part of the Ukrainian authorities to respect the provisions of the 1993 Minsk Convention concerning legal assistance, or any other bilateral treaty between the two States, cannot be the subject matter of a case before the Court (see *Calabro v. Italy and Germany*, (dec.) no. 59895/00, 21 March 2002, and *Karalyos and Huber v. Hungary and Greece*, no. 75116/01, § 40, 6 April 2004).

75. The Court accepts that in some situations, such as in the present case, where a criminal offence was committed on the territory of another State, there may be particular obstacles which would hinder the progress of the criminal investigation.

76. Nevertheless, the Court observes a number of shortcomings in the criminal investigation carried out by the Azerbaijani authorities. Firstly, it transpires from the documents submitted that following the institution of the criminal proceedings in Azerbaijan on 8 April 2003, the investigating authorities failed to secure evidence concerning the murder from, in particular, two people, R.A. and G.A., who had been identified either as suspects or witnesses by the Ukrainian authorities in connection with the murder. They were never questioned by the Azerbaijani prosecution authorities within the framework of the investigation. Although G.A. passed away in the summer of 2007, his death occurred more than four years after the commencement of criminal proceedings in Azerbaijan.

77. As to R.A., although he was questioned as a witness at the request of the Ukrainian authorities on 5 January 2002 within the framework of their own criminal investigation, he was, as indicated above, never questioned as part of the criminal proceedings in Azerbaijan. Still, the Azerbaijani prosecution authorities dismissed the criminal proceedings against R.A. on 18 September 2003 (see paragraph 22 above).

78. The Court further considers that the investigation was not carried out promptly as the authorities remained largely inactive for lengthy periods of time. In particular, although the investigation was instituted in Azerbaijan on 8 April 2003, the investigator in charge of the case did not ask his Ukrainian counterparts for legal assistance until 28 June 2004, more than a year and two months later (see paragraph 26 above). Furthermore, the overall length of the criminal investigation is such that any meaningful investigation can no longer be pursued.

79. Lastly, the Court notes that, as acknowledged by the first-instance court (see paragraph 36 above), the prosecution authorities failed to inform the applicants of the progress of the investigation and to provide them with the relevant decisions taken within the framework of the criminal proceedings. In particular, the investigator failed to inform the applicants of his decision of 18 September 2003 to dismiss the criminal proceedings against R.A, which deprived them of all practical means to challenge that decision. Moreover, in spite of the numerous letters sent by the applicants to the prosecution authorities concerning the lack of progress of the investigation, they replied to them using the same standard wording, that the criminal proceedings concerning their son's death were underway and that their requests had been added to the relevant case file.

80. The foregoing considerations are sufficient to enable the Court to conclude that the national authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the killing of the applicants' son. It accordingly holds that there has been a violation of Article 2 under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. Article 41 of the Convention provides:

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

82. The applicants did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to make any award in this respect.

FOR THESE REASONS, THE COURT,UNANIMOUSLY,

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 31 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President