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

SECOND SECTION

DECISION

Application no. 30173/12
Stig Wolch JØRGENSEN and Others
against Denmark

The European Court of Human Rights (Second Section), sitting on 28 June 2016 as a Chamber composed of:

Julia Laffranque, *President*,
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges*,

and Stanley Naismith, *Section Registrar*,

Having regard to the above application lodged on 15 May 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. The applicants are four Danish nationals, Mr Stig Jørgensen (the first applicant), born in 1952, living in Århus, Mrs Solveig Ryberg (the second applicant), born in 1954, living in Galten, Mr Mikkel Nielsen (the third applicant), born in 1977, living in Flensburg, and Mr Dennis Christiansen (the fourth applicant), born in 1979, living in Århus. The applicants are

represented before the Court by Mr Claus Bonnez, a lawyer practising in Århus.

2. The Danish Government ("the Government") were represented by their Agent, Mr Jonas Bering Liisberg, of the Ministry of Foreign Affairs, and their Co-agent, Nina Holst-Christensen of the Ministry of Justice.

3. The case concerns the death of two men, Lars Wølch Jørgensen and Claus Nielsen (henceforth L and C), during a police operation which took place in the early hours of 29 December 2001. The third and the fourth applicants were also involved.

4. The first applicant is the father of L, who was born in 1976. The second applicant is the mother of C, who was born in 1978. The third and the fourth applicants are henceforth referred to as M and D.

5. On 29 December 2001 at 2.07 and 2.17 a.m., a named person reported to the police that three four-wheel drive vehicles without licence plates were being driven "like mad" at a commercial zone in Tilst, a suburb of Århus. It was snowing lightly.

6. At 2.18 a.m., police officers B and F, with B as driver in a patrol car, a Peugeot 406, informed the central office that they had found the three vehicles.

7. Two minutes later, at 2.20 a.m., police officer F informed the central office that he and B had fired their weapons; that they had been rammed several times by heavy vehicles; that they needed an ambulance since one man was bleeding heavily, and that they needed reinforcements, because two men had fled.

8. It was later clarified that the three vehicles had been stolen, that there were six men present, L, C, M, D, T and P, some of whom had tried to steal a loader tractor parked close to where the incident had taken place, that all the men but L were wearing white boiler suits, that they were all masked with balaclavas, that they were in possession of a police scanner and that they hurried to the cars when the police were on their way. At the time of the events, L was driving a green Jeep with D as passenger, C was driving a black Mercedes with T in the passenger seat and M in the boot, and P was driving a grey Jeep. Moreover, there had been a collision between the police car and both the green Jeep and the black Mercedes. The police officers had fired their weapons, 7.65 mm Walther pistols, 15 times in total, of which three bullets had failed and five had entered the tyres of the green Jeep and the black Mercedes. The crucial bullets were fired as follows: the first two had entered the front window and the left side window of the green Jeep, the next two had entered the front of the black Mercedes, the following two bullets had passed through the right side window of the black Mercedes, and the last bullet had entered the right side window of the green Jeep. The men were not carrying firearms. A crowbar was found in the black Mercedes between the driver's and the passenger's seats. L and C had been shot, and

died from their wounds shortly after. The incident lasted less than two minutes.

9. The Regional State Prosecutor (*Statsadvokaten i Viborg*) was informed at 3.20 a.m. about the incident and immediately thereafter, with the assistance of a special police unit, he initiated a criminal investigation concerning F and B, who were interviewed respectively at 6.55 and 9.15 a.m. Technical examinations were made of the bullets, the pistols, the cars and the scene of the alleged crime. Maps were drawn, photos were taken, recordings of conversations over the police radio were secured and autopsies of L and C were carried out. All relevant persons were interviewed, including the person who had called the police, the persons who had been present in the area at the relevant time, and the police officers who had arrived after the incident. P, who was arrested later that day, D, who was arrested on 30 December 2001, and M and T, who were arrested on 3 January 2002, were also heard. They were charged with car theft and aiding and abetting attempted murder, but the latter charges were dropped, it appears, in September 2002.

10. In a statement of 15 March 2002, the Regional State Prosecutor gave his account of the events, based on the materials in the case, which he found sufficient. He proposed to the Police Complaints Board (*Politiklagenævnet for Statsadvokaten i Viborg)* that no criminal proceedings against the police officers should be initiated as he found that the lethal force for which they were responsible had been justified self-defence.

11. The Regional State Prosecutor's account of the events was detailed and contained numerous specific references to the testimony and evidence in the case. It ran to approximately 40 pages. The account may be summarised as follows. When the police arrived, the grey Jeep fled and passed so close to the police car that the latter had to make an evasive manoeuvre, although there was enough space for both cars. Thereafter, the police car drove right up in front of the green Jeep. The green Jeep advanced slowly, drove into the police car and pushed it backwards. F jumped out of the police car. The green Jeep reversed and accelerated. F stood behind the open right door and fired twice at the front of the green Jeep. One bullet entered the front window. Another bullet entered the left side window and hit L in the head (which proved to be fatal). The black Mercedes accelerated and collided with the police car on its left side, where B was seated. The black Mercedes reversed and accelerated. Either on the first or the second acceleration by the black Mercedes (this could not be fully established), F shot twice at the front of the black Mercedes from his position behind the open right front door of the police car. One of the shots hit C next to his eyelid, causing no harm. Either before or after the black Mercedes had collided with the police car, the green Jeep collided with the front of the police car for the second time. B jumped out of the police car, approached the green Jeep and fired three times at the left front tyre, but the

gun did not go off. In the meantime the black Mercedes drove behind the police car, away from it, but it became stuck on a slope in the snow. F approached it and stood in front of its right front door. F fired two bullets, which went through the right side window. A shell part of a bullet hit T superficially on the forehead. One bullet hit C fatally in the left side of his back, when he was sitting with his torso and head leaning over the right front seat. The green Jeep passed both the police car and the black Mercedes and collided with a white van on the opposite side of the street. At some point B had fired a bullet at the right front tyre of the black Mercedes. Thereafter B ran towards the green Jeep and tried to open the door on the right-hand side, where D was sitting in the passenger seat with his head between his legs. The door was locked. B ordered the men to stop. When there was no reaction he fired at the right front tyre and the right back tyre. Then he knocked on the right front side window of the green Jeep with the stock of his pistol, which caused one shot to go off, breaking the window. The green Jeep drove off with L still driving and D in the passenger seat. F aimed two shots at the left back tyre of the green Jeep. One bullet hit the left back light. There was no trace of the other bullet. Probably at the same time, M and T escaped from the black Mercedes. F called the central station and began giving C first aid. B and his police dog, which had been in the boot of the police car, chased the men who had fled, but in vain.

12. The Regional State Prosecutor found no elements indicating that F or B had shot at T and M when they fled on foot.

13. The Regional State Prosecutor found it established and justified that F and B had felt attacked by the heavy four-wheel drive vehicles and that they had felt in imminent danger, which justified acts of self-defence. He was not able to decide the degree of danger. In the assessment of whether the use of their weapons had been proportionate to the danger, he took into account that F, when he had fired his weapon from the position behind the open right front door of the police car, had had very little time to decide how to react to the attacks from the green Jeep and the black Mercedes; that F had felt that there was no time for warning shots or to try to shoot at the tyres, which in any event would have been difficult from this position; that the alternative of doing nothing would have resulted in B and F being run into, and that at the relevant time F and B were not aware how many men they were dealing with; and that the men that they could see were disguised and masked with balaclavas, which must have been horrifying. With regard to the subsequent two bullets fired by F when he stood on the road at the right-hand side of the black Mercedes, one of which had killed C, the Regional Prosecutor noted that F had stated that, beforehand, he had seen the passenger in the Mercedes reach for an object between the passenger's and the driver's seats, which he perceived to be a sawn-off shotgun, and that he had shouted "drop it" or something like that, but that there had been no reaction and that he had therefore thought "now it is him or me". Having

regard to the fact that C had been leaning his torso and head over the right front seat, the Regional State Prosecutor found it established that it had in fact been C, and not passenger T, who had reached for the crowbar found in the black Mercedes. In this respect he also took into account that T had denied reaching for the crowbar at the relevant time, and that both C and T were wearing white boiler suits and were hooded. Lastly, he found it established that the last shot fired by B, which came out through the roof, went off unintentionally when B knocked on the right front side window of the green Jeep with the stock of his pistol. The Regional State Prosecutor found that this shot was regrettable but did not find that it should result in criminal proceedings being initiated against B.

14. On 3 April 2002 the Police Complaints Board stated that it had been kept up to date with the investigation since the beginning of January 2002 and agreed that no further investigation was required. As to B, it was in agreement with the Regional State Prosecutor's assessment and decision. With regard to F, it agreed that the shots fired at the Jeep and the Mercedes while those cars were accelerating had been fired in self-defence. However, in respect of the subsequent fatal shots fired at C, the Police Complaints Board found that Article 13 of the Penal Code on self-defence had been interpreted so widely that the decision, for the sake of all concerned, ought to be taken by the courts.

15. On 4 April 2002 the Regional State Prosecutor decided not to initiate criminal proceedings against F and B. Shortly after, the applicants received the decision and the opinion of the Police Complaints Board.

16. The first, second and third applicants, and T, appealed against the decisions to the Director of Public Prosecutions (*Rigsadvokaten*), who on 25 June 2002 upheld the decision not to initiate criminal proceedings against F and B. His decision was sent to each of the applicants. In addition the Prosecutor General replied to 25 questions posed by the first applicant about the investigation.

17. The case attracted wide media attention from the newspapers and television.

18. Based on a request by the media in November 2002, the Regional State Prosecutor decided to reopen the case, notably with regard to an expert opinion of 14 January 2002, procured by the Weapons Section of the Criminal Technical Department. The Regional Prosecutor posed various new questions in that connection and interviewed F, B, D, T, M and P anew.

19. On 26 May 2003, the Regional State Prosecutor submitted a supplementary statement to the Police Complaints Board. Having received a new expert opinion from the Weapons Section, he changed his account of the event as follows. At the beginning, when F stood behind the open right door, it was originally found established that F had fired twice at the front of the green Jeep, with one bullet entering the front window and another bullet entering the left side window and fatally hitting L in the head. However,

although nobody had stated that B had also fired a shot at the green Jeep, it had to be B who had fired the bullet through the front window of the green Jeep. B had no recollection of this. Accordingly, at the relevant time, F had only fired one shot, but still the fatal bullet. Moreover, it had to be F and not B who had later fired a shot at the right front tyre of the black Mercedes, when it became stuck on a slope behind the police car. Since there was no further information about the shot that B must have fired though the front window of the green Jeep, which did not hit anybody, it was not possible for the Regional State Prosecutor to decide whether that shot had been deliberate or accidental and, if it had been deliberate, whether it had been fired in self-defence. The Regional State Prosecutor also replied to various questions about the investigation, which had been submitted to him or the Director of Public Prosecutions. He regretted that the information about the two shots had not been clear. In conclusion, he proposed again to the Police Complaints Board that criminal proceedings should not be initiated against the police officers as he found that the lethal force for which they were responsible had been justified self-defence.

20. On 11 June 2003 the Police Complaints Board stated that it still found that criminal proceedings should be initiated against F for the fatal shot fired at C in the black Mercedes, in order to have a decision by the courts as to the extent of self-defence covered by Article 13 of the Penal Code. It agreed with the Regional State Prosecutor regarding the new version of events and agreed that it was regrettable that the original expert opinion by the Weapons Section had been erroneous, which in the view of the Police Complaints Board, contributed to reducing the general credibility of the Regional State Prosecutor's account of the event.

21. On 12 June 2003 the Regional State Prosecutor informed the applicants that he upheld his decision of 4 April 2002 not to initiate criminal proceedings against F and B.

22. The first, second and third applicants, and T, appealed to the Director of Public Prosecutions and submitted questions and comments about the investigation in July, August, September, October and December 2003, as well as in February and April 2004.

23. On 30 June 2004, the Director of Public Prosecutions upheld the decision by the Regional State Prosecutor. His statement in support thereof and reply to the various questions posed by, *inter alios,* the first applicant, ran to 23 pages.

24. On 9 February 2005 the Director of Public Prosecutions refused to reopen the case in respect of the third applicant, who maintained that the police officers had shot at him when he was fleeing.

25. On 31 October 2005 the Ombudsman made a statement addressing complaints by the first applicant and by the representative of the first and third applicants of June, July and August 2005. The Ombudsman stated that he would not examine the case any further since he understood the

complaints to be a general disagreement with the account of the events as established by the Regional State Prosecutor and the Director of Public Prosecutions, which would fall outside the framework of an examination by the Ombudsman, and since there were no prospects of him criticising the decision by the Regional State Prosecutor and the Director of Public Prosecutions to discontinue the investigation of the case.

26. On 30 June 2006 the Regional State Prosecutor refused a request by the first applicant to reopen the case.

27. On 23 December 2006 and 19 November 2007, the applicants and T and P initiated compensation proceedings before the High Court of Western Denmark (*Vestre Landsret*, henceforth "the High Court"), against the Police Commissioner for Eastern Jutland, the Ministry of Justice, and the Director of Public Prosecutions for non-pecuniary loss due to alleged infringement of Articles 2 and 3 of the Convention. The applicants wanted the High Court to assess whether the force used by F and B went beyond what was "absolutely necessary" and whether the investigation had been effective and conducted in such a way that it could be relied on. The applicants found that the force went beyond what was "absolutely necessary". As regards the procedural aspect, the applicants contended that the investigation had been insufficient and that further reconstructions should have been staged. Moreover, the applicants did not have access to all the material in the case from the very beginning and they had not been present when F and B were interviewed or at the reconstructions.

28. Before the High Court, technical evidence, expert opinions and autopsy reports were submitted, police radio records were heard, and maps, sketches and photographs were shown. The first applicant, T, M, D, F and B were heard, as well as the man who had called the police that night and a witness who had been in the vicinity.

29. On 15 September 2009, by a judgment which ran to 131 pages, the High Court found unanimously against the applicants. Concerning the substantive aspect, the High Court found that the events, in so far as they could be established, corresponded to the account given by the Regional State Prosecutor in his supplementary statement, and that F and B had acted within the limits of self-defence. It found no elements indicating that the third and fourth applicants had been shot at by F or B when they were fleeing.

30. Concerning the procedural aspect, the High Court found that the investigation had been sufficient and that the error in the original expert opinion by the Weapons Section had been corrected in the reopened proceedings. It noted that it was normal and human for witnesses to some extent to have divergent perceptions and recollections of events and that technical evidence could not always establish the facts without leaving a certain margin. Likewise in the present case, it would not be possible to reconstruct the details of the events with absolute certainty. Nevertheless,

regarding the fatal shots, the High Court found that the investigation had been effective and appropriate to establish the facts and to determine whether the force used had been absolutely necessary. There was no indication that new or repeated examinations could lead to a further clarification of the events and there was no indication of negligence in the investigation as carried out. Moreover, the applicants had had access to all the materials in the case as soon as the charges against them for aiding and abetting attempted murder were dropped in 2002.

31. Specifically, in its reasoning, the High Court stated as follows:

"*Concerning the shooting*

It has been submitted that the defendant must prove that the police officers acted in self-defence when, *inter alia*, the fatal shots were fired.

[...] The two police officers arrived at a seemingly routine police operation, where car thieves, who knew that the police were on their way, were to be arrested. The police operation suddenly became unexpectedly dramatic, when the police car was driven into, and the police officers realised that the car thieves, whom the police officers could see were masked, attempted to avoid arrest by using the stolen four-wheel drive vehicles to collide with the police car in which the police officers were seated. In these circumstances, there is no basis for changing the starting point, according to which it is [the applicants] and T who must substantiate the authorities' liability when using force.

In the case against the Police Commissioner for Eastern Jutland the High Court must assess whether the fatal shot fired by F against the green Jeep and the shots fired by F at the passenger seat of the black Mercedes, one of which killed C, and the shot fired by B at the moving green Jeep were such as to incur liability, and whether shots were fired at T and M when they were on the run. The plaintiffs have not disputed that the police officers were in a situation which justified the shots at the tyres of the cars and the shots through the front of the black Mercedes.

In the assessment of whether the shots were fired under circumstances which exempt from punishment it is, according to the Court of Human Rights, decisive whether it was absolutely necessary to use firearms, and their use must have been plausibly reasoned in the concrete situation. A police officer who shoots must honestly perceive that there is a danger to his life or the lives of others. The crucial point is whether this perception could have been justified, and it is without importance if it turns out afterwards that the perception was not correct.

The shots were fired after the police car had stopped in front of the green Jeep. At 2.18.35 a.m., before the police car had passed the grey Jeep and before the collisions, the guard at the central office had been informed that the police car "had the three stolen vehicles". The report that shots had been fired came at 2.20.42 a.m. It can therefore be concluded that the course of events, from when the police car was in front of the green Jeep until the report at 2.20.42 a.m., lasted approximately two minutes, and that the shooting incident lasted a shorter time, in that F, at the earliest, got out of the police car after the first collision with the green Jeep, and that the report at 2.20.42 a.m. was submitted only after F had helped B and his dog over the fence. Within this short lapse of time, twelve shots were fired and three shots attempted.

It is not unusual for explanations from persons who have all witnessed the same dramatic event to be conflicting, without this reflecting that those present are consciously lying. The same event can have been experienced differently by those

present, and the explanations may be marked by post-rationalisation. Thus, often it is not possible, on the basis of the explanations by those present or by technical examinations, to establish the precise course of events. However, the uncertainties in the present case do not mean that the High Court cannot assess the legality of each act.

When assessing whether the police officers acted in self-defence, the High Court takes as its starting point the situation in which the police officers found themselves when, expecting to arrest common car thieves, they found themselves being attacked by the car thieves in two of the stolen cars.

The police officers have explained that it was the green Jeep which attacked the police car, whereas D and T have explained that it was the police car which attacked the Jeep. It would go against logical supposition that the smaller police car would have attacked the bigger Jeep and the High Court therefore finds it established that it was the green Jeep that attacked the police car and not the other way around.

After the production of evidence it can be established that F, after alighting and before the shooting, raised his pistol, and that the car thieves in spite of this did not show any signs of surrendering. It can also be established that F's shots at the two four-wheel drive vehicles were fired very shortly after F had alighted. The High Court also finds that F, when the shots were fired, had been at the right side of the police car. That corresponds with the explanations given by F and T, in that T stated, among other things, that F, while firing against the Mercedes, stood "somewhere behind the police car". In addition, the results of the technical examinations do not rule out that F fired the shots from this position. It is not possible to conclude with more precision how far F was from the police car, and F's position in relation to the green Jeep. F has explained that he might have moved instinctively after alighting, so that he was not placed just behind the door. B has explained that he did not notice where F stood. The High Court thus finds that there are no reasons to assume that F was placed at the side of the green Jeep when he fired the fatal shot at L.

As to the reason for firing, F explained that the shots were fired because he had assessed that the police officers were in a life-threatening situation, surrounded by two four-wheel drive vehicles with car thieves who were resisting arrest by driving into the police car with the four-wheel drive vehicles, and that everything went so fast that he did not have time to fire warning shots or consider other opportunities. The High Court does not find reason to contest this explanation.

Since the fatal shot at the driver of the green Jeep was fired in a situation in which F justifiably felt that his and B's lives were in danger, the High Court finds that the situation was self-defence covered by Article 13 (1) of the Penal Code, and that the criteria set out by the Court of Human Rights for impunity in respect of the use of firearms are fulfilled.

As to the further sequence of events, the High Court finds that the black Mercedes, after having run into the police car, which was pushed by the collision, freed itself of the police car, passed it and accelerated, until it became stuck in the snow, sloping at the side of the road. F ran to the black Mercedes to arrest the car thieves and positioned himself in front of the passenger seat, where T was seated. F and T have provided divergent explanations about the events leading to F shooting into the black Mercedes, where one of the shots hit C in his upper back, after which the shot went down into the abdominal cavity. F stated that there was much activity in the Mercedes. T has stated that he had tried to take off his mask to show surrender. F has not mentioned any signs of surrender, but instead explained that he saw a person - whom he remembered as the front passenger - bend down to reach for an object. F

could see the object, which he feared was a sawn-off shotgun, and he thus shot from fear of being shot. It is not possible to establish whether it was C who bent down to reach for the object or T, but considering the technical evidence as to the angle of the bullet, the High Court finds it most likely that it was C who leaned forwards. Since the crowbar, which was subsequently found on the floor by the passenger seat, in the situation could have been mistaken for a shotgun, and since F, after the collisions, must have had a justified fear that the car thieves were in possession of firearms and might think of using them, the High Court finds F's explanation substantiated. Hereafter, the High Court finds that as regards the firing of these shots, F was also in a self-defence situation covered by Article 13 (1) of the Penal Code, and that the criteria set out by the Court of Human Rights for impunity in respect of the use of firearms are fulfilled.

At 2.53 a.m., B told the guard at the central station that when alighting from the police car, he had been forced to jump aside because the green Jeep almost ran into him, whereupon he had shot into the tyres. Subsequently, the green Jeep had run into a parked van, and B had run to the Jeep and smashed the side window with the stock of his pistol. D explained about this event that the window had broken when B shot through the window, whereas B insisted all along that he did not shoot into the green Jeep and that it had been unintentional if he had shot into the car. According to the report by the Weapons Section of the Criminal Technical Department, the side window in the green Jeep had been smashed due to a shot fired from B's pistol. It follows from the report that the shot went off at an angle equivalent to a trajectory from around the right front tyre through the upper part of the side window to the impact in the ceiling. The conclusion in the report about the trajectory is not consistent with D's explanation that B, immediately before the shot, aimed at him. In these circumstances the High Court finds no reason to disregard B's statement that the shot was fired unintentionally, and therefore this shot does not breach Articles 2 or 3 of the Convention either, and cannot constitute a basis for liability for the Police Commissioner for Eastern Jutland.

After the explanations by T and M, and the rest of the production of evidence, there is no basis for assuming that shots were fired at these persons [T and M], when they had alighted from the black Mercedes and were setting off. The fact that F said to the guard at the central station that the escaped suspect had been hit does not support this either since F, who had fired several shots through the windows of the black Mercedes, could have thought that other persons than the one lying next to the car [C] had been hit by the shots. Nor can [such an assumption] be deduced from the fact that police officer V had had that impression when he spoke to F just after the events. Accordingly, these plaintiffs do not have a compensation claim against the Police Commissioner for Eastern Jutland for unnecessary use of force."

...

"*Concerning the claims that the investigation under section 1020 a did not fulfil the requirements of the Convention*

The Convention requires that the investigation which must be carried out into complaints about the authorities' use of force, must be effective in the sense that it is capable of leading to a determination of whether, in the circumstances, the force used was or was not justified, and the investigation must appear trustworthy to the public.

It can be taken as a given that the Regional State Prosecutor was informed rapidly about what had happened in Tilst, that the area was cordoned off immediately and that the necessary investigative steps were initiated instantly. All relevant persons were heard several times in an attempt to describe the events and to clarify discrepancies.

Technical examinations were carried out of the alleged crime scene, the cars, the weapons, and reconstructions of the events were made in order to establish how the collisions had happened and what the trajectories had been. When attention was drawn to possible errors in the examinations by the Weapons Section of the Criminal Technical Department, or the assessments based on those examinations, the investigation was reopened and the error corrected.

The Regional State Prosecutor has, in his decisions, indicated in several places that there are circumstances which cannot be clarified. [The applicants] and T have submitted that the investigations were unsatisfactory and flawed on several points.

As mentioned above, in a course of events like the present ones it will not be possible subsequently to clarify every detail. The High Court finds that the investigation of the shooting – which in respect of the fatal shots led to the conclusion that they were fired in an act of self-defence – was efficient and suitable for establishing whether the police officers had committed criminal offences, and whether unnecessary force had been used. There is no reason to assume that new investigative steps would have led to further clarification of the actual course of events. The fact that an additional investigation could have been carried out cannot lead to another conclusion, since the investigating authority had not acted negligently.

[The applicants] have claimed that they were not involved in the investigation to the extent that they are entitled under the Convention. Simultaneously with the investigation carried out by the Regional State Prosecutor under chapter 93 c of the Administration of Justice Act, an investigation was carried out against P, T, M and D, who were charged with, *inter alia,* attempted homicide. Due to that pending investigation [the applicants] were not granted access. When the charges for attempted homicide were dropped, [the applicants] were granted access. Against this background there is no breach of the Convention on this account.

The two police officers were interviewed by the Regional State Prosecutor a few hours after the shooting incident. Since [they] were both at the police station, they had the possibility to agree on their statements while awaiting the interview, and in fact they have confirmed that they discussed the case while waiting. The possibility alone that they agreed on their explanations, is unfortunate and capable of reducing public confidence in the investigation but is, pursuant to paragraph 330 in *Ramsahai and Others v. the Netherlands* [GC] (no. 52391/99, ECHR 2007-II) not sufficient to find a breach [of the Convention].”

32. The applicants appealed against the judgment to the Supreme Court (*Højesteret*). They disagreed with the events as found established by the prosecution authorities and the High Court. In particular, as concerned the green Jeep, they alleged that it was B who had fired the fatal shot at L, that later B had deliberately shot through the right front side window of the Jeep, and that the shot through the front window of the Jeep had been fired where the Jeep was found at the end of the events. As to the black Mercedes, they alleged that the two shots which went through the front window had been fired after the collision with the police car, and at another place, and that F, when he had fired the fatal shot at C, had not acted in self-defence. With regard to the investigation the applicants alleged, amongst other things, that some recordings had been deleted and that they had not been provided with some recordings of telephone conversations of the Regional State

Prosecutor concerning the summoning of representatives of the police officers' trade union. Finally, during the proceedings before the Supreme Court, they complained that they had not been granted a second expert opinion with regard to the bullet, called VS 3.1 in the file, which had killed L.

33. It was noted by the defendants, though, that as soon as the criminal investigations had been finalised against the implicated persons, the applicants had been granted access to all the material that they had requested, including recordings, except for recordings of persons who had no connection to the case.

34. Bullet VS 3.1 had originally been examined by the Weapons Section of the Criminal Technical Department and compared with the pistols used by F and B and test shots fired from the two pistols with specific bullets of the same calibre, 7.65 mm. In its expert opinion of 16 January 2002, it was noted that the bullet was rather damaged and thus had a low identification value. However, when using a special microscope, some specific small scratches were found which matched F's pistol and the test bullets fired by this weapon. The applicants did not criticise the way the examination had been carried out, but before the Supreme Court they requested a new examination by the Weapons Section, or in the alternative by the UK Met Intelligence Bureau, New Scotland Yard, in order to establish whether the bullet had been fired by F or B. However, it was technically impossible to carry out a re-examination, because the Weapons Section was no longer in possession of the test bullets used in the original examination. Accordingly, by a final decision of 10 June 2011 the Supreme Court refused to order a re-examination of bullet VS 3.1. The applicants' request for a review of that decision was refused by the Supreme Court on 4 August 2011.

35. By judgment of 30 November 2011 the Supreme Court unanimously found against the applicants, and stated in so far as relevant the following:

> "*Yardstick to be applied in the assessment of the course of events*
>
> By virtue of section 1020 a, subsection 2, of the Administration of Justice Act, the Regional State Prosecutor must initiate an investigation when a person dies due to the intervention of the police. The deceased were unarmed when they were shot at by the police, and it is therefore decisive for the assessment, whether it was absolutely necessary to use firearms as was the case. It is not for the authorities to prove that there has been no breach of Article 2 of the Convention (see, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 113, ECHR 2001-III (extracts)), but a satisfactory and plausible explanation regarding the necessity is required by the authorities (ibid., § 124).
>
> *The shooting*
>
> The Regional State Prosecutor's investigation under section 1020 a, subsection 2, of the Administration of Justice Act, took place in accordance with section 1020 b, subsection 2, with the assistance of the National Commissioner of Police, including Department A, the Criminal Technical Department. [The latter] expressed as to the

examination of bullet VS 3.1, that the bullet was rather damaged and thus had a low identification value. The Department has concluded that it must be considered probable that the bullet was fired from F's pistol, and that the same specific scratch traces were not found in B's pistol. [The applicants] have not criticised the way in which this examination was carried out. The Supreme Court does not find reason to criticise the investigation on this point. Moreover, the Supreme Court finds that by virtue of the examination carried out by the Criminal Technical Department it is sufficiently clarified from which pistol bullet VS 3.1 was fired, and thus that there is no need to carry out yet another technical expert examination.

The Supreme Court confirms that it can be found established, after the production of evidence, that both the shot that killed L as driver of the green Jeep, and the shot that killed C as driver of the black Mercedes, were fired by police officer F. For the reasons submitted by the High Court, the Supreme Court confirms that both shots were fired in an act of self-defence covered by Article 13 (1) of the Penal Code, and that the criteria set out by the Court of Human Rights for impunity in respect of the use of firearms under Article 2 § 2 are fulfilled.

After the submission of evidence, the Supreme Court confirms that the shot that went through the right front side window of the green Jeep was fired by B. For the reasons set out by the High Court, the Supreme Court confirms that there is no basis for dismissing B's explanation that the shot was fired unintentionally. Accordingly, in relation to D, it is confirmed that this shot did not entail a violation of Articles 2 and 3 of the Convention, and that the shot does not incur liability for the Police Commissioner for Eastern Jutland.

For the reasons set out by the High Court, there is no basis for D to claim compensation.

The investigation under section 1020 a

The Supreme Court agrees with the High Court that the possibility alone that for a few hours the police officers were able to agree on their statements, before being interviewed by the Regional State Prosecutor, is unfortunate. However, having made an overall assessment, the Supreme Court does not find grounds for concluding that as a consequence thereof, the examination by the Regional State Prosecutor was unsuited to clarify the question of whether criminal proceedings should be initiated against the police officers, including whether the force used had been in breach of Article 2 of the Convention.

With this remark, and for the reasons set out by the High Court, the Supreme Court confirms that there has been no breach of the Convention relating to the investigation carried out by virtue of section 1020 a of the Administration of Justice Act. For those reasons the Ministry of Justice and the Director of Public Prosecutions have not incurred liability in connection with the investigation.

Concluding result

Against this background the Supreme Court upholds the judgment by the High Court

Legal costs

The Supreme Court finds that there are such particular circumstances, that the appellants shall not pay legal costs to the defendants ..."

B. Relevant domestic law

36. Article 63, section 1, of the Constitution (*Grundloven*) reads as follows:

> "The courts of justice shall be empowered to decide any question relating to the scope of the executives' authority; though any person wishing to question such authority shall not, by taking the case to the courts of justice, avoid temporary compliance with orders given by the executive authority."

The basic principle of the provision is that courts can make a judicial review of, for example, the legal basis of administrative decisions, the competence of the authority and the observance of formal rules, but not the exercise of administrative discretion. Thus, the courts do not have the power to review a decision made by the prosecution as to whether or not to bring charges in a criminal case. That was confirmed in a judgment of 4 October 1973, in which the Supreme Court refused an action instituted before the courts by an individual against the Ministry of Justice and a commissioner of police concerning the institution of criminal proceedings (weekly Law Report for 1973, p. 897 (U.1973.897H). Moreover, by virtue of section 975 of the Administration of Justice Act (*Retsplejeloven*), when the prosecution has decided not to bring charges in a criminal case, the latter can only be reopened if at a later stage new evidence of significant weight emerges.

37. In 2002, the rules governing complaints against police officers were to be found in the Administration of Justice Act. The provisions in Part 93c about criminal cases against police officers set out, in so far as relevant:

1020

> "Information on criminal offences committed by police officers while on duty must be laid with the relevant Regional Public Prosecutor *(statsadvokat).*

1020a

> 1. The Regional State Prosecutors shall set in motion an investigation either on the basis of a report or on their own initiative where there is a reasonable ground for believing that police personnel on duty have committed a criminal offence which is subject to public prosecution.
>
> 2. Moreover, the Regional State Prosecutors shall set in motion an investigation, when a person dies or is seriously injured due to the intervention of the police, or while the person was in the care of the police ...

1020b

> 1. When considering the cases referred to in sections I020 and I020a, the Regional Public Prosecutors may exercise the powers otherwise granted to the police.
>
> 2. The National Commissioner of Police shall provide assistance for the investigation to the Regional Public Prosecutors upon request.

3. The police may, on their own initiative, carry out urgent investigative measures. The police shall notify the relevant Regional Public Prosecutor of such investigative measures as soon as possible."

38. The provisions in Part 93d about the Police Complaints Board set out as follows:

1021

"1. A police complaints board (*politiklagenævn*) is composed of an attorney-at-law as chairman and two lay persons appointed by the Minister of Justice for a period of four years reckoned from any 1 January. Members can be re-appointed once.

2. The attorney-at-law is appointed upon nomination by the Council of the Danish Bar and Law Society (*Advokatrådet*), four persons being nominated for each office, two of whom must be female and two male.

3. The lay persons are appointed upon nomination by the county councils, Copenhagen City Council and Frederiksberg City Council, each council nominating six persons residing in the relevant county or municipality, three of whom must be female and three male.

4. The lay persons cannot be members of a local or county council or of Parliament while members of a police complaints board. The provision of section 70 otherwise applies correspondingly.

5. The attorney-at-law must be established, and the lay persons must reside in, the district of the relevant police complaints board.

6. A person turning 70 years of age within the period referred to in the first sentence of subsection 1 cannot be appointed a member.

7. The Minister of Justice shall appoint a substitute for each member among the persons nominated pursuant to subsections 2 and 3 and under the same rules as the member in question.

8. The Minister of Justice shall lay down detailed rules on the number of police complaints boards and the distribution of complaints among them, and on the nomination of members and their remuneration.

1021a

1. The Regional Public Prosecutor shall promptly notify the police complaints board of complaints and information to be considered under Part 93b or Part 93c.

2. The police complaints board may indicate to the Regional Public Prosecutor that, according to the board, an inquiry should be commenced under the rules of Part 93b or an investigation under the rules of Part 93c.

1021b

1. Copies of the material procured by the Regional Public Prosecutor in connection with the inquiry of the cases referred to in Part 93b and the investigation of cases referred to in Part 93c must be sent to the police complaints board on a regular basis. The police complaints board may not surrender the material received to anybody else without the consent of the Regional Public Prosecutor.

2. The Regional Public Prosecutor shall otherwise inform the police complaints board on a regular basis of all material decisions made in connection with the inquiry or investigation.

102Ic

1. The police complaints board may request the Regional Public Prosecutor to take specific additional inquiry or investigative measures.

2. If, in a case that is being considered under Part 93c, the person charged or the Regional Public Prosecutor objects to the board's request for additional investigative measures, such request must be submitted to the court for decision. Section 694, subsection 2, applies correspondingly. Upon request, court decisions must be made by order.

102ld

The Regional Public Prosecutor must make a report to the police complaints board about the outcome of the inquiry performed under Part 93b or the investigation performed under Part 93c. The report must contain a review of the course of the inquiry or investigation and the actual circumstances of importance to the decision in the case, as well as an assessment of the weight of the evidence brought forth. The report must state how the case should be decided according to the Regional Public Prosecutor.

1021e

1. The police complaints board shall inform the Regional Public Prosecutor how cases conducted under Part 93b or Part 93c should be decided according to the board.

2. The decision must state whether it is in conformity with the opinion of the police complaints board.

3. The decision must be forwarded to the person who filed the complaint or provided the information.

102lf

1. The police complaints board can appeal against the Regional Public Prosecutor's decision to the Director of Public Prosecutions. The decision of the Director of Public Prosecutions on an appeal cannot be appealed against to the Minister of Justice.

2. The time-limit for appeals under subsection (1) is four weeks after the police complaints board has received notification of the decision. If the appeal is lodged after expiry of this time-limit, the appeal must be heard if the failure to observe the time-limit may be considered excusable.

..."

39. In the investigation under section 1020 a, subsection 2, of the Administration of Justice Act, the Regional State Prosecutor was assisted by the National Commissioner of Police (section 1020 b, subsection 2). The Regional Public Prosecutor promptly notified the Police Complaints Board, consisting of a lawyer as chairman and two laymen, of complaints and information to be considered under the provisions or Part 93b or Part 93c,

section 1021a, of the Administration of Justice Act. The Regional State Prosecutor's report and decision as to whether or not to initiate criminal proceedings against the police officers had to be reasoned and include an account of the investigation, the events of the case, and an assessment of the evidence procured. Subsequently the report and the decision were submitted to the Police Complaints Board. The Board could ask the Regional State Prosecutor to carry out further specific investigation measures and if the latter opposed such measures, the matter would be brought before the courts for a decision (section 1021 c). The Board also submitted its opinion on the Regional State Prosecutor's final decision as to whether or not to initiate criminal proceedings against the police officers (section 1021 e). Both the Board (section 1021 f) and the complainants could bring the Regional State Prosecutor's decision before the Director of Public Prosecutions (*Rigsadvokaten*). A decision by the latter could not be appealed against to a superior administrative body. The above procedure was amended by Act no. 404 of 21 April 2010 in force as from 1 January 2012.

40. Article 13 of the Penal Code (*Straffeloven*), placed under Chapter 3, entitled "conditions regarding criminal liability", read as follows:

> "1. Acts committed in self-defence are not punishable if they are necessary to resist or avert an unlawful attack that has begun or is imminent, provided that such acts do not manifestly exceed what is reasonable with regard to the danger inherent in the attack, the character of the aggressor and the social importance of the interests endangered by the attack.
>
> 2. Any person who exceeds the limits of lawful self-defence shall not be liable to punishment if his act could reasonably be attributed to the fear or excitement produced by the attack.
>
> 3. Similar rules shall apply to acts necessary to enforce lawful orders in a lawful manner, to carry out a lawful arrest, or to prevent the escape of a prisoner or a person committed to an institution. "

COMPLAINTS

41. The applicants complained under Articles 2 and 3 that the use of force by the police had not been absolutely necessary and that the subsequent investigation had failed to meet the applicable standards. They also complained under Article 13 about the outcome of the domestic proceedings and alleged shortcomings during the investigation. In particular, as to the substantive aspect, they complained that the fatal shooting by the police officers had not been an act of self-defence as presumed by the authorities, that the domestic authorities' evaluation of the facts and assessment of the incident had been wrong, and that the authorities had been uncritical when they relied on the police officers' explanation. With regard to the procedural aspect they complained that in general the

investigation had been insufficient and that criminal proceedings had not been initiated against the relevant police officers. The first applicant also complained that the Supreme Court should have allowed a renewed ballistic examination of the bullet called VS 3.1. Moreover, he complained that he had had belated access to the documents of the investigation.

THE LAW

42. The applicants relied on Articles 2 and 3 of the Convention. The Court, being master of the characterisation to be given in law to the facts of the case, finds it more appropriate to deal with the complaints raised under Article 3 in the context of its examination of the related complaints under Article 2, since in relation to the third and the fourth applicants, the risk posed by the use of firearms to shoot at the cars in which they were passengers calls for examination of their complaints under Article 2 of the Convention (see, for example, *Haász and Szabó v. Hungary*, nos. 11327/14 and 11613/14, §§ 43-48, 13 October 2015).

43. Moreover, since the applicants' complaints under Article 13 concern the outcome of the domestic proceedings and alleged shortcomings during the investigation, and do not include a complaint of lack of a remedy against the State to enforce the substance of a Convention right or freedom at the national level, the Court will also consider these complaints under Article 2 of the Convention.

PRELIMINARY OBJECTION

A. The parties' submissions

44. The Government submitted that the applicants had failed to comply with the six-month rule.

45. They pointed out that the final decision on the substantive assessment of whether the applicants' right to life, enshrined in Article 2 of the Convention, had been violated was taken on 30 June 2004 when the Director of Public Prosecutions agreed with the decision by the Regional State Prosecutor to discontinue the investigation. The review by the Director of Public Prosecutions was an effective remedy within the meaning of Article 13 of the Convention and the subsequent civil action for damages brought by the applicants before the Danish courts was irrelevant to ensuring the identification and punishment of those responsible. Such an action could only lead to pecuniary compensation for a violation of the Convention. Thus, since the applicants had lodged their application with the Court on 15 May 2012, it had been submitted out of time. The Government

referred to, *inter alia*, *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 221-223, 227 and 234, ECHR 2014 (extracts); *Salman v. Turkey* [GC], no. 21986/93, §§ 83-88, ECHR 2000-VII; *İlhan v. Turkey* [GC], no. 22277/93, §§ 61-62, ECHR 2000-VII; and *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 161, *Reports of Judgments and Decisions* 1997-VI.

46. The applicants disagreed and maintained that they would not have been able to make a meaningful and substantiated complaint to the Court if they had not availed themselves of the use of the civil remedy. They pointed out that police officers F and B were never formally charged and that the prosecution may therefore at any time reopen the investigation. Thus if, in the civil proceedings, the domestic courts had found a violation, the authorities would have been obliged to reopen the investigation, which would possibly have led to a criminal trial against the police officers concerned. Moreover, it was only when they initiated civil proceedings that they were afforded access to the investigation and could force the authorities to perform further investigative steps. They were able to examine witnesses and discover, for example, that the police officers had discussed the events of the case before being interviewed by the Regional Prosecutor.

47. The applicants also submitted that, in general, it cannot be said that civil proceedings are ineffective in cases concerning lack of effective investigation into alleged unlawful use of force by state agents. The Convention case-law merely states that applicants are not forced to bring civil proceedings (see, for example *Assenov and Others v. Bulgaria*, 28 October 1998, § 86, *Reports of Judgments and Decisions* 1998-VIII). Where applicants have made use of a civil remedy, case-law suggests that this does not entail that applications are lodged out of time (see, *inter alia*, *Razzakov v. Russia*, no. 57519/09, § 53, 5 February 2015; *Petrović v. Serbia*, no. 40485/08, § 81, 15 July 2014; *Finogenov and Others v Russia* (dec.), nos. 18299/03 and 27311/03, § 199, 18 March 2010; *Nikolova and Velichkova v. Bulgaria* (dec.), no. 7888/03, 13 March 2007; and *Caraher v. the United Kingdom* (dec.), no 24520/94, 11 January 2000; and *Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32).

B. The Court's assessment

1. The general principles

48. The Court reiterates its established case-law pertaining to the requirements of exhaustion of domestic remedies and the six-month period, which are closely intertwined.

49. In respect of the requirements of exhaustion of domestic remedies, (see, *inter alia*, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-72, 25 March 2014), States are dispensed from answering before an international body for their acts before

they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system. It should be emphasised that the Court is not a court of first instance. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies.

50. In respect of the six-month rule the Court reiterates that it has a number of aims (see, among others, *Mocanu and Others v. Romania* [GC], (cited above), §§ 258-259). Its primary purpose is to maintain legal certainty by ensuring that cases raising issues under the Convention are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time. That rule marks out the temporal limit of the supervision exercised by the Court and signals, both to individuals and State authorities, the period beyond which such supervision is no longer possible. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant.

51. In cases where State agents intentionally have used lethal force, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures. Civil proceedings, which are undertaken on the initiative of the next-of-kin, not the authorities, and which do not involve the identification or punishment of any alleged perpetrator, cannot be taken into account in the assessment of the State's compliance with its procedural obligations under Article 2 of the Convention (see, for example, *Jaloud v. the Netherlands* [GC], no. 47708/08, § 186, ECHR 2014 and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 165, ECHR 2011). However, in cases where the authorities may not necessarily be aware of an allegation that State agents intentionally have used lethal

force, the lodging of a formal criminal complaint aimed at the prosecuting authorities of the respondent State to identify and punish the perpetrators is, in principle, considered an effective remedy, which should be used (see, *inter alia*, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §140, ECHR 2012; *Feti Demirtaş v. Turkey, no.* § 82, 17 January 2012; and *Mikheyev v. Russia*, no. 77617/01, § 86, 26 January 2006).

52. The Court also reiterates that in the area of unlawful use of force by State agents - and not mere fault, omission or negligence - civil or administrative proceedings aimed solely at awarding damages, rather than ensuring the identification and punishment of those responsible, are not considered adequate and effective remedies capable of providing redress for complaints based on the substantive aspect of Articles 2 and 3 of the Convention (see, *inter alia*, *Mocanu and Others v. Romania* [GC], (cited above), § 227; *Grămadă v. Romania, no.* 14974/09, § 75, 11 February 2014; *Musayeva and Others v. Russia*, no. 74239/01, § 135, 26 July 2007; *Gül v. Turkey, no.* 22676/93, § 57, 14 December 2000; and *İlhan v. Turkey* [GC], cited above, §§ 61-62).

53. The Contracting Parties' obligation under Articles 2 and 3 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of assault could be rendered illusory if, in respect of complaints under those Articles, an applicant were required to bring an action leading only to an award of damages (see, for example, *Mocanu and Others v. Romania* [GC], (cited above), § 234; *İlhan v. Turkey* [GC], (cited above) idem); *Salman v. Turkey* [GC], (cited above), §§ 83-88, ECHR 2000-VII; and *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 149, 24 February 2005).

54. There is no right, however, to obtain a prosecution or conviction (see, *inter alia*, *Szula v. the United Kingdom*, (dec.) no. 18727/06, 4 January 2007) and the fact that an investigation ends without concrete, or with only limited, results is not indicative of any failings as such. The obligation is of means only, not result (see, among others, *Gürtekin and Others v. Cyprus* (dec), no. 60441/13, 11 March 2014, and *Avşar v. Turkey*, no. 25657/94, § 394, ECHR 2001-VII (extracts)).

2. Application of those principles to the present case

55. In the present case, the Regional State Prosecutor was informed about the fatal incident, and the identities of F and B, at 3.20 a.m., thus one hour after F and B had fired their weapons. Immediately thereafter, on his own motion, with the assistance of a special police unit, the Regional State Prosecutor initiated a criminal investigation with a view to establishing the facts and to punishing those possibly responsible.

56. The applicants have not disputed that the criminal investigation carried out by the Regional State Prosecutor was independent, that it was supervised by the Police Complaints Board and the Director of Public Prosecutions, and that it was *per se* a remedy which could have led to the identification and punishment of those responsible. Nor is it contested that the decision by the Director of Public Prosecutions not to institute criminal proceedings was final. Moreover, although the criminal investigations did not lead to prosecution, the applicants have not disputed that this remedy could be considered effective within the meaning of Article 35 § 1 of the Convention. The Court finds no reason to conclude otherwise.

57. The crucial question is therefore whether the subsequent civil proceedings before the courts, which had full jurisdiction to determine whether the disputed account of events and the investigation were compatible with Article 2 and 3 of the Convention, were also an effective remedy within the meaning of Article 35 § 1, which the applicants, in the specific circumstances of the case, had to exhaust and which should therefore be taken into account for the purposes of the six-month time-limit.

58. The applicants in the present case were unsuccessful in the civil proceedings initiated by them. In principle, therefore, they can still claim to be victims of a violation of Article 2 of the Convention before this Court.

59. They maintained, and maintain, that the State agents' use of firearms, resulting in the death of L and C, and endangering the life of others, was unlawful and not absolutely necessary, and therefore in breach of Article 2 of the Convention.

60. The Court notes that if the Public Prosecution, after having completed their investigation, had been of the same opinion as the applicants, this would have resulted in an indictment against F and B with a view to establishing their liability in criminal proceedings. As stated above, it is not in dispute that the criminal investigation was an effective remedy.

61. Turning to the ensuing civil proceedings, the Court observes that the applicants claimed compensation for damage. It was not the purpose of the civil proceedings to review the decision by the Public Prosecution to discontinue the investigation against F and B. On the contrary, the civil proceedings aimed solely at awarding damages for acts, for which no criminal liability had been established.

62. Accordingly, since the civil proceedings could only have resulted in the granting of compensation, those proceedings cannot be said to be an effective remedy which must be exhausted in a case about the allegedly unlawful, lethal or potentially lethal, use of force in breach of Article 2 of the Convention.

63. Consequently, the subsequent civil proceedings were not an adequate and effective remedy within the meaning of Article 35 § 1, which the applicants had to exhaust and which should therefore be taken into account for the purposes of the six-month time-limit. Accordingly, the application, which was lodged on 15 May 2012, has been lodged out of time.

64. For the sake of completeness, however, the Court will also address the applicants' claim that the civil proceedings were necessary for making a meaningful and substantiated complaint to the Court.

65. In this respect, firstly, the applicants pointed out that since police officers F and B were never formally charged, the prosecution may at any time reopen the investigation. Thus, had the civil courts found a violation of Article 2, the authorities would have been obliged to reopen the investigation, which would possibly have led to a criminal trial against the police officers concerned.

66. The Court notes in this respect that the criminal investigation commenced on the day of the events, namely on 29 December 2001, and police officers F and B were immediately identified. The investigation was carried out by the Regional State Prosecutor, who gave his first account of the events and an assessment of the evidence in his statement of 15 March 2002. The statement, which ran to 40 pages, was submitted to the Police Complaints Board for an opinion. The latter did not oppose the statement of facts as found established by the Regional State Prosecutor, nor did it request that further specific investigation measures be carried out by him. However, the Board found in respect of the fatal shot fired by F at C that Article 13 of the Penal Code on self-defence had been interpreted so widely that the decision, for the sake of all concerned, ought to be taken by the courts. On 25 June 2002 the Director of Public Prosecutions upheld the decision not to initiate criminal proceedings against F and B, since he agreed with the account of events and the assessment of the evidence procured.

67. Having reopened the proceedings *ex proprio motu*, notably in order to accommodate criticism of the expert opinion of 14 January 2002 procured by the Weapons Section of the Criminal Technical Department, and to obtain a new expert opinion from that Department, on 26 May 2003 the Regional State Prosecutor submitted a supplementary statement. In this statement he changed his account of the events on two points: 1) it had been B, and not F, who had fired the bullet which had not hit anybody through the front window of the green Jeep, and 2) it had to be F, and not B, who had later fired a shot at the right front tyre of the black Mercedes. He regretted that the information had not been clear about these two shots. In conclusion, again he proposed to the Police Complaints Board that criminal proceedings against the police officers should not be initiated as he still found that the lethal force for which they were responsible had been

justified self-defence. On 11 June 2003, the Police Complaints Board agreed with the Regional State Prosecutor's new version of events, but maintained that criminal proceedings should be initiated against F for the fatal shot fired at C, in order to have a decision by the courts as to the extent of self-defence covered by Article 13 of the Penal Code. On appeal, on 30 June 2004 the Director of Public Prosecutions again upheld the decision not to initiate criminal proceedings against F and B, since he agreed with the account of events and the assessment of the evidence procured. His statement in support thereof ran to 23 pages.

68. Accordingly, the Regional State Prosecutor's account of the events and assessment of the evidence was supervised by both the Police Complaints Board and the Director of Public Prosecutions. Neither the initial investigation against F and B, nor the reopened investigation led to criminal proceedings being initiated against them since it was found that the lethal force used, for which they were responsible, had been justified self-defence.

69. In these circumstances, the Court is not convinced that instituting subsequent civil proceedings would, in general, increase the possibility of the courts finding a violation of Article 2 of the Convention, which would lead to a reopening of the investigation, which could lead to criminal proceedings being instituted. Moreover, with the wisdom of hindsight, the Court observes that in the present case the civil proceedings were initiated on 23 December 2006 (and 19 November 2007), more than two years after the final decision of 30 June 2004 by the Director of Public Prosecutions; that in the meantime no new decisive evidence had been discovered; and that although the courts had full jurisdiction to determine whether the disputed account of events and the investigation were compatible with Articles 2 and 3 of the Convention, both the High Court and the Supreme Court, unanimously, found against the applicants.

70. Secondly, the applicants maintained that only due to the civil proceedings could they be involved in the investigation and examine witnesses and force the authorities to perform further investigative steps.

71. The Court reiterates, as concerns the accessibility of an investigation to the families and the existence of sufficient public scrutiny, that this aspect of the procedural obligation does not require applicants to have access to police files, or copies of all documents during an ongoing inquiry, or that they be consulted or informed about every step (see, for example, *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 236, ECHR 2016; *Soare and Others v. Romania*, no. 24329/02, § 174, 22 February 2011, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 347, ECHR 2007-II, and *Brecknell v. the United Kingdom*, cited above § 77). Moreover, in the present case the applicants were granted access to the material in 2002, as soon as the charges against the second and the third applicants (and P and T) for aiding and abetting attempted murder were dropped, and they

received all the decisions by the Regional State Prosecutor and the Director of Public Prosecutions, including replies to their numerous questions (see paragraphs 16, 22 and 23 above).

72. Furthermore, before the Court, the applicants have not pointed to any obstructiveness or obfuscation deployed by the authorities during the investigation or to other elements which could indicate that they were excluded from the investigative process to such a degree as would infringe the minimum standard under Article 2 (see, *inter alia*, *Ramsahai and Others v. the Netherlands*, cited above, § 349).

73. Finally, the applicants submitted that it was only during the civil proceedings that they discovered that the police officers had discussed the events of the case before being interviewed by the Regional Prosecutor.

74. The Court points out that during the civil proceedings both the High Court and the Supreme Court *ex propio motu* noted that F and B had been interviewed by the Regional State Prosecutor a few hours after the shooting incident, namely at 6.55 and 9.15 a.m. Since they were both at the police station, they had the opportunity to agree on their statements while awaiting the interview, and in fact they did confirm that they discussed the case while waiting. The High Court stated in this respect that the possibility alone that they could have agreed on their explanations was unfortunate and capable of reducing public confidence in the investigation but was, pursuant to paragraph 330 of *Ramsahai and Others v. the Netherlands* (cited above) not sufficient to find a breach of the Convention. Having made an overall assessment, the Supreme Court endorsed that finding and did not find that this element gave reason to establish that the Regional State Prosecutor's investigation had been inadequate for assessing whether a criminal prosecution should have been initiated against the police officers, including whether the force used had been in breach of Article 2 of the Convention.

75. The Court observes that there is no indication that this fact was concealed by the Regional State Prosecutor during the criminal investigation or could not have been discovered without the applicants having initiated subsequent civil proceedings. There is no indication, either, that F and B did agree on their statements. More importantly, though, despite having learnt during the civil proceedings that F and B had discussed the events of the case before being interviewed by the Regional Prosecutor, the applicants did not raise this point in their initial application before the Court.

76. In conclusion, as stated above, the application has been lodged out of time and must be rejected under Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 1 September 2016.

Stanley Naismith
Registrar

Julia Laffranque
President