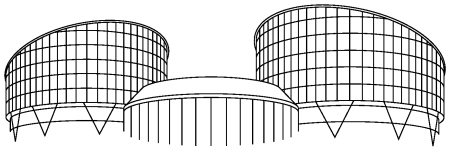

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF RANĐELOVIĆ AND OTHERS v. MONTENEGRO

(Application no. 66641/10)

JUDGMENT

STRASBOURG

19 September 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ranđelović and Others v. Montenegro,

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

Robert Spano, *President,*
Julia Laffranque,
Işıl Karakaş,
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Stéphanie Mourou-Vikström, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 29 August 2017,

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

PROCEDURE

1. The case originated in an application (no. 66641/10) against Montenegro lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by thirteen Serbian nationals, one of whom is also a national of the Former Yugoslav Republic of Macedonia, on 23 March 2011. Further personal details of the applicants are set out in the appendix.

2. All the applicants were initially represented by Mr Vladan Stanojević, Director of the Roma Centre for Strategy, Development and Democracy (hereinafter "the Roma Centre"). The eleventh applicant subsequently authorised Ms S. Bulatović, a lawyer practising in Podgorica, to represent her. The Montenegrin Government ("the Government") were initially represented by their Agent at the time, Mr Z. Pažin, and subsequently by their newly appointed Agent, Ms V. Pavličić. The Serbian Government, who had made use of their right to intervene under Article 36 of the Convention, were represented by their Agent, Ms N. Plavšić.

3. Notified under Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court of their right to intervene in the present case, the Government of the Former Yugoslav Republic of Macedonia expressed no wish to do so.

4. The applicants alleged, in particular, that there had not been a prompt and effective investigation into the deaths and/or disappearances of their family members and that those responsible had not been brought to justice.

5. On 5 February 2014 the complaint concerning the failure of the relevant Montenegrin bodies to promptly and effectively investigate the deaths and/or disappearances of the applicants' family members and prosecute those responsible was communicated to the Montenegrin

Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. The parties were duly informed. The remainder of the application included a general complaint of mass murders and human trafficking of, *inter alia*, Roma and their deportations, detention and arrests, which was declared inadmissible as unsubstantiated.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are the next-of-kin of several Roma who died or disappeared in the circumstances described below.

A. Incident at sea and the ensuing investigation and criminal proceedings

7. On the night of 15 August 1999 around seventy Roma boarded the boat "Miss Pat" on the Montenegrin coast with the intention of reaching Italy. A few hours later the boat sank owing to the large number of passengers.

8. By 30 August 1999 one of the passengers had been found alive on the Montenegrin shore, and thirty-five bodies had been found in the sea, thirteen of which were identified by their relatives. The forensic specialists who had performed autopsies on the bodies by 30 August 1999 stated that the cause of death could not be established with certainty on the basis of autopsies alone. In their opinion, however, the cause of death was drowning.

9. On 1 September 1999 the Court of First Instance (*Osnovni sud*) in Bar initiated a formal judicial investigation (*rješenje o sprovođenju istrage*) against seven individuals on suspicion of illegally crossing the State border in connection with reckless endangerment.

10. By 21 October 1999 the investigating judge had (a) questioned two suspects who were available to the authorities at the time, as well as thirty other individuals in relation to the incident, including the eleventh applicant; (b) requested that some other witnesses be questioned by the relevant authorities in Serbia; and (c) asked for the autopsy reports, an expert opinion on the capacity of the boat and a report on the weather conditions on the night of the incident. The eleventh applicant was questioned on 10 September 1999. She stated that she had been living with her brother and sister-in-law and their children in Kosovo, but that her brother and sister-in-law had decided to go to Montenegro. They had not called her from Podgorica or mentioned that they had intended to go to Italy. She also stated

that she had not recognised them amongst the bodies found, but had recognised her brother's arm in one of the photographs shown to her during questioning. Being illiterate, she had "signed" the minutes of the hearing by giving a fingerprint.

11. On 21 October 1999 the State prosecutor in Bar lodged an indictment with the Court of First Instance in Bar against the seven suspects.

12. On 29 October 1999 the court decided that it lacked territorial competence to deal with the case and transferred it to the Court of First Instance in Kotor. On 6 December 1999 the High Court (*Viši sud*) in Podgorica declared that the court in Bar was territorially competent to process the case and the case was returned.

13. By the end of 2002 the court in Bar had decided that two defendants still at large would be tried in their absence and appointed representatives for them. The remaining five defendants appeared before the court.

14. Between 25 December 2002 and 24 September 2003 ten trial hearings (*glavni pretres*) were scheduled, five of which took place. Four were adjourned because some of the defence lawyers, defendants, witnesses and an interpreter did not attend court; there is no information in the case file about one of the hearings. During the hearings that did take place, the court questioned four defendants and eleven witnesses.

15. On 24 September 2003 the court decided to recommence the trial hearing due to the passage of time. By 14 April 2004 ten hearings had been scheduled, six of which took place. Four were adjourned because one of the defence lawyers and some of the witnesses did not attend court. During the hearings that did take place, the court read out the indictment again, questioned four defendants and sixteen witnesses, including the eleventh applicant, and read out the earlier statements made by the witnesses; the fifth defendant chose to remain silent. The eleventh applicant was heard on 8 October 2003. She stated that she had come to Podgorica with her brother and his family and had had no idea that her brother and his wife had intended to go to Italy. When asked to explain the differences between that and her previous statement of 10 September 1999, she stated that she was certain that they had all been together since they had all been living together in one tent. She also confirmed that she was illiterate.

16. On 14 April 2004 the Supreme State Prosecutor (*Vrhovni državni tužilac*) in Podgorica instructed the State prosecutor in Bar to specify the indictment in terms of the facts and legal classification of the criminal offences, after which the court in Bar would declare that it lacked competence to deal with the case and would transfer it to the High Court in Podgorica (hereinafter "the High Court"), as the competent court to deal with it. Accordingly, the indictment was amended and the case file transferred to the High State Prosecutor (*Viši državni tužilac*) and the High Court.

17. On 26 May 2004 the High State Prosecutor requested that an investigation be opened (*zahtjev za sprovođenje istrage*) against the same seven people and another individual, Z, on suspicion of committing reckless endangerment.

18. By 20 October 2004 the High Court had questioned four of the defendants, while the fifth had chosen to remain silent. It also ordered that the remaining three defendants be brought before the court.

19. On 11 November 2004 an investigating judge of the High Court decided to initiate a formal judicial investigation against the eight individuals, a decision which was upheld by the High Court on 25 November 2004.

20. On 25 February 2006 the High State Prosecutor urged the investigating judge to finish the investigation.

21. On 28 March 2006 an expert witness issued an opinion on the capacity of the boat.

22. On 31 October 2006 the High State Prosecutor charged eight defendants with reckless endangerment under Article 338 § 2 in connection with Article 327 §§ 1 and 3 of the Criminal Code (see paragraphs 43-44 below).

23. Between 24 and 28 November 2006 the indictment was served on four of the defendants.

24. On 15 January 2007 the president of the chamber informed the president of the High Court that a trial hearing could not be scheduled yet as the indictment had not yet been served on all the defendants.

25. By 15 February 2008 the High Court had issued a national arrest warrant (*potjernica*) against one of the defendants, and had attempted to serve one on the other three, one of whom was in detention in Podgorica at the time. The other two were based in Serbia and Bosnia and Herzegovina respectively.

26. On 3 April 2008 the High Court rejected the indictment against Z (the defendant based in Serbia), a decision which was upheld by the Court of Appeal on 26 May 2008.

27. By 28 September 2009 the High Court had decided that the two defendants at large, one of whom was based in Bosnia and Herzegovina, would be tried in their absence.

28. At the first trial hearing on 28 September 2009 one of the defendants, X, stated that he was illiterate and did not understand the indictment. At the request of his lawyer the hearing was adjourned until further notice, so that the indictment could be translated into Romani. By 31 October 2009 the translation of the indictment into Romani had become available.

29. In the course of 2010 seven hearings were scheduled. One was held on 8 October 2010, during which the indictment was read out and four defendants were heard, the fifth having chosen to remain silent. Six hearings

scheduled for 5 February, 29 April, 4 June, 2 July, 17 November and 17 December 2010 were adjourned because some of the defendants, defence lawyers, the interpreter for Romani and a witness did not attend court.

30. On 25 January 2011 another judge of the High Court took over the case. In the course of 2011 eight hearings were scheduled, seven of which were adjourned: (a) three because there was no permanent court interpreter for Romani; (b) two because the defence lawyers and witnesses did not attend court; (c) one because one defendant and several defence lawyers did not attend court and an interpreter had not yet been appointed; and (d) one because of changes to the Criminal Procedure Code, which made the relevant court panel incomplete. One hearing was held on 21 November 2011, during which four defendants were heard and their earlier defence statements made in 1999, 2003, 2004 and 2010 read out. The fifth defendant chose to remain silent.

31. In the course of 2012 seven hearings were scheduled, two of which were adjourned because one defendant, a defence lawyer, some of the witnesses, including the seventh applicant, and/or the interpreter did not attend court. Five hearings were held, two of which by 24 September 2012, when several witnesses were heard. On 24 September 2012 the trial hearing was recommenced due to "the passage of more than three months". During that hearing and the subsequent two hearings four defendants and several witnesses were heard again, and a number of written documents were read out, including the indictment, the defendants' earlier statements and witness statements from 1999, 2003 and 2012, reports by the Kotor and Budva police directorates (*odjeljenja bezbjednosti*), as well as information provided by the Radio and Television of Montenegro and the Bar Public Information Centre. The fifth defendant remained silent.

32. In the course of 2013 nine hearings were scheduled, five of which were adjourned because one of the defendants, two lawyers, an expert witness, a judge, and/or the interpreter did not attend. The lawyers were fined 500 euros (EUR) for their unjustified absence. By 18 December 2013 three hearings had been held, during which one expert witness was heard, and a number of other pieces of documentary evidence were read out, such as an earlier statement of another expert witness, earlier statements of other witnesses from 1999, 2003 and 2004, including the statements of the eleventh applicant, autopsy reports and reports from the Port of Bar of 1995 and 1998 relating to the boat. On 18 December 2013 the trial hearing was recommenced due to the passage of time. Four defendants and one of the expert witnesses were heard and their earlier statements read out.

33. In the course of 2014 five hearings were scheduled, two of which were adjourned because the interpreter and one of the expert witnesses did not attend court and because one defendant was justifiably absent. By 4 June 2014 one hearing had been held, at which earlier statements of witnesses, including the eleventh applicant's statements, official reports,

autopsy reports and experts witness statements were read out. On 4 June 2014 the trial hearing was recommenced due to the passage of time. At that and the subsequent hearing held in 2014 the court read out the indictment, the defendants' earlier statements and some witness statements, including the eleventh applicant's, as well as other written evidence. One of the witnesses was also heard.

34. On 24 July 2014 the High Court acquitted all the accused for lack of evidence. On 10 November 2014 the High State Prosecutor appealed against that judgment. There is no information in the case file as to the outcome of the appeal.

B. The Ombudsman's involvement

35. On an unspecified date prior to 7 December 2009 the Roma Centre complained to the Ombudsman, asking for the criminal proceedings to be expedited and the responsible persons punished, as well as for a DNA analysis of the bodies which had been buried.

36. On 7 December 2009 the Ombudsman issued a report in this regard noting, in substance, that the investigation had lasted for more than seven years and that ten years after the impugned event the criminal proceedings had not yet been terminated, which was unjustified. He recommended that the High Court undertake all necessary steps to terminate the proceedings as soon as possible.

37. On 21 December 2010 the Ombudsman enquired what had been done in the meantime. The judge in charge informed him of the hearings scheduled between October and December 2010.

C. Other relevant facts

38. On 19 August 1999 the only surviving passenger was found guilty of boarding the boat on 16 August 1999 with the intention of illegally crossing the border to Italy and was fined by the Misdemeanour Court (*Sud za prekršaje*) in Kotor.

39. In the course of 2002 a number of family members of those who had disappeared, two of them applicants in the present case, urged that the proceedings at issue be expedited. Some of them claimed that their next-of-kins were alive but had been trafficked. It appears that some others also hoped that their family members might still be alive.

40. On 15 June 2011 the president of the High Court requested the Ministry of Justice to appoint a permanent court interpreter for Romani as soon as possible, stressing that one of the reasons for the criminal proceedings in question having "lasted too long" had been the absence of an adequate interpreter for Romani.

41. It would appear that on several occasions the Roma Centre requested the High Court to expedite the proceedings, and that on 16 August 2010 it issued a statement that the investigation had not been effective.

42. The eleventh applicant's initial representative submitted an authority form signed by her. He also specified that her two sons, two daughters-in-law and five grandchildren had died or disappeared in the impugned event.

II. RELEVANT DOMESTIC LAW

A. Criminal Code (*Krivični zakonik*, published in Official Gazette of the Republic of Montenegro - OG RM - nos. 70/03, 13/04, 47/06, and the Official Gazette of Montenegro - OGM - nos. 40/08, 25/10, 73/10, 32/11, 64/11, and 40/13)

43. Article 327 § 1 provides, *inter alia*, that endangerment of a human life or a human body by a dangerous activity or by dangerous means is punishable by imprisonment of between six months and five years. Article 327 § 3 provides that if the offence is committed in a place where there is a large number of people (*veći broj ljudi*), it is punishable by imprisonment of between one and six years.

44. Article 338 § 2 provides that if the offence defined in Article 327 §§ 1 to 3 results in the death of one or more persons, it is punishable by imprisonment of between two and twelve years.

B. Criminal Procedure Code (*Zakonik o krivičnom postupku*, published in OG RM nos. 71/03, 07/04, and 47/06)

45. Article 8 provides, *inter alia*, that parties to criminal proceedings who do not speak the official language of the court may use their own language instead, in which case both a translation of all the documents as well as interpretation will be provided.

46. Article 16 § 2 provides that the court has a duty to conduct proceedings without delay and to prevent any abuse of the rights of the parties.

47. Articles 19, 20 and 44 provide, *inter alia*, that formal criminal proceedings can be instituted at the request of an authorised prosecutor. In respect of publicly prosecutable offences the authorised prosecutor is the State prosecutor. His or her authority to decide whether or not to press charges is bound by the principle of legality, which requires that he or she must act whenever there is a reasonable suspicion that a publicly prosecutable offence has been committed.

48. Articles 19 and 59 provide, *inter alia*, that should the State prosecutor decide that there is no basis on which to prosecute, he or she

must inform the victim of that decision, and the latter then has the right to take over the prosecution of the case – as a "subsidiary prosecutor" – within eight days of being notified of that decision. When notifying the victim of the decision not to prosecute, the State prosecutor must inform him or her what actions he or she may undertake as subsidiary prosecutor.

49. Article 62 provides that a subsidiary prosecutor has the same rights as the State prosecutor, except for those which the State prosecutor has as a State body.

50. Article 266 provides that if the investigation is not terminated within six months, an investigating judge must inform the president of the court of the reasons for the delay. If needed, the president will undertake measures to terminate the investigation.

51. Article 267 provides, *inter alia*, that a victim may file a request with an investigating judge to conduct an investigation.

52. Article 272 provides that parties to proceedings and victims are entitled to complain about delays in the proceedings and other irregularities to the president of the court, who will look into the complaint and, if requested, inform him or her of what has been done in that regard.

53. Article 273 provides that once an investigation is over, court proceedings may only be initiated on the basis of the indictment of the State prosecutor or the victim in his or her capacity as subsidiary prosecutor.

54. Article 291 § 2 provides that the president of the chamber must schedule a trial hearing within two months of receiving the indictment. If the trial hearing is not scheduled within the time-limit the president of the chamber must inform the president of the court why, and the latter will then, if needed, undertake measures to schedule it.

55. Articles 310 to 319 set out details as to the holding and adjournment of trial hearings, including in cases where various parties to the proceedings do not attend court. Article 317 § 3 provides, in particular, that if the trial hearing has been adjourned for more than three months or is to be held before another president of the bench, it must be started afresh and all witnesses reheard and documentary evidence reassessed (*i svi dokazi se moraju ponovo izvesti*).

C. Courts Act (*Zakon o sudovima*, published in OG RM nos. 05/02, 49/04, 22/08, 39/11, 46/13 and 48/13)

56. Section 84 provides, *inter alia*, that the president of the court is responsible for organising the work of the court and undertakes measures to ensure prompt and timely performance of duties in the court.

D. Obligations Act (*Zakon o obligacionim odnosima*, published in OGM nos. 47/08 and 04/11)

57. The Obligations Act, which entered into force in 2008, was partially amended in April 2017. The relevant provisions, as in force at the time, provided as follows.

58. Sections 148 to 216 set out details as regards compensation claims.

59. Sections 148 and 149 set out the different grounds for claiming compensation for both pecuniary and non-pecuniary damage. In particular, section 148(1) provided that whoever caused damage to somebody else was liable to compensation, unless he or she could prove that the damage was not his or her fault.

60. Section 166(1) provided that any legal entity, including the State, was liable for any damage caused by one of "its bodies".

61. Sections 206 and 207 provided, *inter alia*, that anyone who suffered fear, physical pain or mental anguish as a consequence of the violation of his or her personal rights or owing to the death of someone close to them, was entitled, depending on the duration and intensity, to sue for damages in the civil courts and, in addition, request other forms of redress "which might be capable" of affording adequate non-pecuniary satisfaction.

62. Section 208(1) and (2) provided that in the event of a person's death the courts could award just satisfaction for mental anguish to their closest family, including their brothers and sisters, provided that they had been living together.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

63. The applicants complained, under various Articles of the Convention, that the relevant Montenegrin bodies had failed to promptly and effectively investigate the deaths and/or disappearances of their family members and prosecute those responsible. Being the master of the characterisation to be given in law to the facts of any case before it (see *Tarakhel v. Switzerland* [GC], no. 29217/12, § 55, ECHR 2014 (extracts)), the Court considers that the applicants' complaint falls to be examined under Article 2 of the Convention, which reads as follows:

"1. Everyone's right to life shall be protected by law. ..."

64. The Government denied that there had been a violation of the applicants' rights.

A. The first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, twelfth and thirteenth applicants

65. On 10 June 2014 the Government submitted their observations on the admissibility and merits. They were sent to the applicants, who were invited to appoint a lawyer, given that the initial representative was not a lawyer for the purposes of Rule 36(2) and 4(a), and submit written observations with any claims for just satisfaction by 23 September 2014.

66. By a registered letter dated 28 November 2014 the Court reminded the applicants that their observations had not been submitted. They were invited to inform the Court by 5 January 2015 at the latest whether they wished to pursue their application and to do so unequivocally. They were invited to comply with the Court's previous request by the same date if that was the case. They were also warned, in accordance with Article 37 § 1 (a) of the Convention, that the Court could strike a case out of its list of cases if it concluded that an applicant did not intend to pursue his or her application.

67. Between 19 and 22 December 2014 the third, fifth, sixth, tenth, eleventh and thirteenth applicants received the Court's letter. The rest of the letters were returned to the Court. The twelfth applicant was said to no longer live at the address provided initially, the seventh and eight applicants' address was non-existent and the first, second and ninth applicants "did not ask for the letter" (*nisu tražili*). Nothing was specified in respect of the fourth applicant, but it would appear that she did not ask for the letter either.

68. The eleventh applicant complied with the Court's request within the requisite time-limit. None of the other applicants responded.

69. The Court considers that, in these circumstances, the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, twelfth, and thirteenth applicants may be regarded as no longer wishing to pursue the application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of their complaints to be continued.

70. In view of the above, it is appropriate to strike the application out of the list in so far as it concerns the complaints of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, twelfth and thirteenth applicants.

B. The eleventh applicant

1. Admissibility

a. Compatibility *ratione personae*

i. Want of an applicant

α) The parties' submissions

71. The Government submitted that the application was inadmissible for want of an applicant given that the eleventh applicant's initial representative had not had a valid authorisation. They relied in this regard on the Court's decision in *Post v. the Netherlands* ((dec.), no. 21727/08, 20 January 2009). In particular, the authority form submitted by the initial representative on her behalf was signed, whereas the second authority form, which was provided by the lawyer and notarised, contained her fingerprint instead and an explanation by the notary that she was illiterate. The Government averred that that clearly indicated that the signature in the first authority form had been forged.

72. The eleventh applicant, for her part, confirmed that she had authorised the initial representative to lodge an application on her behalf, and had only appointed a lawyer instead when invited to do so by the Court. Notably, she had been told at the time that all she had to do in order to authorise the first representative had been to provide him with her ID, birth certificate and her deceased family members' birth certificates, which she had duly done. In any event, she had explicitly accepted and approved of all the actions undertaken by him on her behalf.

73. The Serbian Government, which intervened in the case, made no comment in this regard.

β) The Court's conclusion

74. The relevant general principles in this regard are set out in *Lambert and Others v. France* ([GC], no. 46043/14, §§ 89-91, ECHR 2015 (extracts)).

75. In particular, the Court notes that where applicants choose to be represented under Rule 36 § 1 of the Rules of Court rather than lodging an application themselves, Rule 45 § 3 requires them to provide a written authority to act, duly signed. It is essential for representatives to demonstrate that they have received specific and explicit instructions from the alleged victim within the meaning of Article 34 on whose behalf they purport to act before the Court (see *Post*, cited above; as regards the validity of an authority to act, see *Aliev v. Georgia*, no. 522/04, §§ 44-49, 13 January 2009).

76. Turning to the present case, the Court notes that the first authority form, which was provided by the initial representative, was indeed signed by the eleventh applicant, whereas the second, which was provided by the lawyer, contained a fingerprint instead as well as confirmation by a notary that she was illiterate. It transpires from the case file that the applicant is in fact illiterate (see paragraphs 10 and 15 above).

77. The Court considers that the present case is to be distinguished from *Post* (cited above by the Government), as in that case the applicant's representative admitted that she had not had the applicant's authority to act, the authority form had never been received by the Court, the applicant had never been in contact with the Court directly, and the case file had contained no other document indicating that the applicant had wished the representative to lodge an application with the Court on her behalf, or any indication why it would have been impossible for the applicant or her representative to submit a power of attorney.

78. In the present case, however, the eleventh applicant explicitly and clearly confirmed directly to the Court that she had wanted the first representative to lodge an application on her behalf and to represent her from the outset (see, *mutatis mutandis*, *Aliev*, cited above, § 47). She also confirmed that she had authorised him to do so, that is to say she did everything she was requested to do at the time in order to authorise him to act (see paragraph 72 above). She also explicitly accepted all the actions undertaken by him.

79. In view of the above, in spite of certain formal shortcomings in respect of the first authority form, the Court considers that there were no substantial shortcomings. In any event, it is not in dispute that the eleventh applicant retroactively validated all the actions undertaken by him on her behalf. In such circumstances, the Court must reject the Government's objection in this regard.

ii. Victim status

α) The parties' submissions

80. The Government submitted that the applicants had failed to establish their victim status. Notably, they had failed to prove that any of their family members had died or disappeared in the impugned event and the burden of proof in that regard was on them. The Government maintained that "the criminal proceedings [so far had] not offered a reliable answer as to the identity of the others, either those who had been found dead or those who [had] disappeared". They submitted that it was therefore necessary to identify all those who claimed to be indirect victims of the impugned event and to request valid documentation proving that they were closely related to the victims found. Of all the applicants, only the eleventh applicant had provided documents suggesting that she was related to the alleged victims,

and even they had been questionable. In addition, the eleventh applicant's submissions as to which of her relatives had been on the boat and her statements made in court had been inconsistent (see paragraphs 42, 10 and 15 above, in that order).

81. The eleventh applicant reiterated her complaint. She maintained in particular that her brother and sister-in-law had died or disappeared in the impugned event, and submitted her and her brother's birth certificates. She also averred that she had participated in the domestic proceedings as a witness, and had been heard twice in that capacity, on 10 September 1999 and 8 October 2003 (see paragraphs 10 and 15 above).

82. The Serbian Government made no comment in this regard.

β) The Court's conclusion

83. The relevant principles in this regard are set out in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* ([GC], no. 47848/08, §§ 97-100, ECHR 2014). In particular, the Court held that the close relatives of missing persons may lodge applications raising complaints concerning their disappearances, to the extent that such complaints fall within the Court's competence (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 112 *in fine*, ECHR 2009).

84. The Court notes that throughout the domestic proceedings the eleventh applicant claimed that her brother and sister-in-law had died or disappeared in the impugned event (see paragraphs 10 and 15 above). She also expressly repeated that claim in her observations submitted to the Court (see paragraph 116 below). In view of that, the Court considers that she was consistent in stating that her brother and his wife had been on the boat. The Court is prepared, therefore, to accept that the different information provided initially in this regard (see paragraph 42 above) was an innocent mistake rather than the result of any intention by her or her representative at the time to mislead the Court.

85. As regards the Government's objection that the eleventh applicant failed to prove that any of her relatives died or disappeared in the accident, the Court firstly notes that not everyone on the boat was found, given that there were at least seventy people on board and only thirty-five bodies were recovered (see paragraphs 7-8 above). Secondly, out of those thirty-five only thirteen were identified (see paragraph 8 above). It would appear from the case file that the victims found had been identified by their family members on the basis of recognition only, and it is clear that not all the bodies could be recognised owing to the post-mortem changes. The eleventh applicant submitted, and the Government did not contest, that no DNA analysis had ever been performed to identify the rest of the bodies, not even after she had stated in court that she had recognised her brother's hand on one of the photographs of the bodies found (see paragraph 10 above). Thirdly, the applicant, for her part, claimed from the outset to the domestic

authorities that her brother and sister-in-law had been on the boat, she had participated in the domestic proceedings as a witness and given statements to that effect, and had provided the Court with both her and her brother's birth certificates. In such circumstances, in which the State, by its own admission, did not find all the victims and even failed to identify all those who had been found, the Court fails to see what more the eleventh applicant could have done that she had not done already.

86. In view of the above, the Court rejects the Government's objection in this regard.

b. Compatibility *ratione temporis*

i. The parties' submissions

87. The Government maintained that only the events and actions undertaken after 3 March 2004 were within the Courts' jurisdiction *ratione temporis*.

88. The eleventh applicant submitted that the application was compatible *ratione temporis* given that a number of procedural steps had been undertaken after the Convention had entered into force in respect of the respondent State, such as the investigation, which had begun on 26 May 2004, and the indictment, which had been issued on 31 October 2010. She relied in this regard on *Šilih v. Slovenia* ([GC], no. 71463/01, 9 April 2009) and *Bajić v. Croatia* (no. 41108/10, 13 November 2012).

89. The Serbian Government submitted that the applicants' complaint was compatible *ratione temporis* given that most of the investigative steps had been carried out after the Convention had entered into force in respect of the respondent State, while the time between the impugned event and the entry into force of the Convention was reasonably short.

ii. The Court's conclusion

90. The relevant principles in this regard are set out in *Šilih* (cited above, §§ 159-63), and *Janowiec and Others v. Russia* ([GC], nos. 55508/07 and 29520/09, §§ 140-51, ECHR 2013).

91. In particular, temporal jurisdiction is strictly limited to procedural acts which were or ought to have been implemented after the entry into force of the Convention in respect of a respondent State ("the critical date"), and it is subject to the existence of a genuine connection between the event giving rise to the procedural obligation under Article 2 and the critical date. Such a connection is primarily defined by the temporal proximity between the triggering event and the critical date, which must be separated only by a reasonably short lapse of time that should not normally exceed ten years (see *Janowiec and Others*, cited above, § 146) and it will only be established if much of the investigation – that is to say the undertaking of a significant proportion of the procedural steps to determine the cause of

death and hold those responsible to account – took place or ought to have taken place in the period following the entry into force of the Convention (ibid.,§ 147).

92. Turning to the present case, the Court notes that the complaint in respect of the procedural aspect of Article 2 of the Convention concerns the investigation of an event which took place in August 1999 and resulted in the deaths and/or disappearances of the eleventh applicant's family members. It should thus be noted that less than four years and seven months passed between the triggering event and the Convention's entry into force in respect of Montenegro on 3 March 2004 (see *Bijelić v. Montenegro and Serbia*, no. 11890/05, § 69, 28 April 2009), a relatively short lapse of time (see, *mutatis mutandis*, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 208, ECHR 2014 (extracts)).

93. The investigation began in September 1999, shortly after the impugned event. Prior to the date of entry into force of the Convention in respect of the respondent State, few procedural acts were carried out in the context of the investigation. It was after that date, and especially from 14 April 2004 onwards, that the investigation took shape through the transfer of the case to the High Court as the court competent to deal with the case, the opening of a new judicial investigation, as well as a new indictment resulting in criminal proceedings (see, *mutatis mutandis*, *Mocanu and Others*, cited above, § 209 *in fine*). In other words, the majority of the proceedings and the most important procedural measures were carried out after the critical date.

94. Consequently, the Court finds that it has jurisdiction *ratione temporis* to examine the complaint raised by the eleventh applicant under the procedural aspect of Article 2 of the Convention, in so far as it relates to the criminal investigation conducted in the present case after the entry into force of the Convention in respect of Montenegro.

c. Abuse of the right of petition

95. The Government submitted that the application was inadmissible due to an abuse of the right of petition in view of its partly insulting and provocative content. They did not specify exactly what was insulting and provocative.

96. The eleventh applicant made no comment in this regard.

97. The Serbian Government made no comment in this regard.

98. The Court has consistently held that any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and impedes the proper functioning of the Court or the proper conduct of the proceedings before it constitutes an abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, §§ 62 and 65, 15 September 2009). However, the rejection of an application on grounds of abuse of the right of application is an exceptional measure

(see *Miroļubovs and Others*, cited above, § 62) and has so far been applied only in a limited number of cases. In particular, the Court has rejected applications as abusive under Article 35 § 3 of the Convention if they were knowingly based on untrue facts or misleading information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; *Pirtskhalaishvili v. Georgia* (dec.), no. 44328/05, 29 April 2010; *Khvichia v. Georgia* (dec.), no. 26446/06, 23 June 2009; *Keretchashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006; and *Řehák v. Czech Republic* (dec.), no. 67208/01, 18 May 2004), or if they manifestly lacked any real purpose (see *Jovanović v. Serbia* (dec.), no. 40348/08, 7 March 2014), or if they contained offensive language (see, for example, *Řehák*, cited above) or if the principle of confidentiality of friendly-settlement proceedings had been breached (see, for example, *Popov v. Moldova (no. 1)*, no. 74153/01, § 48, 18 January 2005).

99. Turning to the present case, it is observed that the Government did not specify which part of the application was insulting and provocative in their view. The Court can only assume that they were referring to the applicants' vague and unsubstantiated allegations of mass killings and ethnic persecution, which have already been examined by the Court as a separate complaint against the respondent State and declared inadmissible (see paragraph 5 above), of which the parties were duly informed. It therefore rejects the Government's objection in this regard.

d. Exhaustion of domestic remedies

i. The parties' submissions

100. The Government submitted that the applicants had not exhausted all effective legal remedies. Notably, they had not availed themselves of a civil action or lodged a criminal complaint with the State prosecutor. Furthermore, they could have taken over prosecution in a private capacity if that avenue had been unsuccessful.

101. The eleventh applicant maintained that, under Article 2 of the Convention, where there was reason to believe that someone had passed away in suspicious circumstances, it was the State's duty to conduct an efficient investigation and it could not be left to family members to lodge a formal complaint or take over the responsibility for the investigation. She relied in this regard on *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, § 111, ECHR 2005-VII). She also maintained that under domestic law she was entitled to compensation in connection with the deaths of her brother and sister-in-law, as she had been living with them.

102. The Serbian Government made no comment in this regard.

ii. The Court's conclusion

103. The relevant general principles in this regard are set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-75, 25 March 2014).

104. In particular, the Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. That means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned, but also of the general context in which they operate, as well as the applicant's personal circumstances. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *İlhan v. Turkey* [GC], no. 22277/93, § 59, ECHR 2000-VII).

105. The Court firstly notes in this regard that the Government failed to specify against whom the eleventh applicant should have brought a compensation claim or to provide any examples of domestic case-law in support of their submission that a civil claim would be an effective domestic remedy in this regard. The Court, for its part, has already found in an earlier case in which applicants had brought a compensation claim against the State on the basis of the provisions of the Obligations Act that the domestic courts neither acknowledged the breach as clearly as should have been necessary in the circumstances of that case nor afforded the applicants appropriate redress (see *Milić and Nikezić v. Montenegro*, nos. 54999/10 and 10609/11, §§ 75-76, 28 April 2015). As regards a compensation claim against private individuals, the Court notes that a plaintiff in such a case must, *inter alia*, identify the person believed to have committed the tort. In the instant case, however, it is still unknown who was responsible for the acts of which the applicant complained. Given the situation, there does not seem to have been any basis on which the eleventh applicant could have pursued a civil claim with any reasonable prospect of success (see, *mutatis mutandis*, *İlhan*, cited above, § 62).

106. As regards a criminal complaint, the Court notes that under the relevant statutory provisions in force at the time formal criminal proceedings could be instituted at the request of an authorised prosecutor. In the present case it was the State prosecutor who had to act whenever there was a reasonable suspicion that a publicly prosecutable offence had been committed (see paragraphs 47, and 11, 16-17, and 22 above). A victim only had the right to take over prosecution if the State prosecutor decided that there was no basis on which to prosecute (see paragraph 48 above), which was not the case here. Given that the investigation had already been started

by the State prosecutor of his own motion, the Court considers that the eleventh applicant could legitimately have expected that the necessary investigation would be conducted without an additional specific, formal complaint from herself (see, *mutatis mutandis*, *İlhan,* cited above, § 63). Also, it does not consider that a criminal complaint lodged by the eleventh applicant would have been capable of altering to any significant extent the course of the investigation that had been made (see, *mutatis mutandis*, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 110 *in fine*, ECHR 1999-IV).

107. In view of the above, the Court rejects the Government's objection in this regard.

e. Six-month rule

i. The parties' submissions

108. The Government submitted that the applicants had not complied with the six-month time-limit. The criminal investigation had been started on 26 May 2004 and the indictment issued on 31 October 2006, while the applications had not been lodged until 2010. In addition, the eleventh applicant had only turned to the Court for the first time in January 2015, when she had filed her observations. In the Government's opinion the previous submissions lodged by the initial representative could not be considered legally valid as he had had no proper power of attorney.

109. The eleventh applicant maintained that she had submitted her application within six months.

110. The Serbian Government maintained that the application had been submitted within six months, in view of certain steps undertaken in criminal proceedings, which created an illusion of continuity, and given that the applicants had not become aware that there had been no effective investigation of the deaths of their family members until 16 August 2010, when the Roma Centre had issued a statement to that effect.

ii. The Court's conclusion

111. The relevant principles in this regard are set out in *Mocanu and Others* (cited above, §§ 258-69). In particular, the Court has held in cases concerning the obligation to investigate under Article 2 of the Convention that where a death has occurred, applicant relatives are expected to keep track of the progress of the investigation and lodge their applications with due expedition once they are or should have become aware of the lack of any effective investigation (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002; *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III; and *Varnava and Others*, cited above, § 158). As long as there is some indication, or realistic possibility, of progress in investigative measures, considerations of undue delay by the

applicants will not generally arise (see *Mocanu and Others*, cited above, § 269, and *Varnava and Others*, cited above, § 165).

112. Turning to the present case, the Court has already accepted that the eleventh applicant's initial representative was acting on her behalf from the outset, 23 March 2011, when the application was lodged. It therefore rejects the Government's submission that the eleventh applicant only addressed the Court for the first time by means of her observations.

113. Furthermore, it has already been noted that after the Convention entered into force in respect of Montenegro the investigation was recommenced and new criminal proceedings were initiated, in the course of which some hearings were held and others adjourned. It is observed in this regard that the first trial hearing took place in September 2009. Even though the second took place in October 2010, the Court considers that the applicant could not have known immediately after the first hearing that the next few hearings would be adjourned. In other words, it was not unreasonable for her to wait some time after the first hearing and see how the proceedings would develop and how diligently they would be conducted. After the second hearing held in October 2010, all the other hearings scheduled as of November 2010 were again systematically adjourned for more than a year, for various reasons, none of which were attributable to the applicants (see paragraphs 29-30 above).

114. In view of the above, the Court considers that the period of six months could not have started running before November 2010 at the earliest, and that the issue of compliance with the six-month time-limit therefore does not arise given that the eleventh applicant lodged the application on 23 March 2011. The Government's objection in this regard is therefore dismissed.

f. The Court's conclusion

115. The Court notes that the eleventh applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

a. The eleventh applicant

116. The eleventh applicant she submitted that the State had failed to conduct an effective investigation as more than fifteen years since the impugned event the relevant authorities had only identified thirteen bodies and still had not found those responsible for the deaths of her brother and sister-in-law. She also maintained that the criminal proceedings had been

neither speedy nor effective, which had been the result of a lack of willingness on the part of the High Court to act speedily and a strategy by the defence to prolong the proceedings.

b. The Government

117. The Government submitted that the obligation of the State was not an obligation of result but of means, that is to say that the investigation be thorough and the authorities undertake all reasonable measures at their disposal to secure evidence of the impugned event.

118. They maintained that in the present case the competent authorities had undertaken all reasonable measures at their disposal to secure all possible evidence and shed light on the impugned event as far as possible, including hearing evidence from a large number of people in the courts.

119. The Government further averred that the circumstances of the case were rather specific and that it had been impossible to investigate the "crime scene", collect forensic evidence and undertake other investigative measures. Only one witness had survived the impugned event, other potential witnesses had been unavailable (*nedostupni*), the direct victims had not been citizens of Montenegro but citizens of other countries merely in transit through Montenegro, and because of all the abuses of the Roma population which unfortunately took place, cooperation with them was more difficult. In addition, complex criminal cases, as this one definitely was, required a certain amount of time.

120. In view of all this, the Government maintained that the investigation and the proceedings as a whole had been conducted efficiently and in accordance with Article 2.

c. The Serbian Government

121. The Serbian Government maintained that the respondent State had failed to carry out an effective investigation of the impugned event. In particular, four years after the event the indictment had been given a new legal classification, the proceedings had had to be started afresh and before another court, and the domestic bodies had failed to ensure the presence of all the accused, which had caused numerous adjournments of the case. In view of this, they submitted that the criminal proceedings as a whole had been in breach of Article 2 of the Convention.

2. The Court's conclusion

122. The Court reiterates that the obligation in Article 2 to protect the right to life imposes a procedural obligation upon the State to investigate deaths, not only when they occur at the hands of State agents, but also at the hands of private or unknown individuals (see, for example, *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 62, 15 January 2009; *Toğcu*

v. Turkey, no. 27601/95, § 109 *in fine*, 31 May 2005; and *Menson v. the United Kingdom* (dec.), no. 47916/99, 6 May 2003).

123. The essential purpose of an investigation is to "secure the effective implementation of the domestic laws which protect the right to life" and ensure the accountability of those responsible. In order to be effective, an investigation must be capable of leading to the identification and punishment of those responsible. Although it is not an obligation of result but of means, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the person responsible will risk falling foul of the required standard of effectiveness (see, *inter alia*, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 183, ECHR 2012). Where an official investigation leads to the institution of proceedings in the national courts, the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law. It should in no way be inferred from the foregoing that Article 2 may entail the right for an applicant to have third parties prosecuted or sentenced for a criminal offence or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence. On the other hand, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished (see, *mutatis mutandis*, *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 95-96, ECHR 2004-XII). Given that the criminal trial is still under way, the issue to be assessed is not whether the judicial authorities, as guardians of the laws laid down to protect lives, were determined to sanction those responsible, if appropriate, but whether they had proceeded with exemplary diligence and promptness (see *Mučibabić v. Serbia*, no. 34661/07, § 132, 12 July 2016). While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating an alleged infringement of the right to life 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 (see *Mučibabić*, cited above, § 132; see, also, *mutatis mutandis*, *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 108, 4 May 2001; *McCaughey and Others v. the United Kingdom*, no. 43098/09, § 130, ECHR 2013; and *Hemsworth v. the United Kingdom*, no. 58559/09, § 69, 16 July 2013).

124. Turning to the present case, the Court notes that the eleventh applicant had an arguable claim that her relatives had lost their lives as a result of an act of reckless endangerment committed by third parties. Even though it has temporal jurisdiction to examine the complaint only in so far as it concerns the events after 3 March 2004 (see paragraph 94 above), the Court will nevertheless, for reasons of context, succinctly take note of all relevant events prior to that date (see *Mučibabić*, cited above, § 130, and *Mladenović v. Serbia*, no. 1099/08, § 52, 22 May 2012).

125. The Court notes that within less than three months of the impugned event (a) autopsies were performed on the bodies found and the relevant reports in that regard issued, (b) a formal judicial investigation was conducted, during which the investigating judge heard thirty-two people, including two suspects, and asked for expert opinions on the capacity of the boat, the autopsy reports, and a weather report on the night of the incident, and (c) an indictment was issued against seven suspects.

126. By the end of 1999 the case file had been transferred to another court, but the High Court declared the Court of First Instance in Bar competent to deal with the case, after which the file was returned. In the next three years, that is to say by the end of 2002, it was decided that two defendants who were at large would be tried in their absence and representatives were appointed for them. Between 25 December 2002 and 14 April 2004 eleven hearings took place and eight were adjourned for various procedural reasons, there being no information in the case file on one of the hearings. During that time the proceedings had to be recommenced once, on 24 September 2003, due to the passage of time, and defendants and a number of witnesses were therefore heard twice.

127. After the Convention entered into force in respect of the respondent State first the indictment was changed in April 2004, and then the case file was transferred to the High Court, as the competent court (see paragraph 16 above). A new formal judicial investigation into the impugned incident was commenced on 11 November 2004, and a new indictment issued on 31 October 2006. During those nearly two years only one piece of evidence was obtained, namely an opinion of an expert witness on the capacity of the boat. While it may well be that that piece of evidence was sufficient for the indictment to be issued and no other evidence needed to be obtained, the Court does not see why it took the domestic authorities more than a year and four months to obtain that piece of evidence (which was initially requested as early as in 1999, see paragraph 10 above) and an additional seven months to issue the indictment (see paragraphs 19-22 above).

128. It is noted in this connection that after the new indictment was issued in October 2006, the first hearing was held on 28 September 2009, nearly three years later. Moreover, it was the only hearing held in 2009. During those three years the domestic authorities tried to serve the indictment on the defendants. The Court notes that the indictment was not successfully served even on the defendant who was in detention in Podgorica (see paragraph 25 above), and for some other defendants it was clear that they had already been at large since 2002 (see paragraph 13 above).

129. The Court further observes that between 28 September 2009 and 9 July 2014 fifteen hearings were held, while a total of twenty-two hearings were adjourned for various procedural reasons. While perhaps not all the adjournments may be attributed to the respondent State, certainly none was

attributable to the eleventh applicant. Moreover, the trial was recommenced on at least three occasions because delays in proceedings necessitated a fresh trial, despite the relevant statutory provision providing that courts have a duty to conduct proceedings without delay (see paragraphs 31-33 and 46 above). The Ombudsman considered unjustified the length of the investigation and the ensuing criminal proceedings as early as in December 2009 and recommended that the High Court terminate the proceedings as soon as possible (see paragraph 35 above). Even though the president of the High Court also recognised that the proceedings in question had already "lasted too long" in June 2011 (see paragraph 40 above), the proceedings are still pending.

130. The Court further observes that more than ten years and seven months after the new indictment was issued, and

more than seventeen years and nine months after the impugned event, the criminal proceedings in question appear to still be pending at second instance, the defendants having been acquitted by the first-instance court in July 2014 for lack of evidence (see paragraph 34 above). The Court reiterates that violations have also been found where a trial continued unduly (see *Opuz v. Turkey*, no. 33401/02, § 151, ECHR 2009, a case where the criminal proceedings at issue had lasted for more than six years and were still pending). In that regard, the Court would stress that the passage of time inevitably erodes the amount and quality of evidence available and the appearance of a lack of diligence casts doubt on the good faith of the investigative efforts (see *Trubnikov v. Russia*, no. 49790/99, § 92, 5 July 2005). Moreover, the very passage of time is definitely liable to compromise the chances of an investigation being completed (see *M.B. v. Romania*, no. 43982/06, § 64, 3 November 2011). It also prolongs the ordeal for members of the family (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II). The Court considers that in Article 2 cases concerning proceedings instituted to elucidate the circumstances of an individual's death, lengthy proceedings are a strong indication that the proceedings were defective to the point of constituting a violation of the respondent State's procedural obligations under the Convention, unless the State has provided highly convincing and plausible reasons to justify such a course of proceedings (see *Mučibabić*, cited above, § 135). Indeed, in the present case, the Court considers that the Government have failed to justify such lengthy proceedings following the ratification date.

131. In view of the above, the Court considers that the delays cannot be regarded as compatible with the State's obligation under Article 2, and that the investigation and the subsequent criminal proceedings have not complied with the requirements of promptness and efficiency. There has accordingly been a violation of Article 2 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. Article 41 of the Convention provides:

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

A. Damage

133. The eleventh applicant claimed 1,000 euros (EUR) in respect of pecuniary damage and EUR 17,500 for non-pecuniary damage.

134. The Government contested her claim.

135. The Court does not discern any causal link between the violation found and the pecuniary damage alleged and therefore rejects the claim. On the other hand, it awards the eleventh applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

136. The eleventh applicant also claimed EUR 500 for costs and expenses incurred before the Court.

137. The Government contested her claim.

138. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 500 for the proceedings before the Court.

C. Default interest

139. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the application out of its list of cases in so far as it concerns the complaints of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, twelfth and thirteenth applicants;

2. *Declares* the eleventh applicant's complaint under the procedural aspect of Article 2 of the Convention admissible;

3. *Holds* that there has been a violation of the procedural aspect of Article 2 of the Convention in respect of the eleventh applicant;

4. *Holds*

(a) that the respondent State is to pay the eleventh applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the eleventh applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the eleventh applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 September 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President

APPENDIX

Nº.	First name LASTNAME	Birth date	Deceased/disappeared relative	Nationality	Place of residence
1.	Zorka RANĐELOVIĆ (the first applicant)	10/09/1944	Son and two grandchildren	Serbian	Knjaževac, Serbia
2.	Dasa FERATOVIĆ (the second applicant)	13/08/1976	Parents, wife and three children	Serbian	Knjaževac, Serbia
3.	Nardživana DŽAFEROVIĆ (the third applicant)	28/06/1952	Son, daughter-in-law and three grandchildren	Serbian	Bujanovac, Serbia
4.	Nedžmija TAIROVIĆ (the fourth applicant)	26/07/1960	Husband, son, daughter, brother-in-law with his daughter	Serbian	Žarkovo, Serbia
5.	Darko RADOSAVLJEVIĆ (the fifth applicant)	02/02/1978	Sister	Serbian	Lazarevac, Serbia
6.	Salija BERIŠA (the sixth applicant)	16/05/1973	Wife and two children	Serbian	Sremčica, Serbia
7.	Pravdo BOJKOVIĆ (the seventh applicant)	11/12/1968	Brother, sister-in-law, two nieces	Serbian	Železnik, Serbia
8.	Mirka BOJKOVIĆ (the eighth applicant)	27/02/1945	Daughter, son-in-law, three grandchildren	Serbian	Železnik, Serbia
9.	Ivica JOVANOVIĆ (the ninth applicant)	01/01/1975	Wife	Serbian	Knjaževac, Serbia

Nº.	First name LASTNAME	Birth date	Deceased/disappeared relative	Nationality	Place of residence
10.	Manojlo RISTIĆ (the tenth applicant)	21/11/1982	Wife and two children	Serbian	Kaluđerica, Serbia
11.	Begija GAŠI (the eleventh applicant)	25/12/1960	Brother and sister-in-law	Serbian	Podgorica, Montenegro
12.	Qulsefa RAŠIDOLSKA (the twelfth applicant)	01/01/1957	Son, daughter-in-law, granddaughter	Serbian, the Former Yugoslav Republic of Macedonia	Smederevo, Serbia
13.	Elvira ABDULAHU (the thirteenth applicant)	05/09/1982	Mother	Serbian	Kruševac, Serbia