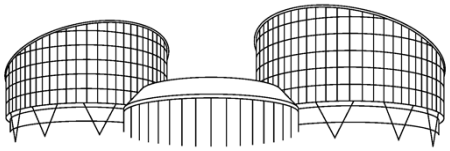

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KOTILAINEN AND OTHERS v. FINLAND

(Application no. 62439/12)

JUDGMENT

Art 2 (substantive) • Positive obligations • Failure to preventively confiscate gun from student whose internet postings prior to committing school killings, while not containing specific threats, cast doubt on his fitness to safely possess firearm • Authorities not under duty of personal protection towards the victims, since available information emanating from the perpetrator insufficient to suspect a real and immediate risk to life • Failure to observe special duty of diligence incumbent on authorities because of particularly high level of risk to life inherent in any misconduct involving the use of firearms Art 2 (procedural) • Effective investigation • Domestic investigation adequate and sufficiently independent

STRASBOURG

17 September 2020

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 Kotilainen and Others v. Finland,

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

Ksenija Turković, *President,*
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Armen Harutyunyan,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 7 July 2020,

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

PROCEDURE

1. The case originated in an application (no. 62439/12) against the Republic of Finland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by nineteen Finnish nationals ("the applicants"), on 28 September 2012. A list of the applicants, by household, is set out in the appendix.

2. The applicants were represented by Mr Esa Puranen, a lawyer practising in Jyväskylä. The Finnish Government ("the Government") were represented by their Agents, Mr Arto Kosonen and Ms Krista Oinonen, both of the Ministry for Foreign Affairs.

3. The applicants alleged, in particular, that the police had omitted to protect the lives of their deceased relatives under Article 2 of the Convention.

4. On 8 December 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The facts of the case, as submitted by the parties and as established in the domestic proceedings, may be summarised as follows.

6. The applicants are relatives of individuals who were killed in a school shooting in Kauhajoki on 23 September 2008. The tragedy took place at a vocational institute attended by young adults. The perpetrator, a 22-year-old student of the institute, killed ten people, of whom nine were students and one was a teacher, and then killed himself. The attack attracted wide publicity both in Finland and internationally.

A. Background of the case

7. The factual background of the shooting was clarified after the fatal attack in the pre-trial investigation and established in the subsequent criminal proceedings against the Detective Chief Inspector involved in the licensing of the perpetrator's weapon (see paragraphs 19-35 below) as well as in the proceedings conducted by an investigation commission set up by the Government (see paragraph 38 below). The established facts as they transpired from the said investigations and proceedings are the following.

8. On 25 June 2008 the perpetrator sought at the local police station licence to acquire and carry a weapon. In his application he indicated that he needed a weapon for practicing precision shooting at the local shooting range and that he had already practiced shooting at the summer house with his father's weapon. In reality his father or step-father had not shot with him, nor did they have a weapon or a firearms licence at that time. This fact was not known to the police at the relevant time. The perpetrator had attached to his firearms application a receipt of paid "membership fee" of 10 euros to the local shooting club which entitled him to practice at the local shooting range. The regular membership fee was 26 euros and would have entitled him also to participate to competitions but the perpetrator did not choose that option. He was thus not a member of the local shooting club.

9. On 21 July 2008 the perpetrator visited a psychologist at the local health centre for panic and aggression attacks. From 11 August 2008 onwards he visited a nurse specialised in depression about once a week, in total five times, the last visit being on 9 September 2008. On 13 August 2008 he was prescribed medication destined for treatment of severe depression and panic attacks. The police did not have this information before the shooting.

10. On 7 August 2008, after having interviewed the perpetrator, the Detective Chief Inspector granted him a permission to acquire a weapon. On 12 August 2008 the perpetrator purchased a weapon in another part of the country. On 2 September 2008 a police officer approved the perpetrator's weapon at the local police station.

11. During the night of 17-18 September 2008 there was an attempt to explode the mail box of a local teacher. No evidence has been found linking the perpetrator to this event.

12. On the early morning of Friday 19 September 2008 a cleaning lady of a local high school, which is situated about a kilometre away from the vocational institute attended by the perpetrator, saw a lit grave candle in the proximity of the high school. She told about the candle to two other persons, one of whom a few hours later discovered on the Internet three video clips in which the perpetrator was seen firing a weapon at a shooting range. It later appeared that he was filmed by his friend who also practiced shooting. In addition, the posted material contained pictures in which the perpetrator

was holding a handgun as well as texts in English about war and dying. This information was submitted to the police the same day. Also another concerned citizen informed the local police in the neighbouring town about the same perpetrator's postings on the Internet on the same day but this information never reached the police officers involved in the present case.

13. After having received the above information, several police officers viewed the video clips. They found out that the videos had been posted under a pseudonym which the perpetrator used. These postings contained only little textual elements and no references to a school shooting. The same pseudonym had also been used at a social media site (IRC-Galleria) as a member of a community called "Zero Hour: Massacre at Columbine High". The perpetrator had also commented this movie as "entertainment as its best" on 18 August 2008. On the basis of these materials, several police officers had started to suspect that the perpetrator might commit a school killing since he seemed to imitate, with his way of dressing and gestures, the perpetrator of the previous school killing which took place in Finland less than a year earlier. Since the Detective Chief Inspector was off duty that day, the police officers contacted his replacement and requested a permission to temporarily seize the perpetrator's weapon. This request was granted at 3.40 p.m. When the police officers about 10 minutes later went to execute this assignment, they no longer found the perpetrator at his home or at school since he had left for the weekend to visit his home town.

14. On Saturday 20 September 2008 the Detective Chief Inspector learned about the events of the day before in a social event attended by him and some of the police officers.

15. On Monday 22 September 2008 the Detective Chief Inspector was told in more detail about the observations made, and he himself viewed the videos and read the English texts. It appears that he also knew about the reference to the massacre at Columbine High. The Detective Chief Inspector called in the perpetrator for an interview the same afternoon, which lasted about a quarter of an hour. The perpetrator explained to the Detective Chief Inspector, *inter alia*, that the English text were the lyrics of a song by a certain band. He was given a verbal warning. After the interview, the Detective Chief Inspector concluded that "no such circumstances had appeared in this matter on the basis of which [the perpetrator's] weapon and his firearms licence should be withdrawn at this stage". After this decision was taken, the police officers sent him three more IRC-Galleria pages at 3.20 p.m.

16. The same evening and the next morning the perpetrator purchased some tools which were used in the killing. Some hours before the act he also made video clips indicating an intention to commit killings. He filmed these video clips by himself. According to the investigation commission, this material was subsequently discovered in deleted camera files, and it had probably not been posted or shown anywhere.

17. On Tuesday 23 September 2008 the school killing took place at 10.42 a.m.

18. During the investigations it appeared that the perpetrator had been discharged from his military service in August 2006 due to mental problems. It was also established that the perpetrator had already in 2002 planned a school shooting which had come to the knowledge of the local police department in another part of the country. It appears from the pre-trial investigation materials that this piece of information came to the knowledge of the police officers involved in the present case only on 23 September 2008, several hours after school killing had already taken place. The perpetrator also wrote in his farewell letter that he had been planning such a killing since 2002.

B. Criminal proceedings against the Detective Chief Inspector, encompassing compensation claims against the State

19. Criminal proceedings were instituted against the Detective Chief Inspector who had been responsible for the decisions concerning the licensing of the weapon used by the perpetrator. The case was investigated by the National Bureau of Investigation (*Keskusrikospoliisi, Centralkriminalpolisen*). The pre-trial investigation against the Detective Chief Inspector was concluded on 8 December 2008.

20. The public prosecutor pressed charges against the Detective Chief Inspector on 16 February 2009. He was charged with negligent breach of an official duty (*tuottamuksellinen virkavelvollisuuden rikkominen, brott mot tjänsteplikt av oaktsamhet*) by the public prosecutor for having decided not to seize the firearm from the perpetrator on 22 September 2008, the date on which he was called in for questioning by the police. He was also charged by the applicants with breach of an official duty (*virkavelvollisuuden rikkominen, brott mot tjänsteplikt*) covering the period of 22 June 2008 to 23 September 2008, and on ten counts of grossly negligent homicide (*törkeä kuolemantuottamus, grovt dödsvållande*) covering the period of 25 June to 23 September 2008. The applicants also joined the charges brought by the public prosecutor and presented their compensation claims against the Finnish State.

1. District Court

21. On 29 January 2010 the Kauhajoki District Court (*käräjäoikeus, tingsrätten*) dismissed in part the charges brought by the public prosecutor and the applicants and dismissed in part, without examining the merits, the charges brought by the applicants in so far as they concerned a time that was too distant from the shooting. The applicants' compensation claims were also rejected.

22. The court found that the firearms licence had been issued to the perpetrator in accordance with the law as at the time as he had fulfilled the legal requirements for such a licence. The first suspicions of a possible risk of a shooting had arisen only a few days before it took place. It was shown that the day before the school shooting the Detective Chief Inspector had been aware of the material that the perpetrator had posted on the Internet but had not found it threatening. However, he had called the perpetrator in for questioning on the same day. As the interview with the perpetrator had not revealed any clear reason to withdraw his firearms licence, the Detective Chief Inspector had only given him a verbal warning. The court found that the Detective Chief Inspector had had all relevant material in his possession and he had discussed the situation with his colleagues. He had questioned the perpetrator in person, and found nothing unusual in his behaviour. The decision had been within his discretion and there was no evidence of any negligence. He had thus not breached his official duties.

2. Court of Appeal

23. By a letter dated 30 April 2010 the applicants appealed against the District Court's judgment to the Vaasa Court of Appeal (*hovioikeus, hovrätten*), requesting that it be overturned and that the Detective Chief Inspector be convicted. The public prosecutor also lodged an appeal.

24. On 19 January 2011 the Vaasa Court of Appeal made a procedural decision concerning the *locus standi* of the applicants as far as the charges of negligent breach of official duty and breach of official duty were concerned. It found that the applicants could not be considered directly concerned by these counts and that they did not therefore have any *locus standi* in this respect.

25. On 15 April 2011 the Vaasa Court of Appeal convicted the Detective Chief Inspector of negligent breach of official duty for having failed to confiscate the perpetrator's gun temporarily the day before the shooting.

26. The court found that the firearms licence had been issued in accordance with the law as the perpetrator had fulfilled the legal requirements applicable at the time for such a licence and he had been personally interviewed by the Detective Chief Inspector before obtaining it. The Detective Chief Inspector had acted in accordance with the practice at the time. Having examined all the circumstances and the evidence relating to the granting of the licence, the Court of Appeal concluded that there had been no negligence in this context.

27. Concerning the question of whether the Detective Chief Inspector had had reasoned grounds to consider that the perpetrator had been misusing his gun, the court found that such misuse had already taken place a few days before the school shooting and that the Detective Chief Inspector should have temporarily seized the perpetrator's gun. In this connection, the court noted that such a seizure was a precautionary measure with a low threshold

and that such a measure was not conditional upon any unlawful conduct having occurred, nor on any suspicion that unlawful conduct might follow; it was sufficient that the weapon had been involved when its holder had behaved disturbingly.

28. The court noted that the material posted on the Internet showed the perpetrator posing with a gun and shooting at a shooting range. This in itself could not be regarded as misuse of firearms. A separate posting cited the lyrics of a song dealing with war, dying children and crying mothers. In addition, the perpetrator's profile on IRC-Galleria contained some pictures and comments which led the court to consider that the perpetrator's Internet postings, taken as a whole, had constituted disturbing behaviour of a kind that warranted temporary seizure of his gun. The court therefore considered that, under the circumstances, the Detective Chief Inspector's decision to refrain from seizing the gun had not been within his discretion and that he was guilty of negligent breach of official duty.

29. As to the charges of grossly negligent homicide, the court found that the Detective Chief Inspector had not had any concrete grounds to suspect that the perpetrator would commit a murderous attack. The court noted that the subordinate police officers, based on the evidence collected prior to the interview conducted by their superior, had expressed mutually differing views concerning the risk posed by the perpetrator. The court found it likely that their perceptions, as reflected in their testimonies, might in part have been affected by the shock of the subsequent events, reinforcing a sense of risk. On the evidence the court found that neither the circumstances relating to the perpetrator's prior behaviour, nor his behaviour in the context of the interview, had been of a kind to give the Detective Chief Inspector reasonable grounds for suspecting that the perpetrator might commit a school shooting. In fact, it was possible that it had been only after the interview and the verbal warning that the perpetrator had decided to commit such an act. This hypothesis was supported by the fact that nothing in the extensive evidence adduced in the case suggested that the perpetrator had had an intention to commit such an attack, and that it had been only following his encounter with the Detective Chief Inspector and shortly before the attack that he had downloaded to Internet material indicating his intention to carry out the attack.

30. Therefore, the court concluded that, when taking the decision not to seize the weapon, the Detective Chief Inspector had not had any probable cause to suspect that the perpetrator would commit a school shooting. The risk he had taken and the negligence he had committed in deciding not to seize the gun had not been causally relevant to the criminal acts subsequently committed by the perpetrator. The Detective Chief Inspector was thus not, through his negligence, responsible for the homicides.

31. When assessing the punishment, the court took into account the harm caused to the Detective Chief Inspector by the extremely wide media

publicity of the incident, mainly caused by the acts of the perpetrator, and found that this publicity had been disproportionate *vis-à-vis* the Detective Chief Inspector's negligence. He was therefore given a warning.

32. The Court of Appeal also examined the applicants' compensation claims against the State. Taking into account the conclusions it had reached concerning the criminal charges against the Detective Chief Inspector, the court concluded that, as the negligence attributable to him was not causally related to the criminal acts committed by the perpetrator, that negligence did not engage the liability of the State *vis-à-vis* the applicants. The court further examined whether the liability of the State was engaged on the grounds of cumulative negligence on the part of the authorities. In this context, the court considered, *inter alia*, the significance of the applicants' allegations according to which the perpetrator had already in 2002, together with another pupil, planned to carry out a school shooting in his previous school in another part of the country. The court stated that no evidence had been adduced regarding the timing, circumstances, content or seriousness of the alleged threat, or regarding the authorities' reaction in respect of the perpetrator. The court concluded that the liability of the State was not engaged on the grounds of negligence on the part of the authorities.

33. Furthermore, the Court of Appeal examined whether the liability of the State was engaged on the grounds of a violation of Article 2 of the Convention. Having analysed the Court's case-law in *Osman v. the United Kingdom*, 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII and subsequently in cases such as *Mastromatteo v. Italy* [GC], no. 37703/97, ECHR 2002-VIII; *Kontrová v. Slovakia*, no. 7510/04, 31 May 2007; and *Güngör v. Turkey*, no. 28290/95, 22 March 2005, the court found that the circumstances of the case did not give rise to liability of the State on this basis.

3. Supreme Court

34. By a letter dated 13 June 2011, the applicants appealed to the Supreme Court (*korkein oikeus, högsta domstolen*), reiterating the grounds of appeal already presented before the Court of Appeal.

35. On 30 March 2012 the Supreme Court refused the applicants leave to appeal.

C. Extraordinary proceedings

36. By a letter dated 1 June 2012 the applicants lodged an extraordinary appeal with the Supreme Court, alleging that one of the Supreme Court justices had been biased as he had been working at the Office of the Prosecutor General (*valtakunnansyyttäjänvirasto, riksåklagarämbetet*) at the time when the charges had been brought.

37. On 25 April 2014 the Supreme Court rejected the applicants' application. It found that it could not be shown that the judge in question had been involved in the matter when charges had been brought. He had not even had any competence to influence the prosecutor's decision. The sole fact that he had worked at the Office of the Prosecutor General at the time when charges had been brought did not give any reason to doubt his impartiality or independence as a judge. Nor was there any other reason to doubt his impartiality.

D. Investigation commission

38. In November 2008 the Government appointed an investigation commission to enquire into the Kauhajoki school killing (*Kauhajoen koulusurmien tutkintalautakunta, Kommissionen för undersökning av skolmorden i Kauhajoki*). On 17 February 2010 the commission issued nine recommendations concerning, *inter alia*, the availability of firearms, mental-health services for young people, comprehensive security planning in educational institutions, co-operation between authorities in preventing similar incidents, and co-ordination of psychosocial support. According to the commission, attempts to identify potential criminal intentions in an interview conducted by the police or a doctor had proved unreliable as evidenced by the fact that in school killings the perpetrators had been able to behave inconspicuously when the need arose. A person could not be deemed suitable or unsuitable to possess a firearm on the basis of mental health diagnoses either.

II. RELEVANT DOMESTIC LAW

A. Firearms Act

39. Section 18 of the Firearms Act (*ampuma-aselaki, skjutvapenlagen*, Act no. 1/1998) provides:

> "[u]nless otherwise provided in this Act, the following activities are subject to authorisation:
>
> 1) transfer and import to Finland, transfer and export from Finland, transit for commercial purposes as well as trade, acquisition, possession and manufacture of firearms, firearm components, cartridges and especially dangerous projectiles;
>
> 2) repair and conversion of firearms and firearm components;
>
> A licence or permit for the activities referred to in subsection 1 may be granted if there is an acceptable reason for granting the licence or permit, and if there is no reason to suspect misuse of the licence or permit or the objects acquired or possessed under it."

40. Section 45 of the same Act provided, at the relevant time, the following:

> "A firearms acquisition permit may be granted to a person who has reached the age of eighteen and who, on the basis of his or her state of health and behaviour, is deemed suitable for possessing firearms and firearm components. With the consent of his or her parents or guardians, the permit may, however, also be granted, for the shooting of animals permitted by hunting legislation or for target shooting or practice, to a person who is fifteen but not yet eighteen years old and who otherwise fulfils the requirements for a firearms acquisition permit applicant.
>
> When applying for a permit
>
> 1) for the shooting of animals permitted by hunting legislation or for target shooting or practice, an applicant shall produce a reliable account of his or her hobby;
>
> ..."

41. Pursuant to section 92, subsection 1, of the same Act, if there are reasonable grounds to suspect misuse of a firearm, firearm component, cartridges or especially dangerous projectiles, or if a procedure to revoke a related permit has been initiated, the police shall, without delay, make a decision on seizing the objects temporarily.

B. Police Act

42. According to section 35, subsection 2, of the Police Act (*poliisilaki, polislagen*, Act no. 493/1995), in force at the relevant time,

> "[w]hen assessing the continued validity of a driving licence, firearm permit or other such licence, the police have the right, on making a justified request, to obtain information on the licence holder's state of health, use of intoxicants or violent behaviour, notwithstanding the secrecy obligation, if there are reasons to suspect that the licence holder no longer meets the conditions set for obtaining a licence."

Similar provision is contained in Chapter 4, section 2, subsection 2, of the current Police Act (*poliisilaki, polislagen*, Act no. 872/2011) which entered into force on 1 January 2014.

C. Penal Code

43. Chapter 40, Article 10 of the Penal Code (*rikoslaki, strafflagen*, Act no. 39/1889, as amended by Act no. 604/2002) provides:

> "[I]f a public official, when acting in his or her office, through carelessness in a manner other than that referred to in Article 5, subsection 2, violates his or her official duty based on the provisions or regulations to be followed in official functions, and the act, when assessed as a whole, taking into consideration its detrimental and harmful effects and the other circumstances connected with the act, is not petty, he or she shall be sentenced for *negligent violation of official duty* to a warning or to a fine."

D. Legislative amendments enacted after the incident

44. Section 45 of the Firearms Act was amended by Act no. 124/2011 which entered into force on 13 June 2011. The amended section 45 reads as follows:

> ”A firearms acquisition permit may be granted to a person who has reached the age of eighteen and who, on the basis of his or her state of health and behaviour, is deemed suitable for possessing firearms and firearm components. The licencing authorities have the right to obtain a medical evaluation of the applicant, when the licencing authorities have, on the basis of received information or an interview, a reason to suspect that the applicant is not, for personal reasons, suitable possess a firearm. The licencing authorities have the right, notwithstanding the secrecy obligation, to obtain such health records on the applicant which are necessary for the authorities when assessing the applicant’s suitability to carry a firearm. A conscript shall provide clarification on the completed military or unarmed service. If service has not yet been completed, the conscript shall present an induction order or a decision on an exemption from the service, a postponement of the service or a reasoned decision on discharging from the service. An acquisition permit for a pistol, small-bore pistol, revolver or small-bore revolver or their component can only be granted to a person over twenty years old. An acquisition permit for firearms used in shooting sports and in shooting hobby and listed in section 6 § 2, points 4-7 can be granted to a natural person only if he or she provides a certificate on this hobby, issued by a licenced shooting instructor of such an association as referred to in section 4 of the Associations Act (Act no. 503/1989), and the hobby has actively continued at least two years. This period of two years may include a period corresponding to a half of the conscript’s completed military service or a half of the completed women’s voluntary military service. An acquisition permit for firearms used in shooting sports and in shooting hobby and listed in section 6 § 2, points 4-7 can also be granted if the applicant provides reliable clarification on his or her hobby as well as a certificate issued by the State authorities as an employer attesting that the applicant carries, within the context of his or her official duties, a firearm listed in section 6 § 2, points 4-7.
>
> When applying for a licence:
>
> ...
>
> 2) for shooting sports or shooting hobby, the applicant shall provide reliable clarification on his or her hobby;
>
> ...”

45. According to section 97a of the Conscription Act (*asevelvollisuuslaki, värnpliktslagen*, Act no. 1438/2007, as amended by Act no. 127/2011), necessary information on military service or fitness for such service can be given, notwithstanding the secrecy obligation, from the data base on conscripts on persons applying for or holding a firearms licence under the Firearms Act (Act no. 1/1998) in order to assess their personal suitability for the possession of a firearms licence. This provision entered into force on 13 June 2011.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

46. The applicants complained under Article 2 of the Convention of the lack of any measures on the part of the police to prevent the school shooting.

47. Article 2 of the Convention reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

48. The Government contested that argument.

A. Admissibility

49. The Government argued that the applicants could not be considered direct victims of any violation of the Convention. The public prosecutor had charged the Detective Chief Inspector with negligent breach of an official duty for not having taken the firearm from the perpetrator on 22 September 2008. The applicants had pursued their own charges of breach of an official duty covering the period of 22 June to 23 September 2008 and, in the alternative, joined the public prosecutor's charges. They had also pursued charges against the Detective Chief Inspector on ten counts of grossly negligent homicide covering the period of 25 June to 23 September 2008. In its final judgment, the Court of Appeal considered that the applicants had lacked *locus standi* as far as the charges of negligent breach of an official duty and breach of an official duty were concerned. The applicants could not therefore be considered in this respect as victims in the present case and their application should be rejected as incompatible *ratione personae* with the provisions of the Convention and be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

50. The applicants considered that the Government's arguments alleging the inadmissibility of their application were completely ill-founded. In such circumstances as in the present case, the applicants should have the right to complain of the State's failure to carry out measures to protect the right to life which resulted in the death of their close relatives. As the Court had

stated in its earlier case-law, the next of kin should be able to complain in Article 2 cases in their own right because of the nature of the violation. All the applicants were either parents, spouses or children of the persons killed in the shooting. Although the Court of Appeal had denied the applicants *locus standi*, it was incorrect to claim that this decision had relevance in respect of their victim status before the Court. Victim status should be established solely on the basis of the Convention and the Court's case-law. In the present case, the State of Finland had in no way recognised any violation, nor awarded any compensation to the applicants. The applicants had to therefore be considered as victims within the meaning of Article 34 of the Convention.

51. According to the Court's established case-law, the concept of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35, ECHR 2004-III). In the Court's settled case-law, it is also accepted that, in Article 2 cases, close family members of the deceased can legitimately claim to be victims of an alleged violation of that Article. Moreover, a domestic decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of victim status unless the national authorities have acknowledged, either expressly or in substance, a breach of the Convention and subsequently afforded appropriate and sufficient redress for it (see, for the main principles, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-213, ECHR 2006-V, and *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 49, 20 December 2007, as well as the cases cited therein). The Court has generally considered this to be dependent on all the circumstances of the case, with particular regard to the nature of the right alleged to have been breached (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010), the reasons given for the decision (see *M.A. v. the United Kingdom* (dec.), no. 35242/04, ECHR 2005, and contrast *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X) and the persistence of the unfavourable consequences for the person concerned after that decision (see *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, § 68, 9 February 2006). Only when those conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V, and *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004). It is therefore for the Court to verify, *ex post facto*, whether the redress afforded domestically by the domestic courts was appropriate and sufficient, having regard to the just satisfaction as provided for under Article 41 of the Convention (see, among other authorities, *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001; *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003; and *Nardone v. Italy* (dec.), no. 34368/02, 25 November 2004).

52. In the present case, the Court notes that all the applicants are close family members of the deceased in the school shooting. They must therefore be considered as indirect victims of the attack. Moreover, the domestic judgments were not favourable to them, nor did the national authorities acknowledge, either expressly or in substance, any breach of the Convention, nor was any redress afforded. In these circumstances the applicants have not lost their victim status. Therefore, this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. The Court 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 applicants

53. The applicants considered that the Finnish authorities had had, before the shooting took place on 23 September 2008, knowledge of several circumstances that together had constituted an acute and concrete threat of serious acts of violence. The most central risk elements that the authorities had known or should have known before the school shooting were the following: a concerned citizen had informed the police on 18 September 2008 of material which the perpetrator had posted on the Internet, pointing out its similarities to earlier postings by the perpetrator of another school shooting. The material had clearly shown that the perpetrator had admired mass killings and that he had found school massacres "entertainment at its best". The police had known already in 2002 that the perpetrator had planned to carry out a similar school shooting at his previous school. The police had also known, or ought to have known, that the perpetrator had lied to them when applying for a firearms acquisition permit about having had shooting as a hobby, whereas totally different information had been published on one of his social-network profiles. The type of firearms acquired had not even been suitable for the purposes the perpetrator had submitted to the police. The police should have learned, at the latest a few days before the incident when they had examined the perpetrator's online profile, that the perpetrator had not acquired the firearm for recreational purposes as he had claimed. This should have constituted strong grounds for the authorities to suspect that there had been a risk of misuse of the firearm.

54. The applicants asserted that the police had also been aware of the videos and pictures posted online before the attack in which the perpetrator could be seen posing with a gun and shooting. The videos clearly showed reckless handling of firearms and random and threatening shooting with a pistol. The police had also been aware, or ought to have been aware, of the strong copycat culture among those who had admired school shootings and

that such persons had aimed to copy the actions of their idols as closely as possible. There had been remarkable similarities to a school shooting which had taken place less than a year earlier, which several individual police officers had noticed. They had qualified the accused as a potential perpetrator of a school shooting. The authorities thus had had sufficient information to recognise the potential threat of a school shooting but any attempts by these police officers to have the perpetrator's gun confiscated had been thwarted when their superior had made a conscious decision to allow the perpetrator to keep his firearm.

55. The applicants further stated that State authorities had also had knowledge of the clear risk factor related to the perpetrator's mental health which had made him unsuitable to possess firearms. The perpetrator had visited a psychologist in July 2008 for treatment in respect of aggressive behaviour and had visited a nurse specialised in depression about once a week since August 2008. He had also been prescribed medicine to counteract severe depression and panic disorders. The perpetrator had also self-harmed several years earlier and the authorities had been aware of this. The police would have been able to obtain all the information concerning the perpetrator's mental health had they decided to take further investigative action in the case prior to the school shooting. The police had been aware of, or at least would have been able to find out, the fact that the perpetrator had been discharged from his military service for mental health reasons and that he had been found guilty of driving under the influence of alcohol in the summer of 2007.

56. On the basis of the above circumstances, the applicants claimed that it was evident that the police had been, or at least ought to have been, aware of the real and immediate threat that the perpetrator had presented to the school in question. He had planned to carry out a school shooting in his own school and therefore these students should have been considered as "identifiable individuals" who risked being potential targets of a lethal act. A positive obligation had therefore arisen for the authorities to take sufficient and efficient operational measures to protect these citizens and society at large. Several police officers had recognised the acute risk of a potential school shooting and had attempted to confiscate the perpetrator's weapon before the start of a new school week. However, their superior had consciously decided to allow the perpetrator to keep his firearm. This was the so-called decisive moment when the authorities had failed to take measures to avert the risk. There had been many concrete measures which could have been taken, the most efficient being the confiscation of his weapon. The actual interview had lasted for about ten minutes, which had clearly not been sufficient to thoroughly investigate the matter. It might have also made the perpetrator act more rapidly than planned as he had then become aware of the police's plan to confiscate his gun.

57. In conclusion, the applicants claimed that the respondent State had thus clearly failed to fulfil its positive obligation under Article 2 of the Convention.

(b) The Government

58. The Government argued that, contrary to the case of *Armani Da Silva v. the United Kingdom* [GC] (no. 5878/08, 30 March 2016), in the present case the applicants appeared to be dissatisfied with the conviction and sentence of the Detective Chief Inspector and with the fact that their claim for compensation was not successful. However, the matter had been resolved domestically and, taking into account the margin of appreciation left to the States in this respect, the applicants' application should not be considered by the Court due to its fourth-instance nature.

59. The Government stated that it was obvious that Article 2 of the Convention required the Contracting Parties to have in place effective mechanisms governed by administrative and criminal law to prevent misuse related to firearms and to make intervention in such misuse possible. Not only were there several proscriptions in the Penal Code, but there was also the possibility to seize firearms and to revoke acquisition and possession permits, which together constituted such an effective mechanism. Accordingly, the domestic firearms legislation was, as a mechanism, in compliance with Article 2.

60. The Firearms Act as in force at the material time had explicitly prohibited the granting of a permit without acceptable grounds or if a reason had existed for suspecting misuse of the permit or objects acquired or possessed under it. When assessing the criminal charges against the Detective Chief Inspector concerning the granting of an acquisition permit in August 2008, the Court of Appeal had found no evidence that the Detective Chief Inspector had failed to comply with the relevant legislation or that there had been any other negligence on his part. Accordingly, the decision to grant the perpetrator the firearms acquisition permit had not been in breach of Article 2.

61. The Court of Appeal had found in its judgment that the material posted by the perpetrator on the Internet, when viewed as a whole, constituted conduct that was in breach of the statutory requirement that firearms be used in an appropriate manner. Such conduct had given the Detective Chief Inspector grounds for further enquiries as to whether the perpetrator's conduct had warranted a revocation of his licence to possess firearms. The court had, however, also held that the Detective Chief Inspector had had no concrete grounds for suspecting that the perpetrator's conduct had amounted to anything more than arousing fear and concern. According to the court, the Detective Chief Inspector had not considered it possible that the perpetrator would commit a school shooting. The Government stressed that the perpetrator had not shown any particular

interest in the victims before the shooting had taken place. Even though the Detective Chief Inspector had acted in breach of his duties by failing to seize the perpetrator's firearm, the situation was not comparable to that in *Osman v. the United Kingdom* (28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII). Accordingly, the Detective Chief Inspector's decision not to confiscate the firearm had not been in violation of Article 2.

62. The Government averred that in November 2008 it had appointed an investigation commission to enquire into the school shooting. On 17 February 2010 the commission had found that attempts to identify potential criminal intentions in an interview conducted by the police or a doctor had proved unreliable as evidenced by the fact that in school killings the perpetrators had been able to behave matter-of-factly when the need had arisen. Nor could a person have been deemed suitable or unsuitable to possess a firearm on the basis of mental health diagnoses.

63. Furthermore the national authority supervising health care had prepared its own report on the appropriateness of the health-care service provided to the perpetrator in the present case. According to the report, the staff treating the perpetrator could not have possibly foreseen the school shooting and had had no grounds for considering that the perpetrator had been an immediate danger to himself or others. The medication prescribed for him had been appropriate but it had been possible that he had not been taking it during the last days of his life. The perpetrator had also failed to inform the health-centre staff of his interest in firearms. The national supervisory authorities had held that the health-care authorities in question had taken all customary measures within their competence. In the Government's view the activities of the health-care authorities had also been in compliance with Article 2.

64. In conclusion, the Government argued that there had been no violation of Article 2 of the Convention.

2. The Court's assessment

(a) Substantive aspect of Article 2 of the Convention

(i) General principles

65. The Court recalls that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, § 109, ECHR 2002-IV).

66. The Court reiterates that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports* 1998-III; *Osman*, cited above, § 115; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II). Such a positive obligation has been found to arise in a range of different contexts. Thus, for example, the Court has held that the State's positive obligation under Article 2 is engaged in respect of the management of various dangerous activities (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII) as well as in the context of road safety (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 135, 25 June 2019). These duties of the domestic authorities entail above all the primary obligation to have in place an appropriate set of preventive measures geared to ensuring public safety. This entails above all a primary duty on the part of the State to adopt and implement a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (see *Öneryıldız,* cited above, §§ 89-90, and *Masneva v. Ukraine*, no. 5952/07, § 64, 20 December 2011). In this regard, the Court has emphasised that the States' obligation to regulate must be understood in a broader sense which includes the duty to ensure the effective functioning of that regulatory framework. The regulatory duties thus encompass necessary measures to ensure implementation, including supervision and enforcement (*Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 189, ECHR 2017). Thus, the States' positive obligation under the substantive limb of Article 2 extends to a duty to ensure the effective functioning of the regulatory framework adopted for the protection of life (see *Cavit Tınarlıoğlu v. Turkey*, no. 3648/04, § 86, 2 February 2016).

67. The Court has held that the above positive obligation under Article 2 must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake (see *Öneryıldız,* cited above, § 89, and *Nicolae Virgiliu Tănase*, cited above, § 135, with further references). Thus, in the context of activities which may pose a risk to human life due to their inherently hazardous nature, States are required to take reasonable measures to ensure the safety of individuals as necessary (see *Cevrioğlu v. Turkey*, no. 69546/12, § 57, 4 October 2016, with further references). In this regard, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives (see *Masneva*, cited above, § 64). The regulatory measures in question must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks (see *Cevrioğlu,* cited above, § 51, and

Zinatullin v. Russia, no. 10551/10, §§ 25-27, 28 January 2020). The Court has, however, also emphasised that the positive obligation is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (see *Öneryıldız,* cited above, § 107, and *Ciechońska v. Poland*, no. 19776/04, §§ 63 and 64, 14 June 2011). Accordingly, not every potential risk to life can entail for the authorities a Convention requirement to take preventive measures to deter that risk from materialising. The extent of the positive obligations in a given context depends on the kind of risks concerned and the possibilities of mitigating them (see *Cavit Tınarlıoğlu,* cited above, § 90).

68. In this context, the Court has held that where a Contracting State has adopted an overall legal framework and legislation tailored to the protective requirements in the specific context, matters such as an error of judgment on the part of an individual player, or negligent coordination among professionals, whether public or private, could not be sufficient of themselves to make a Contracting State accountable from the standpoint of its positive obligation under Article 2 of the Convention to protect life (see *Lopes de Sousa Fernandes v. Portugal* [GC], cited above, § 165; *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 106, 31 January 2019; and *Marius Alexandru and Marinela Ştefan v. Romania,* no. 78643/11, § 100, 24 March 2020).

69. In addition, there is a further substantive positive obligation to take preventive operational measures to protect an identified individual from another individual (see *Osman*, cited above, § 115, and *Nicolae Virgiliu Tănase*, cited above, § 136) or, in particular circumstances, from himself (see *Fernandes de Oliveira,* cited above, §§ 103 and 108-15). In order to engage this positive obligation, it must be established that the authorities knew or ought to have known at the time, of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman*, cited above, §§ 115-16; *Öneryıldız*, cited above, §§ 74 and 101; *Bone v. France* (dec.), no. 69869/01, 1 March 2005; *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 483, 13 April 2017; *Cavit Tınarlıoğlu*, cited above, §§ 91-92; and *Fernandes de Oliveira*, cited above, § 109).

70. The above obligation of the State authorities to take preventive operational measures has been established for situations where the real and immediate risk from criminal acts of a third party concerns the life of a one or more identified or identifiable individuals. In certain circumstances, however, the Court has held that a similar obligation to afford protection against a real and imminent risk of criminal acts emanating from a given

individual may arise toward members of the public who are not identifiable in advance, namely in the context of the granting of prison leave or conditional release to dangerous prisoners (see *Mastromatteo v. Italy* [GC], no. 37703/97, § 69, ECHR 2002-VIII; *Maiorano and Others v. Italy*, no. 28634/06, § 107, 15 December 2009; and *Choreftakis and Choreftaki v. Greece*, no. 46846/08, §§ 48-49, 17 January 2012).

71. Thus, the Court has drawn a distinction between cases concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act, and those in which the obligation to afford general protection to society was in issue (see *Maiorano and Others*, cited above, § 107, and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 247, ECHR 2011 (extracts)). In the latter context, the Court has stressed the duty of diligence incumbent on the State authorities, in dealing with the danger emanating from the potential acts of certain individuals in their charge, to afford general protection of the right to life (see *Mastromatteo*, cited above, § 74, and *Maiorano and Others*, cited above, § 121). Similarly, in a case concerning a police officer who deliberately shot two persons with his police gun while off-duty, the Court found a violation of Article 2 on the grounds that the officer had been issued with the gun in breach of the existing domestic legislation governing police weapons and there had been a failure to properly assess his personality in the light of his known history of previous disciplinary offences (see *Gorovenko and Bugara v. Ukraine,* nos. 36146/05 and 42418/05, § 39, 12 January 2012).

72. The Court has also found that the obligation to afford general protection against potential lethal acts was engaged in respect of the danger emanating from a person with a history of violence, unlawful possession of firearms and alcohol abuse, who was apparently mentally disturbed and had been under the control of the police on the day of the killing committed by him (see *Bljakaj and Others v. Croatia*, no. 74448/12, § 121, 18 September 2014). In the circumstances of that case, which arose in the context of domestic violence and concerned the killing of the lawyer of the perpetrator's wife in the wake of an attack on the latter, the risk to life emanating from the perpetrator was found to be real and imminent, whereas the lawyer was not in advance identifiable as victim. Furthermore, the supervisory duties of diligence in the context of a school were engaged in *Kayak v. Turkey* (no. 60444/08, §§ 59 and 66, 10 July 2012).

73. For a positive obligation to arise, it must in any event be established that the authorities failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see, amongst other authorities, *Keenan v. the United Kingdom*, no. 27229/95, § 90, ECHR 2001-III).

(ii) Application in the present case

74. The Court notes that the applicants' main grievance concerns the fact that the perpetrator of the fatal attack was permitted to possess a firearm and that, in particular, his licensed weapon was not seized before the attack.

75. For the Court, there can be no doubt that the use of firearms entails a high level of inherent risks to the right to life since any kind of misconduct, not only intentional but also negligent behaviour, involving the use of firearms may have fatal consequences to victims, and the risk of such weapons being used to commit deliberate criminal acts is even more serious. Accordingly, the use of firearms is a form of dangerous activity which must engage the States' positive obligation to adopt and implement measures designed to ensure public safety (see paragraphs 66-68 above). This primary obligation consists in the duty to adopt regulations for the protection of life and to ensure the effective implementation and functioning of that regulatory framework.

76. In the light of the applicants' complaints, the regulatory framework applicable in the respondent State at the relevant time as such is not in issue in the present case. The Court does not discern any deficiencies in this respect that could entail a violation of the State's positive obligations under Article 2. In this context, the Court is not prepared to hold that the absence of a nationwide sharing between the various local police authorities of information regarding past records of various threats which have not given rise to criminal proceedings could in itself be considered as a relevant deficiency in the regulatory framework (see paragraph 18 above).

77. As regards the licensing of the perpetrator's firearm, the domestic courts have examined the allegations put forward by the applicants, and have established that the license granted to the perpetrator was issued in compliance with the relevant legislation. The perpetrator had fulfilled the statutory requirements and had undergone a personal interview as a prerequisite for the license. According to the domestic courts, there was no evidence of negligence on the part of the Detective Chief Inspector in charge of the licensing. The Court sees no reason to call into question these findings of the domestic courts.

78. Turning to the question of whether the domestic authorities, in particular the local police, complied with the preventive operational duties arising under Article 2 (see paragraph 69 above), the Court notes that the domestic courts, having taken and carefully considered the available evidence, concluded that the information available to the local police authority at the time preceding the perpetrator's criminal act did not give rise to any reason to suspect an actual risk of an attack in the form of a school shooting.

79. The Court reiterates that its task is not to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see, *inter alia*,

Radomilja and Others v. Croatia [GC], nos. 37685/10 and 22768/10, § 150, 20 March 2018). Although the Court is not bound by the findings of the domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Gäfgen,* cited above, § 93). In the present case, the Court does not discern any grounds for departing from the assessment of the Court of Appeal. The approach followed by that court is not inconsistent with the test of actual or imputed knowledge of a real and imminent risk to life as laid down in the Court's case-law.

80. In essence, the assessment made by the domestic court leads to the conclusion that although, prior to the murderous attack committed by the perpetrator, there were certain factual elements suggesting that the perpetrator might potentially pose a risk of life-threatening acts, the school killing actually committed by him was not reasonably foreseeable. The findings of the investigation commission similarly stated that the material posted by the perpetrator in the Internet did not contain any references to a school killing. The Court finds it important to emphasise that there remains a substantial difference between conduct involving video clips and cryptic postings on the Internet without any specific or even unspecific threats, and the indiscriminate killing of persons present at a specific location (see, *mutatis mutandis, Van Colle v. the United Kingdom,* no. 7678/09, § 99, 13 November 2012). The Court also notes that the Court of Appeal found it possible that it was not until after the police interview and the verbal warning that the perpetrator had actually decided to commit the act (see paragraph 29 above).

81. Under these circumstances, the Court is unable to conclude that there was a real and immediate risk to life directed at identifiable individuals of which the authorities knew or ought to have known at the relevant time. In other words, it cannot be held that the circumstances in the present case gave rise to a duty of personal protection toward the victims of the subsequent killing, or toward the other pupils or staff of the school concerned. The question whether there had been any decisive stage in the sequence of events leading up to the fatal shooting when it could have been said that the authorities had known or ought to have known of a real and immediate risk to the life of the applicants' next of kin must therefore be answered in the negative (see *Van Colle*, cited above, § 95). Consequently, the domestic authorities cannot be faulted for having failed to comply with their preventive operational obligation to protect the victims, as set out in the Court's case-law (see paragraph 69 above).

82. The present case must also be distinguished from *Bljakaj and Others* (see paragraph 72 above). In that case, the perpetrator was found to present a real and immediate risk to life of which the relevant authorities were aware, whereas the victim was not identifiable in advance. The case concerned a mentally disturbed and dangerous person in respect of whom

the need for further medical supervision had been identified and who, due to the acute state he had been in and the threats made by him, had been under immediate police control previously on the same day on which he severely wounded his wife and killed her lawyer. In the present case, the domestic courts, having examined the facts and the evidence, did not conclude that the perpetrator could be foreseen to pose a real and immediate risk to the life of others. The circumstances of the present case are indeed distinctly different. The perpetrator was interviewed by the Detective Chief Inspector because of the materials he had posted on the Internet in order to determine whether there were indications of him posing a danger to public safety but this was not considered to be the case. In the light of the assessments made by the domestic authorities and courts, the Court is not in a position to conclude that there was a real and immediate risk to life emanating from the perpetrator of which the police knew or ought to have known in advance of the attack.

83. This conclusion is not affected by the argument advanced by the applicants according to which the police authority ought to have obtained the perpetrator's medical and military records to verify data regarding his mental health. The Court recalls that the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties, and also protected under Article 8 of the Convention. The Court has acknowledged that respect for such confidentiality is crucial not only for the sake of the patients' sense of privacy but to preserve their confidence in the health service and to ensure that persons are not discouraged from seeking diagnosis or treatment, which would undermine the preventive efforts in health care (see *Z v. Finland*, 25 February 1997, § 95, *Reports* 1997-I; *P. and S. v. Poland*, no. 57375/08, § 128, 30 October 2012; and *L.H. v. Latvia*, no. 52019/07, § 56, 29 April 2014). The domestic law must therefore afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the Convention (see *Z v. Finland*, cited above, § 95). While there are undoubtedly many circumstances in which it is necessary and justified for the police authorities to be able to obtain certain medical data in order to carry out their functions in law enforcement and crime prevention, access by the police to an individual's medical data cannot be a matter of routine. Such access must remain subject to specific requirements of necessity and justification based on the concrete circumstances. The presence of such necessity or justification cannot be established with the benefit of hindsight. Furthermore, even if the data on the perpetrator's medical history (see paragraph 9 above) had been available, it cannot be determined whether or to what extent the assessment of whether the perpetrator posed a real and imminent risk at the relevant time might have depended on such information.

84. In the light of the State's positive obligations relating to the control of dangerous activities (see paragraphs 66-68 above), it remains to be examined, however, whether the authorities of the respondent State have complied with their duty of diligence in the protection of public safety, taking into account the context of the case, namely the use of firearms, where a particularly high level of risk to life is inherent. The Court reiterates that, in the light of the importance of the protection afforded by Article 2, it must subject complaints about loss of life to the most careful scrutiny, taking into consideration all relevant circumstances (see, among many other authorities, *Banel v. Lithuania*, no. 14326/11, § 67, 18 June 2013).

85. As stated above, the Court has held that the duty to provide general protection to society against potential criminal acts of one or several individuals may be engaged in respect of persons, notably dangerous prisoners, who are in the charge of State authorities, or in circumstances where the imminent danger emanating from them has become apparent in connection with an intervention by the police (see paragraph 71 above). The Court considers that a similar obligation of special diligence is engaged in the circumstances of the present case. Although the perpetrator was not in the charge of State authorities, those authorities are responsible for determining and upholding the requirements for the lawful possession of firearms. The particularly high level of risk to life which is inherent in their use must entail a duty for the authorities to intervene when alerted to facts that give rise to concrete suspicions regarding compliance with such requirements.

86. In the present case, the local police had become aware of the perpetrator's postings on the Internet which, although they did not contain any threats, were of such a nature as to cast doubt on whether the perpetrator could safely remain in possession of a firearm. Indeed, the police did not remain passive but conducted an interview with the perpetrator. No action was taken, however, to seize the weapon he was known and licensed to possess. While an individual error of judgment cannot suffice to conclude a violation of the State's positive obligations (see paragraph 68 above), especially not when identified with the benefit of hindsight, what is in issue in the present case can be seen to go beyond such an error of judgment. The Court notes, however, that it cannot accept the applicants' argument suggesting that the perpetrator was actually provoked by the police interview to proceed with the attack the following morning. Such a conclusion is entirely based on the benefit of hindsight. The Court can see no reason why, in the light of the facts known at the time, it would not have been an appropriate step to take to organise a personal encounter with the perpetrator following the discovery of his postings on the Internet.

87. The crucial question is whether there were measures which the domestic authorities might reasonably have been expected to take to avoid the risk to life arising from the potential danger of which the perpetrator's

known behaviour, displayed by the Internet postings, gave indications. What is important is whether reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm (see *Bljakaj and Others*, cited above, § 124).

88. Given the particularly high level of risk to life involved in any misconduct with firearms, the Court considers that it is essential for the State to put in place and rigorously apply a system of adequate and effective safeguards designed to counteract and prevent any improper and dangerous use of such weapons. In the context of the present case, the Court notes that the precautionary measure of seizing the gun was available to the police authority and was even considered although not implemented. The Court also observes that such a measure would not have entailed any significant interference with any competing rights under the Convention, and thus it would not have involved any particularly difficult or delicate balancing exercise. Nor would such a measure have required any high threshold of application, rather the contrary. Indeed, the domestic Court of Appeal held that, given the information that had come to the attention of the police authority, the gun could and should have been seized according to domestic law, this being foreseen as a low threshold precautionary measure (see paragraph 27 above).

89. The Court reiterates, in line with the Court of Appeal, that this finding is a matter separate from the conclusion according to which it could not be held that the decision not to seize the gun was causally relevant to the subsequent killings, or that it entailed a failure to comply with the State's obligation to provide personal protection to the victims (see paragraph 81 above). For the Court, the seizure of the perpetrator's weapon was a reasonable measure of precaution to take under circumstances where doubts had arisen, on the basis of information that had come to the attention of the competent authority, as to whether the perpetrator was fit to possess a dangerous firearm. The Court therefore considers that the domestic authorities have not observed the special duty of diligence incumbent on them because of the particularly high level of risk to life inherent in any misconduct involving the use of firearms.

90. For these reasons, the Court finds that there has been a violation by the respondent State of the substantive positive obligations arising under Article 2 of the Convention.

(b) Procedural aspect of Article 2 of the Convention

91. The Court reiterates from its well-established case-law that where a life-threatening injury or a death occurs, Article 2 requires that an effective judicial system be set up to ensure enforcement of the legislative framework geared to protecting the right to life by providing appropriate redress (see, for instance, *Anna Todorova v. Bulgaria*, no. 23302/03, § 72, 24 May 2011,

and *Antonov v. Ukraine*, no. 28096/04, § 44, 3 November 2011). Such a system may, and under certain circumstances must, include recourse to criminal law (ibid., § 45). In the particular context of the loss of life or serious injury incurred in connection with dangerous activities, the Court has considered that an official criminal investigation is indispensable given that public authorities are often the only entities to have sufficient relevant knowledge to identify and establish the complex phenomena that might have caused an incident (see, in particular, *Öneryıldız*, cited above, § 93, and *Brincat and Others v. Malta*, nos. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11, §§ 121-22, 24 July 2014). As regards the possible responsibility of State officials for deaths occurring as a result of their alleged negligence, the obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case (see, among other authorities, *Branko Tomašić and Others v. Croatia*, no. 46598/06, § 64, 15 January 2009).

92. Compliance of an official investigation with the procedural requirement of Article 2 is assessed on the basis of several essential parameters: the adequacy of the investigative measures, the promptness of the investigation, the involvement of the deceased person's family, and the independence of the investigation (see, as a recent authority, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015). In order to be "effective," an investigation must firstly be adequate (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II). That is to say it must be capable of leading to the establishment of the facts and, where appropriate, the identification and punishment of those responsible (see *Mustafa Tunç and Fecire Tunç*, cited above, §§ 172-74).

93. These requirements also extend to the trial stage (see *Abdullah Yılmaz v. Turkey*, no. 21899/02, § 58, 17 June 2008, and *Mosendz v. Ukraine*, no. 52013/08, § 94, 17 January 2013). It cannot, however, be inferred that Article 2 entails the right 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 (see *Giuliani and Gaggio*, cited above, § 306).

94. Article 2 of the Convention implies, among other requirements, that the investigation must be sufficiently independent (see, as a recent authority, *Mustafa Tunç and Fecire Tunç*, cited above, § 217). It does not require that persons and bodies responsible for an investigation enjoy absolute independence, but rather that they are sufficiently independent of the persons and structures whose responsibility is likely to be engaged (see ibid., and *Ramsahai and Others*, cited above, §§ 343-44).

95. The Court notes that the applicants did not complain about the pre-trial investigation, other than claiming under Article 6 of the Convention that there had been no fair trial as the pre-trial investigation had been conducted by the police. The Court observes that, in the Finnish legal

system, pre-trial investigations are always conducted by the police. In the present case, the pre-trial investigation was conducted by the National Bureau of Investigation as the case concerned the actions or omissions of a local police officer. There was thus no issue of partiality, and the investigation was sufficiently independent of the persons and structures whose responsibility was to be engaged. Nor are there any indications that the pre-trial investigation conducted in the case was somehow insufficient or faulty, nor was there any dispute about its conclusions. On the contrary, the effectiveness of the investigation conducted by the police was never questioned by the applicants.

96. Moreover, in November 2008 the Government appointed an investigation commission to enquire into the school shooting. The commission finished its work in February 2010 when it issued nine recommendations concerning, *inter alia*, the availability of firearms, mental-health services for young people, comprehensive security planning in educational institutions, co-operation between authorities in preventing similar incidents, and co-ordination of psychosocial support.

97. The applicants have not indicated any other shortcomings. Nor has the Court identified any.

98. Accordingly, there has been no violation of the procedural aspect of Article 2 of the Convention.

II. THE REMAINDER OF THE APPLICATION

99. The applicants also complained under Articles 5, 6 and 13 of the Convention that the domestic courts had not been impartial and independent, that they had assessed the evidence wrongly, and that there had been no fair trial as the pre-trial investigation had been conducted by the police. Moreover, the applicants claimed that they did not have an effective remedy as their charges had been dismissed without examining the merits for the lack of *locus standi*.

100. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, this part of the application must be rejected as manifestly ill-founded and declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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

102. The applicant, Elmeri Kotilainen, from the first household unit, claimed 31,571.97 euros (EUR) plus interest in respect of pecuniary damage for the loss of earnings owing to the death of his mother.

All the applicants claimed EUR 45,000 each in respect of non-pecuniary damage.

103. The Government found Elmeri Kotilainen's claim for pecuniary damage hypothetical and unsubstantiated and considered that it should therefore be rejected.

As to the non-pecuniary damage, they considered the applicants' claims excessive. Compensation for non-pecuniary damage should be no higher than EUR 2,500 per applicant.

104. The Court recalls that there must be a clear causal connection between the pecuniary damage claimed by an applicant and the violation found by the Court, and that this may, in an appropriate case, include compensation in respect of loss of earnings (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 213, ECHR 2006-XIII (extracts)). Having regard to its above conclusions, the Court finds that there is a sufficient causal link between the violation of Article 2 in respect of Elmeri Kotilainen's mother and the loss by him of the financial support which he could have obtained from her as a dependent. The Court considers it reasonable to assume that his mother would have had earnings and that he would have benefitted from them. Consequently, there is justification for making an award to Elmeri Kotilainen under this head. Having regard to all the circumstances, including the age of the victim and that of Elmeri Kotilainen and how closely they were related to each other, the Court awards him the sum claimed for pecuniary damage in full.

105. Moreover, the Court acknowledges that the applicants have undeniably sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Ruling on an equitable basis, it awards each household unit, as detailed in the Appendix below, jointly EUR 30,000 in respect of non-pecuniary damage.

B. Costs and expenses

106. The applicants also claimed EUR 6,818.56 per each household unit, except the first household unit which claimed EUR 2,086.34 jointly, for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

107. The Government considered that the applicants had failed to submit sufficiently itemised particulars of their claims with supporting documents, as required by Rule 60 of the Rules of Court. In any event, the claims for costs and expenses incurred before the domestic courts should be rejected in full. As to those incurred before the Court, the Government found the claims excessive as to quantum and considered that the compensation should not be higher than EUR 2,500 (inclusive of value-added tax) jointly for the applicants.

108. 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 applicants the full amounts claimed, that is, EUR 6,818.56 jointly per each household unit, as detailed in the Appendix below, except the first household unit which claimed EUR 2,086.34 jointly, for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

C. Default interest

109. 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

1. *Declares*, unanimously, the complaint under Article 2 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, by six votes to one, that there has been a violation of the substantive limb of Article 2 of the Convention;

3. *Holds*, unanimously, that there has been no violation of the procedural limb of Article 2 of the Convention;

4. *Holds*, unanimously,

(a) that the respondent State is to pay the applicants, 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 31,571.97 (thirty-one thousand five hundred and seventy-one euros ninety-seven cents) to the applicant, Elmeri Kotilainen, plus any tax that may be chargeable, in respect of pecuniary damage;
  (ii) EUR 30,000 (thirty thousand euros) to each household unit jointly, plus any tax that may be chargeable, in respect of non-pecuniary damage;
  (iii) EUR 2,086.34 (two thousand eighty-six euros thirty-four cents), to the first household unit, in respect of costs and expenses;
  (iv) EUR 6,818.56 (six thousand eight hundred and eighteen euros fifty-six cents) to each of the other household units (two to ten), in respect of costs and expenses;
  (v) plus any tax that may be chargeable to the applicants, 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*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 September 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Ksenija Turković
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Eicke is annexed to this judgment.

K.T.U.
A.C.

PARTLY DISSENTING OPINION OF JUDGE EICKE

I. INTRODUCTION

1. This is a most tragic case and one cannot but have the greatest sympathy for the victims and their families and friends.

2. Unfortunately, however, such tragic events also create a risk of (and perhaps an incentive for) regulatory overreach with the stated aim of achieving yet greater security for everybody (or at least the impression thereof). In particular, there is a danger to seek to devise rules or standards with the benefit of hindsight which would (or might) have prevented the very event from having occurred. To my regret, I have come to the conclusion that, for the reasons set out below, the present judgment does exactly that. It is, in my eyes, an example of such overreach in the form of an undue extension or enlarging of the existing case-law under Article 2. It creates what, in my view, are new requirements on domestic authorities which they, in their endeavour to ensure they comply with the requirements under Article 2, are likely to find difficult to apply "in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action" (see *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 53, ECHR 2006-XI; *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 96, 3 May 2007).

II. THE CONTEXT

3. While there can be no doubt that firearms are inherently dangerous, it is for this very reason that – at least in Europe – their acquisition, licensing and use is already highly regulated both at domestic level as well as at EU level. Whether as a result of this already existing level of regulation or not, the evidence suggests that the rate of gun homicides in the European Union is at only 0.24 per 100,000 people (0.2 in Finland) as compared with e.g. 4.46 in the United States.[1] is for this very reason that – at least in Europe – their acquisition, licensing and use is already highly regulated both at domestic level as well as at EU level.

4. It is, therefore, important

(a) on the one hand not to overstate the general risk arising from the use of firearms and, in particular, from the – as in this case – lawful and licensed ownership of firearms and,

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1. Alpers, Philip, Amélie Rossetti and Marcus Wilson. 2020. *Guns in the European Union: Rate of Gun Homicide per 100,000 People*. Sydney School of Public Health, The University of Sydney. GunPolicy.org, 9 June. Accessed 10 September 2020. at: https://www.gunpolicy.org/firearms/compare/347/rate_of_gun_homicide/194.

(b) on the other hand, to bear in mind that the principles laid down by this Court in its case-law under Article 2 need to be capable of being applied beyond the facts of any one particular case, without, as the majority accept in § 67, imposing "an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources".

5. In this context, it is perhaps also worth bearing in mind that, while the Grand Chamber in *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 147-148, 25 June 2019 did not take a final view on whether driving a car is a "particularly dangerous activity or not" for the purposes of Article 2, there is evidence that, in fact, vehicles and bladed weapons, the former of course also commonly subject to a licensing regime, are increasingly used as weapons in terrorist attacks.[2] As the Court rightly said in *Nicolae Virgiliu Tănase v. Romania* [GC], cited above, § 136, "[n]ot every alleged risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising".

III. COMMON GROUND

6. The Grand Chamber, in its judgment in *Nicolae Virgiliu Tănase v. Romania* [GC], cited above, §§ 134 - 145, has most recently sought to provide an authoritative summary out the different obligations arising under Article 2 on the basis that this provision requires states "not only to refrain from the 'intentional' taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction" (§ 134). These are:

(a) "to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life" (described as a "substantive positive obligation"; § 135);

(b) "to take preventive operational measures to protect an identified individual from another individual (see *Osman v. the United Kingdom*, 28 October 1998, § 115, Reports 1998-VIII) or, in particular circumstances, from himself" (also a "substantive positive obligation"; § 136); and

(c) "to have in place an effective independent judicial system. Such system may vary according to circumstances. It should, however, be capable of promptly establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (described as a "procedural positive obligation"; § 137).

7. The issue of "intentional" taking of life by a state agent does not, of course, arise in this case. Consequently, the circumstances of this case fall

[2] See the 2017 Report "Attacks in London and Manchester March-June 2017: Independent Assessment of MI5 and Police Internal Reviews" by David Anderson QC quoted in the Chamber judgment in *Big Brother Watch and Others v. the United Kingdom*, nos. 58170/13 and 2 others, § 177, 13 September 2018.

to be considered by reference to the established obligations under Article 2 as listed above.

8. Having considered the evidence available to the Court in this case, I completely agree with the majority that:

(a) there is no reason to consider that the regulatory framework applicable in the respondent State at the relevant time was deficient in a way that would have justified a finding of a violation of the State's positive obligations under Article 2 (§ 76);

(b) on the evidence before the Court (as confirmed by the findings of the domestic courts), there was no basis to conclude that there had been a real and immediate risk to life directed at identifiable individuals of which the authorities knew or ought to have known at the relevant time so as to give rise to a "duty of personal protection toward the victims of the subsequent killing, or toward the other pupils or staff of the school concerned" (§ 81). Like the majority, in this context I would highlight the clear findings of the domestic courts that (i) the license granted to the perpetrator was issued in compliance with the relevant legislation (§ 77); (ii) there was no evidence of negligence on the part of the Detective Chief Inspector in charge of the initial licensing (ibid); and (iii) the information available to the local police authority at the time preceding the perpetrator's criminal act did not give rise to any reason to suspect an actual risk of an attack in the form of a school shooting (§ 78); and.

(c) there has been no violation of the procedural aspect of Article 2 of the Convention (§§ 91 – 98).

9. On the facts of this case, this is where – for me – the analysis should have stopped, leading to an inevitable finding of no violation of Article 2.

IV. THE NEW "DUTY OF DILIGENCE"

10. Unfortunately, the majority went on to create a further obligation, or as the judgment puts it "duty of diligence", in relation to "the protection of public safety" more generally, over and above the duty to protect an identified individual as laid down in the Court's *Osman* jurisprudence (§ 84).

11. The majority seeks to justify the creation of this "duty of diligence" (§ 85) by reference to the case-law identified in § 71 of the judgment where it is rightly noted that:

> "... the Court has drawn a distinction between cases concerning the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a lethal act, and those in which the obligation to afford general protection to society was in issue (see *Maiorano and Others*, cited above, § 107, and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 247, ECHR 2011 (extracts)). In the latter context, the Court has stressed the duty of diligence incumbent on the State authorities, in dealing with the danger emanating from the potential acts of certain individuals in their charge, to afford general protection of the right to life (see

> *Mastromatteo*, [no. 37703/97, § 74, ECHR 2002-VIII], and *Maiorano and Others*, [no. 28634/06, § 121, 15 December 2009]). Similarly, in a case concerning a police officer who deliberately shot two persons with his police gun while off-duty, the Court found a violation of Article 2 on the grounds that the officer had been issued with the gun in breach of the existing domestic legislation governing police weapons and there had been a failure to properly assess his personality in the light of his known history of previous disciplinary offences (see *Gorovenko and Bugara v. Ukraine*, nos. 36146/05 and 42418/05, § 39, 12 January 2012)."

12. The judgments in *Mastromatteo and Maiorano*, however, make absolutely clear that they arose in (and are limited to) the very specific context of what the Court referred to as a "duty of care" owed by the State in relation to the adoption and implementation of decisions to grant temporary prison leave or semi-custodial treatment to dangerous prisoners, while they are in the charge of State authorities. In those cases, the Court stressed that the individuals in question were (a) in the custody of the state (in prison) on the basis of what the Court referred to as "[o]ne of the essential functions of a prison sentence [namely] to protect society, for example by preventing a criminal from re-offending and thus causing further harm" (*Mastromatteo* § 72) and (b) their temporary release for the purposes of "progressive social reintegration" was dependent upon the prisoner having shown that he had been "of good behaviour while in prison and ... his release would not present a danger to society" upon temporary release (ibid).

13. While the application of this narrow test, based on the "duty of care" owed by the state "to 'do all that could reasonably be expected of them to avoid a real and immediate risk to life of which they had or ought to have had knowledge'" (§74, quoting *Osman*) led to a finding of no violation in *Mastromatteo*, it led to a finding of a violation in *Maiorano*. The latter finding was based on the Court's assessment of the balance between the reports of the prisoner's positive behaviour while in prison weighed against the available adverse information. This included in particular the extremely serious criminal history of the prisoner (including his "condamnation à perpétuité pour des faits considérés comme étant d'une cruauté exceptionnelle") as well as the information/warnings received by the authorities before the murder was committed (including information that he was getting ready to commit murder and other serious offences). The test, however, remained whether the authorities knew or ought to have known of the existence of a real and immediate risk to life.

14. The majority suggests, at the end of § 85, that this "duty of care"/obligation can, without more, be extended to situations where "[a]lthough the perpetrator was not in the charge of State authorities, those authorities are responsible for determining and upholding the requirements for the lawful possession of firearms" solely on the basis of the "particularly high level of risk to life which is inherent in their use".

15. I am unable to agree that the extension of the existing duty of protection (so as to create an additional "duty of diligence") in a case such as the present is either justified or appropriate. After all, in the present case, we have none of the building blocks identified in the Court's case-law as being necessary either for the "duty of care" (as identified by the Court in *Maiorano*) to arise or for a finding of a breach thereof: (a) the perpetrator in the present case was not at any time under the control of the state; (b) the need to protect society (so as to warrant prison or otherwise) had not previously been established and was not known, (c) the judgment positively (and rightly in my view) concludes that the authorities did not know and could not reasonably have known of the existence of a real and immediate risk to life posed by the perpetrator whether to identified individuals or generally and (d) the "warnings" in the present case were nowhere near as specific or serious as in *Maiorano* (and even less so in the context of a person of no prior finding of risk/threat).

16. The case of *Gorovenko and Bugara v. Ukraine* also does not, in my view, significantly expand the narrow class of cases established in *Mastromatteo and Maiorano*. In that case, the culprit was a police officer (i.e. an agent of the State) who killed two persons with his service gun. The Court there, expressly based its decision *inter alia* on the fact that "the States are expected to set high professional standards within their law-enforcement systems and ensure that the persons serving in these systems meet the requisite criteria (...). In particular, when equipping police forces with firearms, not only must the necessary technical training be given but the selection of agents allowed to carry such firearms must also be subject to particular scrutiny" (§38).

17. In the prison context (especially involving serious criminals) it is understandable that any (early) release into the community would and should be dependent on the prisoner establishing that s/he was of good character (so as to outweigh the risks to society they pose which had already been established by the criminal courts). In this specific context, this Court would – by reference to the right to life under Article 2 – recognise that the state had a "duty of care" when making that assessment at the time of (and during) any temporary release. The Grand Chamber in *Murray v. the Netherlands* [GC], no. 10511/10, § 111, 26 April 2016 described this as part of the State's "positive obligation to protect the public by continuing to detain life prisoners for as long as they remain dangerous".

18. The same can be said of the duty to set and apply high professional standards within their law-enforcement systems so as to prevent killings by state agents. After all, in both these scenarios the risk emanates/the danger is created by a positive act of the State (undertaken with actual or constructive knowledge of the dangers posed), namely the release of a convicted and known dangerous criminal into society or the provision of a service gun to a police officer without the necessary safeguards. In the context of the latter -

again unlike in the present case – this occurred without the requirements expressly laid down in domestic regulations having been followed.

19. By contrast, in my view, Article 2 provides no basis for such an approach in the context of the licensing of firearms (or other potentially dangerous equipment or activities) to persons of, at the relevant time, apparently good character. In the present case, the perpetrator was competently assessed at the relevant time and there is no criticism of that assessment. Even if the assertion in § 88 of the judgment were right that the suspension of this perpetrator's licence and/or a temporary seizure of his gun "would not have entailed any significant interference with any competing rights under the Convention" (and this will, of course, not necessarily always be the case), it is difficult to see how (and subject to what safeguards) such a licence holder would be able to establish to the authorities that the information (e.g. as in this case internet postings) which led to the temporary seizure/suspension did not, in fact, give rise to a suspicion that s/he poses a threat to the right to life. There is a very real difficulty (and unfairness) in being required to prove a negative in such circumstances.

20. The difficulty with the proposed approach is in my view further highlighted by the fact that the majority:

(a) rightly identified the generic nature of the (internet) material on which the suspicion had been based and emphasised (§ 80) that "there remains a substantial difference between conduct involving video clips and cryptic postings on the Internet without any specific or even unspecific threats, and the indiscriminate killing of persons present at a specific location"; and

(b) endorses again (§ 89) the decision of the Court of Appeal that "it could not be held that the decision not to seize the gun was causally relevant to the subsequent killings".[3]

21. Finally, the question has to be asked: where does this leave the domestic (police or licencing) authorities who, as a result of this judgment, will from now on have to apply this new "duty of diligence" as set out therein? They will have to do so in the context of the continuing supervision of those who (at the time) are properly and appropriately licensed to carry out a dangerous activity (in this case ownership of a gun) - and do so knowing that the State is likely to be liable in compensation by reference to a breach of Article 2 of the Convention if they are not "sufficiently cautious". In my view, the present judgment risks leaving those authorities in a true lose-lose situation.

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[3] This latter finding is also difficult to reconcile with the decision, under Article 41 (§ 104), to make an award of pecuniary damages in respect of the applicant's loss of financial support from his mother on the basis "that there is a sufficient causal link between the violation of Article 2 in respect of [his] mother and the loss by him of the financial support which he could have obtained from her as a dependent" to justify such an award.

22. While a domestic legislature may, of course, chose to enable national authorities to take a "precautionary measure with a low threshold ... not conditional upon any unlawful conduct" (§ 27), no doubt with its own specific safeguards, there is in my view no legitimate basis for this Court seeking to create such a requirement for the authorities of the 47 Contracting Parties to the European Convention on Human Rights and certainly not under Article 2 of the Convention which is rightly described as "one of the most fundamental provisions in the Convention [...] enshrines one of the basic values of the democratic societies making up the Council of Europe" (§65).

APPENDIX

The household units are the following:

1. Elmeri KOTILAINEN, born on 31 March 2006, is a Finnish national who lives in Jyväskylä and Pasi KOTILAINEN, born on 30 May 1978, is a Finnish national who lives in Jyväskylä.
2. Harri FINNILÄ, born on 20 December 1958, is a Finnish national who lives in Mantila and Sirkka FINNILÄ, born on 21 February 1955, is a Finnish national who lives in Mantila.
3. Anneli HEIKKILÄ-KIILI, born on 16 May 1960, is a Finnish national who lives in Norinkylä and Sauli KIILI is a Finnish national who lives in Norinkylä.
4. Raili KORKIAMÄKI is a Finnish national who lives in Munakka and Tapani KORKIAMÄKI, born on 13 May 1954, is a Finnish national who lives in Munakka.
5. Jarmo KOSKINEN is a Finnish national who lives in Tampere and Kirsi KOSKINEN is a Finnish national who lives in Tampere.
6. Helena LAHTI-RÖYSKÖ, born on 26 September 1957, is a Finnish national who lives in Koskenkorva and Jussi LAHTI-RÖYSKÖ is a Finnish national who lives in Koskenkorva.
7. Marja-Terttu MARTISKAINEN is a Finnish national who lives in Koskenkorva.
8. Seppo RANTALA, born on 6 September 1962, is a Finnish national who lives in Kauhava and Taina RANTALA, born on 10 July 1961, is a Finnish national who lives in Kauhava.
9. Marketta VALLI, born on 30 August 1948, is a Finnish national who lives in Ilmajoki and Matti VALLI is a Finnish national who lives in Ilmajoki.
10. Matti YLI-MANNILA, born on 24 April 1956, is a Finnish national who lives in Alajärvi and Mervi YLI-MANNILA, born on 7 August 1959, is a Finnish national who lives in Alajärvi.