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

FIFTH SECTION

CASE OF NIKOLOVA AND VELICHKOVA v. BULGARIA

(Application no. 7888/03)

JUDGMENT

STRASBOURG

20 December 2007

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 Nikolova and Velichkova v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 27 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 7888/03) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ms Krastinka Petrova Nikolova and Ms Violeta Atanasova Velichkova, Bulgarian nationals who were born in 1939 and 1960 respectively and live in Shumen, on 24 February 2003.

2. The applicants were represented by Ms Zh. Yoncheva, a lawyer practising in Shumen. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotseva, of the Ministry of Justice.

3. The applicants alleged that their husband and father, Mr Atanas Velichkov Nikolov, had died as a result of ill-treatment by two police officers, and that the ensuing criminal proceedings against the officers had failed to provide an effective remedy.

4. In a decision of 13 March 2007 the Court joined to the merits the question whether the applicants may still claim to be victims in respect of the alleged violations of Articles 2 and 3 of the Convention and declared the application admissible.

5. The applicants, but not the Government, filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants are the wife and daughter of Mr Atanas Velichkov Nikolov. Mr Nikolov died on 1 October 1994 as a result of assault and battery by two police officers on 27 September 1994.

A. The events of 27 September 1994 and Mr Nikolov's ensuing death

7. At about 2 p.m. on 27 September 1994 the twelve members of the rapid response force of the Shumen Regional Police Department were training just outside town. They spotted at a distance Mr Nikolov, aged sixty-two at the time, and Mr N.R., who were testing a home-made metal detector. The leader of the team, lieutenant I.I., assumed that the two were treasure-hunters and sent a party to verify his suspicion. Two police officers approached Mr N.R., while two others, chief sergeants B.I. and H.T., moved towards Mr Nikolov. None of the officers was in uniform. Chief sergeants B.I. and H.T. reached Mr Nikolov as he was trying to hide a hoe in nearby bushes. Surprised by the sudden appearance of the two men, Mr Nikolov did not throw the hoe away, but held it in front of him, taking a defensive posture. Chief sergeant B.I. brusquely pulled it out of his hands and threw it to a safe distance. Each of the officers then proceeded to deliver blows to Mr Nikolov's head. They then brought him to the ground, handcuffed him, and took him to their colleagues. A car was called and Mr Nikolov and Mr N.R., who had also been apprehended, were taken to the premises of the Shumen Regional Police Department. At about 3 p.m., while waiting to be questioned on the precinct premises, Mr Nikolov fainted. An ambulance was subsequently called and he was taken to hospital, where it was found that he had slipped into a coma.

8. After an unsuccessful operation to evacuate a subdural haematoma, Mr Nikolov died on 1 October 1994. A medical report drawn up in the course of the criminal proceedings opened pursuant to his death concluded that the cause of death was a severe cranial and cerebral trauma and internal brain haemorrhage.

B. The criminal proceedings against the police officers

1. The preliminary investigation

9. On 2 October 1994 criminal proceedings were opened into the incident by the Shumen Regional Investigation Service. The offence was

provisionally characterised as murder under Article 115 of the Criminal Code of 1968 ("the CC") (see paragraph 39 below).

10. On 3 October 1994 the investigator in charge of the case questioned chief sergeants B.I. and H.T. Mr N.R. was also questioned on the site of the incident in the presence of a medical doctor. The investigator took a number of pictures of the site.

11. Most of the other witnesses were interviewed in October 1994 and in March and May 1995. Several expert reports were drawn up.

12. Chief sergeants B.I. and H.T. were charged and questioned again on 27 April 1995. They were released on bail.

13. The two officers who had arrested Mr N.R. were likewise charged and questioned on 2 May 1995.

14. On 12 May 1995 the investigator in charge of the case drew up his final report, concluding that chief sergeants B.I. and H.T. should be tried for wilfully inflicting grievous bodily harm on Mr Nikolov and thus having negligently caused his death, contrary to Article 124 § 1 of the CC (see paragraph 37 below). He also concluded that the two officers who had arrested Mr N.R. should be tried for inflicting light bodily harm on him. He noted, *inter alia*, that all of the officers had denied any wrongdoing, in spite of the evidence to the contrary, had drawn no lessons from their act and had shown no signs of remorse. He also noted that chief sergeant B.I. and one of the officers who had assaulted Mr N.R. had been charged with inflicting light bodily harm on another person on 18 April 1994, only a few months before the act in issue in the proceedings. Reflecting on the conditions which had led to the perpetration of the alleged offences, the investigator expressed the opinion that these were "the recent increase in crime which ha[d] led law-enforcement officers to suspect a criminal intent in all citizens until proven otherwise; the physicality of their training at the [police officers' school in the town of Pazardzhik], where, year after year, they [we]re instructed in how to deal with violent resistance but [we]re inadequately trained on the legal aspects of law enforcement, a practice that ha[d] been maintained within the newly-formed rapid response force centre in Shumen, as evidenced by the curriculum attached to the case file: it abound[ed] in physical training classes and lack[ed] any classes in legal training; the sense of authority that the law-enforcement officers ha[d] over the public, who [were] expected to show unconditional submission with no regard to their own rights and interests and with no regard to their dignity and inviolability as citizens; the sense of impunity; the absence of any eye-witnesses to the two offences, committed in a forested area out of the public's sight, and the hope that all [would] be covered up".

15. In view of an amendment in June 1995 to the Code of Criminal Procedure of 1974, whereby military courts were given jurisdiction to try police officers, on an unspecified date in 1995 the case was sent to the Varna Regional Military Prosecutor's Office. Apparently it was not

processed there until January 1998. The applicants complained about this inactivity to the President of the Republic, the Chief Prosecutor and the Council of Ministers. All of them forwarded the complaints to the military prosecution authorities.

16. On 12 January 1998 the Varna Regional Military Prosecutor's Office sent the case to a military investigator for further processing.

17. In a letter of 6 February 1998 the Varna Regional Military Prosecutor's Office informed the applicants that the work on the case had been held up until the beginning of 1998 because of staffing and backlog problems.

18. In June 1998 the military investigator in charge of the case was transferred to another post. For this reason, on 31 July 1998 the case was assigned to another military investigator.

19. Having concluded his work on the case, on 30 December 1998 the investigator drew up his final report, proposing that chief sergeants B.I. and H.T. be committed for trial. He noted, *inter alia*, that, by that date, chief sergeant B.I. was a unit commander at the riot-police sector of the Shumen Regional Police Department and that chief sergeant H.T. was a police officer at the specialised unit in charge of bank and cash transfer safety in Sofia.

20. On 18 August 1999 the Varna Regional Military Prosecutor's Office issued an indictment against chief sergeants B.I and H.T. It noted, *inter alia*, that on 15 January 1999 chief sergeant B.I. had resigned from the police force and that chief sergeant H.T. was still on the force, assigned as a guard in a commercial bank. Concerning the factors which had led to the perpetration of the offence, the prosecutor observed that these were "the defendants' sense of impunity as officers of the special force of the [Ministry of Internal Affairs], their lack of respect for human dignity and the health and inviolability of citizens and their habit of treating citizens as dummies for testing their physical force and abilities, which [were] only needed for apprehending dangerous criminals".

2. The judicial proceedings

21. The trial at the Varna Military Court started on an unspecified date in the autumn of 1999.

22. On 13 November 1999 the applicants and Mr Nikolov's son brought claims for compensation against the two police officers (5,000 Bulgarian levs (BGN) for the first applicant, BGN 4,000 for the second applicant and BGN 4,000 for Mr Nikolov's son) and joined the proceedings as private prosecuting parties alongside the public prosecutor.

23. The court held a hearing on 3 December 1999. It heard the applicants, Mr Nikolov's son and the accused officers. It also heard the concluding argument of the parties. In his argument the public prosecutor noted that no disciplinary proceedings had taken place against chief

sergeants B.I. and H.T. He requested that immediate custodial sentences, ranging between four and a half and five years' imprisonment, be imposed. In their final statement the defendants said that they were not guilty and asked the court to acquit them.

24. In a judgment of 3 December 1999 the Varna Military Court convicted chief sergeants B.I. and H.T. of having negligently caused the death of Mr Nikolov by wilfully inflicting grievous bodily harm on him, contrary to Article 124 § 1 of the CC. It sentenced each of them to three years' imprisonment, suspended for five years. It also awarded the first applicant BGN 4,000, the second applicant BGN 3,000, and Mr Nikolov's son BGN 3,000, payable jointly and severally by the two officers. The court described in detail the events of 27 September 1994 and held, as relevant:

> "... the act was committed negligently ... The case at hand concerns a complex offence, where the intention in respect of the lesser outcome is combined with negligence in respect of the more serious outcome, in other words, the offence was committed with both forms of *mens rea* ... The court is of the opinion that both of the defendants wilfully inflicted grievous bodily harm on [Mr Nikolov], which later brought about his death. The intentions must be judged through their actions. Taking into account the subjective attitude of the defendants towards their act, the court deems that their intention did not go beyond inflicting bodily harm. They merely behaved negligently in respect of the ensuing death. The objective analysis of the defendants' conduct shows that they did not foresee the imminent death of [Mr Nikolov] and neither wished nor envisaged a fatal outcome, their intention being solely to inflict bodily harm...
>
> ...The evidence in the case suggests that no persons other than the defendants were in physical contact with [Mr Nikolov]... All the traumatic injuries which were established were inflicted at the same time, in quick succession. The evidence shows that between 2 and 2.15 p.m. on 27 September 1994 in the area of the Shumen plateau the defendants, ..., in their capacity as officers of the Shumen Regional Police Department, arrested [Mr Nikolov] using physical force, and in the process delivered numerous blows to his body, some of which were strong, as a result of their prior training in arrests. There is a direct and proximate causal link between the beating and [Mr Nikolov']s traumatic injuries and the ensuing fatal outcome. In pursuing their direct aim of inflicting bodily harm on [Mr Nikolov], the defendants did not envisage the end result, but – in view of the force and the direction of the blows, they could have. It must however also be noted that, as members of the rapid response force, the defendants had acquired special skills for subduing and apprehending offenders. They were executing an order given by their immediate superior ... which included the arrest of [Mr Nikolov]... In this connection, the court finds that the conduct of the head of the team, lieutenant I.I., is also reprehensible, because he was the individual who could and should have determined whether Mr Nikolov and Mr N.R. were offenders who had to be apprehended without fail. ...
>
> The causes and the conditions for the commission of the offence are the defendants' feeling of impunity as members of the special force of the Ministry of Internal Affairs.
>
> In determining the type and the quantum of the penalty the court had regard both to the defendants' young age and to their good character as mitigating circumstances.

The court deemed the unlawful use of physical force as an aggravating circumstance.

The court imposed the penalties having regard to the preponderance of mitigating circumstances...

Taking into account the personality of the offenders, the gravity of the offence, and the fact that the defendants have no prior convictions, and bearing in mind the aims of punishment ... the court considers that the penalties do not need to be served immediately. For this reason ... the serving of the sentences is postponed ... The main purpose of punishment in our law is general deterrence, which is achieved through the imposition of just punishment. In matching the severity of the punishment to the gravity of the offence [the court] must have regard to the personality of the offender as an additional factor. In the case of a suspended sentence, [the court] must put the emphasis on individual deterrence, namely reform of the offender. In the instant case, the court, having regard to the facts as established above, the type of *mens rea* involved – negligence –, and the low level of public threat of the two offenders, who perpetrated their act in the relatively distant past, concludes that there is no need for the penalties of imprisonment to be served immediately in order to achieve the aims of the criminal law. ...”

25. Both the applicants and the officers appealed to the Military Appellate Court. The applicants submitted that the sentence was too lenient and that the compensation awarded was too low. They argued that the lower court had erred in assessing the gravity of the offence and had wrongly opted for the minimum possible penalty. In their view, the officers ought to be sentenced to an effective prison term of about five years.

26. Having held a hearing on 25 October 2000, in a judgment of 29 December 2000 the Military Appellate Court partly upheld and partly reversed the lower court's judgment. It increased the amount of compensation to BGN 5,000 for the first applicant, BGN 4,000 for the second applicant and BGN 4,000 for Mr Nikolov's son, but upheld the sentence. The court described in detail the events of 27 September 1994 and held that “in view of the police officers' numerical superiority, their younger age, their special training, the proximity of their colleagues, and the fact that in his further actions [Mr] Nikolov [had not] resisted or refused to obey their lawful orders, the physical force used had been in breach of section 40(1)(1) and (2) and section 41(2) and (4) of the National Police Act [1993], in force at the material time” (see paragraphs 42 and 43 below). The court's opinion continued, as relevant:

“The factual findings of the [lower] court are based on the evidence gathered and are fully accepted by [this] court. In view of the facts, the acts committed by the defendants were properly characterised as an offence under Article 124 § 1 of the CC...

I. Concerning the defendants' appeal

In the indictment the prosecution brought charges against the two defendants for an offence ... committed in concert. The prosecution has not taken into consideration that

the offence under Article 124 § 1 of the CC is only negligent as regards the graver consequence [death]. Complicity in a criminal offence is only possible in respect of wilful offences, as it presupposes the joint wilful participation of two or more persons, whose actions lead in their entirety to the perpetration of the offence, provided always that these persons realise that they are acting in concert with others. The *actus reus* of the offence under Article 124 [§ 1 of the CC] is complex. The intention to achieve the lesser outcome [bodily harm] is combined with negligence in respect of the graver outcome, i.e. the offence is committed with differing types of *mens rea*, which excludes the possibility of complicity.

...

The defendants' objection concerning the unfoundedness of the lower court's judgment as regards the authors of the offence is groundless. The experts' conclusion is that the cranial and cerebral traumas were caused by two separate blows to the head, with or against a solid object, delivered with considerable force. The experts provide two explanations as to its possible source. According to the first explanation, one blow was to the head, either on the left temple or on the right occiput, followed by a fall to the ground and a further blow to the opposite side. According to the second explanation, the two injuries may be due to two separate consecutive blows with a blunt, solid object. The experts categorically exclude the possibility that the blows were inflicted with the sharp (metal) part of the hoe...

The [lower] court was correct in accepting the second explanation, which is supported by the remaining evidence... In their statements, including those made at the trial, the two defendants admit the fact that they acted violently in apprehending [Mr] Nikolov. ... [B]oth defendants state that the victim did not fall on the ground at any point. Both aver that [Mr] Nikolov was standing or squatting. It was therefore impossible for one of the injuries ... to have been the result of a fall to the ground.

The defendants' assertion that the victim's death was the result of light and not grievous bodily harm, as accepted by the [lower] court, is groundless and completely unsubstantiated. The conclusions of both medical expert reports are categorical on the point that the heavy cranial and cerebral trauma has in itself resulted in a continuing overall life-endangering disruption to health, i.e. it corresponded to the medical and biological indications of grievous bodily harm.

The [lower] court has correctly found that the two defendants wilfully inflicted grievous bodily harm resulting in death. Its reasoning regarding the intention to inflict bodily harm and the negligence as regards the final result – death – are convincing and fully accepted by [this] court, so there is no need to repeat them.

...

II. Concerning the [applicants'] appeal

The appeal is partially well-founded. The punishments imposed – three years' imprisonment – although the minimum possible by law, are not disproportionately lenient. The [lower] court has examined and taken account of all the factors which are material in determining the sentence. On the one hand, it is true that a human life was taken in a situation which did not call for the use of such intense physical violence in respect of [Mr] Nikolov. On the other hand, the defendants have no prior convictions, are of good character, each of them administered one blow to the head of the victim,

the death was caused negligently, the [defendants] acted with a view to arresting an offender pursuant to the direct orders of their immediate superior, [Mr] Nikolov did not initially obey and did not throw away the hoe which he was holding and the defendants were discharged from the [police]. In view of all this the [court] finds that the [lower] court's conclusions as to the quantum of the penalties are well-founded, as is its conclusion that the correction and reform of the defendants do not call for the imposition of an immediate custodial sentence.

The appeal is ... well-founded as regards [the amount of compensation awarded]. The quantum of the compensation for non-pecuniary damage is to be determined at the time of delivery of the judgment. At present the courts' practice is to allow claims in respect of non-pecuniary damage for amounts higher than the claims submitted by the [applicants]. For this reason the [court] finds that the judgment should be revised, by increasing the sums awarded to each of the applicants up to the full amount of their claims. This level of compensation will reflect the actual pain and suffering which [the applicants] have sustained from the loss of their relative."

27. Both the applicants and the police officers appealed to the Supreme Court of Cassation. The applicants again submitted, *inter alia*, that the suspended sentence was too lenient. They argued that the lower court's characterisation of chief sergeant B.I. as a person "of good character" was questionable as he had been charged with the battery of a detainee six months before the beating of Mr Nikolov. The police officers submitted, *inter alia*, that the lower courts had imposed a very severe punishment.

28. Having held a hearing on 5 December 2001, in a final judgment of 14 January 2002 the Supreme Court of Cassation upheld the lower court's judgment in the following terms:

"As regards the [applicants'] appeal:

It is being argued that the [lower] courts have erred in ordering the suspension of the sentences of the two defendants, and a request is made to order that they serve their sentences.

This ground of appeal ... is not supported by the materials in the case file and is ill-founded. In applying Article 66 of the CC, [the lower courts] have weighed all the factors relating to the individual and general deterrence functions [of the criminal law]. Taking into consideration [the defendants'] clean criminal record, their good character, the manner in which the offence was committed, namely one blow each, the form of the *mens rea*, namely, negligence by each of the defendants, the behaviour of the victim, and in view of the aims of the punishment ..., the conclusion that the correction and reform of the defendants does not call for the sentence is lawful. This court fully shares it...

As regards the appeal by the two defendants:

The grounds of appeal are a breach of the substantive law and the obvious inequity of the sentences imposed and compensation awarded

Bearing in mind the [lower courts'] findings of fact, which are not subject to review [by this court], this court is of the view that the argument of a violation of the substantive law is unfounded and not supported by the materials in the case file. The

authorship of the offence has been proven beyond doubt, and the legal characterisation is correct. Each of the accused ... has executed all the elements of the offence under Article 124 § 1 of the CC. The evidence – the statements of the defendants, the witness testimony, combined with the medical expert report and the other written evidence, correctly assessed by both levels of jurisdication ... has led them to hold that the two have committed the offence independently of each other, in their capacity of police officers on active duty, in connection with the performance of their duties, thus negligently bringing about the death of [Mr Nikolov] by wilfully causing him grievous bodily harm. The personal conviction of the courts has been based on objective, comprehensive and complete assessment of all the facts of the case, which have been subjected to a serious and through analysis. In view of the facts, as thus established by the appellate court, the conclusions concerning the *actus reus* and the *mens rea* are lawful.

In this connection, the defendants' objection that death resulted from light bodily harm is unfounded. An identical objection was made before the appellate court, which reviewed it and ultimately rejected it. The reasons given are detailed and based on the evidence, and therefore shared by this court.

...

The arguments concerning the obvious inequity of the sentences imposed and compensations awarded are likewise groundless. In determining the punishment of the two defendants, [the lower courts] analysed all the mitigating and aggravating circumstances. They correctly found a preponderance of the former and have imposed [a minimal suspended sentence, within the bounds provided for by law]. Extra lenience would be unwarranted, as it would not further [the deterrent and reforming purposes of the criminal law].

The amounts of compensation are likewise equitable. The reparation of the non-pecuniary damage resulting from the offence is assessed by the court on the basis of the facts of the case and the principles of equity... Taking into account the pain and suffering as well as the irreversibility of the loss sustained, this court considers that the amount set by the [lower] court is just and would recompense the [applicants] to the utmost degree."

C. The enforcement proceedings against the police officers

29. The applicants obtained writs of execution against the two police officers on 25 January 2002. As the latter apparently refused to pay the applicants of their own accord, on 28 December 2002 the applicants issued enforcement proceedings against them. During the period 2002-04 the enforcement judge at the Shumen Regional Court tried to collect the amounts from the two officers, but to no avail, since the officers did not own any seizable assets. For this reason the two enforcement proceedings were discontinued towards the end of 2004 at the applicants' request.

D. The applicants' tort action against the Shumen Regional Police Department

30. On 24 July 1997 the two applicants and Mr Nikolov's son brought a tort action against the Ministry of Internal Affairs and the Shumen Regional Police Department before the Shumen District Court. They sought non-pecuniary damages for Mr Nikolov's death in the amount of 1,500,000 Bulgarian levs (BGL)[1] for the first applicant, BGL 750,000 for the second applicant and BGL 750,000 for Mr Nikolov's son.

31. At the first hearing on 16 October 1997, the Shumen District Court stayed the proceedings in anticipation of the outcome of the investigation against the officers. Following completion of the criminal proceedings on 14 January 2002 (see paragraph 28 above), on 16 July 2003 the Shumen District Court resumed examination of the case.

32. The court held three hearings, on 5 November 2003 and 30 January and 12 May 2004. It admitted the judgments given in the criminal proceedings against the police officers in evidence and heard the parties' pleadings. In a bench ruling of 12 May 2004 it discontinued the proceedings against the Ministry of Internal Affairs, holding that the Shumen Regional Police Department, which had employed the police officers, was the only entity capable of being vicariously liable for their actions.

33. In a judgment of 24 June 2004 the Shumen District Court ordered the Shumen Regional Police Department to pay BGN 1,500 to the first applicant, BGN 750 to the second applicant and BGN 750 to Mr Nikolov's son, together with interest at the statutory rate, from 27 September 1994, the date of Mr Nikolov's death. It also awarded costs and expenses in the amount of BGN 149.40. It held that the facts surrounding Mr Nikolov's death and the non-pecuniary damage sustained by the applicants as a result had been fully established in the judgments of the criminal courts which had tried the police officers. These judgments, which assessed the applicants' non-pecuniary damage at BGN 5,000 and BGN 4,000 respectively, were binding on the civil court. The court further noted that the applicants had not been able to collect the awards made in the criminal proceedings and concluded that this called for an award of damages to be paid by the entity which was vicariously liable for the police officers' actions. It observed however that the applicants had claimed lesser amounts – BGN 1,500 and BGN 750 – and it was therefore unable to increase the amount of the awards.

34. On 19 July 2004 the Shumen Regional Police Department appealed. On 15 November 2004 the applicants increased their claims to BGN 5,000 and BGN 4,000 respectively. The Shumen Regional Court held five

1. On 5 July 1999 the Bulgarian lev was revalued. One new Bulgarian lev (BGN) equals 1,000 old Bulgarian levs (BGL).

hearings, on 16 November and 14 December 2004 and on 11 January, 1 and 24 February 2005.

35. In a final judgment of 29 March 2005 the Shumen Regional Court upheld the lower court's judgment. It likewise took into account the findings of the criminal courts and noted that the applicants had not been able to effectively enforce the award of damages made against the police officers. Concerning the increase in the applicants' claims, the court held that this could not be taken into account, since it had been made for the first time on appeal and as only the defendant had appealed against the first-instance judgment.

36. The Shumen Regional Police Department paid the award of damages to the applicants shortly after the end of the proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Criminal Code of 1968

37. Article 124 § 1 of the CC provides that whoever negligently causes the death of another by wilfully inflicting bodily harm on him or her is punishable by a term of imprisonment ranging from three to twelve years in the case of grievous bodily harm, from two to eight years in the case of intermediate bodily harm, and up to five years in the case of light bodily harm.

38. Articles 128 § 2, 129 § 2 and 130 § 2 of the CC differentiate bodily harm as grievous, intermediate or light, on the basis of various medical criteria.

39. Under Article 115 of the CC, murder is punishable by ten to twenty years' imprisonment. Under Article 116 § 1 (2) of the CC, murder committed by police officers in the performance of their duties is punishable by fifteen to twenty years' imprisonment or life, with or without parole.

40. Article 54 § 1 of the CC directs the criminal court to determine the sentence within the bounds provided for by law, taking into account the general rules of criminal law, the dangerousness of the offence and of the offender, the motives for committing the offence, and the remainder of the mitigating and aggravating circumstances.

41. Under Article 66 § 1 of the CC, the court may suspend a sentence of up to three years' imprisonment for three to five years, provided that the offender has not previously been sentenced to a term of imprisonment for a publicly prosecutable offence, and also provided that the court finds that the aims of the criminal law (in particular, reform of the offender) may be furthered without the sentence being served immediately.

B. The National Police Act of 1993

42. The relevant part of section 40(1) of the now repealed National Police Act 1993 („Закон за националната полиция“), as in force at the material time, provided:

> "... police [officers] may use ... force ... when performing their duties only if they [have no alternative course of action], in cases of:
>
> 1. resistance or refusal [by a person] to obey a lawful order;
>
> 2. arrest of an offender who does not obey or resists the police [officers];
>
> ...
>
> 5. attack against citizens or police [officers]; ..."

43. Under section 41(2) of the Act, the use of force had to be commensurate to, *inter alia*, the specific circumstances and the personality of the offender. Section 41(3) of the Act directed police officers to "protect, if possible, the health ... of the persons against whom [force was being used]." Section 41(4) of the Act provided that the use of force had to be discontinued immediately after its aim had been attained.

C. The Contracts and Obligations Act 1951

44. Under section 49 of the Contracts and Obligations Act 1951 („Закон за задълженията и договорите“), legal persons – including public bodies – are vicariously liable for the tortuous conduct of individuals employed by them.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' submissions

45. The Government, referring to the case of *Caraher v. the United Kingdom* ((dec.), no. 24520/94, ECHR 2000-I), submitted that applicants who had received compensation for the breach of their Convention rights could no longer claim to be victims of a violation. The possibility of obtaining compensation for the death of a person constituted in principle sufficient redress for an alleged violation of Article 2 of the Convention.

Not only had the applicants been awarded the compensation they had asked for in full, but the authorities had charged and convicted the police officers responsible for Mr Nikolov's death. Concerning the officers' penalties, the national courts had had regard to the gravity of their offence, their motives for committing it, and all other aggravating and mitigating circumstances. All levels of jurisdiction had given full reasons for their rulings on this point. The penalties were adequate if compared to the constant practice of the domestic courts in respect of such offences, where the average sentence was three years and two months, as could be seen from the published case-law of the Supreme Court of Cassation. The sentences meted out to the officers could thus not be considered unduly lenient.

46. The applicants replied that they had not received the amounts which the police officers had been ordered to pay in damages. Moreover, the officers' penalties had been inadequate in view of the extreme gravity of their offence, which consisted of an unprovoked beating resulting in death. The investigation of this beating, after initially resulting in a conclusion on 12 May 1995 that the accused should be committed to trial, had then been halted and renewed only on 12 January 1998, after the applicants' numerous complaints to all possible bodies. The criminal proceedings had lasted almost eight years overall and, had it not been for the applicants' persistent complaints, would probably never have resulted in a trial. The State had thus not effectively enforced the laws preserving the right to life and the prohibition of ill-treatment. The sentence imposed on the police officers was not sufficiently effective and did not amount to full redress for the ill-treatment and death of Mr Nikolov.

B. The Court's assessment

47. In its admissibility decision (see paragraph 4 above) the Court found that the question whether the applicants may still claim to be victims in respect of Mr Nikolov's death was closely linked to the questions whether the investigation of the death was effective and whether the compensation received by the applicants amounted to sufficient redress therefor. It therefore decided to join the Government's objection to the merits and will examine it now.

48. Article 34 of the Convention provides, as relevant:

> "The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. ...."

1. Principles established under the Court's case-law

49. The Court recently summarised the principles governing the assessment of an applicant's victim status in paragraphs 178-92 of its

judgment in the case of *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, ECHR 2006-...). In so far as relevant to the case under consideration, they are:

(a) Under the subsidiarity principle, it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention;

(b) A decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention;

(c) The applicant's ability to claim to be a victim will depend on the redress which the domestic remedy will have given him or her;

(d) The principle of subsidiarity does not mean renouncing all supervision of the result obtained from using domestic remedies, otherwise the rights guaranteed by the Convention would be devoid of any substance. In that connection, it should be reiterated that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective.

2. Application of the foregoing principles

50. It follows from the foregoing principles that the Court must verify whether the authorities acknowledged, at least in substance, that there had been a violation of a right protected by the Convention and whether the redress can be considered as appropriate and sufficient (see *Scordino (no. 1)*, cited above, § 193).

a. The finding of a violation

51. There can be no doubt that the judgments convicting the police officers and awarding compensation to the applicants (see paragraphs 24, 26, 28, 33 and 35 above) amounted to an acknowledgment in substance that the death of Mr Nikolov had been in breach of Article 2 of the Convention.

b. The characteristics of the redress

52. The first issue which needs to be determined by the Court is whether the compensation awarded to the applicants amounted to sufficient redress.

53. On this point, the Court notes that the applicants' claims for compensation against the police officers (BGN 5,000 and BGN 4,000) were allowed in full. However, that award never came to fruition as the applicants were unable to collect any money, despite the efforts of the enforcement judge, because the police officers did not have any seizable assets (see paragraphs 24 and 29 above). On the other hand, the applicants' tort claims against the police department by which the officers were employed (BGN 1,500 and BGN 750) were also allowed in full. It is true that the

applicants' attempt to increase their claims to match those against the officers, following the remarks by the first-instance court that it would have awarded even larger amounts, was unsuccessful. However, this happened only because they had failed to increase the claims in good time, i.e. before the first-instance court had delivered its judgment. It does not seem that they were prevented from doing so, since by the time the examination of the tort action was resumed they were already aware of the amounts awarded in the criminal proceedings and, in all probability, became aware of the impossibility to recover these amounts while the case against the police department was still pending before the first-instance court (see paragraphs 29, 31, 33, 34 and 35 above).

54. It may thus be concluded that the applicants received compensation for Mr Nikolov's death.

55. However, the Court observes that in cases of wilful ill-treatment resulting in death the breach of Article 2 cannot be remedied exclusively through an award of compensation to the relatives of the victim. This is so because, if the authorities could confine their reaction to incidents of wilful police ill-treatment to the mere payment of compensation, while not doing enough in the prosecution and punishment of those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity and the general legal prohibitions of killing and torture and inhuman and degrading treatment, despite their fundamental importance, would be ineffective in practice (see, among many other authorities, *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2431, § 74; *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 329, § 105; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 79, ECHR 1999-IV; *Velikova v. Bulgaria*, no. 41488/98, § 89, ECHR 2000-VI; *Salman v. Turkey* [GC], no. 21986/93, § 83, ECHR 2000-VII; *Gül v. Turkey*, no. 22676/93, § 57, 14 December 2000; *Kelly and Others v. the United Kingdom*, no. 30054/96, § 105, 4 May 2001; *Avşar v. Turkey* [GC], no. 25657/94, § 377, ECHR 2001-VII; and, *mutatis mutandis*, *Krastanov v. Bulgaria*, no. 50222/99, § 60, 30 September 2004). In this connection, the Court considers that the Government's reliance on *Caraher* (cited above) is inapposite, as there the Court observed, by reference to *Kaya* (cited above, § 105) that "[s]eparate procedural obligations may also arise under Article 2 concerning the provision of effective investigations into the use of lethal force, but these are not in issue in the present case", as the applicants in *Caraher* had not raised a complaint in that regard.

56. It is apparent from the above that the possibility of seeking and receiving compensation represents only one part of the measures necessary to provide redress for death resulting from wilful ill-treatment by State agents. The Court must, then, also examine the effectiveness of the criminal proceedings against the police officers.

57. Before embarking on an analysis of the unfolding of these proceedings, the Court considers it necessary to reiterate the principles which govern the authorities' duty to investigate deaths occurring as a result of the use of force by State agents:

(a) Article 2 ranks as one of the most fundamental provisions in the Convention. 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 require 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).

(b) Article 2 imposes a duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3159, § 115; *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 67 and 89, ECHR 2002-VIII; and *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V).

(c) Compliance with the State's positive obligations under Article 2 requires the domestic legal system to demonstrate its capacity to enforce criminal law against those who have unlawfully taken the life of another (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII).

(d) The effective investigation required under Article 2 serves to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts, to secure the effective implementation of the domestic laws which protect the right to life and the right not to be subjected to ill-treatment and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (see, among many other authorities, *McKerr v. the United Kingdom*, no. 28883/95, §§ 111 and 114, ECHR 2001-III; and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, §§ 69 and 72, ECHR 2002-II).

(e) The requirements of Article 2 go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law. While there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished. This is essential for maintaining public confidence and ensuring adherence to the rule of law and for preventing any appearance of tolerance of or collusion in unlawful acts (see, *mutatis mutandis*, *Öneryıldız*

v. Turkey [GC], no. 48939/99, § 96, ECHR 2004-XII; *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006-... (extracts); and *Türkmen v. Turkey*, no. 43124/98, § 51, 19 December 2006).

58. The Court must now examine the effectiveness of the criminal proceedings against the two police officers in the light of these principles.

59. The Court will first assess the promptness of these proceedings, viewed as a gauge of the authorities' determination to prosecute those responsible for Mr Nikolov's death (see, *mutatis mutandis*, *Selmouni v. France* [GC], no. 25803/94, §§ 78 and 79, ECHR 1999-V, and *McKerr v. the United Kingdom*, no. 28883/95, §§ 114 and 152-55, ECHR 2001-III). It notes that Mr Nikolov was beaten on 27 September 1994 and died on 1 October 1994. The investigation was opened on the next day, 2 October 1994, and at first proceeded at a good pace: the officers were charged, the witnesses were interviewed, a number of reports were drawn up, and it was concluded that the officers should be committed to trial. However, after June 1995, when the case was transferred to the military prosecution authorities, the proceedings ground to a halt. While this delay was explained by staffing and backlog problems, it should be noted that the proceedings did not resume until January 1998 – two and a half years later – and only after the applicants' repeated complaints. Further delays accumulated later, with the result that those responsible were brought to trial only in the autumn of 1999 and finally convicted and sentenced in 2002, more than seven years after their wrongful act (see paragraphs 12-20 and 24, 26 and 28 above). This manner of proceeding appears unacceptable to the Court, considering that the case concerned a serious instance of police violence and thus required a swift reaction by the authorities (see *Türkmen*, cited above, §§ 54-57). Moreover, the inordinate delay in the proceedings, entirely attributable to the authorities, was relied on by the trial court as an argument for imposing suspended, and not effective, sentences (see paragraph 24 above).

60. This brings the Court to the second aspect of its inquiry: whether the suspended sentences imposed on the officers at the close of excessively lengthy criminal proceedings were sufficient to discharge the authorities' positive obligations under Article 2 of the Convention. The Court's task here consists in reviewing whether and to what extent the national courts may be deemed to have submitted the case to the careful scrutiny required by Article 2, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life are not undermined (see, *mutatis mutandis*, *Öneryıldız*, § 96; and *Okkalı*, § 66, both cited above).

61. It is true that it is not for the Court to rule on the degree of individual guilt (see *Öneryıldız*, § 116; and *Nachova and Others*, § 147, both cited above), or to determine the appropriate sentence of an offender, those being matters falling within the exclusive jurisdiction of the national criminal

courts. However, under Article 19 of the Convention and under the principle that the Convention is intended to guarantee not theoretical or illusory, but practical and effective rights (see paragraph 49 above), the Court has to ensure that a State's obligation to protect the rights of those under its jurisdiction is adequately discharged. In cases of deaths occurring as a result of the use of excessive force, it must in particular verify whether the State has complied with its duty under Article 2 to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions, and by not allowing life-endangering offences to go unpunished (see paragraph 57 above). Moreover, as noted in *Scordino (no. 1)* (see paragraph 49 above), in determining an applicant's continuing victim status the Court must have regard to the result obtained from using domestic remedies.

62. It follows that while the Court should grant substantial deference to the national courts in the choice of appropriate sanctions for ill-treatment and homicide by State agents, it must exercise a certain power of review and intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed. Were it to be otherwise, the States' duty to carry out an effective investigation would lose much of its meaning, and the right enshrined by Article 2, despite its fundamental importance, would be ineffective in practice.

63. The Court notes that in the instant case the national courts gave substantial reasoning as to why they characterised the act committed by the officers as wilful inflicting of grievous bodily harm negligently resulting in death. They also specified the grounds for imposing the minimum term of imprisonment allowed by law and for opting to suspend it (see paragraphs 24, 26 and 28 above). It is not the Court's task to verify whether their judgments correctly applied domestic criminal law; what is in issue in the present proceedings is not the individual criminal-law liability of the officers, but the international-law responsibility of the State (see *Tanlı v. Turkey*, no. 26129/95, § 111, ECHR 2001-III (extracts)). However, the Court cannot overlook the fact that, while the Bulgarian Criminal Code of 1968 gave the domestic courts the possibility of meting out up to twelve years' imprisonment for the offence committed by the officers (see paragraph 37 above), they chose to impose the minimum penalty allowed by law – three years' imprisonment –, and further to suspend it. In this context, it should also be noted that no disciplinary measures were taken against the officers (see paragraph 23 above). What is more, until 1999, well after the beginning of the criminal proceedings against them, both officers were still serving in the police, and one of them had even been promoted (he stopped being on the force only because he later chose to resign) (see paragraphs 19 and 20 above), whereas the Court's case-law says that where State agents

have been charged with crimes involving ill-treatment, it is important that they be suspended from duty while being investigated or tried and be dismissed if convicted (see *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004; and *Türkmen*, cited above, § 53). In the Court's view, such a reaction to a serious instance of deliberate police ill-treatment which resulted in death cannot be considered adequate. By punishing the officers with suspended terms of imprisonment, more than seven years after their wrongful act, and never disciplining them, the State in effect fostered the law-enforcement officers' "sense of impunity" and their "hope that all [would] be covered up", noted by the investigator in charge of the case (see paragraph 14 above).

64. In conclusion, the Court finds that the measures taken by the authorities failed to provide appropriate redress to the applicants (see *Okkalı*, cited above, § 78). They may therefore still claim to be victims within the meaning of Article 34 of the Convention.

II. ALLEGED VIOLATION OF THE SUBSTANTIVE ASPECT OF ARTICLE 2 OF THE CONVENTION

65. The applicants complained about the beating and ensuing death of Mr Nikolov. They relied on Article 2 of the Convention, which provides:

> "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."

66. The applicants submitted that the use of force in respect of Mr Nikolov had been entirely unprovoked and unnecessary.

67. The Government did not comment.

68. The Court notes that the criminal courts, after acquainting themselves with the evidence and examining the facts of the case, found that the two police officers, who were acting in their official capacity, were responsible for the death of Mr Nikolov. The courts also found that the officers had wilfully hit him, and that the "situation [had] not call[ed] for the use of such intense physical violence" (see paragraphs 24, 26 and 28 above). The Court therefore finds that the death of Mr Nikolov is

attributable to the respondent State. It is moreover clear from the findings of the criminal courts that the force used for effecting his arrest was not "absolutely necessary", within the meaning of the Court's case-law, and thus in breach of Article 2 of the Convention (see, as a recent authority, *Nachova and Others*, cited above, §§ 94 and 106-08).

69. There has therefore been a violation of this provision.

III. ALLEGED VIOLATION OF THE PROCEDURAL ASPECT OF ARTICLE 2 OF THE CONVENTION

70. The applicants complained about the alleged ineffectiveness of the criminal investigation into Mr Nikolov's death and about the alleged lack of effective compensation therefor. They relied on Articles 6 and 13 of the Convention.

71. The applicants submitted that, had it not been for their complaints to various institutions, the investigation against the police officers, having been halted in May 1995, would have never progressed to trial. It had resumed only in January 1998, more than two and a half years later. A number of other delays had accumulated throughout the following years, during the preliminary investigation and during the trial and the ensuing appeals.

72. The Government submitted that the investigation into Mr Nikolov's death had been full and comprehensive. The authorities had gathered all the relevant evidence. They had conducted twenty-eight interviews, a site inspection and an identity parade. They had also ordered seven forensic reports, including an autopsy. All levels of court had meticulously analysed all the available evidence and had found the police officers guilty. The investigation and the judicial proceedings had not been unduly protracted.

73. The Court considers that this complaint falls to be examined under the procedural aspect of Article 2 of the Convention and that there is no need to further examine it under Articles 6 and 13 (see, *mutatis mutandis*, *Okkalı*, cited above, § 54). The text of Article 2 has been set out in paragraph 65 above.

74. The relevant principles governing the States' duty to carry out an effective investigation in all cases where the use of force by State agents has resulted in death have been set out in paragraph 57 above.

75. The Court has already found that the criminal proceedings against the police officers responsible for Mr Nikolov's death fell short, for various reasons, of the requirements of Article 2 of the Convention (see paragraphs 58-64 above).

76. There has therefore been a violation of that provision.

IV. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

77. The applicants additionally alleged that the beating which had led to Mr Nikolov's death and the ensuing ineffective investigation had amounted to breaches of Article 3 of the Convention, which provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

78. Having regard to the grounds on which it has found a dual violation of Article 2 of the Convention (see paragraphs 69 and 76 above), the Court considers that no separate issue arises under Article 3 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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. Pecuniary damage

80. The applicants claimed loss of earnings of 18,240 Bulgarian levs (BGN). They submitted that Mr Nikolov had been sixty-two when he had died. He had retired shortly before and was receiving a monthly retirement pension of BGN 120. He would have received the above amount between his death and the date on which the application was lodged.

81. The Government did not comment.

82. Under the Court's settled case-law, there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in appropriate cases, include compensation in respect of loss of earnings (see, among many other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV; and *Salman*, cited above, § 137). The Court has found that the authorities were liable under Article 2 of the Convention for the death of the applicants' husband and father. In these circumstances, there was a causal link between the violation of Article 2 and the loss by his widow, Ms Nikolova, of the financial support which he provided for her. Concerning the amount of that loss, the Court notes that the applicants have not presented an actuarial report or other documents. It is therefore obliged to deal with the claim on an equitable basis (see *Velikova*, cited above, § 102). Ruling in equity, the Court awards Ms Nikolova 7,000 euros (EUR), to reflect the loss of income due to her husband's death. As regards Mr Nikolov's daughter, Ms Velichkova, it does not appear that at the time of his death she was

financially dependent on him; there is therefore no reason to award her any sum under that head.

B. Non-pecuniary damage

83. The applicants claimed BGN 10,000 for the non-pecuniary damage sustained by Mr Nikolov on account of the alleged breach of Article 2 of the Convention and BGN 10,000 for the non-pecuniary damage suffered by him on account of the alleged breach of Article 3 of the Convention. Ms Nikolova further claimed BGN 50,000 for the anguish which she had experienced as a result of Mr Nikolov's death. She submitted that the loss of her husband and her becoming a widow at the age of fifty-five had caused her considerable grief. Ms Velichkova claimed BGN 30,000. She submitted that the early loss of her father had caused her sorrow. The applicants also jointly claimed BGN 20,500 in respect of the frustration sustained by them on account of the slow and ineffective investigation into the death of Mr Nikolov.

84. The Government did not comment.

85. The Court notes that it has found that the authorities were responsible for the death of the applicants' husband and father and that they failed to provide an effective investigation in this respect. It also notes that it has found that no separate issue arises under Article 3 of the Convention. In these circumstances, and having regard to the awards made in comparable cases, the Court awards, on an equitable basis, EUR 10,000, plus any tax that may be chargeable, to Ms Nikolova, and EUR 10,000, plus any tax that may be chargeable, to Ms Velichkova, for the damage suffered by them personally, but makes no award in respect of the damage sustained by Mr Nikolov.

C. Costs and expenses

86. The applicants sought the reimbursement of BGN 1,000 in lawyers' fees and expenses. They did not submit any documents in corroboration of their claim.

87. The Government did not comment.

88. The Court notes that the applicants have not provided any documents in corroboration of their claim, as required under Rule 60 § 2 of the Rules of Court. They have not therefore established to the Court's satisfaction that they have actually incurred the costs and expenses claimed. In these circumstances, the Court makes no award under this head.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the applicants may claim to be victims for the purposes of Article 34 of the Convention;

2. *Holds* that there has been a violation of the substantive limb of Article 2 of the Convention;

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

4. *Holds* that no separate issue arises under Article 3 of the Convention;

5. *Holds*
   (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, to be converted into Bulgarian levs at the rate applicable on the date of settlement:
      (i) to Ms Nikolova, EUR 7,000 (seven thousand euros) in respect of pecuniary damage;
      (ii) to Ms Nikolova, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;
      (iii) to Ms Velichkova, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage;
      (iv) any tax that may be chargeable on the above amounts;
   (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;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 20 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President