



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

FIFTH SECTION

CASE OF VACHKOVI v. BULGARIA

(Application no. 2747/02)

JUDGMENT

STRASBOURG

8 July 2010

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 Vachkovi v. Bulgaria,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 2747/02) 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 two Bulgarian nationals, Ms Veronika Simeonova Vachkova and Mr Petar Ganchev Vachkov (“the applicants”), on 20 December 2001.

2. The applicants were represented by Mr Y. Grozev, a lawyer practising in Sofia. The Bulgarian Government (“the Government”) were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicants alleged that their son had died at the hands of the police and that the authorities had failed to provide a plausible explanation for his death and to investigate it effectively.

4. On 13 September 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1937 and 1935 respectively and live in Sofia.

6. Between 1995 and 1998 two sets of criminal proceedings for car theft, illegal possession of arms and robbery were opened against their son, Mr Gancho Vachkov, born in 1971. In 1996 a warrant for his arrest was issued and his name was placed on the list of wanted suspects. In May 1998 the police published a call for information about him.

A. The events of 6 June 1999

7. On the afternoon of 6 June 1999, a Sunday, Mr Gancho Vachkov and friends of his were playing football in a school playground in central Sofia. At one point Mr Vachkov found out that the police had located him and were watching him. He decided to leave the place and drove away at high speed. He was accompanied by Mr A.M. A police car followed his car.

8. During the ensuing chase through the streets of Sofia, Mr Gancho Vachkov or Mr A.M. opened fire on the police with an automatic weapon. The police fired back and after some time managed to shoot out the tyres of Mr Vachkov's car. Mr Vachkov and Mr A.M. abandoned the car and started running. Apparently the exchange of gunfire continued. Mr Vachkov and Mr A.M. split up as the latter had been shot in the leg. Shortly after that Mr A.M. was caught by the police.

9. Mr Gancho Vachkov continued to run, followed by the police. He entered a building situated on Murphy Street, in a residential area of Sofia, and went up the staircase of the building to the top floor. The police sealed off the area, urging the inhabitants to stay in their homes. Several masked police officers entered the building. Gunfire was heard. Thereafter, Mr Gancho Vachkov was taken out of the building by police officers, who were still masked. He had been shot in the head but was still alive. His hands were tied behind his back.

10. He was taken to a hospital, where he died later that day.

11. A masked officer took out of the building a handgun wrapped in a cloth and handed it over to the police officers who were standing around after the incident. The weapon was later identified as a "PSM handgun", calibre 5.45 mm. In the early hours of 7 June 1999 it was delivered by a police officer to an investigator on duty in the hospital where Mr Gancho Vachkov had been taken.

12. Subsequently it was established that the masked officers who had followed Mr Gancho Vachkov in the building and had directly participated in his arrest were from the Special Anti-Terrorism Squad (*Специализиран отряд за борба с тероризма*, "the SATS") of the Ministry of Internal Affairs. They were not under the command of the police forces who had participated in the earlier stages of Mr Vachkov's chase.

B. The investigation of the events

13. A criminal investigation of the events was opened on 6 June 1999.

1. Inspections and expert reports

14. On the same day an on-site inspection was carried out at the staircase of the building on Murphy Street. The record stated that the site had not been preserved. Traces of blood and body tissue were found at the site, as well as a number of cartridge shells, metal splinters and projectiles.

15. Mr Gancho Vachkov's abandoned car was inspected on the same day. The inspection established that the car's front left tyre was torn and flat and the rear left tyre was flat as well. The rear window was broken and marked by bullets. On the front seats the police found a Kalashnikov automatic rifle and numerous cartridge shells. In the boot they found munitions and false passports.

16. A Makarov handgun was found on the street in the area around the car.

17. A post-mortem examination of Mr Gancho Vachkov's body was performed by three medical doctors on the morning of 7 June 1999. They found entrance and exit wounds to the head and concluded that the death had been caused by cranio-cerebral trauma. The entrance wound, with an opening six millimetres in diameter, was in the right temple. The exit wound was in the left temple, with an opening measuring fifteen to eight millimetres. The doctors concluded that the fatal shot had been fired at "immediate range". They described numerous bruises and evidence of haemorrhage on Mr Gancho Vachkov's head and limbs which, in their view, were unrelated to the cause of death and seemed to have been caused within a short space of time.

18. Laboratory tests showed that there were no traces of alcohol or narcotic substances in Mr Gancho Vachkov's blood.

19. A second autopsy was carried out at the applicants' request on 11 June 1999. The report was drawn up in September 1999. The experts confirmed that the lethal shot had been fired at very close range. According to them, as the entry opening in the right temple measured eight to six millimetres, the shot had been produced by a weapon whose calibre did not exceed seven millimetres. This might have been a PSM handgun. The experts confirmed that there were numerous bruises and contusions on Mr Gancho Vachkov's head, face and limbs, which had probably been caused by blunt objects. They noted bruises on the wrists which, in their view, might have been caused by handcuffs.

20. On 24 June 1999 another expert who examined the relevant part of the skin from Mr Gancho Vachkov's right temple, concluded that the fatal wound had been caused by a firearm fired at very close range. It was "possible" that this was a PSM handgun.

21. On 12 and 14 July 1999 ballistic experts examined the PSM handgun allegedly found at the site where Mr Gancho Vachkov had been shot, and the cartridge shells and projectiles also found there. They concluded that three of the shells had been fired by the PSM handgun. Another fourteen cartridge shells found on the spot had been fired by one and the same weapon, a 9 mm calibre Parabellum.

22. A medical report of an unspecified date concluded that the blood found at the site where Mr Gancho Vachkov had been shot might have been his.

2. Witness evidence

23. Residents of the building on Murphy Street were interviewed on 6 and 10 June 1999. Mr A.H., Mrs B.H. and Ms M.H. explained that they had seen masked police officers who had instructed them to stay in the bathroom of their apartment. Thereafter, they had heard several gunshots, not consecutively, and then two more powerful shots. After that it had become quiet. They had come out of the apartment and seen bloodstains on the landing. Some time later Mrs B.H. and Ms M.H. washed the blood off. Police officers who had arrived later to inspect the site had told them that they should not have done this.

24. In her testimony, Ms M.H. stated in addition that she had heard the police officers urge Mr Gancho Vachkov to surrender.

25. Mr A.M. was interviewed on 11 June 1999. He explained that he and Mr Gancho Vachkov had been acquaintances and that on 6 June 1999 the latter had been giving him a lift home when he had noticed that the police were following him. During the chase Mr Gancho Vachkov had given Mr A.M. a Kalashnikov automatic rifle and insisted he open fire on the police; when Mr A.M. refused Mr Gancho Vachkov shot him in the leg. After that Mr Gancho Vachkov had himself started shooting at the police while driving. When the two abandoned the car, Mr A.M. was not able to run, due to the injury to his leg, and was soon caught by the police and taken to hospital.

26. Mrs L.G., interviewed on 21 June 1999, explained that she had seen from the balcony of her apartment two young men running. Only one of them had had a weapon; later on she had seen him being led away by the police. They had been chased by other men, all of whom were armed. Mr S.V., also interviewed on 21 June 1999, had also seen the two young men running. According to him, none of them were armed.

27. In the course of the investigation the authorities questioned a number of protected witnesses, whose anonymity was preserved in accordance with Article 97a of the Code of Criminal Procedure (see paragraph 52 below), including police officers involved in the chase in the streets of Sofia, but not those from the SATS who had been the last to be in contact with the applicants' son in the building on Murphy Street.

28. On 24 June 1999 protected witness no. 33 said that she had seen Mr Gancho Vachkov enter the courtyard of the building on Murphy Street, armed with a handgun.

29. Protected witness no. 333, a senior police officer who had been in charge of Mr Gancho Vachkov's chase, but had not been involved in the events inside the building on Murphy Street, was interviewed on 25 June 1999 and explained that the arrest operation had been planned in advance. On 15 September 1999 he explained that he did not know the identities of the SATS masked officers who had been in the building as they enjoyed a special status.

30. Other witnesses interviewed during the investigation described what they had seen of the car chase in the city and outside the building on Murphy Street.

31. The SATS officers who had followed Mr Gancho Vachkov into the building were never identified or questioned. In a letter dated 10 June 1999 and addressed to the Ministry of Internal Affairs the prosecutor in charge of the case requested their names. He undertook to protect their identities in accordance with Article 97a of the Code of Criminal Procedure (see paragraph 52 below). The reply, signed by the head of the National Police Service, was dated 15 July 1999. It contained information on the police operation of 6 June 1999, but did not mention the names of the officers in question.

32. On 30 August 1999 the investigator in charge appointed an expert in psychiatry to assess Mr Gancho Vachkov's mental state during the last hours of his life. The expert, who submitted her report on an unspecified date, noted that Mr Gancho Vachkov had no record of mental problems or indeed any particular health problem. However, there were reasons to believe that he had displayed the major symptoms of a "dissociative personality disorder". Furthermore, according to the expert, in the "extremely tense and psychologically strained situation" when he was surrounded by the police

"it is possible that he attempted suicide as an impulsive reaction, seeking a solution to the situation without considering possible alternatives".

3. Discontinuance of the proceedings

33. On 17 September 1999 the evidence collected in the case was presented to the applicants, who were given the opportunity to familiarise themselves with it and make any remarks and objections. The first applicant stated that she disagreed with the findings of the psychiatric expert report.

34. On 21 September 1999 a prosecutor from the Sofia military regional prosecutor's office discontinued the criminal proceedings. He found that no offence had been committed in relation to Mr Gancho Vachkov's death and

that the immediate cause of his death was suicide, committed with the PSM handgun allegedly found on the spot. Furthermore, he noted that:

“The actions of the [police officers] during [Mr Gancho] Vachkov’s chase and arrest were a direct response to the actions and the behaviour of [Mr] Gancho Vachkov and [Mr A.M.], which were in flagrant violation of public order and threatened public security. [...] In the case, the [police officers] did not exceed their powers and their actions did not exceed what was necessary and lawful within the meaning of [Article 12a] of the Criminal Code.”

35. On 7 July 2000 the applicants appealed against the discontinuance, arguing that the investigation had been flawed. They pointed out that the authorities had failed to question the police officers directly involved in the arrest of their son. Furthermore, no evidence establishing a link between their son and the PSM handgun had been gathered and no plausible explanation had been given for the other injuries on his body. Also, the wording of the decision of 21 September 1999 did not make it clear whether the prosecutor accepted that their son had been shot but the shooting was lawful under Article 12a of the Criminal Code, or considered that their son had committed suicide.

36. On 12 February 2001 a prosecutor from the military appellate prosecutor’s office dismissed the appeal. He found that the police officers who had followed Mr Gancho Vachkov into the building on Murphy Street had rightly not been questioned; they enjoyed “a special status” and the disclosure of their identities was not warranted, since sufficient other evidence had been collected to establish the relevant facts. The prosecutor reiterated the conclusion that Mr Vachkov had committed suicide and dismissed the argument that the bruises and contusions on his body had remained unexplained, stating that the post-mortem reports had provided sufficient explanation.

37. On 5 March 2001 the applicants appealed to the Chief Public Prosecutor’s Office. They pointed out that no rules of criminal procedure exempted police officers from the duty to testify and that, furthermore, Article 97a of the Code of Criminal Procedure provided for the questioning of protected witnesses. The applicants claimed once again that the authorities had failed to establish the timing and origin of the numerous injuries on their son’s body.

38. In a letter accompanying the appeal the applicants referred to Article 237 of the Code of Criminal Procedure (see paragraph 49 below) and requested that in the event of a dismissal of the appeal the case file be forwarded to the appropriate court.

39. On 22 March 2001 a prosecutor from the Chief Public Prosecutor’s Office dismissed the appeal without commenting on the applicants’ argument that the police officers involved had not been identified or questioned. He considered that in his decision of 21 September 1999 (see paragraph 34 above) the prosecutor from the Sofia military regional

prosecutor's office had rightly relied on Article 12a of the Criminal Code and that, in addition, it had been clearly established that Mr Gancho Vachkov had committed suicide. Furthermore, he considered that the bruises on Mr Vachkov's body had been the result of the violent chase preceding his arrest, as he had climbed fences and gone through bushes. Furthermore, none of the witnesses living in the building had heard sounds indicating that Mr Gancho Vachkov might have been beaten by the police officers.

40. The decision did not mention the applicants' request for the case file to be forwarded to the appropriate court. Instead, it stated that the file should be sent back to the Sofia military regional prosecutor's office.

41. In a letter of 28 March 2001 the applicants insisted again that the file be transmitted for review by the courts, pursuant to Article 237 of the Code of Criminal Procedure.

42. On 29 June 2001 a prosecutor from the Chief Public Prosecutor's Office dismissed the request. In his view, there were no grounds for forwarding the case file to a court, since the decision of the Sofia military regional prosecutor's office of 21 September 1999 had become final as early as 28 September 1999, after the applicants had failed to appeal to the military appellate prosecutor's office within seven days. The provisions requiring the forwarding of the case file to the appropriate court had entered into force on 1 January 2000, by which date the decision to discontinue the proceedings had already become final.

43. On 17 July 2001 the applicants lodged a complaint with the Chief Public Prosecutor. They stated that the file did not contain information on the date when they had received the decision of 21 September 1999, and that the prosecuting authorities had the duty to examine any complaint containing information that a serious offence might have been committed.

44. No reply to that complaint was ever received.

II. RELEVANT DOMESTIC LAW

A. Offences against life and duty to investigate death

45. Article 115 of the 1968 Criminal Code provides that murder is punishable by ten to twenty years' imprisonment. By Article 116 § 1 (2) of the Code, if a murder is committed by a police officer in the course of or in connection with the performance of his or her duties, it is punishable by fifteen to twenty years' imprisonment, or life imprisonment, with or without parole. By Article 124 § 1 of the Code, where death occurs as a result of wilfully inflicted grievous bodily harm, the punishment is three to twelve years' imprisonment. Those offences are publicly prosecutable.

46. Article 192 §§ 1 and 2 of the 1974 Code of Criminal Procedure, as in force at the material time, provided that proceedings concerning publicly prosecutable offences could be initiated only by a prosecutor or an investigator. By Article 20 of the Code, read in conjunction with its Articles 186-91, those authorities were under an obligation to initiate a preliminary inquiry or institute proceedings and investigate, where they have been informed of facts or events on the basis of which a reasonable supposition could be made that a criminal offence may have been committed.

47. The remaining relevant provisions of the Criminal Code and the Code of Criminal Procedure related to the duty to investigate death and to the competences of the relevant authorities have been summarised in the Court's judgment in the case of *Ognyanova and Choban v. Bulgaria*, no. 46317/99, §§ 65 and 69-71, 23 February 2006).

B. Injuries inflicted during arrest

48. Article 12a of the Criminal Code, added in August 1997, provides that causing harm to a person while arresting them for an offence is not punishable where no other means of effecting the arrest exist and the force used is necessary and lawful. According to Article 12a § 2, the force used is not necessary where it is manifestly disproportionate to the nature of the offence committed by the person to be arrested or the resulting harm is in itself excessive and unnecessary.

C. Discontinuance of preliminary investigations

49. Article 237 § 6 of the 1974 Code of Criminal Procedure, as worded until the end of 1999, provided that the discontinuance of a preliminary investigation could be challenged before a more senior prosecutor within a seven-day period. The period ran from the date of receipt of the decision by the person concerned. No judicial review was provided for.

50. On 1 January 2000 that Article was amended to provide for a system of automatic control of the discontinuance: after the discontinuance the prosecutor had to send the file and his decision to the immediately superior prosecutor's office, which could confirm, modify or quash it. If it confirmed the decision, it had to forward the file to the appropriate court, which had to review the matter in private. The court's decision was final. No provision was made for those concerned to be notified of the discontinuance.

51. Following a further amendment of that Article in May 2001, the discontinuance of preliminary investigations became subject to judicial review. The 2005 Code of Criminal Procedure maintained that position, in Article 243 §§ 3-7.

D. Witness protection

52. Article 97a of the 1974 Code of Criminal Procedure provided for the protection of witnesses who might be at risk. The prosecuting authorities or the courts could decide to preserve the witnesses' anonymity and make orders for their security. Protected witnesses had to be questioned in secret. Their identity could only be known to the prosecuting authorities, the courts, and to the witnesses' legal representatives.

E. Special Anti-Terrorism Squad

53. Under the 1997 Ministry of Internal Affairs Act, in force from 1997 to 2006, the Special Anti-Terrorism Squad ("the SATS") was a specialised service of the Ministry of Internal Affairs for combating terrorism, protecting strategic objects and participating in the prevention and investigation of crimes. By section 159(3) of the Act, "in the performance of the SATS' tasks, the identity of its members [was] to be kept secret".

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

54. The applicants complained that the State had been responsible for their son's death on 6 June 1999. They also complained that the investigation of the events had not been effective in that the authorities had refused to collect crucial evidence, had not acted promptly and had not ensured the applicants' involvement in the proceedings.

55. The applicants relied on Articles 2 and 13 of the Convention. The Court considers that the complaints fall to be examined solely under Article 2 of the Convention, which reads:

"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.”

A. Admissibility

1. *The parties' submissions*

56. The Government urged the Court to dismiss the complaints as inadmissible. They pointed out that the applicants had failed to lodge an appeal against the decision to terminate the criminal proceedings of 21 September 1999 within the statutory seven-day time-limit. In their view, the decision in question had entered into force after the expiry of the said time-limit and represented the final decision in the case. The present complaint had been submitted more than six months after that decision and thus outside the time-limit under Article 35 § 1 of the Convention.

57. The applicants contested that argument. They pointed out that the decision of 21 September 1999 had not been served on them and that they had appealed against it as soon as they had learned of it. Furthermore, the higher prosecutors had examined the merits of their appeals, without questioning their admissibility. The applicants had availed themselves of all available domestic remedies and had lodged the present application less than six months after the last of these remedies had been exhausted.

2. *The Court's assessment*

58. The Court observes that in July 2000 the applicants appealed against the decision of the Sofia military regional prosecutor's office of 21 September 1999 (see paragraph 35 above). It is unclear whether that decision had been served on the applicants and, consequently, whether the appeal was lodged within the seven-day statutory period (see paragraphs 34, 35 and 49 above). The Court observes, however, that the military appellate prosecutor's office examined the applicants' appeal on the merits without questioning its admissibility (see paragraph 36 above). Furthermore, the Chief Public Prosecutor's Office examined the applicants' consequent appeal against the decision of the military appellate prosecutor's office and dealt with the substance of the issues raised – which concerned the question whether police officers might have been responsible for the death of the applicants' son (see paragraph 39 above). Therefore, since the domestic authorities themselves found the applicants' appeals against the decision of 21 September 1999 to be admissible and examined them, delivering new decisions on the substance of the issues now brought before the Court, it cannot be maintained, as the Government did (see paragraph 56 above), that the applicants had not made valid use of the opportunity to appeal (see, *mutatis mutandis*, *Öztürk v. Turkey* [GC], no. 22479/93, §§ 45-46, ECHR 1999-VI, and *Raichinov v. Bulgaria* (dec.), no. 47579/99, 1 February 2005).

59. The Court thus finds that the applicants made normal use of the available remedies before the prosecuting authorities and, when the possibility of judicial review of their decisions was introduced into Bulgarian law in 2001, sought to have the case reviewed by the courts. This latter action was refused on 29 June 2001 and the applicants applied to the Court on 20 December 2001 (see paragraphs 1, 37, 40-44 and 49-51 above). It follows that the present complaint was introduced within six months of the final domestic decision in the case and that, therefore, Article 35 § 1 of the Convention has been complied with. Accordingly, the Government's objection that the application is time-barred must be dismissed.

60. The Court finds furthermore that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and not inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

61. The applicants submitted that the authorities had failed to provide a plausible explanation for their son's death and that the conclusion that he had committed suicide had not been based on any significant evidence.

62. Firstly, they expressed doubts as to whether their son had had a gun when he had entered the building on Murphy Street. In this respect, they relied on the testimonies of Mrs L.G and of Mr S.V. (see paragraph 26 above) and expressed doubts as to the veracity of the testimony of protected witness no. 33 and of Mr A.M. (see paragraphs 25 and 28 above). For them, it seemed more likely that Mr A.M. and not their son had been the person who was armed.

63. Furthermore, the applicants referred to the expert reports of 12 and 14 July 1999 (see paragraph 21 above) which had shown that the cartridge shells found on the scene of the shooting in the house on Murphy Street had only been fired by two guns. The applicants noted that if it had been their son who had used the PSM handgun, it was likely that more than one of the police officers present in the building had returned fire.

64. The applicants argued, secondly, that even if it could be accepted that their son had been armed, it had not been sufficiently established that he had committed suicide, as this conclusion had mostly been based on a post-mortem psychiatric expert report.

65. The applicants thus concluded that their son had not committed suicide but had died as a result of force used by the police. In this respect, they argued that that force had been disproportionate. They contended that the police operation of 6 June 1999 had lacked adequate planning and that

no clear instructions had been issued as to when the use of force was permitted.

66. In respect of the effectiveness of the investigation, the applicants pointed out that the prosecuting authorities had failed to gather crucial evidence, as they had failed to identify and question the police officers who had arrested their son and had therefore been the sole eyewitnesses to the events inside the building on Murphy Street. Furthermore, the applicants noted that the scene of the shooting had not been preserved. They criticised the prosecuting authorities' unreserved acceptance of Mr A.M.'s statement and their failure to investigate the exact circumstances of his capture.

67. In the applicants' view, therefore, the investigation had been ineffective.

68. The Government did not comment on the merits of the complaint.

2. *The Court's assessment*

(a) **Mr Gancho Vachkov's death**

69. Article 2 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.

70. The provision of Article 2 not only safeguards the right to life but sets out the circumstances when the deprivation of life may be justified. The Court has held that the exceptions delineated in Article 2 § 2 indicate that this provision extends to, but is not concerned exclusively with, intentional killing. The text of Article 2, read as a whole, demonstrates that paragraph 2 does not primarily define instances where it is permitted intentionally to kill an individual, but describes the situations where it is permitted to "use force" which may result, as an unintended outcome, in the deprivation of life. The use of force, however, must be no more than "absolutely necessary" for the achievement of one of the purposes set out in sub-paragraphs (a), (b) or (c) (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 147-48, Series A no. 324).

71. The use of the term "absolutely necessary" in Article 2 § 2 indicates that a stricter and more compelling test of necessity must be employed from that normally applicable when determining whether State action is "necessary in a democratic society" under paragraph 2 of Articles 8 to 11 of the Convention. In particular, the force used must be strictly proportionate to the achievement of the aims set out in sub-paragraphs 2 (a), (b) and (c) of Article 2. In keeping with the importance of this provision in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination so as to prevent unnecessary

deprivation of life (see *McCann and Others*, cited above, §§ 149-50, and *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 171, *Reports of Judgments and Decisions* 1997-VI).

72. Turning to the case at hand, the Court notes that Mr Vachkov was fatally injured during an attempted police arrest. It has not been disputed that in the course of this operation the police used force. The Court has to examine therefore whether that use of force complied with the requirements of Article 2 § 2 of the Convention, that is, whether the force used was “absolutely necessary” and strictly proportionate to the aim of carrying out Mr Vachkov’s arrest.

73. In that respect the Court notes that in the course of his pursuit Mr Vachkov entered and hid in a residential building where the SATS officers followed him. A series of gunshots were then heard and Mr Vachkov was brought out of the building, having sustained a fatal shot to the head and with his hands tied behind his back (see paragraphs 9 and 11 above).

74. Once Mr Gancho Vachkov entered the building, the whole area was sealed off by the police (see paragraph 9 above). It does not appear that he was in any position to successfully flee the scene as the police were in complete control of the situation. Given those circumstances, the Court is struck by the fact that the police do not appear to have had, or to have attempted to employ, any strategy aimed at minimising to the greatest extent possible recourse to lethal force. The operation had been planned in advance, as stated by protected witness no. 333, who was a senior police officer (see paragraph 30 above); yet, at no point has it been alleged that a strategy aimed at minimising recourse to lethal force existed, or that the possibility to carry out the arrest without resort to such force had been considered. It has not been established, nor have the Government argued, that there was any danger or urgency warranting recourse to armed force for Mr Vachkov’s arrest. The Court is therefore not convinced that it was impossible for the police, for example, to attempt to warn Mr Vachkov of their intentions, or negotiate with him to put down his weapon, if he was armed, and surrender (see, *mutatis mutandis*, *Bubbins v. the United Kingdom*, no. 50196/99, § 146, ECHR 2005-II (extracts)), or otherwise prevent recourse to lethal force, including a suicide attempt by him. Instead, apparently without considering any other possible course of action, the SATS officers entered into the building and engaged in gunplay.

75. As mentioned above (see paragraph 71), the Court must subject any deprivation of life to the most careful scrutiny, taking into consideration all relevant circumstances. In view of that, and for the considerations above, the Court has serious doubts as to whether the force employed by the police in the case was “absolutely necessary” and proportionate to the aim of carrying out Mr Vachkov’s arrest, as required under Article 2 § 2 of the Convention (see paragraph 71 above). Nor have, in fact, the Government,

who did not make submissions on the merits (see paragraph 68 above), argued that the force used had been necessary in the circumstances.

76. The Court observes that it is not for it to make an assessment of the evidence collected by the prosecuting authorities and reach a conclusion as to who fired the shot that resulted in Mr Vachkov's fatal head wound. However, bearing in mind the considerations above, it is of the view that it has not been demonstrated that the operation for Mr Vachkov's arrest was adequately planned, or that the armed force used, which in one way or another brought about Mr Vachkov's death, was proportionate and "absolutely necessary".

77. Therefore, there has been a violation of Article 2 of the Convention.

(b) Alleged ineffectiveness of the investigation

78. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. The investigation must be, *inter alia*, thorough, impartial and careful (see *Ognyanova and Choban*, cited above, §§ 102-03 and 106-07). The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (*ibid*, § 105).

79. There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice, to maintain public confidence in the authorities' adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 321, ECHR 2007-..., and *Anguelova v. Bulgaria*, no. 38361/97, § 140, ECHR 2002-IV).

80. Even where death has not been caused intentionally, Article 2 of the Convention requires that there should be an effective independent judicial system capable of establishing the circumstances of the death (see, *mutatis mutandis*, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I).

81. Applying the principles above to the case at hand, the Court notes that the authorities undertook a number of acts of investigation (see paragraphs 14-32 above). However, the Court is struck by the fact that they failed to collect a crucial piece of evidence, namely statements from the SATS officers who had been directly involved in Mr Vachkov's arrest.

82. The first reason given by the authorities for their decision to forego the collection of this evidence – that the officers worked for a special police unit and thus enjoyed “special status” (see paragraph 36 above) – was vague, as the authorities did not refer to any legal provision. Furthermore, assuming that implicit reference was made to section 159(3) of the Ministry of Internal Affairs Act, as in force at the time, which provided for the protection of the SATS officers' identities in the performance of their duties (see paragraph 53 above), it is doubtful whether this provision could be interpreted as unconditionally exempting SATS officers from their duty to testify in criminal proceedings.

83. In the Court's view, even if this was so, such an unconditional exemption would be in itself contrary to Article 2 of the Convention, which imposes on States the obligation to conduct full and effective investigations into suspicious deaths. The fact that the officers in question worked for a “special” police unit could warrant appropriate measures, such as treating them as protected witnesses, but could not justify doing away altogether with their identification and questioning. Bulgarian law at the relevant time provided for the protection of witnesses and for guarantees of their anonymity (see paragraph 52 above). Moreover, in his letter dated 10 June 1999 and requesting the disclosure of the identities of the officers in question, the prosecutor in charge of the case expressly undertook to apply those provisions (see paragraph 31 above). Indeed, the witness protection scheme was applied in the case, the investigators having examined numerous anonymous witnesses, including a high-ranking police officer from another service (see paragraphs 27-29 above). It is thus striking that they did not extend the scheme to the SATS officers.

84. The Court is, furthermore, disturbed by the second reason given – that the identification and questioning of the police officers was “unnecessary” since sufficient other evidence of suicide had been collected (see paragraph 36 above).

85. Contrary to the prosecutors' affirmation, the Court considers that the evidence available to them was inconclusive, suicide being only one of the possible explanations for Mr Vachkov's death. The Court observes, for example, that the fact that the fatal shot had been fired at close range into Mr Vachkov's head (see paragraphs 17 and 19-20 above) was compatible with both suicide and manslaughter as possible explanations. Furthermore, the Court considers that the reliability of a psychiatric assessment carried out post-mortem, as the one commissioned by the investigators in the case (see paragraph 32 above), can be seriously questioned (see *Tais v. France*,

no. 39922/03, § 109, 1 June 2006). In addition, that assessment did not contribute anything more than a statement that suicide was one of the “possible” causes of the applicants’ son’s death. Thus, there can be no doubt about the crucial importance of questioning the SATS officers in order to substantiate or disprove the supposition that Mr Gancho Vachkov had committed suicide and establish if any measures had been taken to avoid the lethal outcome of the arrest operation. The SATS officers were the only eyewitnesses to the events inside the building on Murphy Street and, by failing to question them, the authorities forwent their only opportunity of receiving an account of the last minutes of Mr Gancho Vachkov’s chase and the circumstances of his arrest.

86. The Court notes that the scope of the investigation was limited to the possible criminal acts committed by the officers involved. The investigation did not seek to clarify the full picture of the operation and the manner in which it had been planned and carried out so as to avoid unnecessary use of lethal force and possible loss of life. What is more, the Court notes that the SATS officers were potential suspects, since, as already mentioned in the preceding paragraph, it could appear that Mr Vachkov had died as a result of excessive force used by the police. For the Court, there can thus be no excuse for the failure to take statements from them.

87. In the Court’s view, having regard to the principles enshrined in Article 2 of the Convention, discontinuing the investigation into the death of a person who had been in the hands of police officers at the time of the fatal injury, without identifying and questioning the police officers involved, cannot be justified in any circumstances (see *İrfan Bilgin v. Turkey*, no. 25659/94, § 144, ECHR 2001-VIII, and *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 158 and 159, 24 February 2005).

88. That is so, in the first place, because the investigation required by Article 2 must be thorough and complete and must probe all plausible versions of the events. That is also essential, moreover, since the very purpose of the effective investigation required by Article 2 in cases such as the present one is, above all, to ensure the accountability of State agents for deaths which may have occurred under their responsibility, to maintain public confidence in the authorities’ adherence to the rule of law and to prevent any appearance of collusion in or tolerance of unlawful acts (see the case-law cited in paragraph 79 above).

89. In the circumstances of the present case, the Court considers that the approach of the Ministry of Internal Affairs and of the prosecuting authorities, who found it normal not to identify the SATS officers involved, betrays a deplorable lack of respect for the principle of accountability of the police before the law.

90. In addition, the Court notes that the prosecuting authorities discontinued the investigation on the ground that no criminal offence had been committed in relation to Mr Vachkov’s death (see paragraph 34

above). As already mentioned (see paragraph 86 above), they failed to investigate whether the police operation had been planned and carried out so as to avoid unnecessary loss of life and use of lethal force, an issue which the Court has found to be highly relevant (see paragraphs 72-76 above). Instead, the investigation was limited to establishing whether the police officers involved possibly committed a criminal offence such as manslaughter. Thus, the Court considers that the investigation was incomplete, in that it did not, and was not intended to, establish the relevant circumstances in their entirety (see, *mutatis mutandis*, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 114, ECHR 2005-VII, and *Tzekov v. Bulgaria*, no. 45500/99, § 71, 23 February 2006).

91. The Court observes that the investigation suffered from additional serious omissions. The site of the shooting was not preserved (see paragraphs 14 and 23 above). Moreover, the prosecuting authorities did not investigate the circumstances in which the applicants' son had received numerous bruises and haemorrhages on the head and limbs. Those injuries were not discussed at all in the initial decision of the Sofia military regional prosecutor's office to discontinue the proceedings (see paragraph 34 above). For the military appellate prosecutor's office, the injuries had been sufficiently accounted for in the post-mortem reports (see paragraph 36 above). However, the Court notes that the experts who prepared those reports only described the injuries in question and stated that they had been caused by blunt objects within a short interval of time; they did not explain, in the context of the specific facts of the case, how the injuries had been inflicted (see paragraphs 17 and 19 above). In these circumstances, the statement contained in the prosecutors' decision of 22 March 2001 that the injuries had been the result of the chase preceding Mr Vachkov's arrest (see paragraph 39 above) was not only too vague and general, but was a mere unverified supposition, as there was no evidence that the applicants' son had fallen or otherwise injured himself during that chase.

92. Furthermore, despite their finding that Mr Vachkov had shot himself with his own PSM handgun (see paragraph 34 above), the authorities never investigated how the weapon had been found and failed to establish a link between it and Mr Vachkov. The PSM handgun was not found by the investigating authorities on the spot but was delivered to them several hours later by the police (see paragraph 11 above). No evidence was gathered as to the exact location and the position in which the weapon had been found, or as to whether it had been tampered with before being handed over to the investigators. No fingerprints were taken from the gun. It was not established whether Mr Vachkov had had it before entering the residential building. The authorities merely assumed that it was his. The applicants' arguments about the absence of any link between their son and the gun (see paragraph 35 above) were disregarded. It should also be noted that the police found a Makarov handgun dropped on the street close to the place

where Mr Vachkov and Mr A.M. had abandoned their car (see paragraph 16 above). However, the authorities did not establish whether this was the gun seen by Mrs L.G. (see paragraphs 26 above). Furthermore, the prosecuting authorities did not seek to clarify the contradictory witness statements made by Mrs L.G., Mr S.V. and protected witness no. 33 as to whether Mr Vachkov had had at all a gun in his hands before entering the building on Murphy Street (see paragraphs 26 and 28 above).

93. In view of the foregoing, the Court finds that the investigation in the case lacked the requisite thoroughness and objectivity and that the prosecuting authorities failed to take all steps necessary to identify the circumstances of Mr Vachkov's death.

94. It follows that there has been a violation of the respondent State's obligation under Article 2 of the Convention to conduct an effective investigation into his death.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicants claimed jointly 30,000 euros (EUR) as compensation for the pain and suffering resulting from the death of their son and the ineffective investigation.

97. The Government urged the Court to adopt a just and moral approach.

98. The Court notes that it found violations of Article 2 of the Convention, under both its substantive and procedural aspects (see paragraphs 77 and 94 above). It considers that the applicants must have suffered gravely as a result of those serious violations of fundamental human rights. It thus awards the amount claimed in full.

B. Costs and expenses

99. The applicants sought reimbursement of EUR 3,605 for 51.5 hours of legal work by their lawyer, at a rate of EUR 70 per hour. In support of this claim they presented a contract of legal representation and a time sheet. They requested that any sum awarded under this head be transferred directly into the bank account of their lawyer.

100. The Government were of the view that the amount claimed was excessive.

101. According to the Court's case-law, costs and expenses can be awarded under Article 41 only if it is established that they were actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the applicants the full amount claimed, plus any tax that may be chargeable to them. That amount is to be paid into the bank account of their legal representative, Mr Grozev.

C. Default interest

102. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention in that the State was responsible for the events which led to Mr Gancho Vachkov's death;
3. *Holds* that there has been a violation of Article 2 of the Convention in that the authorities failed to conduct an effective investigation into Mr Gancho Vachkov's death;
4. *Holds*
 - (a) that the respondent State is to pay the applicants jointly, within three months of 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) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 3,605 (three thousand six hundred and five euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be transferred directly into the bank account of the applicants' legal representative;

(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;

Done in English, and notified in writing on 8 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

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

P.L.
C.W.

CONCURRING OPINION OF JUDGE MARUSTE

While I am in agreement with the majority in finding a violation of Article 2 in its substantial limb, I have slightly different view in respect of the reasoning.

Briefly, the majority seems to depart from the presumption that the special police forces were responsible for the lethal shot and Mr Vachkov's death. In general it is so, but for me this conclusion needs to be more nuanced. My understanding is that at the final stage of operation the police failed to protect human life and that being so, the State has violated its positive obligation under Article 2.

The operation had clearly two stages – first, the attempt to arrest and ensuing chase and second, the localisation of the fugitive in a residential building and his capture. Allegedly the first stage was planned by the police. But the second stage probably went outside of the scope of the previously planned operation.

There is no doubt that Mr Vachkov acted highly dangerously both *vis-à-vis* the police and the public in general during the first stage. It is hard to see something more dangerous than shooting in the city streets using a machine gun in the course of escaping using a car. Consequently, the police had all good grounds to believe that the fugitive was extremely dangerous and had to react accordingly to eliminate that danger decisively and quickly, even by using lethal force.

But after having localised the fugitive and having sealed the whole area off, it was clear that Mr Vachkov was under police control and that he was not in any position to flee or to pose a threat to other people. In such circumstances another scenario stemming from the positive obligation of State authorities to save and protect human life should have been applied in order to make the fugitive surrender. Apparently, the police were not adequately prepared for that or they neglected that duty.

Because of the procedural failure of the State to conduct a complete and thorough investigation of the incident we do not know the exact reasons of the death – if it was suicide or a lethal shot from the police force. If it was suicide the positive obligation covers also the duty of police to take all necessary means to avoid autoaggression of the wanted and desperate person which was under their control. If it was a lethal shot by the police then the “absolutely necessary” and proportionality criteria applies and here I am in agreement with the majority reasoning. Be that as it may, in both cases the State authorities to my mind failed in their duty to protect human life.