CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF KRASTANOV v. BULGARIA

(Application no. 50222/99)

JUDGMENT

STRASBOURG

30 September 2004

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 Krastanov v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 9 September 2004,

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

PROCEDURE

1. The case originated in an application (no. 50222/99) 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 Mr Svetoslav Dimitrov Krastanov ("the applicant"), a Bulgarian national born in 1952 and living in Sofia, on 3 March 1999.

2. The applicant was not legally represented. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged that he had been ill-treated by police officers and had not received adequate redress, that the proceedings for compensation he had initiated against the responsible state authorities had lasted unreasonably long and as a result of that, as well as the inflation of the local currency, the amount he had eventually received as compensation had been inadequate.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 4 September 2003 the Court declared the application admissible.

6. The applicant, but not the Government, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1952 and lives in Sofia.

A. The events of 2 March 1995

8. The applicant is a high-school teacher. At about 11.45 a.m. on 2 March 1995 he went to a café with two of his work colleagues.

9. At about 12 noon seven or eight police officers with masks on their heads rushed into the café.

10. Subsequently it was established that they were officers of the Ministry of Internal Affairs, the Special Anti-Terrorism Squad („Специализиран отряд за борба с тероризма“) and the Central Service for Combating Organised Crime („Централна служба за борба с организираната престъпност“) and that they were conducting an operation for the arrest of several persons suspected of criminal offences who were apparently known to go regularly to that café.

11. The officers shouted “Police!” and ordered everyone in the café to lie down, put their hands up and close their eyes. The applicant asked where exactly he should put his hands. One of the officers told him that he should put his hands behind his neck. The applicant did so and lay down on the bench on which he had been sitting. He remained in this position for about two or three minutes, during which he was hit two or three times on the head with a solid object. After that he was ordered to go out of the café. The applicant asked why he had been hit, since he had done nothing to provoke this. He also said that he had difficulties moving because he was feeling a strong pain in his head and was losing blood. The police officers threatened the applicant and swore at him, using abusive language. They dragged him outside the café, hit him several times and threw him down on the ground. The applicant was hit several times in the head with the butt of a gun and received several kicks in the ribs. After that the officers ordered the applicant to produce his identity papers. He handed his wallet to an officer who checked the papers. At that point the applicant’s colleagues managed to explain that there had apparently been some kind of confusion as to the applicant’s identity and the beating stopped. The officers told the applicant that they had mistaken him for another person and apologised.

12. The applicant crossed the street with the help of his two colleagues and then lost consciousness. An ambulance was called which brought him to the neurosurgical ward of the Medical Academy in Sofia.

B. The applicant's medical treatment and health condition following the events of 2 March 1995

13. The applicant was examined by the emergency ward team. It was found that he had a cerebral trauma with an epidural haematoma in his left temporal area, cerebral contusion, polyfragmentary fracture of the left temporal bone, fracture of the ninth rib on the right side of the thorax and a subcutaneous emphysema in the right thoracic half. Six hours after his admission to hospital it was decided that urgent head surgery was needed. The applicant underwent decompressive craniotomy in the left temporal area, evacuation of the epidural haematoma and coagulation of the damaged *arteria meningica media* at the left side of his head.

14. The applicant remained in hospital until 13 March 1995.

15. During the following five or six months he was experiencing pain and had to be treated with analgesics and vasodilatory drugs. He was on sick leave until 27 November 1995.

16. The applicant was directed for another operation, which he could not afford financially.

17. On 10 September 1998 the competent commission for assessing disability issued a decision stating that the applicant suffered from second degree disability. The diagnosis on which this decision was based was the following: traumatic subdural subarachnoid and extradural haemorrhage, posttraumatic and postoperative status in respect of an acute epidural haematoma in the left temporal area, defect after a depressive polyfragmentary fracture of the left temporal bone, posttraumatic encephalopathy, quadripyramidal syndrome, latent hemiparesis on the right side, central subcompensated otoneurological syndrome, neuritis of the left auditory nerve (light degree), postfractural status of the ninth rib at the right side, arterial hypertension.

C. Civil proceedings for compensation

1. Proceedings before the Sofia City Court

18. On 26 May 1995 the applicant took proceedings under the State Responsibility for Damage Act against the Ministry of Internal Affairs, the Central Service for Combating Organised Crime, the Specialised Anti-Terrorism Squad and the Sofia City Directorate of Internal Affairs. He alleged, in particular, that officers of those entities had ill-treated him in violation of the relevant rules for the use of force by the police. He claimed 500,000 Bulgarian levs (BGL) as compensation for non-pecuniary damage and BGL 100,000 as compensation for pecuniary damage.

19. A prosecutor took part in the proceedings *ex officio*, as required by section 10(1) of the State Responsibility for Damage Act (see paragraph 46 below).

20. The first hearing was held on 2 October 1995. The applicant provided particulars of his claim for compensation for pecuniary damage. The defendants did not dispute most of the facts alleged by the applicant, but maintained, *inter alia*, that he had provoked the beating through his inadequate behaviour, that the use of force by the police had been lawful and that they were not liable for damage caused in the course of police operations. They also disputed the amount of compensation sought. The Sofia City Directorate of Internal Affairs submitted that it was not liable because it had not participated in the planning or the execution of the operation on 2 March 1995. The applicant requested the defendants to provide a copy of the order pursuant to which the operation had been carried out, in order to clarify whose officers had participated in it. He also presented written evidence and asked for leave to call witnesses. The court admitted the written evidence, gave leave to the applicant to call witnesses, ordered an accounting and a medical expert reports and directed the defendants to provide a copy of the order pursuant to which the operation had been carried out.

21. The next hearing was held on 19 February 1996. The court heard a witness called by the applicant, the applicant in person, and the medical and accounting experts. It admitted their reports in evidence. Counsel for the Specialised Anti-Terrorism Squad stated that the order pursuant to which the 2 March 1995 operation had been carried out was classified and a copy could be produced only if the court made a special ruling to that effect. The court agreed and adjourned the case.

22. The third hearing took place on 20 May 1996. The order pursuant to which the operation of 2 March 1995 had been carried out was admitted in evidence. The court allowed the applicant to adduce further written evidence and adjourned the case.

23. The hearing listed for 10 June 1996 did not take place because the Sofia City Directorate of Internal Affairs had not been duly summoned.

24. The fourth and last hearing was held on 30 September 1996. The court heard the parties' closing arguments. In his observations the prosecutor who participated in the proceedings *ex officio* concluded that the applicant's averments of ill-treatment were true and that his action was well-founded.

25. The Sofia City Court gave judgment on 4 November 1996. It found that the police officers involved in the 2 March 1995 incident had used force uncalled for, in breach of the National Police Act which regulated the use of force by the police. It further found that the use of force had not been provoked in any way by the applicant and accordingly rejected the defendants' argument of contributory negligence. The court found that the

police officers had been employed by the first three defendants (the Ministry of Internal Affairs, the Central Service for Combating Organised Crime and the Specialised Anti-Terrorism Squad), but not by the fourth defendant (the Sofia City Directorate of Internal Affairs). Finally, it found that the applicant had sustained damage due to the unlawful behaviour of the officers. It awarded the applicant the whole amount of the compensation for non-pecuniary damage sought (BGL 500,000) and partially dismissed his claim for compensation for pecuniary damage, awarding him BGL 63,064.57 under that head. The court ordered that both amounts should bear interest at the statutory rate starting from 2 March 1995 until settlement. The first three defendants were ordered to pay jointly and severally.

2. Proceedings before the Supreme Court and the Sofia Court of Appeals

26. On 26 November 1996 the Ministry of the Internal Affairs appealed against the judgment to the Supreme Court. The Central Service for Combating Organised Crime also appealed on 2 December 1996. The Ministry's appeal concerned only the amount of the compensation for non-pecuniary damage awarded to the applicant, whereas the Central Service for Combating Organised Crime's appeal concerned the awards of compensation for both pecuniary and non-pecuniary damage.

27. Copies of the appeals were served on the other parties to the case. As the Specialised Anti-Terrorism Squad had changed its address, the initial service of process, having been made at its old address, had to be repeated at the new one.

28. On 28 October 1997 the case file was sent to the Supreme Court.

29. In December 1997 the Code of Civil Procedure ("the CCP") was amended to provide for three-instance proceedings. Accordingly, all appeals which had been filed with the Supreme Court prior to the amendment were to be forwarded to the newly created courts of appeals. The amendment entered into force on 1 April 1998.

30. On 1 April 1998 the Supreme Court of Cassation[1] forwarded the appeals to the newly created Sofia Court of Appeals.

31. On 9 July 1998 the Sofia Court of Appeals, acting in pursuance of the new rules of civil procedure adopted with the 1997 amendment of the CCP, instructed the appellants – the Ministry of Internal Affairs and the Central Service for Combating Organised Crime – to indicate which parts of the judgment below they were appealing against and why they considered that that judgment was erroneous.

1. With the 1997 reform the Supreme Court was split into a Supreme Court of Cassation, having jurisdiction over civil and criminal cases, and a Supreme Administrative Court, having jurisdiction over administrative cases.

32. On 29 July 1998 the Central Service for Combating Organised Crime complied with the court's instructions, submitting an amended appeal in which it specified that it was appealing only against the amount of non-pecuniary compensation awarded to the applicant, because it considered that the Sofia City Court had erroneously assessed the extent of the damage suffered by him.

33. On 30 July 1998 the Ministry of Internal Affairs withdrew its appeal and on 24 August 1998 the Sofia Court of Appeals discontinued the proceedings in respect of that appellant.

34. A hearing listed for 29 October 1998 did not take place, because the Sofia Appellate Prosecutor's Office, which had to participate in the proceedings *ex officio*, had not been duly summoned.

35. A hearing fixed for 18 February 1999 was adjourned because counsel for the applicant was ill and could not attend.

36. A hearing was held on 15 April 1999. The parties did not submit additional evidence. The court heard their closing argument and accepted their written observations. The Central Service for Combating Organised Crime reiterated its position that the claim for compensation for non-pecuniary damage, allowed in full by the Sofia City Court, was excessive, in particular because the applicant had contributed to the inflicting of his injuries through his inadequate behaviour during the 2 March 1995 incident.

37. The Sofia Court of Appeals gave judgment on 5 May 1999. It held that the applicant had been ill-treated by police officers, that he had not contributed in any way to that and that as a result of the ill-treatment he had sustained serious injuries. Accordingly, the court upheld the Sofia City Court's judgment. No appeal having been lodged within the statutory time-limit, the judgment entered into force on 27 May 1999.

38. On 24 June 1999 the applicant's lawyer requested the Sofia City Court to issue a writ of execution pursuant to the judgment. On 29 June the court issued such a writ against the Ministry of Internal Affairs, the Central Service for Combating Organised Crime and the Specialised Anti-Terrorism Squad.

39. On 5 July 1999 a monetary reform took place, whereby BGL 1,000 became 1 new Bulgarian lev (BGN).

40. On 12 July 1999 the applicant presented the writ of execution to the financial department of the Ministry of Internal Affairs and four days later, on 16 July, he received the compensation awarded to him by the courts together with the interest accrued. He was altogether paid BGN 2249.84, BGN 563.06 representing the principal amount of compensation awarded by the courts (BGN 500 for non-pecuniary damage and BGN 63.06 for pecuniary damage), BGN 1,570.80 representing interest, and the remainder costs and expenses for the proceedings.

D. Inquiries carried out by the domestic authorities pursuant to the incident of 2 March 1995

41. The Government submitted that an internal inquiry had been carried out by the Ministry of Internal Affairs in relation to the events of 2 March 1995, but that they had not been able to find any documents relating to that inquiry in the archive of the Ministry. The applicant submitted that he knew of the existence of a preliminary inquiry carried out by the prosecution authorities, but that he had no information about it.

II. RELEVANT DOMESTIC LAW

A. Use of force by the police

42. Section 40(1) of the National Police Act, as in force at the material time, read, as relevant:

> "... [P]olice [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 a police [officer]; ...
>
> 5. attack against citizens or police [officers]; ..."

Section 41(2) provided that the use of force had to be commensurate to, in particular, the specific circumstances and the personality of the offender. Section 41(3) imposed upon police officers the duty to "protect, if possible, the health ... of persons against whom [force was being used]".

B. Duty to investigate ill-treatment by the police

43. Articles 128, 129 and 130 of the Criminal Code ("the CC") make it an offence to cause a light, intermediate or severe bodily injury to another. Article 131 § 1 (2) provides that if the injury is caused by a police officer in the course of or in connection with the performance of his or her duties, the offence is an aggravated one. This offence is a publicly prosecutable one (Article 161 of the CC).

44. Under Bulgarian law criminal proceedings for publicly prosecutable offences can be opened only by the decision of a prosecutor or an investigator (Article 192 of the Code of Criminal Procedure ("the CCrP")). The prosecutor or the investigator must open an investigation whenever he or she receives information, supported by sufficient evidence, that an offence might have been committed (Articles 187 and 190 of the CCrP).

During the relevant period the CCrP provided that if the information to the prosecuting authorities was not supported by evidence, the prosecutor had to order a preliminary inquiry (verification) in order to determine whether the opening of a criminal investigation was warranted (Article 191 of the CCrP).

C. Civil remedies against ill-treatment by the police

45. Section 1 of the State Responsibility for Damage Act of 1988 („Закон за отговорността на държавата за вреди, причинени на граждани“) provides that the State is liable for damage suffered by private persons as a result of the unlawful acts of civil servants, committed in the course of or in connection with the performance of their duties. The State's liability is strict, i.e. no fault is required on the part of the civil servants in the commission of the unlawful acts (section 4 *in fine*).

46. Section 7 of the Act provides that the action in responsibility must be brought against the authority by whom the civil servant concerned is employed. A prosecutor participates in the proceedings *ex officio* (section 10(1)).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

47. The applicant alleged that he had been brutally attacked and beaten by masked police officers without any explanation and that he had not received adequate redress for this. He relied on Article 3 of the Convention, which provides:

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

48. The Court notes that the applicant brought proceedings under the State Responsibility for Damage Act in respect of his ill-treatment by the police and was successful in these proceedings, being awarded and receiving compensation for the pecuniary and non-pecuniary damage he had sustained as a result of the ill-treatment (see paragraphs 25, 37 and 40 above). However, the Court further notes that these proceedings were directed against the bodies employing the officers responsible for the ill-treatment, that those bodies' task is to combat crime, and that a prosecutor participated in the proceedings *ex officio* (see paragraphs 18 and 19 above). As a result, the competent authorities were put on notice of the applicant's allegations and were provided with ample evidence of the

ill-treatment. However, they remained passive and did not undertake effective measures to prosecute those responsible (see paragraph 41 above). The civil proceedings themselves were not capable of leading to the identification and punishment of the perpetrators; they were premised on the State's strict liability and could only result in the award of compensation (see paragraph 45 above). In these circumstances, the Court considers that it is called upon to examine the applicant's complaint, both under its substantive and under its procedural aspects.

A. Substantive issue: the applicant's ill-treatment

49. The Government submitted that the operation on 2 March 1995 had been carried out pursuant to a lawful order. Further, when they had entered into the café, the police officers had manifested themselves as such but the applicant had retorted to their orders. From the moment when the applicant's identity had been established, the violence against him had stopped. The police officers had explained that there had been a mistake and had apologised. No violence had been used against any other person in the café. For this reason in the ensuing civil proceedings the defendants had averred that the applicant had contributed to a certain extent to his ill-treatment through his behaviour. Finally, it was obvious that despite the violence to which the applicant had been subjected, there was no intention of inflicting him bodily injuries.

50. The applicant submitted that by ill-treating him the police had acted in breach of sections 40 and 41 of the National Police Act, which indicated the circumstances in which police officers could use force in the performance of their duties. He had not provoked their violent behaviour in any way, which had been proven in the course of the civil proceedings for compensation. Also, he was not the only person who had been ill-treated during the raid in the café.

51. The Court reiterates that Article 3 enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 of the Convention even in the event of a public emergency threatening the life of the nation (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93).

52. The Court notes that the applicant's assertion that he was ill-treated by police officers was not disputed by the Government (see paragraph 49 above). Moreover, it was fully confirmed by the domestic courts which tried the applicant's action for compensation. It was further established that the

applicant had done nothing to provoke the violent behaviour of the police (see paragraphs 25 and 37 above).

53. The Court finds that the injuries which the applicant sustained establish the existence of serious physical pain and suffering. Moreover, they had lasting consequences for his health (see paragraphs 13-17 above). It is further clear that the acts of violence against the applicant were committed by the police officers in the performance of their duties (see paragraph 10 above). However, it does not appear that the pain and suffering were inflicted on the applicant intentionally for the purpose of, for instance, making him confess to a crime or breaking his physical and moral resistance. Also, the injuries were caused during a short period of time, in the course of a police operation for the arrest of suspected offenders, which was apparently accompanied by heightened tension (see paragraph 11 above and *Egmez v. Cyprus*, no. 30873/96, § 78, ECHR 2000-XII). In these circumstances, the Court concludes that the ill-treatment complained of was sufficiently serious to be considered as inhuman, but that it cannot be qualified as torture.

54. There has, therefore, been a breach of Article 3 of the Convention.

B. Procedural issue: the lack of an effective investigation

55. The Government submitted that an internal inquiry had been carried out by the Ministry of Internal Affairs, but that they had not been able to find any documents relating to that inquiry in the archive of the Ministry.

56. The applicant replied that the fact that no documents had been found in the archive of the Ministry of Internal Affairs did not mean that no inquiry had been carried out. He further stated that he knew of the existence of a preliminary inquiry carried out by the prosecution authorities, but that he did not have detailed information about it.

57. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others*, cited above, p. 3290, § 102 and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

58. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 for the ill-treatment of the applicant (see paragraph 54 above). The applicant's complaint in this regard is therefore "arguable". The authorities thus had an

obligation to carry out an effective investigation into the circumstances in which the applicant sustained his injuries.

59. In this connection, the Court notes that apparently the prosecution authorities, who were made aware of the applicant's beating during the proceedings for compensation under the State Responsibility for Damage Act and were, indeed, of the view that his allegations were well-founded (see paragraphs 19 and 24 above), carried out a preliminary inquiry. The Ministry of Internal Affairs also carried out an internal inquiry (see paragraph 41 above). None of these resulted in criminal prosecutions against the perpetrators of the beating. The issue is consequently not so much whether there was an investigation as whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the investigation was effective. In this connection, the Court notes that the fact of the applicant's beating by police officers was unequivocally established in the course of the proceedings for compensation under the State Responsibility for Damage Act. The only fact which remained to be ascertained was the identity of the police officers who had perpetrated the beating, with a view to bringing criminal proceedings against them. However, the Government have not provided information of any efforts to that effect.

60. The proceedings under the State Responsibility for Damage Act, which were premised on the strict liability of the authorities and could only result in the award of compensation (see paragraph 45 above), but not in the punishment of those responsible for the ill-treatment, cannot be considered as satisfying the procedural requirements of Article 3 (see, *mutatis mutandis*, *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2431, § 74, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 79, ECHR 1999-IV, *Salman v. Turkey* [GC], no. 21986/93, § 83, ECHR 2000-VII, *İlhan v. Turkey* [GC], no. 23763/94, § 61, 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 *Ayder v. Turkey*, no. 23656/94, § 98, 8 January 2004). If the authorities could confine their reaction to incidents of intentional police ill-treatment to the mere payment of compensation, while remaining passive in the prosecution 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 prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice.

61. Against this background, in view of the lack of a thorough and effective investigation into the applicant's arguable claim that he was ill-treated by police officers, the Court finds that there has been a violation of Article 3 of the Convention in this respect as well.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

62. The applicant alleged that the proceedings under the State Responsibility for Damage Act had lasted unreasonably long, in breach of Article 6 § 1 of the Convention.

Article 6 § 1 provides, as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

63. The period to be taken into consideration began on 26 May 1995, when the applicant filed his action, and ended on 27 May 1999, when the Sofia Court of Appeals' judgment became final. It therefore lasted four years and one day for two levels of court.

64. The applicant submitted that the proceedings had lasted unreasonably long because the Ministry of Internal Affairs and the Central Service for Combating Organised Crime had appealed against the award of compensation for non-pecuniary damage by the Sofia City Court solely with the intention of prolonging the proceedings and thus delaying the actual payment of compensation.

65. The Government submitted that the length of the proceedings was not attributable to the authorities. They argued that the case had been complex, involving four defendants. The proceedings had been further complicated by the reform of the civil justice system, which had made necessary the forwarding the Ministry of Internal Affairs' and the Central Service for Combating Organised Crime's appeals to the newly created Sofia Court of Appeals and their brining into line with the new procedural requirements of the CCP.

66. The Government did not comment on the applicant's conduct during the proceedings.

67. Concerning the conduct of the authorities, the Government were of the view that they had acted diligently. The intervals between the hearings had been short and the case had been adjourned only when needed to gather additional evidence. The two judgments had been delivered promptly. The applicant's allegation that the Ministry of Internal Affairs and the Central Service for Combating Organised Crime had filed appeals against the first-instance judgment only with a view to delaying the payment of compensation was unfounded. The two bodies had merely exercised their right of appeal because they had not agreed with the Sofia City Court's findings about the extent of the damage suffered by the applicant and the lack of contributory negligence on his part. Moreover, the Ministry had later withdrawn its appeal.

68. The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the

latter point, what was at stake for the applicant in the litigation has also to be taken into account (see, among many other authorities, *Süßmann v. Germany*, judgment of 16 September 1996, *Reports* 1996-IV, pp. 1172-73, § 48 and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

69. The case was not particularly complex. The facts were for the most part undisputed and the only issues before the courts were the absence or presence of contributory negligence on the part of the applicant and the extent of the pecuniary and non-pecuniary damage he had sustained as a result of the ill-treatment.

70. As regards the importance of what was at stake for the applicant, the Court observes that his action concerned payment of compensation for grave injures sustained as a result of police violence. In such cases special diligence is required of the judicial authorities (see *Caloc v. France*, no. 33951/96, § 120, ECHR 2000-IX). Moreover, the applicant had a strong economic interest at a time of rampant inflation in Bulgaria to secure a definitive adjudication of his claim within a reasonable period of time (see *Podbielski v. Poland*, judgment of 30 October 1998, *Reports* 1998-VIII, p. 3396, § 35).

71. The Court further notes that until July 1998 the Central Service for Combating Organised Crime's appeal concerned the award of compensation for both pecuniary and non-pecuniary damage. However, when it clarified its appeal pursuant to the Sofia Court of Appeals' invitation and specified it as appealing solely against the award of compensation for non-pecuniary damage, and when the Ministry of Internal Affairs withdrew its appeal in August 1998 (see paragraphs 32 and 33 above), it became clear that the part of the Sofia City Court's judgment awarding compensation for pecuniary damage became final and enforceable. The applicant could have sought its enforcement as of that moment, i.e. 24 August 1998. Therefore, during the remaining nine months until the end of the proceedings only the amount of the compensation for non-pecuniary damage was at stake.

72. Concerning the applicant's conduct, the Court considers that he is responsible for the adjournment of the hearing listed for 18 February 1999, which resulted in two months of delay (see paragraph 35 above). It does not seem that any other delays were the product of his conduct.

73. As to the conduct of the competent authorities, the Court notes that the applicant does not complain about the length of the proceedings before the Sofia City Court. Indeed, it does not seem that any significant delays occurred then. On the contrary, considerable gaps may be observed in the proceedings following the Sofia City Court's judgment. About eleven months passed between the filing of the appeals on 26 November and 2 December 1996 and the sending of the case file to the Supreme Court on 28 October 1997 (see paragraphs 26-28 above). Even if part of that period may be deemed justified in view of the need to serve copies of the appeals

on the other parties to the case, that alone cannot explain a gap of eleven months.

74. The delay continued even after that, as due to the reform of the civil justice system the Supreme Court referred the appeals to the newly created Sofia Court of Appeals. While not disregarding the inevitable delay stemming from this reform, the Court notes that the States have a general obligation to organise their legal systems so as to ensure compliance with the requirements of Article 6 § 1, including that of trial within a reasonable time (see *Guincho v. Portugal*, judgment of 10 July 1984, Series A no. 81, p. 16, § 38). In the case at hand the reform added a further year of delay, from 28 October 1997 until 29 October 1998, which was consumed in the forwarding of the appeals to the Sofia Court of Appeals and their bringing into line with the new rules of civil procedure (see paragraphs 29-32 above).

75. Another hearing listed for 29 October 1998 was adjourned because the Sofia Appellate Prosecutor's Office, which had to participate in the proceedings *ex officio*, had not been summoned (see paragraph 34 above).

76. In sum, the Court finds that the delay between 4 November 1996 and 18 February 1999 – about two years and three months – is attributable to the authorities.

77. In the light of the criteria laid down in its case-law and having regard in particular to the delays attributable to the authorities, the Court considers that the length of the proceedings complained of failed to satisfy the reasonable time requirement.

There has, accordingly, been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

78. The applicant alleged that the authorities had not adequately compensated him for the damage he had sustained as a result of the ill-treatment. He submitted that although the Sofia City Court had awarded him the compensation sought in full, eventually he had received a sum significantly devalued by inflation. In his view, this was due to the excessive length of the proceedings on appeal.

79. The Court considers that this complaint falls to be examined under Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

80. The applicant submitted that following the Sofia City Court's judgment the authorities should have paid him the compensation awarded without further delay. Instead, they had appealed against the judgment and had waited for the issuing of a writ of execution to comply with their obligations.

81. The Government submitted that the delay in the payment of the compensation had been made good through the payment of interest at the statutory rate. Also, since the award of compensation for pecuniary damage had not been appealed against, the applicant could have obtained payment of that amount earlier.

82. Having regard to its finding in relation to Article 6 § 1 (see paragraph 77 above), the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 1 of Protocol No. 1 (see *Zanghì v. Italy*, judgment of 19 February 1991, Series A no. 194-C, p. 47, § 23 and *Kroenitz v. Poland*, no. 77746/01, § 37, 25 February 2003).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed 25,000 euros ("EUR") as compensation for non-pecuniary damage, together with interest from the date of the lodging of the application. He submitted that he did not claim compensation for pecuniary damage, as he considered that any such damage had been compensated by the award made in the domestic proceedings.

85. The Government submitted that this claim was exorbitant and ill-founded. They were of the view that the amount of compensation should be commensurate to the living standards in Bulgaria and should not exceed EUR 1,000.

86. Having regard to all the circumstances of the case and deciding on an equitable basis, the Court awards the applicant EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

87. The applicant claimed EUR 500 for translations, postage, transportation and fees for the procurement of documents.

88. The Government submitted that the applicant's claim was not supported by any documents establishing that he had actually incurred these expenses.

89. The Court considers that it is reasonable to assume that the applicant has incurred certain expenses for the conduct of the proceedings before the Court. Ruling on an equitable basis, it awards EUR 200.

C. Default interest

90. 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 there have been violations of Article 3 of the Convention, in that the applicant was ill-treated by police officers and in that the authorities failed to conduct a thorough and effective investigation into the applicant's arguable claim of ill-treatment;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that it is unnecessary to rule on the complaint under Article 1 of Protocol No. 1;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage;

(ii) EUR 200 (two hundred euros) in respect of costs and expenses;

(iii) 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;

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

Done in English, and notified in writing on 30 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President