FIFTH SECTION

CASE OF ANGELOVA AND ILIEV v. BULGARIA

(Application no. 55523/00)

JUDGMENT

STRASBOURG

26 July 2007

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

In the case of Angelova and Iliev v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 3 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 55523/00) 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, Mrs Ginka Dimitrova Angelova ("the first applicant") and Mr Mitko Dimitrov Iliev ("the second applicant"), who were born in 1933 and 1962 respectively and live in the village of Ivanski, on 7 February 2000.

2. The applicants were represented before the Court by Mr Y. Grozev, a lawyer practising in Sofia.

3. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Karadjova, of the Ministry of Justice.

4. The applicants alleged that the authorities failed to carry out a prompt, effective and impartial investigation capable of leading to the trial and conviction of the individuals responsible for the ill-treatment and death of their relative who was of Roma origin. They also alleged that the domestic criminal legislation contained no specific provisions incriminating the offences of murder or serious bodily injury, or indeed any other felony, as separate criminal offences where the latter were racially motivated, nor did it contain explicit penalty-enhancing provisions relating to racially motivated offences. The applicants further alleged that the authorities failed in their duty to investigate and prosecute a racially motivated violent offence. Lastly, the applicants alleged that the length of the criminal proceedings against the assailants was excessive, which denied them access to a court to claim damages.

5. On 25 November 2004 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the

Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was the mother and the second applicant was the brother of Mr Angel Dimitrov Iliev ("the victim"), who was of Roma origin and twenty-eight years old at the time of his death.

A. The death of Mr Iliev

7. On the evening of 18 April 1996, in the town of Shumen, the victim was attacked by seven teenagers ("the assailants") and beaten severely. He was also stabbed several times by one of the assailants.

8. The victim was taken to a hospital after the attack but died on the following morning, 19 April 1996.

9. As later submitted by the assailants, the attack was motivated by the victim's Roma ethnicity (see paragraphs 12-13 and 18-21 below).

B. The criminal proceedings into the death of Mr Iliev

10. All of the assailants were detained and questioned by the police on the day of the attack, 18 April 1996. With one exception, all were juveniles.

11. The assailants were all released after questioning, with the exception of G.M.G. ("the first assailant"), who was seventeen years old at the time. A knife had been found on him and two of the other assailants, N.R. and S.H., had implicated him as the person who had wielded the weapon. The first assailant was remanded in custody on suspicion of murder.

12. On 19 April 1996 the assailants were again questioned by the police. N.R. and S.H. confirmed their statements to the effect that the first assailant had wielded the weapon. Thereupon, a preliminary investigation was opened against him and he was charged with murder stemming from an act of hooliganism (see paragraph 56 below). He was then questioned, but declined to give a statement other than to confirm that the knife found on him was his own.

13. D.K., who was fifteen years old at the time, gave a statement on 19 April 1996, the relevant part of which reads:

> "...[We have been meeting] with the boys regularly for the past several months. We agree in advance where and when we will meet the next time, because we do not go to

the same school... We hate junkies and [do not] take drugs... we [also] do not drink alcohol, either when we see each other or when we are apart... We talk about films, music and have [stated] on many occasions that we hate Gypsies – we call them "soot" (сажди) and "mangals" (мангали)... Blacks, Gypsies, Turks, all foreigners I hate. As for the Turks and the Gypsies[,] it is known that a high percentage of criminal offences are [committed] by Gypsies and Turks. At home I have heard my father talk about them that way...

Last night... we met... as we had previously agreed. [It was a] simple gathering without any aim or idea of what we would do... We went for a walk in the city [park]... We [then] headed towards the train station... [Then] down towards the road... We passed by the bridge... and were walking [close to] the tracks. We were just passing and I [do not know] who noticed the Gypsy first... [The Gypsy] was about ten metres away, we were on one side of the road and he was on the other. We started walking after him... The first to catch up with him was [the first assailant] and the Gypsy asked him if he had [the time]. I do not think that anyone of us knew the Gypsy. [The first assailant] told him "I have, I have" and knocked his head against the wall. [He] held the Gypsy by the jacket from behind [so] that when he hit him the first time he did not [collapse] because [the first assailant] was holding him [up]. [The first assailant] turned him around immediately and knocked him [once] again [against] the wall. I think he hit him on the head again. [S.H.] went over... and kicked the Gypsy somewhere on the body. I did not see where. I and [one of the others] went over to [them] and [we all] brought the Gypsy to the ground. [He] was not able to put up any resistance because everything happened very quickly. He was shouting, because he was hurt. I was not thinking about what the Gypsy was saying and I did not care. Personally, I wanted to beat him up and nothing more. I think that the others also just wanted to beat him up... The others... were [also] hitting the Gypsy. I saw them when they hit him. The Gypsy was on the floor and was not able to put up any resistance. I was doing what the others were doing and did not watch what they were doing... At some point I saw that there was bleeding from his head. The blood was somewhere on [his] face. He was [still] moving... the same night I had seen that [the first assailant] had a knife... The knife is mine, [but] I gave it to [the first assailant]... a long time before this [night]... I did not know that [that] night [the first assailant had] the knife [with him]...

... While we were walking [behind] the Gypsy [and] before we caught up with him[,] I saw that [N.B.]... said to the [the first assailant] "Give me the knife" and I saw that [he] took it out of his pants and gave it to him. I did not see where [N.B.] put the knife and whether it remained in his hand. [But] when we were hitting the Gypsy on the floor I saw how [N.B.] stabbed [him] with the knife in [the buttocks] area... I saw that [N.B.] plunged the knife several times into the body of the Gypsy[,] always in that part of his body. The Gypsy was screaming. [N.B.] did not say anything, he was not swearing. [N.B.] made three or four jabs... [T]he Gypsy was still moving. Blood began to flow from the place where [N.B.] had [stabbed him]... The rest of us were continuing to hit... the Gypsy while [N.B.] was stabbing him...The Gypsy had not provoked us in any way[,] neither with words nor with actions... We beat him because he was a Gypsy... He had had enough. I saw that he was not bleeding profusely... We did not want to kill him, just to beat him up...I am not sure that only [N.B.] used the knife, but I cannot indicate that any one of the others used it. I did not see another [person using it]...

...

I still do not know what happened to this person, whether he is [still] alive... We have beaten up Gypsies [before] and we [always] hear what happens [to them]...".

14. An autopsy of the victim was performed on 20 April 1996. It established that he had been stabbed three times in the left outer thigh and twice in the abdominal cavity which resulted in the severance of the ischiadic nerve, the profunda femoris artery (deep artery of the thigh), the main intestine and the urethra. He also had bruises and contusions to his face and the back of his head. The autopsy concluded that the cause of death was massive internal loss of blood, resulting from the severance of the profunda femoris artery.

15. On the same day, 20 April 1996, the investigator commissioned a medical expert's report to establish the victim's wounds, whether any of them were in the stomach area, how they had been inflicted, what force had been used and whether his death had been inevitable or whether it could have been avoided by timely specialised medical assistance. It is unclear what was established by the medical expert.

16. On 15 and 16 May 1996 four of the assailants, D.K., S.H., N.R. and N.B., were charged with hooliganism of exceptional cynicism and impudence (see paragraph 58 below). They were questioned in the presence of their lawyers and then released into their parents' charge.

17. D.K. confirmed his previous statement but denied knowing anything about the stabbing of the victim. He was unable to determine whether he was guilty or not.

18. S.H., who was sixteen years old at the time, pled guilty to the offence with which he had been charged. He expressed his hatred for Gypsies and stated that the group had purposefully looked for someone from that minority group to attack. S.H. retracted his previous statement of 19 April 1996 in respect of who had perpetrated the stabbings (see paragraph 11 above) and implicated N.B. as having been responsible. As to why he was changing his testimony, he claimed that the members of the group had had an understanding always to implicate the first assailant if they were ever caught, which the latter had apparently suggested and condoned.

19. N.R., who was seventeen years old at the time, also pled guilty to the offence with which he had been charged. He also confirmed that they had purposefully looked for a Gypsy to attack, retracted his statement of 19 April 1996 (see paragraph 11 above) and implicated N.B. as having stabbed the victim.

20. N.B. ("the second assailant"), who was fifteen years old at the time, pled guilty to the offence with which he had been charged but denied any knowledge of the stabbings or of having perpetrated them.

21. On 22 May 1996 G.R.G., who was eighteen years old at the time, was charged with hooliganism of exceptional cynicism and impudence (see paragraph 58 below) and questioned in the presence of his lawyer. He was

then released but a restriction was placed on him not to leave his place of residence without authorisation from the Prosecutor's Office. In his statement, he pled guilty to the offence with which he had been charged and confirmed the attack was motivated by the victim's Roma ethnicity but was unable to indicate who had perpetrated the stabbings.

22. The seventh member of the group, S.K., was never charged as he did not participate in the attack on the victim.

23. Also on 22 May 1996 two witnesses were questioned, one of whom was I.D., a member of the group who had not been present during the attack on 18 April 1996. He gave a statement to the investigation that he had met the first assailant later on the same evening and that the latter had confided in him that the second assailant had stabbed a Gypsy whom they had attacked but that he had taken the knife from him after the attack. I.D. also stated that in a subsequent conversation with the second assailant on 6 May 1996, the latter had inquired what kind of sentence he might receive if he were to confess but that he was scared to do so for fear of being sent to a juvenile correctional facility. The other witness, N.D., gave a statement attesting to the aforementioned conversation.

24. On 23 May 1996 the first assailant was questioned again. He confirmed that the group had purposefully looked for a Gypsy to assault on the evening of 18 April 1996. The first assailant also stated that he had given N.B. his knife before the attack and that the latter had stabbed the victim, but that there had been no prior warning or agreement about the incident. Lastly, the first assailant confirmed that he had taken the knife back from N.B. after the attack and that there had been a general understanding in the group that he would take responsibility if they were ever to get caught, but that it had not been agreed for this instance in particular.

25. On 14 June 1996 the Shumen District Prosecutor's Office found that there was a lack of evidence that the first assailant had stabbed the victim, dismissed the charges against him and released him.

26. The charges against the first assailant were amended on 17 June 1996 and, like the other members of the group, he was charged with hooliganism of exceptional cynicism and impudence (see paragraph 58 below). A restrictive measure was imposed on him whereby he was placed under the supervision of an inspector from the Juvenile Delinquency Unit (*инспектор към Детска педагогическа стая*). He was also questioned in the presence of his lawyer, pled not guilty to the offence with which he had been charged and reiterated his statement of 23 May 1996.

27. On 21 June 1996 N.R. and S.H. were charged with having made false statements to the investigation authorities on 19 April 1999, accusing the first assailant of the offence of murder, which resulted in charges being brought against him (see paragraphs 11 and 13 above and 59 below). They were questioned and then released into the charge of their parents.

28. On 26 June 1996 the second assailant was charged with negligent homicide resulting from an inflicted median bodily injury (see paragraph 57 below). He pled not guilty to the offence and insisted that he had not stabbed the victim.

29. Due to their conflicting testimonies, a confrontation was organised on 3 July 1996 between the second assailant, N.R. and S.H. They each confirmed their previous statements.

30. On 15 April 1997 the results of the preliminary investigation were presented to the first and second assailants.

31. On 18 April 1997 the investigator in charge concluded in a report (*обвинително заключение*) that there was sufficient evidence against the assailants to obtain a conviction and that the case should proceed to trial. It is unclear when and whether the case file was transferred to the competent Prosecutor's Office.

32. A little more than a year later on 26 June 1998, a confrontation was organised between the second assailant and I.D. during which they confirmed their previous statements to the investigation.

33. On several occasions during the course of the preliminary investigation the applicants approached the investigator in charge with requests for information on the progress of the case. They were either refused information or were provided with scant details. Sometime in the spring of 1999 the lawyer of the applicants was granted access to the case file.

34. A confrontation was organised on 30 March 1999 between the second assailant and N.D., during which they confirmed their previous statements to the investigation.

35. On 6 April 1999 the second assailant petitioned the investigator to commission a medical report into his state of health, as he claimed to be suffering from a serious incurable disease. Such a report was ordered on 6 October 1999. The resulting medical report of 21 October 1999 established that the second assailant suffered from chronic pyelonephritis and back pain, which were typical for teenagers and would be naturally outgrown.

36. On 18 October 1999 the applicants filed a request with the investigator to be recognised as civil claimants in the criminal proceedings.

37. On 3 November 1999 the investigator commissioned a psychiatric evaluation of the second assailant. The resulting report, of an unknown date, found that he did not suffer from any serious psychiatric condition and that on the day of the attack his illnesses did not affect his understanding of the nature and consequences of his actions nor his ability to control them.

38. On 18 December 1999 the applicants filed a complaint with the Shumen Regional Prosecutor's Office, alleging that the investigation was being protracted. No apparent action was taken in response to their complaint.

39. A confrontation was organised on 12 January 2000 between the second assailant and N.R., at which they gave conflicting testimony in respect of a conversation they had had shortly after the attack on the subject of whether to blame the first assailant for the stabbing.

40. On 17 April 2000 the investigator recognised the first applicant as a civil claimant in the criminal proceedings.

41. Between 17 April and 1 June 2000 the results of the preliminary investigation were presented to the second assailant, the other five accused and the first applicant.

42. On 2 June 2000 the investigator in charge concluded in a new report that the case should proceed to trial, but proposed that the charges for falsely incriminating the first assailant be dismissed. The case file was transferred to the Shumen Regional Prosecutor's Office on an unspecified date.

43. On 3 July 2000 the Shumen Regional Prosecutor's Office remitted the case with instructions that S.K. be questioned concerning the reasons why the group had initially blamed the first assailant for the stabbing, that the accused undergo psychiatric evaluations as to whether or not on the day of the attack they understood the nature and consequences of their actions and could control them, and that the charges against the second assailant be amended.

44. On 11 October 2000 a confrontation was organised between the first and second assailants, at which they gave conflicting testimony in respect of who had had the knife at the time of the attack.

45. On 12 October 2000 S.K. was questioned and gave a statement that there had not been a prior understanding in the group that the first assailant would always take the blame, but that following the attack the group had met and the first assailant had informed them that he would take responsibility for what had happened.

46. On 23 March 2001 D.K. was questioned but declined to answer any questions.

47. The first assailant was questioned on 30 March 2001 and gave a statement attesting to the physical state of the second assailant at the time of the attack, the history of their relationship and his lack of knowledge as to any collusion by the other members of the group to help him by changing their respective testimonies.

48. The charges against the second assailant were amended on 2 April 2001 and a restriction was placed on him not to leave his place of residence without authorisation from the Prosecutor's Office. He was questioned and reiterated his previous statement that he had not been in possession of a knife during the attack and that he had not stabbed the victim. The results of the preliminary investigation were also presented to the second assailant on the same day.

49. Between 3 April and 4 June 2001 the results of the preliminary investigation were presented to the other five accused and the first applicant.

50. On 12 June 2001 the investigator in charge concluded in a new report that the case should proceed to trial. The case file was transferred to the Shumen Regional Prosecutor's Office on an unspecified date.

51. There was no development in the criminal proceedings during the following four years.

52. On 18 March 2005 the Shumen Regional Prosecutor's Office dismissed the charges of hooliganism of exceptional cynicism and impudence and of falsely incriminating someone before the authorities against all of the assailants who had been juveniles at the time of the attack – namely the first and second assailants, N.R., S.H. and D.K. – because the statute of limitation had expired in respect of them. Relying on the evidence collected and the tests conducted in the course of the preliminary investigation, the Shumen Regional Prosecutor's Office argued that the first assailant had stabbed the victim, given that he had had the knife and the victim's blood had been found on his clothes. It therefore dismissed the charges against the second assailant for negligent homicide resulting from an inflicted median bodily injury and remitted the case for further investigation, with instructions that the first assailant be again charged with murder stemming from an act of hooliganism (see paragraphs 12 above and 56 below). The only other remaining accused was G.R.G., who had been eighteen years old at the time of the attack and who continued to be charged with hooliganism of exceptional cynicism and impudence as the statute of limitation had not expired in respect of him (see paragraphs 21 above and 58 below).

53. On 22 April 2005 the applicants and the victim's three sisters filed a request with the authorities to be recognised as civil claimants in the criminal proceedings and claimed 75,000 Bulgarian levs (approximately 38,461 euros) in damages.

54. On 16 May 2005 the applicants' lawyer met with a prosecutor from the Shumen Regional Prosecutor's Office who informed him that the case file had been requested and was being held by the Ministry of Justice.

55. The Court has been informed of no further developments in the criminal proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code

1. Offences with which the assailants were charged

56. For the offence of murder stemming from an act of hooliganism the Criminal Code, as in force in 1996, envisaged a sentence of fifteen to twenty years' imprisonment, life imprisonment or death (Article 116 (10)). In 1998 the death penalty was replaced with "life imprisonment without the possibility of substitution". For juveniles aged from sixteen to eighteen years, the sentence was five to twelve years' imprisonment (Article 63 § 2 (1)) and for those from fourteen to sixteen years – up to ten years' imprisonment (Article 63 § 1 (1) and (2)). The statute of limitation was twenty-two-and-a-half years for juveniles aged from sixteen to eighteen years (Article 80 § 1 (2) in conjunction with § 2 and Article 81 § 3) and fifteen years for those aged from fourteen to sixteen years (Article 80 § 1 (3) in conjunction with § 2 and Article 81 § 3).

57. For negligent homicide resulting from an inflicted median bodily injury, the Criminal Code envisaged a sentence of two to eight years' imprisonment (Article 124 § 1), which for juveniles aged fourteen to sixteen years was up to three years' imprisonment (Article 63 § 1 (3) and (4)). The statute of limitation for such juveniles was seven-and-a-half years (Article 80 § 1 (4) in conjunction with § 2 and Article 81 § 3).

58. For hooliganism of exceptional cynicism and impudence, the Criminal Code envisaged a sentence of up to five years' imprisonment (Article 325 § 2 (2)), which for juveniles aged fourteen to sixteen years was up to two years' imprisonment (Article 63 § 1 (4)). The statute of limitation for such juveniles was seven-and-a-half years (Article 80 § 1 (4) in conjunction with § 2 and Article 81 § 3).

59. For making false statements to the authorities incriminating someone in having committed an offence, as a result of which charges were brought against that individual, the Criminal Code envisaged a sentence of one to ten years' imprisonment (Article 286 § 3), which for juveniles aged fourteen to sixteen years was up to three years' imprisonment (Article 63 § 1 (3) and (4)). The statute of limitation for such juveniles was seven-and-a-half years (Article 80 § 1 (4) in conjunction with § 2 and Article 81 § 3).

2. Racially motivated offences

60. Article 162 of the Criminal Code criminalises the propagation and incitement of hostility and hatred, as well as violence based, *inter alia*, on racial grounds. The relevant part of the Article provides:

"1. [A person] who propagates or incites towards racial... hostility or hatred, or towards racial discrimination, shall be punished with imprisonment of up to three years and a public reprimand.

2. [A person] who [resorts to] violence against another or damages [his/her] property because of [his/her]... race... shall be punished with imprisonment of up to three years and a public reprimand.

3. [A person] who forms or leads an organisation or group, the set goal of which is the perpetration of an offence under the preceding paragraphs, shall be punished with imprisonment of between one to six years and a public reprimand.

4. A member of such an organisation or group shall be punished with imprisonment of up to three years and a public reprimand."

61. Article 163 of the Criminal Code criminalises, *inter alia*, racially motivated mob violence. The relevant part of the Article provides:

"1. Persons who participate in a mob rallied in order to attack groups of [people], individuals or their property because of their... racial affiliation shall be punished [as follows]:

(1) the instigators and leaders – with imprisonment of up to five years;

(2) the remainder – with imprisonment of up to one year or probation.

2. If the mob or some of its participants are armed, the punishment shall be:

(1) for the instigators and leaders – imprisonment of one to six years;

(2) for the remainder – imprisonment of up to three years.

3. If an attack is carried out and, as a result, a serious bodily injury or death occurs, the instigators and leaders shall be punished with imprisonment of three to fifteen years, while the remainder shall be punished with imprisonment of up to five years, unless they are subject to a more severe punishment."

62. Articles 416 to 418 of the Criminal Code criminalise racially motivated genocide and apartheid.

63. Article 54 § 1 provides that domestic courts are to take into account, *inter alia*, the motives of the perpetrator when determining the sentence to be imposed.

B. Code of Criminal Procedure (1974)

64. Article 192, as in force at the relevant time, provided that criminal proceedings concerning publicly prosecutable offences could only be initiated by a prosecutor or an investigator, acting on a complaint or *ex officio*. The offences with which the assailants were charged were publicly prosecutable offences.

65. Under Article 237 § 6, as worded until 1 January 2000, a victim had a right of appeal to a higher ranking prosecutor against a decision not to proceed with pending criminal proceedings. After 30 April 2001 the victim had the right of appeal against such a decision by a prosecutor to the domestic courts. The victim had no other means to challenge a refusal to prosecute.

66. Victims of crime, or their successors, had the right to join the criminal proceedings as civil claimants and, in that connection, to claim damages, inspect the case file, make copies of relevant documents, adduce evidence, raise objections and make applications (Articles 60 § 1 and 63). They had the right to appeal against decisions of the courts which impinged on their rights and interests, which right they also had in respect of decisions of the investigating and prosecuting authorities until 2 May 2003 (Article 63 § 1).

C. Code of Criminal Procedure (2006)

67. The new Code of Criminal Procedure introduced separate rights in the criminal proceedings for victims or their heirs , such as the right to participate in them, to be informed of their progress and to appeal against decisions terminating or suspending them (Articles 74 and 75).

68. Victims of crime or their heirs have the right to join criminal proceedings as civil claimants and, in that connection, to claim damages, inspect the case file, make copies of relevant documents, adduce evidence, raise objections and make applications (Articles 84 § 1 and 87). They also have the right to appeal against decisions of the courts which impinge on their rights and interests (Article 87 § 1).

D. Protection against Discrimination Act (2004)

69. The Protection against Discrimination Act was passed in September 2003 and entered into force on 1 January 2004. It is a comprehensive piece of legislation designed to create machinery providing effective protection against discrimination. It applies mainly in the spheres of labour relations, State administration and the provision of services. The Act created a Commission for Protection against Discrimination with jurisdiction, *inter alia*, to hear individual complaints (sections 40 and 50).

70. Section 9 of the Act provides for the shifting of the burden of proof in discrimination cases. Under that section, where a claimant is able to prove facts from which an inference might be drawn that there had been discriminatory treatment, it is incumbent on the defendant to prove that there had not been a violation of the right to equal treatment.

71. Once successful before the Commission, a plaintiff can initiate a tort action for damages before the domestic courts (section 74 (1)). If the

damages were caused to a private person as a result of an unlawful act, action or inaction by State bodies or officials, the action for damages has to be filed under the State Responsibility for Damage Act (section 74 (2)). No relevant case-law was presented by the parties or was identified as having been reported, to indicate whether or how frequently the aforementioned provision has been utilised in obtaining redress for acts of discrimination from State bodies and officials.

E. State and Municipalities Responsibility for Damage Act (1988)

72. The State and Municipalities Responsibility for Damage Act of 1988 ("the SMRDA") provides that (a) the State and municipalities are liable for damage caused to private and juridical persons by the illegal orders, actions or omissions of government bodies and officials acting within the scope of, or in connection with, their administrative duties; and (b) that in certain cases the State is liable for damage caused to private persons by the organs of the investigation, the prosecution and the courts (sections 1-2).

73. The relevant domestic law and practice under section 1 of the SMRDA has been summarised in the case of *Iovchev v. Bulgaria* (no. 41211/98, §§ 76-80, 2 February 2006).

74. Section 2 of the SMRDA provides, as relevant:

> "The State shall be liable for damage caused to [private persons] by the organs of... the investigation, the prosecution, the courts... for unlawful:
>
> 1. detention..., if [the detention order] has been set aside for lack of lawful grounds;
>
> 2. accusation of a crime, if the [accused] has been acquitted or the criminal proceedings have been terminated on the grounds that the actions were not perpetrated by the [accused] or that the actions do not constitute an offence, or because the criminal proceedings were opened after the statute of limitations expired or the actions were amnestied;
>
> 3. conviction of a crime ..., if the person concerned is subsequently acquitted...;
>
> 4. imposition by a court of compulsory medical treatment..., if [the decision] has been set aside for lack of lawful grounds;
>
> 5. imposition by a court of an administrative measure..., if [the decision] has been set aside as unlawful;
>
> 6. execution of an imposed sentence in excess of the set term or amount."

75. Persons seeking redress for damage occasioned by decisions of the investigating and prosecuting authorities or the courts in circumstances falling within the scope of the SMRDA have no claim under general tort law, as the Act is a *lex specialis* and excludes the application of the general regime (section 8 (1) of the Act; решение № 1370 от 16.XII.1992 г. по

гр.д. № 1181/92 г., IV г.о. and Тълкувателно решение № 3 от 22.04.2005 г. по т. гр. д. № 3/2004 г., ОСГК на ВКС).

III. INTERNATIONAL INSTRUMENTS AND COMPARATIVE LAW ON RACIST VIOLENCE

76. The relevant international instruments and comparative law on racist violence has been summarised in paragraphs 76-82 of the Court's judgment in the case of *Nachova and Others v. Bulgaria* [GC] (nos. 43577/98 and 43579/98, 6 July 2005).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2, 3 and 13 OF THE CONVENTION

77. The applicants complained under Articles 2, 3 and 13 of the Convention that the authorities failed to carry out a prompt, effective and impartial investigation capable of leading to the trial and conviction of the individuals responsible for the ill-treatment and death of their relative. They also complained that the domestic criminal legislation contained no specific provisions incriminating the offences of murder or serious bodily injury, or indeed any other felony, as separate criminal offences where the latter were racially motivated, nor did it contain explicit penalty-enhancing provisions relating to racially motivated offences. Lastly, they complained that the authorities had failed to apply the existing but similarly inadequate provisions of the Criminal Code concerning racially motivated offences.

Articles 2, 3 and 13 of the Convention provide:

Article 2

"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."

Article 3

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. The Government

78. The Government contested the applicants' assertions and argued that the application should be declared inadmissible on account of a failure to exhaust domestic remedies. In particular, they considered it to be premature because the applicants had not waited for the completion of the criminal proceedings against the assailants which, they argued, could address and resolve some of the complaints raised before the Court.

79. Separately, the Government claimed that the investigation into the victim's death had been conducted by the authorities with the required diligence. They considered that the investigation had been extremely delicate and complex, given that most of the assailants had been juveniles at the time of the attack and kept changing their statements. As a result, the authorities needed to question the same witnesses on more than one occasion, and conducted confrontations between such witnesses and performed medical and other tests and analyses. In spite of their efforts, the assailants' testimonies remained contradictory, which resulted in the case being remitted on three occasions. In the end, murder charges had been brought against one of the assailants, which the Government argued was an indication that the investigation had been completely impartial and not discriminatory.

80. Separately, the Government noted that the first applicant had been recognised as a civil claimant in the criminal proceedings and had been provided with access to the investigation file. They claimed that her legitimate interests had therefore been adequately guaranteed and protected.

81. In view of the above, the Government argued that there had been no violations of Articles 2, 3 and 13 of the Convention, on the basis that the investigation had been conducted diligently in spite of the objective and subjective obstructions it had encountered.

2. The applicants

82. The applicants disagreed with the Government's assertion that they had failed to exhaust domestic remedies by not waiting for the completion of the criminal proceedings. They noted that in respect of most of the assailants, the criminal proceedings had been terminated on 18 March 2005 because the statute of limitations had expired. In respect of these individuals the criminal proceedings were no longer pending and they could no longer be charged with any other offence stemming from their participation in the attack against the applicants' relative. Thus, the applicants' complaints in respect of these persons could not be claimed to be premature. In respect of the murder charge, the applicants noted that criminal proceedings were pending only against the first assailant. They stressed, however, that there had been no further development in the criminal proceedings following the decision of 18 March 2005 and that the charges against the first assailant had not been amended. In any event, the applicants argued that the State's positive duty to investigate and prosecute the offenders included a time component. Referring to the Court's judgment in the case of *Selmouni v. France* [GC] (no. 25803/94, ECHR 1999-V) the applicants argued that where such an investigation is unduly prolonged, its excessive length alone would render it ineffective. Lastly, they noted that the question of whether or not the investigation had been effective was a question on the merits and called for the Government's objection to be dismissed.

83. Separately, the applicants reiterated their complaints and argued that the respondent State had violated its positive obligations under Articles 2 and 3 of the Convention to conduct an effective investigation capable of leading to the punishment of the individuals responsible for the ill-treatment and death of their relative.

84. Referring to the Court's case-law, the applicants argued that in the present case the investigation conducted by the authorities had clearly been ineffective as it had, for a considerable length of time, failed to result in prosecution and punishment of the assailants.

85. Lastly, the applicants claimed that the decision of 18 March 2005 of the Shumen Regional Prosecutor's Office had made it even more unlikely that any of the assailants would be punished for the death of their relative, because they considered that the evidence against the first assailant was not conclusive enough for a successful prosecution. They argued that the statements and evidence pointing to the second assailant as the stabber had been much more substantial and credible but noted that, due to the expiration of the statute of limitation, they had all become irrelevant. They submitted that, as a result of the investigation having taken such a long time and having been ineffectively conducted, any possibility of a successful prosecution of any of the assailants was precluded.

86. The applicants made similar submissions in respect of the investigation into their relative's ill-treatment by the assailants, which they

likewise considered to have been excessively delayed and ineffective. They noted that none of the assailants had been charged with causing bodily injury to their relative but had only been charged with "hooliganism", which allegedly carried a lighter sentence. However, even these charges were dismissed on 18 March 2005 against all but one of the assailants because the statute of limitations had expired.

B. Admissibility

87. The Court notes that the Government argued that the applicants failed to exhaust domestic remedies by not waiting for the criminal proceedings against the assailants to be completed. The applicants meanwhile claimed that the question of exhaustion of domestic remedies was inextricably linked to the merits of the complaint and, in addition, that in respect of part of the assailants the criminal proceedings had in any event been terminated on 18 March 2005.

88. The Court observes that that the criminal proceedings were opened against the assailants on 19 April 1996 and were still pending at the investigation stage when the applicants filed their complaints with the Court on 7 February 2000 arguing, *inter alia*, that the said proceedings were of excessive length and therefore ineffective. Subsequently, on 18 March 2005 the criminal proceedings against all but two of the assailants were terminated. Presumably, however, they are still ongoing against the two individuals in question.

89. The Court finds that the question of exhaustion of domestic remedies and the length of the criminal proceedings against the assailants inevitably relate to the merits of the applicants' complaint that the length of the investigation in itself rendered it ineffective. Therefore, to avoid prejudging the latter, these questions should be examined together. Accordingly, the Court holds that the question of exhaustion of domestic remedies should be joined to the merits.

90. In conclusion, the Court finds that the applicants' complaints under Articles 2, 3 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, or inadmissible on any other grounds. They must therefore be declared admissible.

C. Merits

1. General principles

91. Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention and enshrines one of the basic values of the democratic societies making up the Council of

Europe. The Court must subject allegations of breach of this provision to the most careful scrutiny (see *Nachova and Others*, cited above, § 93).

92. The Court observes at the outset that the applicants did not contend that the authorities of the respondent State were responsible for the death of their relative; nor did they imply that the authorities knew or ought to have known that he was at risk of physical violence at the hands of third parties and failed to take appropriate measures to safeguard him against such a risk. The present case should therefore be distinguished from cases involving the alleged use of lethal force either by agents of the State or by private parties with their collusion (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324; *Shanaghan v. the United Kingdom*, no. 37715/97, § 90, 4 May 2001; *Anguelova v. Bulgaria*, no. 38361/97, ECHR 2002-IV; *Nachova and Others*, cited above; and *Ognyanova and Choban v. Bulgaria*, no. 46317/99, 23 February 2006), or in which the factual circumstances imposed an obligation on the authorities to protect an individual's life, for example where they had assumed responsibility for his welfare (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, ECHR 2002-II) or where they knew or ought to have known that his life was at risk (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII).

93. However, the absence of any direct State responsibility for the death of the applicants' relative does not exclude the applicability of Article 2 of the Convention. The Court reiterates that by requiring a State to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, *Reports* 1998-III, p. 1403, § 36), Article 2 § 1 of the Convention imposes a duty on that State to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions (see *Osman*, cited above, § 115).

94. The Court reiterates that in the circumstances of the present case this obligation requires that there should be some form of effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances. The investigation must be capable of establishing the cause of the injuries and the identification of those responsible with a view to their punishment. Where death results, as in the present case, the investigation assumes even greater importance, having regard to the fact that the essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life (see *Anguelova*, cited above, § 137; *Nachova and Others*, cited above, § 110; and *Ognyanova and Choban*, cited above, § 103).

95. The Court reiterates that in cases involving allegations that State agents were responsible for the death of an individual, it has qualified the

scope of the above-mentioned obligation as one of means, not of result. Thus, the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death, or the person or persons responsible will risk falling foul of this standard (see *Anguelova*, cited above, § 139; *Nachova and Others*, cited above, § 113; and *Ognyanova and Choban*, cited above, § 105).

96. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to request particular lines of inquiry or investigative procedures (see *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII, and *Nachova and Others*, cited above, § 111).

97. A requirement of promptness and reasonable expedition is implicit in this context. It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *McKerr v. the United Kingdom*, no. 28883/95, § 114, ECHR 2001-III; and *Ognyanova and Choban*, cited above, § 106).

98. Although there was no State involvement in the death of the applicants' relative, the Court considers that the above-mentioned basic procedural requirements apply with equal force to the conduct of an investigation into a life-threatening attack on an individual, regardless of whether or not death results (see, *mutatis mutandis*, *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII). Moreover it would add that, where that attack is racially motivated, it is particularly important that the investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence (see *Menson and Others v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V).

2. Application of these principles in the present case

99. The Court observes that the preliminary investigation into the death of the applicants' relative was opened almost immediately after the attack on 18 April 1996 (see paragraphs 10 and 11 above). Within less than a day the investigation had identified the persons who had perpetrated the attack, had

detained or questioned all of them and had charged the first assailant with murder stemming from an act of hooliganism (see paragraph 12 above). At the same time, the investigation was informed by one of the assailants, D.K., that the attack had been racially motivated because the victim was of Roma origin (see paragraph 13 above). Within another month the investigation had commissioned medical and other reports and had charged the remaining five assailants with hooliganism of exceptional cynicism and impudence (see paragraphs 14-22 above).

100. The Court further observes that the changes in the testimonies of those assailants who had at first blamed the first assailant for stabbing the victim were initially dealt with expeditiously by the authorities. Namely, the charges against the first assailant were amended to hooliganism of exceptional cynicism and impudence (see paragraph 26 above), N.R. and S.H. were charged with having made false statements to the investigation authorities incriminating the first assailant, (see paragraph 27 above) and the second assailant was charged with negligent homicide resulting from an inflicted median bodily injury (see paragraph 28 above).

101. Over the next three years, however, the preliminary investigation became protracted for undisclosed reasons, with investigative procedures being performed approximately once a year (see paragraphs 30-34 above). From 1999 to 2001 there was more activity on the part of the authorities, but in spite of the numerous confrontations between witnesses, the medical and other evaluations and examinations performed and the investigator's proposals to bring the assailants to trial, nothing further of substance transpired (see paragraphs 34-50 above). Then, for a period of four years between 2001 and 2005, there were absolutely no further developments and the criminal proceedings remained at the investigation stage until the present case was communicated to the respondent Government (see paragraphs 5 and 50-52 above). As a result of the accumulated delays, the statute of limitations expired in respect of the majority of the assailants and the authorities terminated the criminal proceedings against them on 18 March 2005. Thus, in spite of the authorities having identified the assailants almost immediately after the attack and having determined with some degree of certainty the identity of the stabber, no one was brought to trial for the attack on the applicants' relative over a period of more than eleven years.

102. The Court observes in this respect that the Government failed to provide convincing explanations for the protraction of the criminal proceedings. It finds that the arguments put forward by them do not provide justification for the authorities' failure over several years to conclude the criminal proceedings and bring the assailants to trial.

103. The Court recognises that the preliminary investigation is still pending against two of the assailants, but, considering the length of the proceedings so far, it finds it questionable whether either of them will ever

be brought to trial or be successfully convicted. In any event, the Court does not consider it necessary to make an assessment of this point in the context of the present proceedings, in view of the accumulated length of the proceedings so far and the fact that they were terminated in respect of the majority of the assailants due to the expiration of the statute of limitation as a result of the authorities' inactivity. In this respect, it also does not consider that the applicants should have waited for the completion of the criminal proceedings before filing their complaints with the Court, as the conclusion of those proceedings would not remedy their overall delay in any way.

104. As to whether the respondent State's legal system provided adequate protection against racially motivated offences, the Court observes that it did not separately criminalise racially motivated murder or serious bodily injury (Articles 115-135 of the Criminal Code), nor did it contain explicit penalty-enhancing provisions relating to such offences if they were motivated by racism (Articles 116 and 131 of the Criminal Code). However, the Court considers that other means may also be employed to attain the desired result of punishing perpetrators who have racist motives. It observes in this respect that the possibility existed in domestic legislation to impose a more severe sentence depending on, *inter alia*, the motive of the offender (see paragraph 63 above). The Court further observes that the authorities charged the assailants with aggravated offences, which though failing to make a direct reference of the racist motives of the perpetrators provided for more severe sentences than those envisaged in domestic legislation for racial hatred offences (see paragraphs 56-61 above). Thus, it does not consider that domestic legislation and the lack of penalty-enhancing provisions for racist murder or serious bodily injury were responsible in the present case for hampering or constraining the authorities from conducting an effective investigation into the death of the applicants' relative and applying effectively the existing domestic legislation.

105. In conclusion, the Court finds that in the particular circumstances of the present case the authorities failed in their obligation under Article 2 of the Convention to effectively investigate the death of the applicants' relative promptly, expeditiously and with the required vigour, considering the racial motives of the attack and the need to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence.

Thus, there has been a violation of Article 2 § 1 of the Convention. It follows that the Government's preliminary objection (see paragraphs 89 and 103 above) must be dismissed.

106. Having regard to the above conclusion, the Court does not deem it necessary in the present case to make a separate finding under Articles 3 and 13 of the Convention (see, *mutatis mutandis*, *Anguelova*, cited above, § 150; *Ognyanova and Choban*, cited above, § 124; and *Nachova and Others*, cited above, § 123).

II. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLES 2 AND 3 OF THE CONVENTION

107. The applicants alleged a violation of Article 14 in conjunction with Articles 2 and 3 of the Convention in that the authorities failed in their duty to investigate and prosecute a racially motivated violent offence. They referred, *inter alia*, to their Roma origin, the alleged widespread prejudices against their ethnic group and the authorities' consistent failure to address systematic patterns of violence and discrimination against their community.

Article 14 of the Convention provides.

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

1. The Government

108. The Government contested the applicants' assertion and argued that the complaint should be declared inadmissible on account of a failure to exhaust the domestic remedies. They claimed that the applicants could have initiated an action against the authorities under the Protection against Discrimination Act, in force as from 1 January 2004, if they believed that there had been discriminatory motives for the investigation having taken too long or for any alleged inactivity on the part of the authorities.

109. In any event, the Government considered that there had not been any discriminatory motive in the way the authorities had conducted the investigation and argued that this had been demonstrated by the diligence with which it had been conducted, its preciseness and the severity of the charges finally brought against the first assailant.

2. The applicants

110. The applicants challenged the Government's claim that the complaint should be declared inadmissible on account of a failure to exhaust the domestic remedies. They argued that an action under the Protection against Discrimination Act was not a remedy that they were required to exhaust because it was neither effective nor available. The applicants noted that the Court had repeatedly held that there is no requirement that remedies that are neither adequate nor effective should be used (see, *mutatis mutandis*, *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports* 1997-VII, p. 2625, § 53) and that an individual must have clear, practical opportunity to challenge an act which is an interference with his or

her rights (see *De Geouffre de la Pradelle v. France*, judgment of 16 December 1992, Series A no. 253-B, p. 43, § 34 and *Bellet v. France*, judgment of 4 December 1995, Series A no. 333-B, p. 42, § 36). In respect of the lack of availability of the remedy claimed by the Government, the applicants noted that the Protection against Discrimination Act entered into force close to four years after they had lodged their complaints with the Court. With regard to its effectiveness, they argued that an action for damages, be it based on anti-discrimination legislation or general tort law, could not remedy the substance of their complaint before the Court, which was that the authorities had failed to conduct an effective investigation into the death of their relative and to prosecute the perpetrators. Moreover, an action under the Act would be directed against the investigation authorities and would require the applicants to prove discriminatory treatment by them on the basis of race, of which there was no direct evidence. Thus, the applicants claimed that there was no clear link between the complaints they raised before the Court and the remedy suggested by the Government.

111. On the merits of their complaint, the applicants referred to the Court's judgment of 26 February 2004 in the case of *Nachova and Others* (cited above) and noted that States which are parties to the Convention had a positive duty to investigate possible discriminatory motives in cases where there was evidence of racially motivated violence. In line with the Court's ruling in that judgment, the applicants argued that Article 14 of the Convention, taken together with Article 2 and 3 of the Convention, contained a separate procedural obligation to carry out such an investigation. Such an obligation, they further argued, was fully in line with the Court's existing case-law under Articles 2 and 3 of the Convention (see *Menson and Others* (dec.), cited above) and the existing standards under international law (see the jurisprudence of the United Nations Committee on the Elimination of All Forms of Racial Discrimination – Case No. 4/1991, *L.K. v. the Netherlands*, Views adopted on 16 March 1993, para. 6.6.). The applicants thus claimed that in the present case Article 14, in conjunction with Articles 2 and 3 of the Convention, had been violated with respect to its procedural aspect – the duty to investigate where there is evidence reasonably suggesting that there was racially motivated violence and killing.

112. The applicants argued that the investigation had collected testimony and forensic evidence that clearly established that the victim was attacked, severely beaten and killed because of his race. In particular, the assailants testified that the victim was picked, beaten and killed because, and only because, he was a Roma. Sufficient evidence was also collected that this was by no means an isolated event for the assailants and that they had periodically practiced racist violence of a similar nature. Thus, in spite of the abundant evidence of the attack, the beating to which the victim was subjected and his resulting death, the assailants and the person who stabbed him were never prosecuted. This failure by the Bulgarian authorities was,

the applicants argued, an unambiguous violation of Article 14 taken in conjunction with the procedural aspect of Articles 2 and 3 of the Convention.

113. Referring to the general situation of Roma in Bulgaria, the numerous incidents of racist attacks and the high rate of violence against them, as well as the specific facts in the present case, the applicants further claimed that the Bulgarian authorities should have investigated and prosecuted the racial discrimination aspect of the attack and should have brought charges reflecting the particular gravity of the racist violence. They argued that the authorities completely failed to do this and that nothing in the investigation addressed the racist motivation of the violence against their relative. The conduct of the prosecuting authorities therefore thwarted the course of justice and deprived them of an effective remedy against the discrimination suffered by the victim.

B. Admissibility

114. The Court notes that this complaint is linked to the ones examined above (see paragraphs 77-106 above) and must therefore, likewise, be declared admissible. The Court does not find that the Government sufficiently substantiated their argument that the applicants should have exhausted the procedure under the Protection against Discrimination Act, as it does not consider it to have been proven that this procedure, introduced eight years after the attack and four years after the introduction of the application, would have been an effective remedy for their complaint under Article 14 of the Convention alleging that the authorities failed in their duty to investigate and prosecute a racially motivated violent offence.

C. Merits

115. The Court reiterates that States have a general obligation under Article 2 of the Convention to conduct an effective investigation in cases of deprivation of life, which must be discharged without discrimination, as required by Article 14 of the Convention. Moreover, when investigating violent incidents State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent

State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute; the authorities must do what is reasonable in the circumstances of the case (see *Nachova and Others*, cited above, § 160).

116. In the present case, the racist motives of the assailants in perpetrating the attack against the applicants' relative became known to the authorities at a very early stage of the investigation, when D.K. gave a statement to that affect on 19 April 1996 (see paragraph 13 above). The Court considers it completely unacceptable that, while aware that the attack was incited by racial hatred, the authorities did not expeditiously complete the preliminary investigation against the assailants and bring them to trial. On the contrary, they allowed the criminal proceedings to procrastinate and to remain at the investigation stage for more than eleven years. As a result, the statute of limitations expired in respect of the majority of the assailants. In addition, the Court observes that the authorities failed to also charge the assailants with any racially motivated offences. It notes in this respect the widespread prejudices and violence against Roma during the relevant period and the need to reassert continuously society's condemnation of racism and to maintain the confidence of minorities in the authorities' ability to protect them from the threat of racist violence (see *Menson and Others* (dec.), cited above).

117. Thus, the Court finds that in the present case the authorities failed to make the required distinction from other, non-racially motivated offences, which constitutes unjustified treatment irreconcilable with Article 14 of the Convention.

Consequently, it finds that there has been a violation of Article 14 taken in conjunction with the procedural aspect of Article 2 of the Convention.

118. Having regard to the above conclusion, the Court does not deem it necessary in the present case to make a separate finding under Article 14 taken in conjunction with the procedural aspect of Article 3 of the Convention (see paragraph 106 above).

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

119. The applicants complained under Article 6 of the Convention in respect of the excessive length of the criminal proceedings against the assailants and alleged that this denied them access to a court to claim damages from the perpetrators, in that a civil action for damages was dependent on the outcome and findings of the criminal proceedings.

The relevant part of Article 6 § 1 of the Convention provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

120. The Court notes that similar complaints were dismissed in the cases of *Assenov and Others v. Bulgaria* (judgment of 28 October 1998, *Reports* 1998-VIII, p. 3292, §§ 110-13) and *Toteva v. Bulgaria* (dec.) (no. 42027/98, 3 April 2003). The present case does not disclose any material difference. In particular, had the applicants initiated a civil action against the assailants, the competent civil court would have accepted it for examination. It is true that the court would have, in all likelihood, stayed the proceedings if it found that the relevant facts involved criminal acts. However, the civil courts are not bound by a refusal or delay of the prosecuting authorities to investigate. In circumstances where – as here – the applicants did not bring a civil action, it is a pure speculation to consider that the civil proceedings would have remained stayed for such a period, so as to give rise to a *de facto* denial of justice, as claimed by the applicants.

121. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. 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

123. The applicants claimed 40,000 euros (EUR) on behalf of the victim, on their own behalf and also on behalf of the first applicant's three daughters, sisters of the victim. The amount claimed was to compensate the violation of the victim's rights and the pain and suffering caused to all his close relatives, mother, sisters and brother, as a result of the ineffective, prolonged and eventually aborted investigation and prosecution of those responsible for his beating and death, the loss of the moral and financial support he would have provided to his family as well as the thwarted opportunity for his relatives to file a claim for damages under national law for more than nine years.

The applicants claimed that under Article 41 of the Convention non-pecuniary damages should be awarded in full to anyone who suffered a violation of the rights under the Convention and that the Court had awarded the highest amounts in compensation for violations of the right to life. They further noted that the Court in its case-law had outlined a number of circumstances that should be taken into consideration in such cases, such as whether the behaviour of the authorities was particularly blameworthy or

the consequent investigation particularly flawed, the age of the victim (see *Anguelova*, cited above, § 173) and also whether it had been demonstrated that the responding State had tolerated a wider practice of abuse of Convention rights (see *Nachova and Others*, cited above, §§ 171-72).

The applicants argued that in the present case there were several such factors that necessitated an increased award of damages, namely that their relative was the victim of a racist attack, beating and killing; that he was an innocent victim, randomly chosen because of the colour of his skin; that, in spite of the abundant evidence concerning the offence and the perpetrators, the authorities had chosen not to investigate and prosecute a blatantly racist crime; that such tacit approval of racism by the authorities was particularly blameworthy; and that the specific circumstances of the victim's death and the behaviour of the investigation and prosecution authorities should not be tolerated under any circumstances.

Finally, the applicants claimed that the possibility for them to receive compensation from the assailants in the domestic courts was practically non-existent given the latest developments in the criminal proceedings, the expiration of the statute of limitation in respect of most of the perpetrators and the evidentiary difficulties of initiating a successful civil action for damages after so many years.

124. The Government stated that the applicants' claims were excessive, unsubstantiated and that they did not correspond to the size of awards made by the Court in previous similar cases. They referred to the judgment in the case of *Nachova and Others* (cited above) where the Court had awarded the relatives of the first victim EUR 25,000 jointly for pecuniary and non-pecuniary damage and the parents of the second victim EUR 22,000 jointly for pecuniary and non-pecuniary damage. The Government also referred to the case of *Anguelova* (cited above) where the Court had awarded the applicant EUR 19,050 for non-pecuniary damage. They also noted that any compensation for damages should be made on an equitable basis and considered the applicants' claim to be arbitrarily determined.

The Government challenged the possibility for the applicants to claim damages on behalf of the victim's sisters, as the latter had not been party to the proceedings before the Court, and considered that they should not be awarded any sums in compensation. They argued that his sisters could have joined the proceedings in their own right and, had they done so, then they could have filed a claim for damages, such as had been done by the relatives of the victims in the above cited cases.

The Government disagreed with the applicants' argument that they had no opportunity to seek damages from the assailants at domestic level, and referred to the civil claim filed by the applicants and the sisters of the victim in April 2005 within the framework of the pending criminal proceedings.

125. In respect of pecuniary damage, the Court reiterates that there must be a causal link between the damage claimed by an applicant and the

violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings (see, amongst others, the *Barberà, Messegué and Jabardo v. Spain* (Article 50), judgment of 13 June 1994, Series A no. 285-C, pp. 57-58, §§ 16-20, and *Çakıcı v. Turkey* [GC], no. 23657/94, § 127, ECHR 1999-IV). The Court notes that in the present case private persons were responsible for the ill-treatment and death of the victim. Thus, although there is a direct link between his death and the claimed loss of financial support, the Government was not responsible for the assailants' actions and cannot therefore be held liable to compensate the applicants for the pecuniary damage suffered as a result. Accordingly, the Court rejects the applicants' claim for pecuniary damage.

126. In the context of assessing the claim for non-pecuniary damage, the Court notes that, in respect of just satisfaction claims, Rule 60 of the Rules of Court requires the respective party to be an applicant and to have filed a claim to that effect. Rule 60 provides:

> "1. An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention... must make a specific claim to that effect.
>
> 2. The applicant must submit itemised particulars of all claims...
>
> 3. If the applicant fails to comply with the requirements set out in the preceding paragraphs the Chamber may reject the claims in whole or in part."

127. Thus, the principle is that awards can only be made to persons who are applicants in the proceedings before the Court.

128. The Court notes, however, that awards have also previously been made to surviving spouses and children and, where appropriate, to applicants who were surviving parents or siblings. It has also previously awarded sums as regards the deceased where it has found that there had been arbitrary detention or torture before his disappearance or death, such sums to be held for the person's heirs (see, among others, *Çakıcı* [GC], cited above, § 130, and *Akdeniz and Others v. Turkey*, no. 23954/94, § 133, 31 May 2001). The Court recognizes that in those cases the balance of the awards represented compensation for the victim's own pain and suffering at the hands of the police or security forces as a result of substantive violations of Articles 2 and/or 3 of the Convention. The present case relates to the ill-treatment and death of the applicants' relative as a result of actions by private individuals. Accordingly, only the pain and suffering of the applicants as a result of events subsequent to their relative's death – for which the respondent State was responsible – are relevant when assessing the award to be made.

129. Separately, the Court notes that the victim's heirs were established soon after his death in 1996, and included his mother, brother and three sisters. The proceedings before the Court were initiated and maintained by his mother and brother, but that did not restrict, bar or hinder his three

sisters from requesting to join the proceedings and claiming to be victims of the alleged violations in their own right. In so far as they failed to exercise their right to join the proceedings, the Court finds that they do not satisfy the requirements of Article 41 of the Convention and Rule 60 of the Rules of Court, namely to be applicants who claim to be an injured party and who have filed a valid claim for damages.

130. Accordingly, the Court, deciding on an equitable basis and having regard to awards in comparable cases (see *Anguelova*, cited above, § 173 and *Nachova and Others*, cited above, §§ 171-72), finds it appropriate in the circumstances of the present case to award EUR 15,000 jointly to the two applicants, plus any tax that may be chargeable on that amount.

B. Costs and expenses

131. The applicants claimed EUR 6,000 for 65 hours of legal work by their lawyer before the Court, at the hourly rate of EUR 80, and for 23 hours of travelling time, at the hourly rate of EUR 40, on matters relating to the case. They submitted an agreement on legal fees concluded with their lawyer and a timesheet. The applicants requested that the costs and expenses incurred should be paid directly to their lawyer, Mr Y. Grozev.

132. The Government challenged the timesheet presented by the applicants and the number of hours claimed to have been worked by the applicants' lawyer in the proceedings before the Court, which they considered excessive for the work performed. Concerning the travel expenses, they argued that it had not been proven that any such trips had even taken place because no tickets or receipts had been presented to the Court. In any event, they considered the rate of EUR 40 per hour for travelling time for the lawyer to be excessive.

133. The Court reiterates that, according to its case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. Noting the complexity of the case, the submissions of the applicants' lawyer and the other relevant factors, the Court considers it reasonable to award the sum of EUR 3,500 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

134. 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. *Decides* to join to the merits the question of the exhaustion of domestic remedies in respect of Article 2 of the Convention;

2. *Declares* admissible the complaints concerning (a) the failure of the authorities to carry out a prompt, effective and impartial investigation capable of leading to the trial and conviction of the individuals responsible for the ill-treatment and death of the applicants' relative, and (b) the authorities' failure in their duty to investigate and prosecute a racially motivated violent offence;

3. *Declares* the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 2 of the Convention and accordingly *dismisses* the Government's preliminary objection based on non-exhaustion of domestic remedies;

5. *Holds* that no separate issue arises under Articles 3 and 13 of the Convention;

6. *Holds* that there has been a violation of Article 14 in conjunction with Article 2 of the Convention;

7. *Holds* that no separate issue arises under Article 14 in conjunction with Article 3 of the Convention;

8. *Holds*
   (a) that the respondent State is to pay to the applicants, 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 on the date of settlement:
      (i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, payable jointly to the applicants;
      (ii) EUR 3,500 (three thousand five hundred euros) in respect of costs and expenses, payable into the bank account of the applicants' lawyer;
      (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;

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

Done in English, and notified in writing on 26 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President