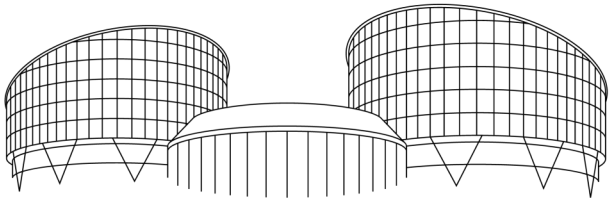

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BEKIRSKI v. BULGARIA

(Application no. 71420/01)

JUDGMENT

STRASBOURG

2 September 2010

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

In the case of Bekirski v. Bulgaria,

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska, *judges,*
Pavlina Panova, ad hoc *judge,*

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 71420/01) against the Republic of Bulgaria lodged on 26 March 2001 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Bulgarian nationals, Mr Petar Hristov Bekirski, Mrs Kate Dimitrova Bekirska and Mrs Krasimira Petrova Bekirska ("the applicants") who were born in 1947, 1949 and 1975, respectively. The first two applicants live in Plovdiv, while the third resides in Canada.

2. The applicants were represented by Ms I. Vandova, a lawyer practising in Sofia.

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

4. The applicants alleged, in particular, that their relative, Mr Hristo Petrov Bekirski ("Mr Bekirski"), died as a result of complications caused by numerous injuries sustained at the hands of the police on 30 August 1996, from alleged ill-treatment thereafter and from the alleged lack of adequate medical care. The applicants also complained that the authorities had failed to conduct a prompt, effective and impartial investigation or bring charges against the perpetrators for the ill-treatment and subsequent death of Mr Bekirski.

5. On 2 September 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

6. Mrs Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case. On 30 January 2009 the Government appointed in

her stead Mrs Pavlina Panova as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of Court as in force at the time).

7. Meanwhile, on 11 July 2006 the applicants informed the Court that they would like to submit further observations at an oral hearing, if the Court were to require such observations before deciding on the admissibility of the application. However, the Court decides under Rule 54 § 3 of the Rules of Court, not to hold a hearing on the admissibility and merits of the above application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. Mr Petar Hristov Bekirski ("the first applicant") and Mrs Kate Dimitrova Bekirska ("the second applicant") are the parents of Mr Bekirski, while Mrs Krasimira Petrova Bekirska ("the third applicant") is his sister. Mr Bekirski was born in 1972 and was twenty-four years old at the time of the events.

A. The criminal proceedings against Mr Bekirski

9. In May 1996 a criminal investigation was opened into the activities of the so-called Komatevska gang, of which Mr Bekirski and five other individuals, including the first applicant, were allegedly members. The investigation was carried out in connection with several murders and armed robberies.

10. On 13 May 1996 Mr Bekirski was charged with premeditated murder (Article 115 of the Criminal Code of 1968) and placed in pre-trial detention.

11. Mr Bekirski was held at the detention facility of the Plovdiv Regional Investigation Service ("the detention facility") located on the sixth and seventh floors of a building it shared with the Plovdiv Fourth District Police Station. Accordingly, there were two sets of guards – one stationed on the sixth or seventh floor for the detention facility and another on the ground floor for the entire police station. In addition, a metal door barred access to the floors of the detention facility.

12. Initially, Mr Bekirski was held in cell no. 5 on the seventh floor together with another detainee, whose help he tried to enlist in an attempted escape. As a result, on 7 August 1996 Mr Bekirski was moved and placed alone in cell no. 14 on the same floor.

13. Meanwhile, on 9 July 1996 the first applicant had been detained in the course of the same criminal proceedings. He was also being held at the detention facility on 30 August 1996 when the events outlined below took place.

B. The events of 30 August 1996

14. At around 7 p.m. on 30 August 1996, while the detainees were being served dinner, Mr Bekirski allegedly tried to escape.

15. Using the sharpened handle of a wooden spoon as a makeshift weapon, Mr Bekirski attacked and apparently wounded two duty officers – first S.G. and then G.G. S.G. was injured and received several cuts in the area of his left eye while G.G. was stabbed in the left eye. The latter subsequently lost the sight in his left eye. Taking G.G. as a hostage and threatening to stab him in the neck with the makeshift weapon Mr Bekirski allegedly tried to leave the detention facility.

16. Taking advantage of Mr Bekirski being briefly distracted, G.G. knocked the makeshift weapon out of Mr Bekirski's hand and moved away. A fight then ensued between Mr Bekirski and approximately three or four duty officers, among which were duty officers G.P., N.S. and B.Z. The duty officers kicked, punched and used a truncheon in the course of the encounter, which continued for five to ten minutes. During the fight, Mr Bekirski and some or all of the duty officers fell down the stairs between the seventh and sixth floors. Eventually, Mr Bekirski was subdued and handcuffed.

17. The first applicant maintains that he and the other detainees heard the screams and cries which accompanied the subduing of his son. Some of those witnesses later gave testimony before the investigators (see part D below).

1. The first medical report on Mr Bekirski – no. 1220/96

18. At around 9 p.m. on the same day Mr Bekirski was examined by doctor I.D. who was head of the Department of Forensic Medicine at the Medical University of Plovdiv ("the University").

19. In medical report no. 1220/96 ("the first medical report") he described the incident of that evening and Mr Bekirski's overall condition as follows:

> "[Mr Bekirski] injured two persons from the detention facility using a sharpened handle of a wooden spoon[.] A brawl ensued between him and officers from the detention facility [where] force was used to pacify [him]. During the scuffle they fell down a flight of stairs. [Mr Bekirski] indicates that he does not remember anything.

... [Mr Bekirski is] responsive, correctly answers the questions asked (name, address, age), but does not remember what happened to him. [He] does not make any specific complaints."

20. The injuries sustained by Mr Bekirski were described as follows:

"Head – ... [next to the left eyelid there is] a 3 cm by 3 cm oval area with skin swelling and a blue-reddish coloured bruise ... [on the forehead above the nose there is] a 3-cm-long wound [showing signs of] fresh bleeding ... [on the right side of the face there is] a 10 cm by 3 cm area with slight skin swelling and a reddish coloured bruise ... [below the left eyelid there is] a 4 cm by 2 cm reddish coloured bruise... in the right corner of the mouth ... there is a 4 cm by 4 cm area where there are numerous ... 1-cm-long cuts ...

Neck and chest – ... there is a 4 cm by 4 cm oval reddish coloured bruise ... a 4 cm by 3 cm reddish coloured bruise ... on the [upper left side of the] back [there is] a 30 cm by 25 cm oval bruise of [varying] colouration ... in the middle [of which there are] two dark red coloured strips [measuring] 8 cm by 3 cm ... on the [upper right side of the] back [there is] a 25 cm by 15 cm oval bruise also of [varying] colouration ... in the middle [of which there are] also two dark red coloured strips [measuring] 10 cm by 3 cm ...

Abdomen – ... [on the right side there is] a 5 cm by 4 cm oval darker reddish coloured bruise ... [on the left side there is] a 12 cm by 8 cm blue-reddish coloured bruise ... [and under it] a 5 cm by 8 cm oval darker reddish coloured bruise ...

Limbs – ... [on the right shoulder blade there is] a 10 cm by 6 cm oval red coloured bruise ... [on the right armpit there are] three 1.5 cm by 1.5 cm oval blue-reddish coloured bruises surrounded by a 5 cm by 5 cm lighter blue-reddish coloured area ... [on the left armpit there are] two 1.5 cm by 1.5 cm oval blue-reddish coloured bruises surrounded by a 4 cm by 4 cm lighter blue-reddish coloured area ... a 12 cm by 8 cm darker red coloured bruise ... [and] a 6 cm by 6 cm oval blue-reddish coloured bruise ... [on the right armpit area there are three] oval blue-reddish coloured bruises [measuring] ... 4 cm by 4 cm, 4 cm by 3 cm [and] 4 cm by 3 cm ... [and] a 6 cm by 1.5 cm abrasion ... [on the right shoulder and armpit area there is] a 10 cm by 6 cm oval dark reddish coloured bruise ... [on the left shoulder and armpit area there is] a 10 cm by 8 cm oval blue-reddish coloured bruise ... [on the left thigh there is] an 8 cm by 8 cm oval blue-reddish coloured bruise ... a 12 cm by 12 cm light blue-reddish coloured bruise ... in the middle [of which there are] two dark red coloured [strips measuring] 8 cm by 3 cm ... [and] an 8 cm by 8 cm oval blue-reddish coloured bruise ... [on the right thigh there is] a 6 cm by 6 cm oval red coloured bruise ... [and] an 18 cm by 18 cm oval lighter blue-reddish coloured bruise ... [below the right knee there is] a 5 cm by 5 cm oval blue-reddish coloured bruise ... [on the right thigh there is] a 10 cm by 10 cm oval blue-reddish coloured bruise ... a 6 cm by 8 cm oval blue-reddish coloured bruise ... [and] an 8 cm by 8 cm oval blue-reddish coloured bruise ... [on the left thigh there is] a 6 cm by 8 cm oval blue-reddish coloured bruise ..."

21. The first medical report concluded as follows:

"During the examination of Mr Bekirski [I] discovered a cut on [his] forehead, numerous skin bruising in the area of his head, chest, stomach, arms and legs, a skin abrasion on the front part of [his] right armpit. These injuries were caused by a solid blunt object and it is possible that they were inflicted at the time indicated [by the investigators].

The affected deterioration of [his] health does not represent [grievous or moderate bodily harm under] the Criminal Code."

22. Mr Bekirski did not receive any immediate medical treatment for his injuries.

23. The Government claimed that on an unspecified date two more criminal investigations were opened against Mr Bekirski for the attempted murder of an official and attempting to escape while in detention, but did not present documents in support of their assertions.

2. The medical report on duty officer G.P. – no. 1221/96

24. At 9.30 p.m. on 30 August 1996 doctor I.D. examined duty officer G.P. who complained that he had been punched and kicked while subduing a detainee. The report described, *inter alia*, the injuries sustained by the duty officer as follows:

"Limbs – ... in the area of the right armpit ... there is a 4 cm by 4 cm oval reddish coloured bruise ... on the ... right thigh ... there is a 4 cm by 3 cm oval lighter blue-reddish coloured bruise.

25. The medical report on duty officer G.P. concluded as follows:

"During the examination of [duty officer G.P.] an injury and a bruise were found ... in the area of the right armpit and right thigh. The injuries were caused by a solid blunt object and may have been caused in the manner described [by duty officer G.P.].

[The injuries] caused pain and suffering."

3. The medical report on duty officer N.S. – no. 1222/96

26. At 10 p.m. on 30 August 1996 doctor I.D. also examined duty officer N.S. who complained that his right palm had been injured while subduing a detainee. The report described the injury sustained by the duty officer as follows:

"Limbs – the area of the 5th bone of the right palm, mainly on the side, is painful to the touch in an area measuring 4 cm by 3 cm and minor swelling of the skin is visible."

27. The medical report on duty officer N.S. concluded as follows:

"During the examination of [duty officer N.S.] a swollen injury was found in the area of the 5th bone of the right palm. This injury was caused by a solid blunt object and may have been caused in the manner described [by duty officer G.P.].

[The injury] caused pain and suffering."

C. Alleged ill-treatment after 30 August 1996, Mr Bekirski's medical condition and death

28. The applicants claimed that in the days following the events of 30 August 1996 Mr Bekirski was systematically ill-treated and beaten by police officers while in detention. That was challenged by the Government. The ill-treatment and beatings allegedly continued day and night for several days. The beatings were heard by both the first applicant and other detainees who later testified before the investigators (see part D below).

29. Following complaints by Mr Bekirski that he was in pain, on 2 and 5 September 1996, while at the detention facility, he was examined by a paramedic. He was prescribed painkillers.

30. Meanwhile, on 4 September 1996 a prosecutor from the Plovdiv regional public prosecutor's office visited the detention facility in order to check whether the police were diligently investigating the criminal cases of the detainees being held there. In the course of his visit the prosecutor talked to several detainees and noted their complaints in connection with the processing of their cases. One of the detainees he talked to was Mr Bekirski who told him that he had no complaints, that he did not know why he was being held and that he was innocent. In connection with his visit, the prosecutor prepared a report dated 6 September 1996.

31. On 6 September 1996 Mr Bekirski complained of pain in his abdomen. He was found to have irregular blood pressure, so he was taken to the First Regional Hospital. The persons that accompanied him there informed the medical personnel that Mr Bekirski had suffered injuries (bruises and abrasions) after having attacked a policeman.

32. It was suspected that Mr Bekirski had a burst spleen or internal bleeding, so a stomach operation and a tracheotomy were performed on the same day. However, having opened his abdominal cavity, the surgeons could not find any lacerations of internal organs or haemorrhaging.

33. Thereafter, Mr Bekirski's medical condition continued to be unstable and he remained in hospital. Over the next day and a half he was kept under medical supervision, was visited by medical personnel on several occasions and was prescribed various medication and treatment.

34. In the evening of 7 September 1996 his medical condition deteriorated. In spite of changes to his medication and the involvement of a specialist doctor, Mr Bekirski passed away at 7:20 a.m. on 8 September 1996.

35. The applicants claimed that neither they nor Mr Bekirski's lawyer had been informed of Mr Bekirski's deteriorating medical condition in the period between 30 August and 8 September 1996. That was not expressly challenged by the Government. The applicants also claimed to have learnt of Mr Bekirski's death from the media and to have not received his body for almost a month.

Autopsy report no. 364/96

36. An autopsy was carried out on 9 September 1996 with the task of determining the cause of Mr Bekirski's death and identifying what injuries he had sustained prior to his death, including how and when they had been inflicted. The team carrying out the autopsy was lead by doctor I.D. who was assisted by two assistant professors from the University.

37. The autopsy report described in detail the state of Mr Bekirski's body and the examinations and tests carried out. In respect of the injuries established it described its findings, *inter alia*, as follows:

> "Head – ... 3 cm above the base of the nose ... there is a 3 cm vertical wound covered by a dry, brownish scab ... There is a 3 cm by 3 cm oval blue-reddish coloured bruise on the skin of the front part of the right earlobe. The skin on the whole right earlobe is bruised ... The skin behind the right earlobe is bruised in a 5 cm by 3 cm area which connects with the bruising of the skin on the right earlobe. ...
>
> Neck and chest – ... There is a 40 cm by 26 cm bruise on the skin of the [upper left side of the] back ... the bruise is patchy ... [and there are areas] with more intense linear-shaped bruising ... measuring 10 cm by 3 cm. There is a 38 cm by 25 cm bruise on the skin of the [upper right side of the] back ... This bruise is also patchy ... In the area of the [upper left side of the] back, where there is more intensive bruising, ... there is no epidermis in some places in an area measuring approximately 10 cm by 3 cm [and] there is red-coloured dermis, [which is] wet, fresh [and not] covered by a scab ... Around the two ... armpits there are 30 cm by 20 cm bruises ... on the right and 25 cm by 20 cm bruises on the left ... On the skin on the right side of the chest ... there is a 25 cm by 25 cm bruise ...
>
> Abdomen – ... above the umbilicus there is a stitched, vertical surgical scar measuring 18 cm ... On the left side, above the hip joint, there is a bruise ... measuring 48 cm by 25 cm which is patchy because there are [three] areas of more intense bruising and colouring [as follows] – in the vicinity of the hip measuring 8 cm by 8 cm, towards the stomach lining measuring 12 cm by 10 cm and [another] below it extending towards the genitals measuring 12 cm by 10 cm ... On the right hip there is a bruise measuring 8 cm by 6 cm ... From it starts [another bruise] to the side of the buttocks ... measuring 12 cm by 8 cm ...
>
> Limbs – ... The skin on both buttocks is bruised and patchy ... because there are areas of more intense bruising and colouring. On the left buttock, there are [two such] areas, one measuring 14 cm by 10 cm ... and the other measuring ... 8 cm by 5 cm ... On the right buttock, ... there is [another such] area measuring 13 cm by 6 cm, which is also patchy ... On the skin of the right side of the genitals, there is a bruise measuring 8 cm by 6 cm ... The right thigh is almost completely bruised and patchy [because] there are areas of more intense bruising and colouring ... on the front and upper outside area measuring 15 cm by 8 cm, on the inner upper area measuring 14 cm by 5 cm, on the back towards the side measuring 15 cm by 10 cm ... and on the back lower area towards the right knee joint measuring 15 cm by 5 cm. On the inner side of the right knee joint there is a bruise ... measuring 8 cm by 4 cm. Behind the right knee joint there is a more intensely-coloured bruise ... measuring 8 cm by 8 cm. On the inner part of the upper to middle part of the right shank there is a bruise ... measuring 8 cm by 7 cm ... the bruising of the right heel is without visible swelling ... The skin on the left thigh is bruised [as follows]: in the upper front and side area

measuring 16 cm by 7 cm, in the inner upper to middle area measuring 12 cm by 6-8 cm, in the area behind the left knee joint ... measuring 8 cm by 8 cm ... On the skin below the left knee joint there is a bruise ... measuring 7 cm by 3 cm. On the inner middle area of the shank there is a bruise measuring 8 cm by 6 cm ... The skin in the area of the ankle joint, on the back of the left heel [and] up to the toes, has a blue-reddish coloured bruise without visible swelling of the skin on the heel. On the frontal area of the right armpit, from the front part of the right shoulder blade leading down to the lower third of the armpit, there is a wavy bruise measuring 23 cm by 7 cm ... On the back and inner area of the right armpit, as well as in the area of the right elbow and the upper back part of the right forearm there is a bruise measuring in total 33 cm by 10 cm ... on the middle back part of the right forearm there is a bruise measuring 10 cm by 7 cm in the middle of which there is a vertical abrasion measuring 6 cm by 1.5 cm covered by a yellow-brownish dry scab ... In the area of the right wrist joint there are three aligned abrasions one above the other measuring 3 cm by 0.5 cm, 4 cm by 0.5 cm and 3 cm by 1.5 cm covered by a yellow-brownish scab ... The skin on the back of the right hand is swollen without visible trauma ... The skin in the area of the left armpit is bruised almost everywhere – the inner, back and side areas ... On the front and inner-side area of the middle left forearm, there is a bruise ... measuring 17 cm by 9 cm. In the area of the left wrist joint there are two aligned abrasions measuring 1 cm by 0.5 cm and 5 cm by 0.5 cm covered by a yellow-brownish scab. The skin on the back of the left hand is visibly swollen. In the area of the right elbow joint there is an oval abrasion measuring 2 cm by 2 cm covered by a yellow-brownish scab. On the upper to middle front part of the right thigh there is an oval abrasion measuring 1 cm by 1 cm covered by a yellow-brownish scab. On the upper front part of the left thigh there are two oval abrasions next to each other, each measuring 2 cm by 0.5 cm [and] covered by a yellow-brownish scab.

Incisions were made in the area of the chest, buttocks, and upper and lower limbs in order to examine the underlying soft tissue. In the area of the back, very intense and widespread bruising of the underlying soft tissue was found and deep bruising of the muscles in the area of both shoulder blades was found. The right shoulder blade is fractured in the main part of the scapula and its narrow section. The fracture is 'Y-shaped', whereby the two upper sections are each 5 cm long, the [lower] is 3 cm long and there is an adjacent fracture perpendicular to the [lower] section, which is 2.5 cm long. The muscles in the area of the fracture of the right shoulder blade are bruised ... The tissue in the area of both ankle joints and the upper part of the heels are also bruised, but there is no visible swelling to the soft tissue ...

... On the right side, the following ribs are fractured: 6th, 7th, 8th and 10th in their middle [sections] ... while rib 6 is [also] fractured where it is attached to the sternum... "

38. The autopsy report summarised its findings, *inter alia*, as follows:

"... numerous skin bruising in the area of the head, chest, abdomen, upper and lower limbs, a skin wound on the forehead, abrasions to the skin on the limbs, four fractured ribs on the right [side], a fracture of the right shoulder blade, contusions in the muscles around the area where the skin had been bruised, a fairly distinct fatty embolism in the lungs, [sporadic] drops of fat in the brain and kidney, severe [and] acute swelling in the lungs, swelling and enlargement of the interalveolar barriers, infectious alterations of the lungs – bronchitis, bronchiolitis, bronchopneumonia ... a haemorrhage of the alveolus ... inflammation of the pleura of the lungs, swelling of the brain..."

39. The autopsy report concluded that:

> "The immediate cause of [Mr Bekirski's] death was acute cardiac and pulmonary insufficiency resulting from massive swelling and infectious alterations of the lungs. The death was also caused by hypoxia (oxygen deficiency) of the body from acute anaemia, was caused by internal bleeding in the soft tissues – under the skin and in the muscles, as well as the morphological changes of the lungs, which most probably resulted in acute pulmonary insufficiency. The above-described changes are the result of injuries which are present on [Mr Bekirski's] body – a chest injury with fractured ribs, a fractured right shoulder blade, a contusion of the chest muscles, as well as bruising of the soft tissues in other parts of his body. Death was caused by varying, fairly complex and interrelated infectious processes and mechanisms which, in order to be clarified, require further data, testimonies of witnesses, data from [Mr Bekirski's medical] examinations, the history of his illness and other data.
>
> Generally, the injuries were caused by a solid blunt object.
>
> The injuries, relating to the skin bruising and the soft tissue under it, as well as the infectious alterations to the lungs are ... five to seven days [old]."

D. The investigation into the death of Mr Bekirski

40. A preliminary investigation into Mr Bekirski's death was opened on 8 September 1996 against an unknown perpetrator. The investigation was assigned to the Plovdiv Regional Investigation Service which was the authority in charge of the facility in which Mr Bekirski had been detained and where the events of 30 August 1996 had taken place.

41. In a letter of 11 September 1996 the second applicant complained to the Plovdiv regional military prosecutor's office that the preliminary investigation had been assigned to the Plovdiv Regional Investigation Service, because of the possible involvement of police officers from that division in the death of her son. No apparent action was taken in response.

1. The medical report on the duty officers – no. 262/96

42. On an unspecified date in September 1996 a medical report was commissioned to ascertain the injuries sustained by duty officers S.G. and G.G. and whether the weapon used could have been life-threatening.

43. Medical report no. 262/96 ("the duty officers' medical report") was prepared by doctor I.D. sometime in September 1996 on the basis of the existing documentary evidence.

44. In respect of the events of 30 August 1996, the duty officers' medical report contained the following extracts of statements given by various duty officers in the course of the preliminary investigation:

> "[duty officer] S.G. (victim) [-] '... at around 7 p.m. ... all of a sudden something hit me in the left eye ... I could not see from the blood ... that's why I ran [down] the stairs to the 6th floor where the duty officers' room was ... on the upper floor [Mr] Bekirski was shouting to my colleagues not to go up and to throw down their

guns ... I heard screams and the noise of falling bodies and when I came out onto the landing, several colleagues were wrestling with [Mr] Bekirski until they finally handcuffed him ...'

[duty officer] G.G. (victim) [-] '... at around 7 p.m. ... [S.G.] shouted out ... I went over and saw that [Mr] Bekirski had attacked him. At that moment [Mr] Bekirski turned towards me ... he lunged forward ... I felt that he hit me with something sharp in the left eye, which hurt and started to bleed and he began wrestling with me ... I resisted ... then I saw that in his right hand he held a wooden spoon. The forward part of the spoon was in his palm and the handle was protruding forward between his fingers so that he could jab [with it]. I then understood that he had stabbed me in the eye with the wooden spoon ... I managed to grab his hand and, using force, I twisted his right wrist, he opened his fingers and, when I prised the spoon away with the other hand, I threw it down the stairs towards the 6th floor ... Only then did I manage to push him away ... because I pushed him away from me, he fell down the stairs towards the 6th floor ... he could have killed me because the handle of the spoon had been sharpened ...'

[duty officer] G.P. [-] '... at around 7 p.m. I heard shouting on the 7th floor landing... Hristo [Bekirski] was behind [G.G.], holding him by the throat with his left hand. In his right hand he was holding a wooden spoon with the handle pointing towards [G.G.'s] neck ... he was pointing the handle of the wooden spoon towards [G.G.'s] eye and then towards his neck ... he started fighting us and all three of us fell down the stairs, where, with N.S., we tried to twist his hands so as to handcuff him ... Downstairs on the 6th floor [B.Z.] joined in and only with his help did we manage to twist Hristo [Bekirski]'s hands towards his back and [B.Z.] handcuffed him ...'

[duty officer] B.Z. [-] '... in the corridor on the 7th floor [G.G.] and Hristo Bekirski were brawling. ... Hristo [Bekirski] was behind [G.G.] and was holding him by the throat with his left hand while, in his right hand, he was holding a wooden spoon ... with the handle pointing first towards [G.G.'s] neck and then towards one of his eyes ... at that moment G.P. and N.S. ... grabbed hold of him, all three of them tumbled down the stairs while continuing to wrestle ... I joined in and pinned Hristo [Bekirski] down on the concrete floor and managed to handcuff him behind his back, and that's how we overcame his resistance ...'"

45. In respect of the physical condition of the duty officers, the report noted that duty officer S.G. had almost completely recovered from his injury and concluded as follows:

"[Duty officer] S.G. was injured [in the area] of the orbit of his left eye [where there is] a cut to the skin of the upper eyelid [and] bruising and swelling to the skin of the eyelids of his left eye. The injury, and in particular the cut, was caused by a blunt solid object with a discernible edge ...

The affected deterioration of [his] health does not represent [grievous or moderate bodily harm under] the Criminal Code."

46. The report also noted that duty officer G.G. had undergone an operation and subsequent treatment for the injury he had sustained to his left eye. In respect of his condition it concluded as follows:

"[Duty officer] G.G. sustained a cut to the skin of the lower eyelid of his left eye, a bruise to the skin of the eyelids of his left eye, a cut and damage to the orbit of his left eye and complete loss of sight in his left eye. These injuries were caused by a blunt solid object with a discernible edge (tip) and it is possible that they were caused by the wooden spoon, which was produced in evidence, whereby the wound [would have been] inflicted by jabbing the sharpened part (tip) of the handle into G.G.'s eye.

The damage to the orbit of his left eye caused permanent loss of sight in [that] eye."

47. Finally, the duty officers' medical report noted that the handle of the wooden spoon used by Mr Bekirski had been sharpened to a fine point thereby allowing it to be used as a stabbing weapon. It concluded that, given the physical strength of Mr Bekirski and the way he had threatened duty officer G.G. by pointing the sharpened handle towards his neck, and given that there were a number of major veins and arteries in that area of the body, the weapon could have been life-threatening.

2. The second medical report on Mr Bekirski – no. 92/97

48. On an unspecified date the Plovdiv Regional Investigation Service commissioned another medical report. Its task was to ascertain the cause of Mr Bekirski's death and its causal relationship with the injuries he had sustained on 30 August 1996.

49. Medical report no. 92/97 ("the second medical report") was prepared on an unspecified date by a team of five doctors on the basis of the existing documentary evidence. The team was again headed by doctor I.D. and the other doctors all worked at the University.

50. The team reached similar conclusions to those in the autopsy report in respect of the cause of death and that it may have resulted from the injuries sustained on 30 August 1996.

51. In respect of the events of that day, the second medical report contained the following extracts of statements given by witnesses in the course of the preliminary investigation:

"[duty officer] B.Z. [-] '... the fight on the landing of the seventh floor edged towards the stairs leading to the [said] floor as a consequence of [Mr] Bekirski's great [sturdiness] ... this fight involved many people and I cannot say who hit [Mr] Bekirski and where ... Mr Bekirski and those trying to restrain him were hitting [each others'] hands, legs, knees, anywhere we could so that [Mr] Bekirski himself ... [was] shoved against the walls, the stairs, the central heating pipes, the frame of the security fence ... my colleague, [N.]S., was also hitting [him] with a truncheon ... I think this continued for 5 to 10 minutes ... In the end, after all the stumbling [and] hitting, we managed to pin [Mr] Bekirski down ...'

[duty officer] G.P. [-] '... he started fighting with us using karate [techniques] ... In order to restrain him, we hit and kicked him and, in the case of [our] colleague, [N.]S., with the use of a truncheon, but [Mr] Bekirski continued to resist with the same ferocity. The fight continued down the stairs, whereby [Mr] Bekirski fell several times ... he hit his back against some piping ... We managed to push him to the ground several times and [during that time] we continued to kick him, knee him [and] hit him

with a truncheon, but he [still] managed to get up and fight ... Every one of us hit him across every part of [his] body and maybe his head with everything we could – legs, knees, by shoving him and in other ways ...'

[duty officer] N.S. [-] '... He was very aggressive and ferocious ... The fight continued down the stairs towards the [security guard's] duty room. We hit him with whatever we had available – hands, legs [and] a truncheon. We fell several times and got up and tried to subdue him ... he was very agile and offered resistance ... When [Mr] Bekirski tumbled down the stairs towards the exit we tried to catch up with him in order to subdue him ...'"

3. The first discontinuation of the preliminary investigation

52. On 16 June 1997 the case file was transferred to the Plovdiv regional military prosecutor's office.

53. By a decision given on an unknown date between 16 and 19 June 1997 the Plovdiv regional military prosecutor's office discontinued the preliminary investigation. Although it considered Mr Bekirski's death to have been caused by negligence, it found it not to be a prosecutable offence because it had resulted from the police officers acting in self-defence on 30 August 1996.

54. On 24 June 1997 the second applicant appealed against the decision to discontinue the preliminary investigation. She claimed that the force used against her son on 30 August 1996 had been excessive and objected to the fact that all the medical reports had been prepared with the participation of doctor I.D.

55. On 23 September 1997 a prosecutor from the military prosecutor's office found evidence that Mr Bekirski had been subjected to systematic beatings on more than one occasion after the events of 30 August 1996. He therefore quashed the decision of 19 June 1997 to discontinue the preliminary investigation and remitted the case to the Plovdiv regional military prosecutor's office.

56. In the course of the resumed investigation, ninety-three witnesses were questioned. Twenty of them were duty officers at the detention facility while the remaining seventy-three were detainees who had been held there between 30 August and 10 September 1996.

57. On 13 April 1998 the Plovdiv regional military prosecutor's office stayed the preliminary investigation because of the need to find and question several more witnesses who were considered vital to the investigation.

58. The preliminary investigation was resumed on an unknown date.

4. The third medical report on Mr Bekirski – no. 151/99

59. On an unspecified date, in the course of the resumed investigation, the Plovdiv regional military prosecutor's office commissioned another medical report tasked to ascertain (a) the cause of Mr Bekirski's death,

(b) the cause of his injuries, (c) whether the injuries established during the autopsy and the other medical examinations had existed on 4 and 6 September 1996 and (d) when those injuries had been inflicted.

60. Medical report no. 151/99 ("the third medical report") was prepared on an unspecified date by a team of five doctors on the basis of the existing documentary evidence. The team was again headed by doctor I.D. and the remaining doctors all worked at the University.

61. In respect of the events of 30 August 1996, the report contained extracts from more than seventy witness statements obtained in the course of the preliminary investigation from detainees at the detention facility, which provided a contradictory account of the said events:

> "[the first applicant -] '... it was on 30 August 1996 around 6 p.m. ... after 8 p.m. I heard the cries of my son. [I] recognised his voice ... Blunt blows could be heard and the cries of my son ... The cries and howls of my son, as well as the blows continued until 10 p.m. on 30 August 1996 ... This continued probably until 1 or 2 a.m. on 31 August 1996 ... on 31 August 1996 the new shift came and they started beating my son ... On 1 September 1996 the beating of my son continued in absolutely the same manner ... on 2 September 1996 ... around lunch and dinner [time] I could hear the cries of my son, which were now inhuman-like and resembled a [dying] man ... at around lunch time and in the evening I could hear the cries of my son ...'
>
> ...
>
> [detainee S.D. -] '... I only heard that. [I] did not hear anything after that. I did not hear cries or beatings during the following days ...'
>
> [detainee T.D. -] '... for 2-3 days after that, muted cries could be heard from somewhere down there. I did not hear any beating ...'
>
> [detainee P.Z. -] '... several days after the incident ... patter could be heard ...'
>
> [detainee B.V. -] '... I did not hear of any violence having been inflicted on Hristo Bikirski ...'
>
> [detainee V.V. -] '... after that everything quietened down ... then I heard the cries of the attacker ... I do not remember hearing the sound of beating ...'
>
> ...
>
> [detainee A.T. -] '... maybe after an hour the sound of blows and cries could be heard ... this continued for around four days ...'
>
> [detainee N.Sa. -] '... maybe after less than half an hour screams started to be heard ... I assumed that they were beating [Mr] Bekirski because he was screaming very loudly and I could also hear blows from a police truncheon ...'
>
> [detainee A.I. -] '... the person in the cell was beaten continuously for several days ... five or six days after the incident everything quietened down ...'
>
> ...

[detainee S.A. -] '... these cries continued throughout the whole night [and I] could hear the sound of beating ... these sounds continued for around a day ... after that I did not hear cries or the sounds of fighting ...'

[detainee A.G. -] '... after the incident I did not hear any more cries or the sound of beating ...'

[detainee I.R. -] '... I think this continued for around two hours ... the cries were coming form downstairs ...'

[detainee V.Ya. -] '... while I was in detention I did not hear anyone getting beaten ...'

...

[detainee S.V. -] '... the transfer was made maybe half an hour after the commotion occurred. After the transfer [on Friday evening, 30 August 1996,] until Monday morning, [2 September 1996] muted cries, which I think emanated from the sixth floor, could be heard at regular intervals ... on Monday, 2 September 1996, everything quietened down ...'

[detainee A.A. -] '... after that, during the night and also for several days – I cannot say how many – cries, screams and beatings could be heard ... after five or six days everything quietened down ... I have no idea what had been going on ...'

...

[detainee Z.M. -] '... after that the situation calmed down ... I do not know what happened ... personally, I did not hear any cries or sounds that were unusual for the [detention facility] ...'

[detainee Ya.H. -] '... I did not hear anything after that. The situation in the [detention facility] was normal ...'

[detainee N.H. -] '... beatings and cries could be heard ... this continued for a while ... This was repeated with the arrival of the new shift ...'

[detainee S.S. -] '... the other person was placed in cell no. 7 ... after that I heard the [duty] officer shouting at the person in cell no. 7 to get up, to eat, but he said that he could not ... I do not know whether, after the incident, the [duty] officers mistreated the person ... after several days the cries stopped ...'

[detainee S.B. -] '... and they placed someone in cell no. 7. From Friday evening to five or six days [later] ... I did not hear that person being mistreated by the [duty] officers in the [detention facility] ...'

[detainee Z.Z. -] '... they emptied cell no. 7 and placed the person who had shown resistance there ...'

...

[detainee S.K. -] '... the blows and the cries continued in intervals of five to ten minutes throughout the whole night ... after that cell no. 7 was again opened and [more] blows and cries were heard ...'

...

[detainee K.G. -] '... after a while loud screams and dull thumps could be heard, from which I concluded that they were beating the person whom they had handcuffed ... This continued throughout the whole night on Friday [30 August 1996] to Saturday [31 August 1996]. The beatings, the blows and the cries continued for the following two to three days both during the day and the night ...'

...

[detainee A.Ya. -] '... after that the [duty] officers started beating the person in the cell opposite ours ... Cries and blows could be heard ... the beating continued for most of the night ... the [duty] officers were beating that person for three or four days ... relentlessly throughout the day and night, almost continuously. I could distinguish [between] blows to the body [using] a truncheon and [using their] boots [to kick him].'

...

[detainee A.I. -] '... they placed someone in the [adjacent] cell. During the night, cries could be heard from the cell where they had placed the person ... sounds of a truncheon hitting a human body could clearly be heard ... The beatings and the cries lasted four or five days ... [Then] all of a sudden, everything quietened down ...'

[detainee D.R. -] '... they opened a cell and placed someone inside. From time to time, policemen opened the cell door and an officer hit him on the head with a truncheon and he cried out ... During the following days no one beat him ... This person did not have scars on his face, nor blood ... I later found out that I had been transported [to the hospital] with [Mr] Bekirski. He was apparently left in the hospital because I came back alone ...'

...

[detainee S.Ge. -] '... for five to ten minutes someone could be heard screaming ... after five to ten minutes everything quietened down and after several hours it was all repeated again ... As I said, this continued until the morning on Monday [2 September 1996] or Tuesday [the 3rd] ...'"

62. Extracts from the statements of several doctors who had examined Mr Bekirski were also quoted in the report. They all reiterated their previous findings as recorded in the respective medical reports.

63. Extracts from the statements of twenty officers from the detention facility, who all stated that Mr Bekirski had never been tortured by any of them, were also contained in the report.

64. The findings and conclusions of various other reports, such as the medical report of the duty officer who had lost his eyesight, the medical reports on Mr Bekirski, the reports of the medical interventions and of

Mr Bekirski's hospital treatment, as well as the autopsy report, were also considered by the medical commission.

65. In respect of the cause of death, the report concluded, similar to the autopsy report, that it had been caused as a result of complications arising out of the various injuries identified on the body. Moreover, it considered that those injuries could all have been sustained during the incident on 30 August 1996 even though some of them appeared to be only five to seven days old at the time of death. The report also reasoned as follows:

> "the [medical] treatment of [Mr Bekirski] was performed promptly, correctly and in conformity with the [standards] of modern medical science and practice, irrespective of the undesired result – the death of Mr Bekirski."

66. As to the contradictory accounts of the events, the medical report concluded as follows:

> "The allegations of ... the witnesses that [Mr Bekirski had] continuously been beaten over several days are not supported by [the evidence] and the injuries established on the body of Mr Bekirski"

67. When, on 27 May 1999 the applicants had acquainted themselves with the results of the investigation, they requested that the body of Mr Bekirski be exhumed and that a new medical report be commissioned from independent medical specialists.

68. In a decision of 2 June 1999 the applicants' requests were dismissed by the investigator. He found that no exhumation of the body was warranted and that the medical report had been:

> "performed by specialists, who have no interest in the outcome of the proceedings and there are no grounds to recuse any one of them".

5. The second discontinuation of the preliminary investigation

69. In a decision of 9 June 1999 the Plovdiv regional military prosecutor's office discontinued the preliminary investigation. It found that by using force to subdue Mr Bekirski the officers had acted in self-defence and that none of them had performed any actions which could be qualified as murder. The Plovdiv regional military prosecutor's office did not identify any of the officers who had participated in subduing Mr Bekirski on 30 August 1996 and did not assess the relevance of the witness testimonies which had alleged that he had been ill-treated after that date. On 21 June 1999 the first applicant appealed against that decision.

70. In a decision of 5 July 1999 the appellate military prosecutor's office dismissed the appeal. It considered that it had not been irrefutably proven that anyone had beaten Mr Bekirski after 30 August 1996 while the three medical reports had all concluded that his injuries might have been inflicted only during the incident of that date. The first applicant appealed against that decision on an unspecified date.

71. In a decision of 30 September 1999 the Supreme Cassation Public Prosecutor's Office dismissed the first applicant's appeal and upheld the findings of the lower standing prosecutors' offices. It also identified four duty officers who had participated in subduing Mr Bekirski on 30 August 1996. In respect of the validity of the statements of the other detainees pertaining to the alleged ill-treatment after 30 August 1996, the prosecutor found them to be unsubstantiated in view of the conclusions of the third medical report. On 15 October 1999 the applicants appealed against that decision to the Chief Public Prosecutor's Office.

72. Although addressed to the Chief Public Prosecutor's Office, on 27 October 1999 a prosecutor from the Supreme Cassation Public Prosecutor's Office rejected the applicants' appeal because he found that all of their arguments and complaints had already been addressed in the challenged decisions.

73. In response to a further appeal by the applicants of an unknown date, the Supreme Cassation Public Prosecutor's Office, in a decision of 22 March 2000, remitted the case with instructions that the duty officer who partially lost his eyesight be examined by an ophthalmologist and that a further medical report be commissioned to assess whether all of Mr Bekirski's injuries had been caused on 30 August 1996 and in the way indicated by the various witnesses. It also requested an assessment as to whether Mr Bekirski had been beaten after 30 August 1996.

6. The fourth medical report on Mr Bekirski – no. 192/00

74. In the course of the resumed investigation, on an unspecified date, the Plovdiv regional military prosecutor's office commissioned another medical report tasked to ascertain (a) the date or dates on which the injuries sustained by Mr Bekirski's had been inflicted, (b) whether they could all have been inflicted in the way indicated by the witnesses – duty officers N.S., G.P. and B.Z., (c) whether it was possible that Mr Bekirski had been beaten after 30 August 1996, and (d) to address the questions raised by the applicants in their petition.

75. Medical report no. 192/00 ("the fourth medical report") was prepared on an unspecified date in May 2000 by a team of five doctors on the basis of the existing documentary evidence. The team was again headed by doctor I.D. and the remaining doctors all worked at the University.

76. The report reiterated the findings of the previous such reports. It compared the injuries sustained by Mr Bekirski on 30 August 1996 and those present on his body in subsequent examinations and found them to be essentially the same, the only difference being their natural physiological change over time. Furthermore, it found it reasonable and probable that they had been sustained only during the events on that day. Finally, it confirmed the duty officer's loss of sight in one eye.

77. When, on 1 June 2000 the applicants had acquainted themselves with the results of the investigation, they once again requested that the body of Mr Bekirski be exhumed and that a new medical report be commissioned from medical specialists in Sofia.

78. In a decision of 6 June 2000 the applicants' requests were dismissed by the investigator. He found that no exhumation of the body was warranted and that the medical report had been:

> "... prepared by specialists, who have no interest in the outcome of the proceedings and there are no grounds to recuse any one of them."

79. On 14 June 2000 the applicants appealed against the findings of the investigator to the Supreme Cassation Public Prosecutor's Office. Apparently no response was received, so, on 16 July 2000, they lodged a second appeal to the Chief Public Prosecutor's Office. No response was received from it either.

7. The third discontinuation of the preliminary investigation

80. In the meantime and in spite of the above-mentioned appeals, by a decision of 14 June 2000 the investigator proposed that the preliminary investigation be discontinued. He addressed the applicant's arguments and concluded that:

> "... the [duty] officers ..., in complying with their obligations to guard the detention cells and to prevent the escape of detainees, acted lawfully [and] in self-defence by counteracting the unlawful behaviour of [Mr Bekirski], [which], moreover, was aimed at threatening the life and health of their colleague. In the specific circumstances, they were obliged to use physical force and [police] equipment and the level of response corresponds to the level and intensity of the attack carried out by Mr Bekirski against [the duty officer]. The actions of the [duty] officers do not constitute an offence."

81. On 21 June 2000 the Plovdiv military prosecutor's office discontinued the preliminary investigation on the above-mentioned grounds, which was confirmed by the appellate military prosecutor's office on 26 June 2000.

82. In a supplementary decision of 12 July 2000 the appellate military prosecutor's office amended the grounds for discontinuing the preliminary investigation as follows:

> "the negative result – the death of [Mr Bekirski] – is not [punishable], owing to the fact that he was attempting to perpetrate the offence of [escape from detention] and perpetrated the offence of [grievous and moderate bodily harm on two duty officers]. The injuries to Mr Bekirski were inflicted while he was being subdued and in order to prevent him from perpetrating another offence. There was no other way to subdue him and the level of response did not exceed the necessary and lawful [level of force]."

83. The case file was then forwarded to the Military Court of Appeal. On 24 July 2000, in camera, the court confirmed that the preliminary investigation was being discontinued on the grounds indicated in the

decision of the appellate military prosecutor's office of 12 July 2000. It also found that:

> "Information has also been collected in the case that, following the incident and the subsequent restraining of Mr Bekirski on 30 August 1996 and until his [transfer] to hospital on 6 September 1996, [certain] unidentified persons may have inflicted a number of additional injuries [on him] – the other detainees heard groans and moaning from the cell where he was being held. In spite of [having] questioned the personnel at the detention facility and the persons detained there at the time, no unequivocal facts have been ascertained that any such events occurred..."

84. In addition it concluded that:

> "The necessary level [of force] required to [subdue] Mr Bekirski was not exceeded, because they could not [do it any other way] in view of the specific circumstances (screaming wildly, aggressive, detained for serious intentional offences, having perpetrated offences against two of the duty officers, attempting to escape, small space, badly lit stairs).
>
> In view of the events described [above], the actions undertaken by senior sergeants G.P., B.Z. and N.S. on 30 August 1996 to subdue Mr Bekirski are not [punishable], because, even though they formally [perpetrated an offence] it was done in the course of [restraining] a person who had perpetrated an offence, it had not been possible to [subdue] him in any other way and the inflicted injuries correspond to the offences he had perpetrated and the circumstances surrounding his [restraining]."

85. The applicants were informed that the preliminary investigation had been discontinued and, by letter of the appellate military prosecutor's office dated 27 September 2000, were given the decision of the Military Court of Appeal.

E. The medical report on Mr Bekirski commissioned by the applicants

86. On an unspecified date the applicants commissioned a medical report. It was prepared on 30 May 2001 by a doctor from the Sofia Academy of Medicine, who re-examined the findings of the first medical report, the autopsy and the other medical reports in the case.

87. That report found that the differences in the injuries identified on the body of Mr Bekirski at the time of his death and their apparently quite recent infliction confirmed that they must have been sustained after 30 August 1996. In addition, it reasoned that the identified differences could not be attributed to the natural physiological change over time of the injuries sustained on 30 August 1996. The report found it more likely that the said differences came from new injuries sustained in the same areas over a longer period and inflicted by various objects.

88. In addition, the report considered that Mr Bekirski's injuries had warranted immediate medical treatment or, at least, that more medical tests should have been carried out in order to ascertain his state of health.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal law and procedure

89. Article 12 of the Criminal Code of 1968, as in force on 30 August 1996, provided as follows:

> "(1) An action shall not be considered dangerous to society, even if injury is caused to an attacker, where it is committed in self-defence – in defence against an imminent unlawful attack ... by the use of reasonable force .
>
> (2) The limits of self-defence shall be considered to have been exceeded where the self-defence has obviously not corresponded to the nature and danger of the attack.
>
> (3) The perpetrator of an action which is considered to have exceeded the limits of self-defence shall not be punished if the action is committed in an atmosphere of fear or confusion."

90. Article 12a of the Criminal Code of 1968 provided after 8 August 1997 as follows:

> "(1) An action shall not be considered dangerous to society, even if injury is caused to a person who has committed a crime, where this occurs in the course of detaining such person for his or her delivery to the authorities and in order to eliminate the opportunity for such person to commit another crime, provided that there is no other way to detain such person and provided that necessary and lawful measures have not been exceeded.
>
> (2) The necessary measures for detaining a person who has committed a crime shall be considered to have been exceeded where there is an obvious disparity between the nature and the degree of public danger caused by the crime, and the circumstances of the affected detention, as well as in a case in which unnecessary and obviously excessive harm is inflicted on the person. In such an instance, criminal responsibility shall be sought only under circumstances in which harm was deliberately inflicted."

91. Separately, under Article 122 § 1 of the Criminal Code of 1968, it is an offence to cause the death of another through negligence. Article 123 § 1 of the Criminal Code of 1968 makes it an offence to cause the death of another through the negligent performance of an occupation or a regulated high-risk activity. Article 387 § 1 of the Criminal Code of 1968 makes it an offence for military or police officers to, *inter alia*, fail to perform their duties, if this leads to harmful consequences. The offence is aggravated if, *inter alia*, the harmful consequences are serious (Article 387 § 2). The conduct proscribed by Article 387 § 1 is criminal even if the harmful consequences are caused merely through negligence (Article 387 § 4). These offences are all publicly prosecutable.

92. Article 192 §§ 1 and 2 of the Code of Criminal Procedure of 1974, as in force at the relevant time, provided that investigations concerning publicly prosecutable offences could only be opened by a prosecutor or an

investigator. Prosecutors could discontinue investigations when, *inter alia*, there was no evidence of an offence, or the alleged act did not constitute an offence (Articles 21 § 1 (1) and 237 § 1 (1) and (2)). Prior to 2001, this decision was subject to appeal to a higher prosecutor, or to automatic review by that prosecutor (Articles 181 and 237 §§ 3 to 9, as in force at the relevant time). In April 2001 the Code of Criminal Procedure of 1974 was amended to provide for judicial review at the request of those concerned (Article 237 § 3, as amended in April 2001).

93. At the relevant time offences allegedly committed by police officers or by officers, sergeants and privates of other ministries and agencies were tried by military courts (Article 388 § 1 (2) of the Code of Criminal Procedure of 1974, as in force at the relevant time). Where a case would fall within the jurisdiction of the military courts, the investigation was handled by military investigators and prosecutors.

B. The 1988 State Responsibility for Damage Act

94. Section 1(1) of the 1988 Act, originally entitled the State Responsibility for Damage Caused to Citizens Act, renamed on 12 July 2006 the State and Municipalities Responsibility for Damage Act ("the SMRDA"), provides that the State is liable for damage suffered by private individuals as a result of unlawful decisions or actions taken, or omissions made by civil servants in the course of or in connection with the performance of their duties. Section 1(2) provides that compensation for damage resulting from unlawful decisions may be claimed after those decisions have been quashed in prior proceedings. The Supreme Administrative Court has held that it is competent to review the lawfulness of a person's detention by the police and award compensation by reference to the above-mentioned provisions (реш. № 11858 от 28 ноември 2006 г. по адм. д. № 9165/2006 г., ВАС, V отд., реш. № 5230 от 9 май 2008 г. по адм. д. № 11884/2007 г., ВАС, III отд.).

95. Section 2(1)(1) provides that the State is liable for damage caused to individuals by the investigating or prosecuting authorities or the courts through unlawful detention, provided that such detention has been set aside for lack of lawful grounds. Over the years the application of this provision has generated a considerable amount of case-law.

96. Section 2(2) stipulates that, under certain conditions, the State is liable for damage sustained by individuals on account of their being charged with a criminal offence.

97. Section 6(1) provides that the right to compensation in respect of pecuniary damage is inheritable, but that the right to compensation in respect of non-pecuniary damage survives the death of the individual concerned only if he or she has brought a claim.

C. The general law of tort

98. The general rules of the law of tort are set out in sections 45 to 54 of the 1951 Obligations and Contracts Act. Section 52 provides that the amount of compensation in respect of non-pecuniary damage is to be determined by the court in equity. In application of this provision, the former Supreme Court held that the parents of an individual who has died cannot seek compensation in respect of the non-pecuniary damage suffered by him prior to his death, because of the lack of a sufficient causal link. They can, however, claim compensation in respect of their own distress and anguish flowing from the death (реш. № 3287 от 27 декември 1971 г. по гр. д. № 1964/1971 г., ВС, I г. о.).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 2 AND 3 OF THE CONVENTION

99. The applicants complained of several violations of Articles 2 and 3 of the Convention. In particular, they contended that (a) excessive force had been used by the police to subdue Mr Bekirski on 30 August 1996, namely, a severe beating by an unknown number of officers resulting in forty-three injuries to his body; (b) over the following few days their relative had been systematically beaten by police officers while in detention, which amounted to torture; (c) during those nine days the authorities had failed to provide Mr Bekirski with adequate medical care to treat the injuries resulting from the above-mentioned violations, which had led to his health and physical condition severely deteriorating; and (d) as a result of the above-mentioned violations, their relative had died on 8 September 1996.

100. In addition, the applicants complained that the authorities had failed to conduct a prompt, effective and impartial investigation and to bring charges against the perpetrators for the ill-treatment and subsequent death of Mr Bekirski. In particular, they complained that (1) the same doctor had taken part in preparing all the medical reports in the domestic proceedings; (2) no attempts had been made to identify the specific officers who had subdued the applicant on 30 August 1996; and, (3) the testimonies of the other detainees regarding the systematic beating of their relative had been purposefully ignored by the authorities. They also referred to their inability to participate effectively in the preliminary investigation into the death of their relative and to challenge the court decisions for terminating it, which they considered to have deprived them of their rights as victims of the

alleged violations to seek to uncover the truth and to obtain effective protection of their rights.

101. The applicants also contended that the facts of the case were indicative of a prevailing culture of abuse on persons held in detention and an illustration of the attempts by the domestic authorities to cover up such abuse rather than to identify and punish the officials responsible. In support of that assertion the applicants presented a letter dated 6 May 1998 from the Chief Public Prosecutor and the Head of the National Investigation Service to a Member of the National Assembly which detailed numerous cases in which injurious force had been unlawfully used by police officers against detained or arrested persons.

Article 2 provides as follows:

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

Article 3 provides as follows:

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

A. Admissibility

102. The Government claimed that the applicants had failed to initiate an action for damage under the SMRDA.

103. The applicants considered the Government's assertion to be completely unsubstantiated and argued that an action for damage under the SMRDA could not be considered an effective remedy to be exhausted in respect of violations of Articles 2 and 3 of the Convention.

104. The Court reiterates that the rule of exhaustion of domestic remedies obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness (see *Yaşa v. Turkey*, 2 September 1998, § 71, *Reports of Judgments and Decisions* 1998-VI).

105. However, the investigations which the Contracting States are obliged by Article 2 of the Convention to conduct in cases of fatal assault must be able to lead to the identification and punishment of those responsible. As the Court has previously held, that obligation cannot be satisfied merely by awarding damages. Otherwise, if an action based on the State's strict liability were to be considered a legal action that had to be exhausted in respect of such a complaint, the State's obligation to seek those guilty of fatal assault might thereby disappear (*Yaşa*, § 74; *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 121, 24 February 2005; and *Mojsiejew v. Poland*, no. 11818/02, § 41, 24 March 2009). Thus, the State's obligation to conduct an effective investigation would not be cancelled as a result of the applicants' use of a civil law action for damages under the SMRDA, as inferred by the Government.

106. Consequently, the applicants were not required to bring the civil proceedings in question and the Government's objection of non-exhaustion is unfounded. The Court further finds that the complaints under Articles 2 and 3 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. They are not inadmissible on any other grounds. They must therefore be declared admissible.

B. The Court's assessment of the evidence and establishment of the facts

1. Arguments of the parties

107. The applicants complained of several violations of Articles 2 and 3 of the Convention (see paragraphs 99-101 above). They also noted that the Government had failed to present a copy of the investigation file into Mr Bekirski's death. The applicants argued that, had the file been presented to the Court, the latter would have had the opportunity to fully acquaint itself with all the facts of the case, including the complete statements of the numerous witnesses attesting to the ill-treatment inflicted on Mr Bekirski after 30 August 1996 and the photographs graphically illustrating the injuries he had sustained as a result. In addition, it would also have been easy to clearly establish that the authorities had failed to carry out a prompt, effective and impartial investigation. Thus, the applicants argued that, by withholding a copy of the investigation file, the Government had obstructed and violated their right of petition guaranteed under Article 34 of the Convention. They reiterated the Court's position in similar such situations and referred to paragraph 77 of the judgment in the case of *Velikova v. Bulgaria* (no. 41488/98, ECHR 2000-VI) which states as follows:

> "... the Court recalls that it is of utmost importance for the effective operation of the Convention system of individual petition that States furnish all necessary facilities to

enable a proper and effective examination of applications, as required by Article 38 of the Convention ...".

108. The Government disputed the applicants' allegations concerning the alleged violations (see paragraphs 125-27, 138-39, 154 and 165-66 below).

2. General principles

109. The Court reiterates that, in assessing evidence, it adopts the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey,* no. 25656/94, § 264, ECHR 2002). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom,* 18 January 1978, § 161, Series A no. 25).

110. The Court is sensitive to the subsidiary nature of its role and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Though the Court is not bound by the findings of the domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Klaas*, cited above, § 30).

3. The Court's considerations

111. The Court observes that at the time of communicating the present application to the Government on 2 September 2005 it explicitly requested from them to provide a copy of the complete investigation file into Mr Bekirski's death. The Government failed to provide a copy and did not give any reasons.

112. A second request to provide a copy of the complete investigation file was made to the Government on 16 June 2006 to which they also failed to respond and provide the requested documents. Once again they did not give any explanations for their failure to provide it.

113. In respect of the applicants' complaint under Article 34 of the Convention regarding the above outlined failure of the Government to provide the requested file, the Court considers that it must simultaneously be examined under Article 38 § 1 (a) of the Convention.

Article 34 of the Convention provides:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Article 38 § 1 (a) of the Convention provides:

"If the Court declares the application admissible, it shall

(a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;"

114. The Court reiterates that it is of utmost importance for the effective operation of the system of individual petition instituted by Article 34 that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Orhan,* cited above, § 266; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV; and *Velikova*, cited above, § 77). It is inherent in proceedings relating to cases of this nature, where an individual applicant accuses State agents of violating his rights under the Convention, that in certain instances solely the respondent Government have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicants' allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI). The same applies to delays by the State in submitting information which prejudices the establishment of facts in a case (see *Orhan*, cited above, § 266).

115. In the light of the above-mentioned principles and having regard to the Government's obligations under Article 38 § 1 (a) of the Convention, the Court has examined the Government's conduct in the present case in regard to their failure to provide a copy of the complete investigation file into Mr Bekirski's death, in spite of having been explicitly requested to do so on two separate occasions (see paragraphs 111-12 above). The Court notes moreover that the Government did not provide any explanation for their inability to furnish the said file, which may be considered vital evidence necessary for the examination of the application in so far as it contains information capable of corroborating or refuting the violations alleged by the applicants. The Court therefore considers that it can draw inferences as to the well-foundedness of the applicants' allegations and the Government's conduct in the instant case (see *Velikova*, cited above, § 77, and *Orhan*, cited above, § 274).

116. Bearing in mind the difficulties arising from the establishment of the facts in the present case and in cases similar to it, and in view of the importance of a respondent State's cooperation in Convention proceedings, the Court finds that the Government have failed to furnish all necessary facilities to the Court to aid it in its task of establishing the facts within the meaning of Article 38 § 1 (a) of the Convention.

117. Accordingly, the Government have failed to discharge their obligations under Article 38 § 1 (a) of the Convention.

118. The Court does not consider that, in this respect, a separate issue arises under Article 34 of the Convention (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 248-56, ECHR 2004-III).

C. Whether Mr Bekirski died as a result of ill-treatment and inadequate medical care while in police custody

1. General principles

119. Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies which make up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective. In the light of the importance of the protection afforded by Article 2, the Court must subject complaints about the deprivation of life to the most careful scrutiny, taking into consideration all relevant circumstances.

120. Article 3, meanwhile, prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

121. In respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Selmouni v. France* [GC], no. 25803/94, § 99, ECHR 1999-V). Moreover, the Court has emphasised that such persons are in a vulnerable position and that the authorities are under a duty to protect them. In this context, it is incumbent on the State to account for any injuries suffered in custody, an obligation which is particularly stringent where an individual dies (see, for example, *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII).

122. In respect of the obligation to provide sufficient and adequate medical care in places of detention, the relevant principles have been

summarised in the Court's recent judgment in the case of *Stoyan Mitev v. Bulgaria* (no. 60922/00, §§ 63-65, 7 January 2010).

123. Finally, the Court reiterates, in line with its settled case law, that it remains free to make its own assessment in the light of all the material before it (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 113, ECHR 2004-IV (extracts), and, *mutatis mutandis*, *Selmouni*, cited above, § 86).

2. Scope of the issues for consideration

124. The Court notes that the applicants' complaints under Articles 2 and 3 of the Convention concern the following issues:

- *first*, whether excessive force had been used to subdue Mr Bekirski on 30 August 1996;
- *second*, whether, over the following few days, between 30 August and 6 September 1996, Mr Bekirski had been beaten while in detention;
- *third*, whether, between 30 August and 6 September 1996, Mr Bekirski had been provided with medical care which was prompt and which adequately addressed both his initial injuries and his deteriorating state of health; and
- *fourth*, whether his death had been unavoidable because it had resulted solely from untreatable complications caused by the injuries he had sustained on 30 August 1996, or because additional factors had played a decisive role, namely, additional injuries sustained between 30 August and 6 September 1996 and the lack of prompt and adequate medical care.

In view of the issues to be considered, the Court finds that it must assess each one of them individually in the context of Article 3 of the Convention and, given the alleged causal link and contributory nature to Mr Bekirski's death, also assess them jointly in the context of Article 2 of the Convention.

(a) The events of 30 August 1996

(i) The parties' submissions

125. The Government claimed that the force use on 30 August 1996 by the duty officers had been only enough to stop Mr Bekirski from escaping and to subdue his aggressive behaviour. Once they had succeeded and had handcuffed him, the duty officers had immediately stopped applying such force. Thus, they had acted in complete accordance with Article 12a of the Criminal Code of 1968 which permitted the use of force in such situations.

126. The Government further noted that the injuries sustained by Mr Bekirski on 30 August 1996 had been documented in detail in the first medical report and in the subsequent medical reports. They considered that in their entirety the said injuries had not amounted to light or moderate bodily harm under the Criminal Code of 1968 and that they had

corresponded to the offences committed by Mr Bekirski – attempting to escape from detention (Article 297 § 1 of the Criminal Code of 1968) and inflicting light and grievous bodily harm on two duty officers (Articles 128 and 130 § 1 of the Criminal Code of 1968).

127. The Government also claimed that the duty officers had been aware that Mr Bekirski had been detained for serious offences, that he had represented a serious danger to society and that he might easily have reoffended considering the injuries he had inflicted on the two duty officers. The Government therefore considered that the above-mentioned three offences, committed by Mr Bekirski in the detention facility, gave the duty officers the right to restrain him in order to prevent him from reoffending. In addition, they were also acting to stop Mr Bekirski from attacking any of the other duty officers. Thus, there had been no other way to restrain him other than in the way undertaken by the duty officers.

128. The applicants, meanwhile, argued that it had not been unequivocally proven by the Government that Mr Bekirski had attempted to escape on 30 August 1996 or that he had represented a real danger to any of the duty officers. They argued that the information in that respect had been based only on the statements of the duty officers involved, while some of the other witnesses had simply referred to a fight having broken out or that Mr Bekirski had attacked the officers when he had been taken out of his cell for questioning. In addition, they considered that it was not clear whether their relative had acted aggressively or in self-defence in retaliation to possible ill-treatment inflicted on him.

129. Separately, because the subsequent investigation had failed to assess what force had been used by Mr Bekirski and the officers involved, the applicants considered that it was impossible to determine whether the latter had used the appropriate amount of force required in such a situation. Thus, they argued that the justification to use force against Mr Bekirski – and its appropriateness – was questionable. Lastly, they considered that the domestic authorities had apparently come to the same conclusion because, in its decision of 24 July 2000, the Military Court of Appeal had changed the grounds for terminating the preliminary investigation by justifying the force used by the officers not in the context of them having acted in self-defence but in order for them to effect the detention of Mr Bekirski.

130. The applicants also noted that the domestic authorities referred in their documents to five, six or eight officers having participated in subduing Mr Bekirski on 30 August 1996 which resulted in the latter having sustained twenty-nine serious injuries. Accordingly, they considered such force to have been wholly unnecessary and disproportionate because all witness statements indicated that the actions of the officers to subdue Mr Bekirski began only after he had been separated from officer G.G. Accordingly, there was no imminent danger to anyone at the time and it was wholly unlikely that their relative might actually escape from the detention facility. Thus,

the force necessary to restrict and detain him could reasonably have been far less.

131. In view of the above, the applicants consider that the violence and force used against Mr Bekirski on 30 August 1996 amounted to inhuman and degrading treatment in violation of Article 3 of the Convention. In so far as Mr Bekirski's death had also been brought about as a result of the injuries sustained on that day, the applicants invited the Court to also find a violation of Article 2 of the Convention in that the force used could not be justified under the second paragraph.

(ii) The Court's assessment

132. The Court notes at the outset that the main sources of information in respect of the events of 30 August 1996 come from the witness statements of the duty officers involved, which are selectively quoted in the various medical reports. It further notes that the Government failed to provide the Court with all the information in its possession concerning the events of that day and in particular a copy of the complete investigation file into the incident, from which it can draw inferences as to the well-foundedness of the applicants' allegations (see paragraph 115 above).

133. Accordingly, the Court notes that there are no indications or claims that Mr Bekirski had any medical problems or had any injuries prior to his detention and the events of 30 August 1996. As to the events leading up to the violent confrontation of that day and the actual intentions of Mr Bekirski, the Court finds them to be unclear as the facts are disputed by the parties and it has not had access to the complete investigation file. What is apparently clear is that on 30 August 1996 there was a violent confrontation between Mr Bekirski and several duty officers during which the former severely injured one or two of them, possibly by stabbing them with a makeshift weapon. A fight then ensued at the end of which Mr Bekirski was subdued and handcuffed, but suffered at least twenty-nine injuries to his head, chest, stomach, arms and legs (see paragraphs 20 and 21 above). During the fight, two other duty officers sustained injuries - one to his right armpit and right thigh and the other to his right palm (see paragraphs 24-27 above).

134. In so far as there are assertions that Mr Bekirski was attempting to escape, it may be considered that the duty officers had justification to use force against him in order to stop him. However, such force must have been "no more than absolutely necessary", that is to say it must have been strictly proportionate in the circumstances.

135. In assessing whether it was proportionate, the Court notes the apparent violent conduct of Mr Bekirski during the incident - stabbing two duty officers in the eyes, threatening to stab one of them in the throat and - once without a weapon - kicking, punching and using martial arts against the duty officers. This resulted in up to four duty officers sustaining injuries

to their eyes and limbs, one of which left a duty officer partially blind. Given the conduct of Mr Bekirski, the Court finds it reasonable that the duty officers might have feared for both their safety and for that of the persons in their charge. In addition, if indeed Mr Bekirski had been attempting to escape from the detention facility, it might have been reasonable to suppose that he represented a danger to society and that the duty officers were obligated to thwart his attempt. As to the numerous injuries sustained by Mr Bekirski during the incident, the Court notes that the confrontation lasted up to ten minutes, involved several duty officers attempting to overpower and subdue Mr Bekirski and included the latter being pinned to the wall, falling down the stairs and to the ground before handcuffs were finally placed on him. The Court notes in this respect that the duty officers used only physical force and non-lethal means to subdue Mr Bekirski and did not resort to fire arms.

136. Based on the above-mentioned considerations, the Court finds that in these circumstances the force used by the duty officers to subdue Mr Bekirski on 30 August 1996 does not seem to have been disproportionate.

137. Accordingly, there has not been a violation of Article 3 of the Convention in that respect.

(b) The alleged ill-treatment between 30 August and 6 September 1996

(i) The parties' submissions

138. The Government noted that the domestic authorities had collected evidence that certain unidentified individuals had visited him and had possibly inflicted additional injuries on him. After collecting additional witness statements from various detainees and duty officers, it had not however been unequivocally proven that anything like that had actually occurred. Moreover, the Government claimed that the autopsy did not establish the existence of any injuries sustained after 30 August 1996.

139. The Government also referred to the report of the visit to the detention facility on 4 September 1996 by a prosecutor from the Plovdiv regional public prosecutor's office (see paragraph 30 above). They argued that in so far as Mr Bekirski had failed to personally raise any sort of complaint before that prosecutor in respect of his physical condition or any alleged mistreatment after 30 August 1996, it cannot validly be claimed that any such mistreatment had existed.

140. The applicants argued that both the Government in its submissions and the domestic authorities in their decisions to terminate the investigation into the death of their relative had noted that:

> "information had also been collected in the case that, after the incident and the apprehension of Mr Bekirski on 30 August 1996 and until his [transfer] to the hospital

on 6 September 1996, [certain] unidentified persons possibly inflicted numerous additional injuries [on him]".

They, however, considered that that had been another attempt to cover up the actions of the persons involved, because, irrespective of who had actually inflicted any such "numerous additional injuries" on Mr Bekirski, he had continuously been under the authority of the State which was responsible for preserving his life and state of health. Moreover, the visitors' logbook at the detention facility had allegedly never been checked in order to ascertain the identity of the "unidentified persons" who had allegedly been present in the facility at the time of the subsequent beatings reported by the numerous witnesses. Also, the identity of the duty officers who had allowed such "unidentified persons" to enter the cell of Mr Bekirski in order to inflict the "numerous additional injuries" had allegedly never been verified.

141. Separately, the applicants noted that the autopsy report indicated that Mr Bekirski had had several ribs fractured and a shoulder blade injured, neither of which had been identified as injuries in the first medical report. In addition, numerous witnesses attested to hearing the beatings and ill-treatment of Mr Bekirski in the days following 30 August 1996. Thus, the applicants disagreed with the Government position that, in spite of the available evidence and statements, it had not been proven that any such ill-treatment or beatings had ever occurred. Moreover, the applicants considered that some of the injuries described in the autopsy report, such as those to his feet, could not have been sustained on 30 August 1996, but are more consistent with subsequent acts of torture.

142. In view of the allegedly unassailable evidence, the applicants disagreed with the domestic authorities' decisions to terminate the preliminary investigation which gave weight only to statements and facts which corroborated the position of the officers involved and had the effect of affording them impunity by protecting them from prosecution. Moreover, they questioned the reliance on the medical evidence in the proceedings all of which had been prepared by doctor I.D., or under his direct supervision, which allegedly curtailed any possibility that the reports may openly criticise or disagree with one another.

143. Based on the findings above, the applicants considered it unquestionably proven that, between 30 August and 6 September 1996, there had been a violation of Article 3 of the Convention on account of the ill-treatment and torture that Mr Bekirski had been subjected to at the hands of unidentified individuals either from the Plovdiv Regional Investigation Service or with their assistance or acquiescence.

(ii) The Court's assessment

144. The Court notes once again that it is restricted in assessing all the facts in the case as a result of the Government's failure to provide all the

information in its possession and in particular a copy of the complete investigation file, from which it can draw inferences as to the well-foundedness of the applicants' allegations (see paragraph 115 above).

145. In respect of the alleged ill-treatment of Mr Bekirski between 30 August and 6 September 1996, the Court observes that numerous witnesses attested to such and described the screams and cries being heard in the detention facility during that period (see paragraph 61 above). Moreover, a number of the witnesses were apparently detained in cells adjoining to or facing the cell where Mr Bekirski had been held alone, so they would have had the opportunity to easily and directly hear what was happening.

146. Separately, on 23 September 1997 a prosecutor from the military prosecutor's office found evidence that Mr Bekirski had been subjected to systematic beatings on more than one occasion after the events of 30 August 1996 and remitted the case for further investigation (see paragraph 55 above).

147. The Military Court of Appeal in its decision of 24 July 2000 also noted that "information [had] also been collected ... that after the incident ... on 30 August 1996 and until his [transfer] to the hospital on 6 September 1996 [certain] unidentified persons possibly inflicted numerous additional injuries [on him]" (see paragraph 83 above). The said court went on to find that no unequivocal evidence had been ascertained that any such events occurred. The Court, however, is unconvinced that that finding is supported by the evidence in the case and notes that no apparent attempt was ever made to check the visitors' log so as to identify which individuals may have visited Mr Bekirski during the period in question. Neither, apparently, were any of the duty officers guarding the facility during that time questioned in order to establish whether and how any such visits may have occurred.

148. Most notable, however, is the medical evidence and the fact that the autopsy report contains details of injuries to Mr Bekirski which were not present at the time of the first medical report, such as several ribs that were fractured, and injuries to his shoulder blade and feet (see paragraphs 37-39 above). The medical report commissioned by the applicants also found that the differences in the injuries identified on the body of Mr Bekirski meant that they must have been sustained after 30 August 1996 and concluded that the said differences came from new injuries sustained in the same areas over a longer period and inflicted by various objects (see paragraph 86-88 above). The Court notes in this context that this medical report is the first in the case that was not prepared by doctor I.D. or under his direct supervision.

149. In conclusion, the Court notes that, during the period in question, Mr Bekirski was detained by the domestic authorities, therefore he was constantly under their control and authority. As such, he was in a particularly vulnerable state, both as a result of the restriction to his liberty and, in particular, his state of health after the events of 30 August 1996 as

detailed in the first medical report (see paragraph 20 above). Thus, the domestic authorities had an obligation under the Convention not only to safeguard his life but also to take all precautions necessary in order to avoid the infliction of any ill-treatment or punishment on that individual. Considering the medical evidence in the case, the corroborating witness statements and especially the Government's lack of assistance in providing all the information at its disposal, the Court finds that the domestic authorities do not appear to have done that in the present case. Accordingly, the Court finds it sufficiently proven that between 30 August and 6 September 1996 Mr Bekirski was subjected to ill-treatment or punishment at the hands of unidentified individuals for which the State bears responsibility.

150. It remains to be determined whether the "pain or suffering" inflicted on Mr Bekirski can be defined as "severe", which is, like the "minimum severity" required for the application of Article 3, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.

151. The Court has previously examined cases in which it concluded that there had been treatment which could only be described as torture (see *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports* 1996-VI; *Aydın v. Turkey*, 25 September 1997, §§ 83-84 and 86, *Reports* 1997-VI; *Selmouni*, cited above, § 105; and *Batı and Others*, cited above, § 124).

152. In the instant case, the Court finds that, in spite of Mr Bekirski's particularly vulnerable state, after 30 August 1996 he was kept in an almost permanent state of physical pain and anxiety owing to the uncertainty about his health and to the level of violence to which he had been repeatedly and systematically subjected over a period of seven days, for which the State bears responsibility. In these circumstances, the Court finds that, taken as a whole, the treatment to which Mr Bekirski was subjected between 30 August and 6 September 1996 was particularly serious and cruel and capable of causing "severe" pain and suffering. It therefore amounted to torture within the meaning of Article 3 of the Convention.

153. Accordingly, there has been a violation of Article 3 of the Convention in that respect.

(c) The adequacy of the medical care provided to Mr Bekirski

(i) The parties' submissions

154. In respect of the medical care provided to Mr Bekirski after 30 August 1996, the Government noted that he had been examined on the date of the incident. Subsequently, a paramedic had also examined him on 2 and 5 September 1996 and had prescribed painkillers. When, on 6 September 1996, he had complained of pains in his stomach, he had been

transferred to a hospital where, in spite of the medical treatment provided, he had passed away.

155. The applicants considered that the medical assistance and treatment provided to Mr Bekirski between 30 August and 6 September 1996 had not been adequate to address and treat the injuries he had sustained. Moreover, given that it had been more than apparent that his numerous injuries required access to adequate medical treatment during that period, they considered that it had been purposefully denied to him by the authorities.

156. In particular, the more than twenty-nine injuries, some to his face, sustained by Mr Bekirski on 30 August 1996 and described in the first medical report, clearly required the authorities to provide immediate and adequate medical care. In spite of his grave condition, Mr Bekirski was only provided with medical treatment twice during that period by a paramedic, who was an employee of the detention facility and who was evidently unable to identify the underlying medical complications and, moreover, only prescribed painkillers. In view of this, the applicants argued that the assessment of doctor I.D. in the medical reports – that Mr Bekirski had received adequate medical care during the period after 30 August 1996 – lacked medical foundation and logic. In particular, the conclusions that Mr Bekirski's death had been caused by injuries sustained only on 30 August 1996 and, at the same time, that the medical treatment for those injuries had been prompt and adequate completely contradicted and excluded each other in view of the resulting death of their relative. Moreover, the Government had failed to indicate why during that period Mr Bekirski had not been examined by a specialist civilian doctor.

157. The argument put forward by the Government that Mr Bekirski had not complained or asked for medical care during that period does not rescind the authorities' obligation to monitor the need to provide such care and to provide it in cases where it is evident that a detainee's health requires it. In respect of the visit of a prosecutor on 4 September 1996 to the detention facility, the applicants considered that he too should have acted on his responsibility to monitor the conditions in the detention facility and argued that he should have given the necessary instructions that Mr Bekirski be provided with better and more adequate medical care and supervision.

158. In view of the above, the applicants considered it proven that, in violation of Article 3 of the Convention, Mr Bekirski had purposefully been denied adequate medical treatment between 30 August and 6 September 1996. That had led to his untimely death on 8 September 1996, which amounted to a violation of his right to life under Article 2 of the Convention.

(ii) The Court's assessment

159. The Court notes that Mr Bekirski was not provided with any treatment immediately after the incident on 30 August 1996 when he

sustained more than twenty-nine injuries to his head, chest, stomach, arms and legs (see paragraphs 20 above). He was examined by doctor I.D. and a report was prepared, but he was not treated for any of the injuries sustained. Neither was he taken to a specialised medical facility in order to ascertain whether he had any internal injuries or fractures that could not be immediately identifiable. Moreover, the first medical report noted that Mr Bekirski "does not remember anything" and "does not remember what had happened to him", which may have been an indication of a head trauma but which was not followed up by further tests or examinations.

160. Throughout the following days, Mr Bekirski was provided with medical care on only two further occasions, on 2 and 5 September 1996, when a paramedic examined and prescribed him painkillers. Finally, he was transferred to a hospital but only on 6 September 1996, where, in spite of the medical treatment provided, he passed away on 8 September 1996.

161. Considering the requirement that, in places of detention, authorities provide medical care that is sufficient and adequate to address the medical needs of detainees, and in view of the clearly evident need, in the Court's opinion, to treat the injuries and apparent deteriorating medical condition of Mr Bekirski between 30 August and 6 September 1996 with more than painkillers and, possibly, in a specialised medical facility, the Court finds it sufficiently proven that the authorities failed in that respect.

162. Accordingly, there has been a violation of Article 3 of the Convention in that respect.

(d) The Court's assessment under Article 2 of the Convention

163. In view of the above-mentioned findings, (a) that between 30 August and 6 September 1996 Mr Bekirski had been tortured, for which the State bears responsibility, and (b) that he had not been provided prompt and adequate medical care while in detention, coupled with the Government's lack of assistance in providing all the information at its disposal from which inferences are drawn as to the well-foundedness of the applicants' allegations, the Court finds it sufficiently proven that the aforementioned decisively contributed to Mr Bekirski's death on 8 September 1996.

164. Accordingly, there has also been a violation of Article 2 of the Convention in that respect.

D. The alleged ineffectiveness of the investigation into the death of Mr Bekirski

1. The parties' submissions

165. The Government considered that the authorities had conducted a thorough and effective investigation into Mr Bekirski's death. They claimed that the authorities had collected and evaluated a multitude of witness statements and had commissioned medical reports which refuted the accusations of the applicants while unanimously supporting the authorities' conclusion that the injuries which had led to Mr Bekirski's death had all been sustained at the time of his escape attempt on 30 August 1996.

166. The Government once again referred to the report of the prosecutor who on 4 September 1996 had visited the detention facility and argued that, in so far as Mr Bekirski had failed to complain to him about his physical condition or any alleged mistreatment after 30 August 1996, that it cannot validly be claimed that there had been any such mistreatment.

167. The applicants emphasised the Government's failure to present the Court with a copy of the investigation file, which they considered to be a direct attempt to hamper the latter's efforts to establish the facts of the case and the truth surrounding the events leading up to Mr Bekirski's death. They further considered that that had created a presumption in their favour because the Government, by not presenting the said file, had failed to effectively refute the facts and evidence attesting to the violations claimed. In any event, the fact that the said investigation file had not been presented should have been sufficient to prove that there had been a procedural violation of Article 2 and 3 of the Convention because it attests to the fact that the authorities had failed to demonstrate to the Court that they had conducted an effective investigation into the allegations of ill-treatment and abuse which had led to Mr Bekirski's untimely death.

168. The applicants further noted that for many years they had unsuccessfully tried to force the authorities to conduct an effective investigation into the circumstances surrounding the death of their relative, which should have been conducted by individuals who were independent of those implicated in the events. Moreover, the first applicant had been a direct witness to his son's screams and wailing in the detention centre and had partly known the facts leading to his death. Unfortunately, the applicants' attempts had only led to the authorities finally admitting that certain "unidentified persons" had possibly inflicted "numerous additional injuries" on Mr Bekirski after 30 August 1996. However, no real attempt had ever been made to indentify those "unidentified persons" or the officers on duty during the relevant period, even though they ultimately bore full responsibility for the well-being of the detainees under their watch, including Mr Bekirski.

169. Separately, the applicants noted that they had been denied the opportunity to participate in the criminal proceedings into Mr Bekirski's death and to effectively challenge the decisions for terminating them. They considered that that had been an infraction of their right to defend their right to obtain an effective and exhaustive investigation into the death of their relative.

170. In conclusion, the applicants stated that, by not conducting an effective investigation, capable of identifying and punishing those responsible for Mr Bekirski's death, the authorities had failed to adhere to the rule of law and to prevent the appearance of collusion in or tolerance of unlawful acts (see *McKerr v. the United Kingdom*, no. 28883/95, § 114, ECHR 2001-III). Thus, the applicants considered that there was no doubt that there had been a violation of the procedural limb of Articles 2 and 3 of the Convention and also of Article 13 in conjunction with the said Articles.

2. General principles

171. The relevant principles have been summarised in the Court's judgment in the case of *Anguelova v. Bulgaria* (no. 38361/97, §§ 136-40, ECHR 2002-IV).

3. The Court's assessment

172. The Court notes at the outset that the investigation commenced promptly and while it was open the authorities appear to have worked on it, in so far as a number of investigative actions were undertaken such as an autopsy, the commissioning of several medical reports and the questioning of numerous witnesses. However, apart from the actions indicated, the Court is unable to establish what other investigative measures and evidence was collected and analysed because the Government did not provide it with a copy of the complete investigation file into Mr Bekirski's death and did not give any explanation as to why it could not, from which inferences are drawn as to the well-foundedness of the applicants' allegations (see paragraphs 111-12 and 115 above). Such lack of assistance by the respondent State in providing evidence which is vital for the proper assessment of the current complaint suffices for the Court to conclude that the authorities have failed to show that they complied with their obligation under Article 2 of the Convention to conduct an effective and impartial investigation into Mr Bekirski's death.

173. In addition, even on the basis of the incomplete information it has at its disposal, the Court takes note of a number of imperfections in the investigation. In particular, the investigation was assigned to the Plovdiv Regional Investigation Service which was the authority in charge of the facility in which Mr Bekirski had been detained and where the events of 30 August 1996 had taken place. Accordingly, the impartiality of the

investigating officers might reasonably be called into question. Secondly, the Court notes that the investigating authorities did not give any particular weight to the numerous witness statements by detainees and essentially dismissed them as unreliable and unsubstantiated even though there was corroborating medical evidence.

174. In view of the above-mentioned considerations and especially the lack of assistance by the respondent State in providing a copy of the complete investigation file into Mr Bekirski's death, the Court finds it sufficiently proven that the investigation lacked the requisite objectivity and thoroughness, a fact which decisively undermined its ability to comprehensively establish the cause or causes of Mr Bekirski's death and the identity of the persons responsible.

175. The applicants also alleged, in addition, that the failings of the investigation in their case were the problematic result of a general lack of independence, impartiality and public accountability on the part of the authorities which handle investigations of police ill-treatment. In these particular circumstances, having already found that the investigation into Mr Bekirski's death was not sufficiently objective and thorough, the Court does not need to rule on the additional aspects of their complaint.

176. In view of the above, the Court finds that there has been a violation of the respondent State's obligation under Article 2 of the Convention to conduct an effective and impartial investigation into Mr Bekirski's death.

177. The Court does not deem it necessary to make a separate finding under Article 3 of the Convention in respect of the deficiencies in the investigation (see *Mahmut Kaya v. Turkey,* no. 22535/93, § 120, ECHR 2000-III).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

178. Relying on Articles 6 and 13 of the Convention, the applicants complained that Bulgarian law provided them with no effective remedy against the inaction of the prosecuting authorities or the authorities' failure to identify and prosecute the perpetrators. The applicants also complained that that had barred them from exercising their right to seek damages through a civil action for the death in police detention of their relative, because that action could only have been taken upon the outcome and findings of criminal proceedings.

The Court finds that the applicants' complaint that they were denied access to a court for their grievance and to seek damages, which would normally be examined under Article 6 of the Convention, is, in the present case, inextricably linked with their more general complaint concerning the manner in which the investigating authorities treated the death of their relative. It therefore considers that it is more appropriate to examine the complaint in relation to the more general obligation under Article 13 of the

Convention to provide an effective remedy in respect of violations of the Convention, including Articles 2 and 3 thereof.

Article 13 of the Convention provides:

> "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."

179. The Government simply claimed that the applicants had failed to initiate an action for damage under the SMRDA, the question of which has already been dealt with in the context of the admissibility of the present application (see paragraph 102-06 above).

180. The Court finds that this complaint is linked to the ones examined above and must therefore likewise be declared admissible. However, having regard to the reasons for which it found a breach of the State's procedural obligations under Article 2 (see paragraphs 172-76 above), the Court considers that it is not necessary to examine whether there has also been a violation of Article 13 in conjunction with either of Articles 2 or 3 (see, among other authorities, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 123, ECHR 2005 VII and *Makaratzis*, cited above, § 86).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

181. 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

182. The applicants jointly claimed 160,000 euros (EUR) in respect of Mr Bekirski's death and the ensuing violations of the Convention. The amount included EUR 10,000 in pecuniary damage for the first and second applicants and EUR 150,000 for non-pecuniary damage.

183. In respect of pecuniary damage, the first and second applicants each claimed EUR 5,000 for lost income resulting from their son's death. They did not provide documentary proof but argued that, had Mr Bekirski been alive, even if he had been convicted and sentenced to a term of imprisonment, he might have been released by now, would have been supporting them financially and would have continued to do so. They further noted that the Court had not required any documentary proof in similar cases (see *Nachova and Others*, cited above, §§ 170-72) and invited it to award the claimed amounts in full.

184. The applicants also claimed EUR 150,000 for non-pecuniary damage – EUR 60,000 each for the first and second applicants and EUR 30,000 for the third applicant – in respect of non-pecuniary damage stemming from the pain and suffering caused, the death of their relative and the lack of an effective investigation into his death.

185. The Government did not comment.

186. In respect of pecuniary damage, the Court observes that the Government have not disputed the first and second applicants' statement that they had suffered pecuniary loss in that Mr Bekirski would have supported them financially if he were still alive. The Court sees no reason to reach a different conclusion.

187. As to the amount, the Court notes its position in the case of *Nachova and Others* (ibid.). Having regard to the submissions of the parties, all relevant factors (including the age of the victim and the applicants) and the awards made in similar cases, the Court finds it appropriate to award EUR 5,000 jointly to the first and second applicants in respect of lost income resulting from Mr Bekirski's death.

188. The Court considers that, undoubtedly, the applicants also suffered non-pecuniary damage on account of the serious violations found. Taking into account the particular circumstances, as well as how closely the applicants were related to Mr Bekirski, and ruling on an equitable basis, the Court awards EUR 75,000 jointly to the applicants (see *Nachova and Others*, cited above, §§ 171-72 and *Angelova and Iliev v.Bulgaria*, no. 55523/00, § 130, ECHR 2007-IX).

B. Costs and expenses

189. The applicants also claimed EUR 11,600 for costs and expenses incurred before the Court. The amount claimed consisted of (a) lawyer's fees of EUR 10,000 for an unspecified number of hours of legal work at an hourly rate of EUR 80 per hour for examining the preliminary investigation file, consulting with independent experts and preparing the application form and observations; (b) 1,409.78 Bulgarian levs (BGN: EUR 720) for translating 114 pages of forensic medical reports; (c) BGN 770.73 (EUR 394) for translating the applicants' observations; (d) an unspecified amount for the medical report commissioned by the parties; and (e) postal and office expenses. In support of their claim, the applicants provided a legal-fees agreement between the first applicant and their lawyer and receipts for payment of the expenses under items (b) and (c) above. The applicants asked that any award under this head be made directly payable to their lawyer.

190. The Government did not comment.

191. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown

that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claims for costs and expenses under items (d) and (e) in paragraph 175 above for lack of proof of expenditure but finds it reasonable to award the sum of EUR 11,100 covering the remainder of the claimed costs and expenses. This sum is to be paid into the bank account of the applicants' legal representative, Ms I. Vandova.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a failure to comply with Article 38 of the Convention and that no separate issue arises under Article 34 of the Convention;

3. *Holds* that there has been no substantive violation of Article 3 of the Convention on account of the force used to subdue Mr Bekirski on 30 August 1996;

4. *Holds* that there has been a substantive violation of Article 3 of the Convention on account of the torture to which Mr Bekirski was subjected between 30 August and 6 September 1996;

5. *Holds* that there has been a substantive violation of Article 3 of the Convention on account of inadequate medical care provided to Mr Bekirski between 30 August and 6 September 1996;

6. *Holds* that there has also been a substantive violation of Article 2 of the Convention as a result of the aforesaid violations decisively having contributed to Mr Bekirski's death on 8 September 1996;

7. *Holds* that there has been a procedural violation of Article 2 of the Convention on account of the ineffective investigation carried out into Mr Bekirski's death;

8. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

9. *Holds*

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

(i) EUR 5,000 (five thousand euros) jointly to the first and second applicants, plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 75,000 (seventy-five thousand euros) jointly to the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 11,100 (eleven thousand, one hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the bank account of the applicants' legal representative, Ms I. Vandova;

(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;

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

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

Stephen Phillips	Peer Lorenzen
Deputy Registrar	President