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

FIFTH SECTION

CASE OF DODOV v. BULGARIA

(Application no. 59548/00)

JUDGMENT

STRASBOURG

17 January 2008

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 Dodov v. Bulgaria,

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

Peer Lorenzen, *President*,
Snejana Botoucharova,
Karel Jungwiert,
Rait Maruste,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 59548/00) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Nikolai Ivanov Dodov ("the applicant"), on 9 December 1998.

2. The applicant, who had been granted legal aid, was represented by Mr R. Semerdzhiev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Kotzeva, of the Ministry of Justice.

3. The applicant alleged, in particular, that his mother's life had been put at risk through negligence on the part of the staff of a State-run nursing home, that the police had not undertaken all necessary measures to search for the applicant's mother immediately after her disappearance, that the ensuing investigation had not resulted in criminal or disciplinary sanctions, that the applicant's attempt to obtain compensation in civil proceedings had been frustrated by the dilatory approach of the defendant State authorities and that the proceedings had been excessively lengthy.

4. On 7 June 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Sofia.

A. The disappearance of the applicant's mother

6. In May 1994 the applicant's mother, Mrs Stoyanova, sixty-three years old and suffering from Altzheimer's disease, was admitted to the Sofia nursing home for elderly persons. The home was located on a busy boulevard in Kniazhevo, a neighbourhood of Sofia. Mrs Stoyanova was placed in the hospital unit, which was staffed with several medical doctors and nurses. According to a medical opinion on Mrs Stoyanova's health at that time, her memory and other mental capacities progressively deteriorated. She needed constant supervision and the nursery home staff had been instructed not to leave her unattended. In the following months, the applicant visited his mother regularly and on occasion accompanied her for medical visits outside the nursing home.

7. During his visit on 2 December 1995, the applicant noticed spots on his mother's skin and reported it to the nurse on duty.

8. The applicant visited again on 4 December 1995 at about 6.30 p.m. but was informed that his mother was missing. Earlier that day, his mother had been sent to consult a dermatologist outside the home, accompanied by Mrs V., a medical orderly. According to the explanation given to the applicant, upon their return, at around 11.30 a.m., the medical orderly had left Mrs Stoyanova alone in the yard and had not found her there several minutes later. The nursing home's staff had looked for Mrs Stoyanova in the area but in vain.

9. The staff alerted the police approximately two hours after the incident. On the same day, and again on 11 December 1995, the police heard several witnesses to the events and recorded their statements. Some of them explained that they had searched the area immediately upon discovering Mrs Stoyanova's disappearance.

10. On 8 December 1995, Mrs Stoyanova was recorded as a person sought by the police in the region of Sofia and on 22 December 1995, her data were entered in the national list of missing persons. On 11 December 1995, the Sofia police issued a press release containing information about Mrs Stoyanova's physical appearance and a request to the public to report any relevant information. It appears that the description of Mrs Stoyanova's appearance contained errors. On 13 December 1995, the area in the proximity of the nursing home was searched unsuccessfully using a police dog. The police also checked the identity of patients admitted to psychiatric

clinics during the relevant period. The police also verified information according to which, in January 1996, a woman resembling the applicant's mother had spent a night in a monastery. In February 1996, an announcement was broadcast on national television.

11. In the days following his mother's disappearance, the applicant himself did what he could to find her. He contacted all persons that had last been in contact with her, published calls for witnesses in several newspapers and posted announcements carrying his mother's photograph.

12. The applicant's mother has not been found to date. In 1998, a District Court issued a decision declaring Mrs Stoyanova missing and appointed the applicant as her representative.

B. The applicant's criminal complaints against the staff of the nursing home

13. On 5 July 1996, the applicant filed a complaint with the Sofia District Prosecutor's Office alleging that the administrative and medical staff of the nursing home had been responsible for his mother's disappearance.

14. Nothing was done in the case until December 1997, despite the applicant's numerous complaints to all levels of the prosecuting authorities.

15. In December 1997, the District Prosecutor's Office opened a preliminary investigation in the matter.

16. The applicant participated actively in the ensuing proceedings. He made specific requests for the collection of evidence in respect of the events of 4 December 1995 and the alleged negligence on the part of the nursing home staff. In other submissions, often voluminous, he exposed at length his suspicion that his mother might have been abducted by a criminal gang trading in human organs.

17. On 19 March 1998, after having heard doctor G., the head of the medical staff at the nursing home, the investigator recommended that the investigation be discontinued. On 10 April 1998, the prosecutor followed this recommendation. The investigator and the prosecutor noted that it had not been uncommon in the practice of the nursing home for residents suffering from Alzheimer's decease to be sent for outside examinations by public transport, accompanied by a medical orderly. Also, it had been the normal practice to leave residents in the yard for several minutes, the time necessary to report to the doctor on duty, and then to accompany them to their rooms. The yard had been enclosed by a fence and staff had usually been present in the area. There had been a gatekeeper whose duty had been to check the identity of those entering. Having noted those facts, the investigator and the prosecutor stated that no criminal offence had been committed.

18. The applicant was not informed of the above decisions. He became aware of it on 14 December 1998, when he visited the District Prosecutor's Office to inquire about the examination of his complaint.

19. On 8 January 1999 the applicant appealed, insisting on the examination of other witnesses, such as the medical orderly who had accompanied his mother, the medical doctor who had directed his mother for an examination and the gatekeeper.

20. On 22 January 1999 the Sofia City Prosecutor's Office quashed the lower prosecutor's decision and referred the case back for renewed investigation. In June and August 1999 the file was transmitted to an investigator. The investigator heard the medical orderly and the gatekeeper.

21. On 12 April 2000 the prosecutor terminated the proceedings. He noted that Ms V., the medical orderly, had left the applicant's mother in the yard for two or three minutes as she had been asked to see a senior medical staff member. At that moment, the applicant's mother had left and could not be found. The gatekeeper had stated that she had not seen Mrs Stoyanova. The prosecutor further noted that, in accordance with the relevant job descriptions, it was the medical orderlies' duty to accompany residents and that the gatekeeper's duties did not include responsibility for the residents' safety. On that basis the prosecutor concluded that "there [was] no indication that a staff member had exposed Mrs Stoyanova [to a danger] ...; and, as regards the [possible perpetrator's] *mens rea*, no wilful conduct could be proven."

The applicant appealed.

22. On an unspecified date, the prosecutor's decision of 12 April 2000 was quashed and the case remitted for renewed investigation. In the ensuing investigation, it was established that the gatekeeper had not been at the portal when the applicant's mother had been left alone there on 4 December 1995, as the she had left to have a tea.

23. On 18 June 2001, the District Prosecutor's Office terminated the proceedings. The decision stated, *inter alia*:

> "Ms V. had left [the applicant's mother] alone in the yard, in dereliction of her duty to accompany and assist the seriously ill [residents]. However, her act did not constitute a criminal offence under Article 137 of the Criminal Code. That provision makes punishable the failure to assist a person in a helpless state, in circumstances of a real danger for that person's life, if the perpetrator is aware of the danger but fails to act. Ms V. stated that she had not thought that leaving [the applicant's mother alone] in the yard might result in a danger for her life, as the yard was closed by a fence and a gatekeeper was usually present. The gatekeeper had committed a serious dereliction of her duties as she had left the portal to have a tea. However, the gatekeeper is not criminally liable as she had not understood that [the applicant's mother] was in danger. Ms V. and the gatekeeper have undoubtedly committed disciplinary offences, which should have led to disciplinary sanctions but their behaviour is not criminally punishable."

24. The applicant was not informed of the prosecutor's decision. Having learned about it, on 29 September 2001 he appealed to the Sofia District Court.

25. On 21 November 2001, the Sofia District Court quashed the prosecutor's decision and referred the case for renewed investigation, considering that there were inconsistencies in the prosecutor's reasoning and that not all relevant evidence had been collected.

26. After having heard additional witnesses, on 15 August 2003 the Sofia District Prosecutor's Office terminated the investigation. The prosecutor noted the following facts that had not been mentioned in earlier decisions: i) it had not been uncommon for elderly residents of the nursing home to scale the fence around the house; ii) there was a second entrance to the yard, used for service cars, which had usually been kept closed by means of a metal bar placed on the inner side of the portal; and iii) the order in the nursing home and the duties of its staff were not clearly regulated.

The prosecutor stated that in view of the absence of clear rules on the duties of staff in the nursing home it was not possible to draw conclusions as to the criminal liability of staff members. Also, the facts did not disclose a criminal offence under Article 137 of the Criminal Code.

The prosecutor also stated that in any event the relevant statutory limitation period for the prosecution of the alleged perpetrators had expired.

27. Upon the applicant's appeal, on 20 January 2004 the Sofia District Court upheld the prosecutor's decision of 15 August 2003 as the relevant statutory limitation period for the prosecution of the alleged perpetrators had expired on 4 June 2003.

C. The applicant's criminal complaint against the police

28. In July 1996, the applicant complained to the prosecution authorities against the police alleging that they had not undertaken the necessary steps to search for his mother following her disappearance. The prosecuting authorities examined the matter and, by decisions of 1997 and 1999, refused to open criminal proceedings considering that the police had acted diligently.

D. Civil proceedings instituted by the applicant

1. Proceedings before the Sofia City Court

29. On 10 July 1996, the applicant brought before the Sofia City Court a civil action for non-pecuniary damages resulting from his mother's disappearance. He claimed damages from the Ministry of Labour and Social Care and the Sofia municipality (the institutions responsible for the nursing

home) on the grounds that the employees of the nursing home had been negligent. He also sought damages from the Ministry of the Interior on the grounds that insufficient efforts had been made to find his mother. The applicant indicated the State Responsibility for Damage Act as the legal grounds for his action.

30. Throughout the proceedings before the Sofia City Court, the applicant made voluminous written submissions and numerous requests for the collection of evidence.

31. At the first hearing on 24 February 1997, the court could not proceed with the examination of the case as one of the defendants had not been summoned. The court ordered the applicant to indicate the full addresses of the Ministry of Labour and Social Care and of the Sofia municipality and stated that failure to comply could lead to discontinuation of the proceedings.

32. Hearings were held on 2 June 1997 and 19 January 1998. The Sofia City Court admitted several documents in evidence and refused to admit other documents. The applicant's request for several witnesses to be examined was refused as it had been unclear and related to facts whose establishment required documentary proof.

33. On 13 April 1998, the representative of the Sofia Municipality which managed the nursing home stated that the case did not fall to be examined under the State Responsibility for Damage Act. The representative of the Ministry of the Interior, one of the defendants, stated that the applicant's allegations in reality concerned not the Ministry as a whole but one of its regional units, the Sofia Directorate of Internal Affairs. The court decided to adjourn the hearing and instructed the applicant to submit proof of the *locus standi* of the Ministry of the Interior.

34. On an unspecified date, the applicant requested that the Sofia Directorate of Internal Affairs be added to the action as a further defendant. The request was granted at the next hearing, on 16 October 1998, and the case was adjourned. The court instructed the applicant to submit another copy of the evidence already admitted to the file, to be transmitted to the new defendant.

35. At the hearing on 26 March 1999, the representative of the Sofia Directorate of Internal Affairs stated that the case did not fall to be examined under the State Responsibility for Damage Act as it did not concern the administrative powers of the police. The applicant sought to involve the nursing home as defendant. The court instructed the applicant to prove that the nursing home had a legal personality separate from that of the Sofia Municipality and adjourned the hearing. The court eventually found that the nursing home did not have separate legal personality.

36. The hearing held on 15 October 1999 was adjourned as the court issued a disclosure order against the Sofia police in respect of specific documents. The court rejected the applicant's request to summon witnesses,

including the medical doctor on duty on the relevant day. The applicant had stated that the witnesses would testify about the daily regime in the nursing home, the identity of staff members responsible for accompanying the applicant's mother, her state of health on the relevant day and the exact sequence of events following her consultation with a dermatologist. The court held that such facts could only be established on the basis of documentary evidence.

37. On 4 February 2000, the hearing could not proceed owing to a defective summons.

38. The hearing listed for 5 May 2000 was adjourned owing to the prosecutor's absence.

39. On 6 October 2000, the court accepted some of the applicant's requests for the examination of witnesses and adjourned the hearing.

40. The next hearing was held on 2 February 2001. It was adjourned as the nursing home had not complied with a disclosure order in respect of specific documents. One of the summoned witnesses appeared but was not invited to testify.

41. The hearing listed for 4 May 2001 could not proceed as one of the defendants and a witness had not been summoned. The court fixed the next hearing for 12 October 2001.

42. On 12 October 2001, the court heard two witnesses, who were employees of the nursing home.

The employee responsible for the relevant unit stated that the staff had been aware of the applicant's mother's illness and her complete lack of orientation. She had been on a “closed regime”. All staff had been aware that she had to be accompanied.

Mrs V., the medical orderly who had accompanied the applicant's mother, testified that she had left her for a minute at the gate, next to the gatekeeper's booth. The gate had not been locked. However, the gatekeeper had been there at that time. Mrs V. further stated that she had told the gatekeeper to look after the applicant's mother and that the gatekeeper's statement that she had not seen the applicant's mother had been untrue.

43. The next hearing was on 15 March 2002. The court heard two witnesses and adjourned the examination of the case. One of the witnesses, the gatekeeper at the nursing home, did not appear. Eventually, the court decided to examine the case on the basis of the available material. The last hearing was held on 21 June 2002.

44. On 31 July 2002, the Sofia City Court delivered its judgment. It found that the applicant had no standing to bring an action under the State Responsibility for Damage Act since his mother had not been declared dead and, therefore, the applicant could not claim that he was her heir.

The court also stated that it was unclear whether the State Responsibility for Damage Act applied as it only concerned damage resulting from unlawful administrative decisions or unlawful acts of the administration.

2. Proceedings before the Sofia Appellate Court

45. On 16 August 2002 the applicant appealed. He stated, *inter alia*, that it was for the courts to decide on the legal characterisation of his claim. Therefore, if the court considered that the claim fell to be examined under general tort law, it should examine it under general tort law. The applicant also reiterated that he was personally affected as he had suffered non-pecuniary damage as a result of his mother's disappearance.

46. By decisions of 21 and 30 January 2003, the Appellate Court, criticising the Sofia City Court's failure to collect relevant evidence, ordered the summonsing of witnesses and the production of other evidence in the appellate proceedings.

47. On 8 July 2003, the Appellate Court ordered the examination of a witness, the gatekeeper.

48. On 13 October 2003, the court heard the former gatekeeper, who had fallen ill, in her home, in the presence of the parties' representatives and a prosecutor. The former gatekeeper stated that on the relevant date she had not seen the applicant's mother.

49. On 15 January 2004, the Appellate Court delivered its judgment. It found that the State Responsibility for Damage Act only concerned damages resulting from administrative decisions or acts in the exercise of administrative functions. The applicant's claim did not concern such decisions or acts and fell to be examined under the general provisions of tort law. For that reason, the Appellate Court annulled the Sofia City Court's judgment and remanded the case for renewed examination by the Sofia City Court.

3. Proceedings before the Supreme Court of Cassation

50. On 13 February 2004 the applicant filed a cassation appeal. On 25 May 2005 the Supreme Court of Cassation rejected the appeal. It found that the Sofia City Court had wrongly put the case on a track under the State Responsibility for Damage Act.

4. Renewed examination of the case by the Sofia City Court

51. On an unspecified date the case was transmitted to the Sofia City Court for a fresh examination under general tort law.

52. On 7 July 2005 the Sofia City Court instructed the applicant to clarify his claims.

53. On 1 September 2005 the court found the clarifications made insufficient and gave him additional instructions.

54. On 1 February 2006 the Sofia City Court held a hearing. It issued disclosure orders against the nursing home and the Sofia Directorate of Internal Affairs and allowed the collection of other evidence. The hearing was adjourned until 14 June 2006. The proceedings are pending.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Regulations on the activities of the nursing home and its staff

55. At the relevant time, the activities of nursing homes for the elderly and other social care homes were governed by regulations issued by the Ministry of Public Health (State Gazette no. 91 of 1965, amended by State Gazette no. 30 of 1987), in force until 1999, when new regulations replaced them.

56. In accordance with the regulations, nursing homes were funded and managed by the local municipal councils and were required to follow the standards established and instructions given by the Ministry of Public Health. It appears, however, that in 1994 nursing homes were placed under the management of the Ministry of Labour and Social Care. That was not reflected in the regulations.

57. The regulations set out the duties of the main staff categories – the director, medical doctors, nurses and administrative staff. On that basis, each nursing home adopted its own internal rules. The nursing home where the applicant's mother lived also had internal rules regulating in detail the organisation and distribution of tasks and duties among staff. In addition, the specific duties attached to each position were set out in job descriptions. For example, according to the job description for a gatekeeper, one of the main duties was control over the entry and exit of persons and vehicles. The nursing home also maintained a presence/absence table and daily instructions book.

B. The Criminal Code

58. Article 137 of the Criminal Code makes it a punishable offence to place a person in a situation endangering his life and, being aware of the situation, to fail to render assistance, despite the fact that the person concerned was unable to take care of himself owing to young or old age, illness, or any other state of helplessness.

There is no reported case-law under that provision.

C. The State Responsibility for Damage Act and general tort law

59. The State Responsibility for Damage Act provides, in its section 1, that the State shall be liable for damage occasioned by State bodies or State officials in the exercise of their administrative functions. For damage caused in other circumstances, the State and State bodies are liable under general tort law.

According to the established practice in civil proceedings, the courts examine and determine the legal characterisation of claims submitted to them, without regard to the legal characterisation proposed by the plaintiff. The plaintiff must identify the disputed issue by clarifying the facts and the claim made but is under no duty to specify its characterisation in law. Even if the plaintiff indicated a legal characterisation of the claim, the courts are not bound thereby. They must make their own independent assessment (see, among many other authorities the following judgments: 1208-98-V (Supreme Court of Cassation), 38-97-VII (Supreme Administrative Court) and 75-88- ОСГК (Supreme Court)).

60. According to section 10, unlike civil proceedings under general tort law, proceedings under the Act are conducted in the presence of a prosecutor and court fees are only payable following the entry into force of the final judgment.

61. In 2005, the Supreme Court of Cassation issued an interpretative decision on certain aspects of the implementation of the Act, noting the existence of disputes and divergent practice. One of the issues dealt with was the identity of the State administrative bodies having *locus standi* to answer claims under the Act. The Supreme Court of Cassation clarified that the action must be brought against the State body employing the relevant agent or, where that State body did not have separate legal personality, against the superior State organ meeting that condition.

D. Missing persons and persons presumed dead

62. By virtue of sections 8-19 of the Persons and Family Act, the courts may declare missing a person whose whereabouts have been unknown for more than one year. If the person is still missing after five years, the courts may declare the person presumed dead.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

63. The applicant complained that the events surrounding the disappearance of his mother disclosed violations of Articles 2, 13 and 17 of the Convention. In particular, his mother's life had been put at risk through inexcusable negligence on the part of nursing home staff and deficient regulations. Moreover, the ensuing investigation had not resulted in criminal or disciplinary sanctions and the applicant's attempt to obtain compensation in civil proceedings had been frustrated by the dilatory approach of the

defendant State authorities and delays imputable to the courts. The applicant also complained that the police had not undertaken all necessary measures to search for the applicant's mother immediately after her disappearance. The Government contested the applicant's arguments.

64. The Court considers that the relevant provision is Article 2 § 1 of the Convention, which reads, in its pertinent part:

> "Everyone's right to life shall be protected by law."

65. The Court notes that the applicant's complaints concern two different sets of facts that require separate examination.

A. Alleged violation of Article 2 § 1 in respect of the alleged impossibility to hold accountable the relevant institutions and staff

1. Admissibility

(a) Applicability of Article 2

66. The Government stated that the substantive guarantee of Article 2 of the Convention was inapplicable as the present case did not concern death in custody or use of force by State agents. Furthermore, Article 2 did not apply even in its procedural limb since it had not been established that the applicant's mother had died.

67. The applicant, stressing that the case concerned the life of his mother, stated that Article 2 of the Convention was clearly applicable.

68. The Court notes that the applicant's mother suffered from Alzheimer's disease at an apparently advanced stage and more than eleven years have elapsed since she disappeared in December 1995, at the age of sixty-four, at a time when her mental capacities had deteriorated and she needed constant supervision. In these conditions, under Bulgarian law it is possible to obtain a judicial declaration of Mrs Stoyanova's presumed death (see paragraphs 6-12 and 62 above), although it does not appear that such a declaration was sought in the present case. The Court finds it reasonable, for the purposes of the case, to presume that the applicant's mother has died.

69. The question arises, however, as to whether there was a direct causal link between her presumed death and the impugned negligence on the part of the nursing home staff so as to trigger the application of Article 2 in respect of the alleged deficiencies in the legal system's reaction to such negligent acts.

70. The Court observes that the domestic authorities in the course of the criminal investigation against the staff of the nursing home established (although the finding never became final) that Mrs Stoyanova had been on a "closed regime" and the staff had known that she should not be left

unattended as that could result in danger for her health or life. It also became clear that the staff had left her unattended and there was a direct connection between that failing on their part and the applicant's mother's disappearance (see paragraphs 23 and 42 above). Furthermore, the Court considers that the sphere of application of Article 2 of the Convention cannot be interpreted as being limited to the time and direct cause of the individual's death. Chains of events that were triggered by a negligent act and led to loss of life may also fall to be examined under Article 2 (see *Öneryıldız v. Turkey* [GC], no. 48939/99, ECHR 2004-XII).

71. It follows that the events in the present case – while they by no means involve deprivation of life – fall within the scope of application of Article 2, the Convention provision safeguarding the right to life.

(b) Other admissibility issues

72. The Court considers that the above complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

(a) The parties' submissions

73. In the Government's submission, in so far as Article 2 might be applicable in its procedural aspect, the respondent State had fulfilled its duties under that provision, as interpreted by the Court in its case law and, notably, in *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, ECHR 2002-I. In particular, the Bulgarian legal system had made available to the applicant the possibility to seek compensation in civil proceedings. The fact that the civil proceedings issued by the applicant had not yet ended in a judgment on the merits was the result of the applicant's own procedural behaviour. He had wrongly brought his action under the State Responsibility for Damage Act, whereas the applicable regime was that under general tort law.

74. The Government also argued that the authorities had discharged their duty under Article 2 of the Convention to provide an adequate legal framework protecting life. In particular, the activities of nursing homes were legally regulated in detail.

75. In the applicant's view, his case was different from the above cited *Calvelli and Ciglio* judgment in two essential aspects. First, in *Calvelli and Ciglio* the Italian authorities had prosecuted the person who had caused death through negligence and had even convicted him at first instance, whereas the Bulgarian authorities had refused to indict the perpetrators despite the evidence clearly pointing to criminally punishable negligence. Second, in *Calvelli and Ciglio* the relatives of the victim had received a

pecuniary compensation, albeit through a settlement, whereas the applicant had had to endure a protracted procedure and saw no realistic perspective of obtaining redress.

76. The applicant also considered that civil proceedings should not be seen as satisfying the requirements of Article 2 in cases such as the present one, as that would amount to "privatising" the protection of the right to life. Also, civil proceedings did not guarantee a complete and exhaustive investigation of the full factual background.

77. In any event, as regards the effectiveness of the civil proceedings as a means to secure accountability and provide redress, the applicant averred that the conduct of the Sofia City Court in general and, in particular, its failure to determine in good time the legal characterisation of the facts of the case, had destroyed any remaining hope that the truth about his mother's death would come to light and that he would be compensated.

78. The applicant also contended that the activities of nursing homes in general and the duties of its staff in particular had not been regulated in a satisfactory manner. In particular, the regulations in force at the relevant time had been outdated. Furthermore, in contradiction with the regulations, after 1994 nursing homes had been placed under the management of the Ministry of Labour and Social Care. As a consequence, in the civil proceedings he had instituted, the applicant had had difficulty in establishing whether or not the nursing home had had legal personality and in naming the administrative entity having *locus standi* to answer his claim.

(b) The Court's assessment

79. The first sentence of Article 2, which ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic values of the democratic societies making up the Council of Europe enjoins the State not only to refrain from the "intentional" taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *Calvelli and Ciglio v. Italy*, cited above, § 48, and the case-law referred to there).

80. Those principles apply in the public-health sphere too. States are required to make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients' lives and to set up an effective independent judicial system so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable (*Calvelli and Ciglio,* referred to above*,* § 49, again with further references).

81. Unlike *Calvelli and Ciglio*, which concerned medical doctors' errors, in this case the negligent act that endangered Mrs Stoyanova's life was apparently committed by a medical orderly and/or technical auxiliary staff. However, there is no reason why the requirement to regulate the activities of

public health institutions and afford remedies in cases of negligence should not encompass such staff, in so far as their acts may also put the life of patients at risk, the more so where patients' capacity to look after themselves is limited, as in the present case.

82. Where a Contracting State has made adequate provision for securing high professional standards among health professionals and the protection of the lives of patients, it cannot be accepted that matters such as error of judgment on the part of a health professional or negligent co-ordination among health professionals in the treatment of a particular patient are sufficient of themselves to call a Contracting State to account from the standpoint of its positive obligations under Article 2 of the Convention to protect life (*Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V; see also *Nitecki v. Poland*, no. 65653/01, dec. 21 March 2002).

83. The Court must examine, therefore, whether or not an issue of State responsibility under Article 2 of the Convention may arise in respect of the alleged inability of the legal system to secure accountability for negligent acts that had led to Mrs Stoyanova's disappearance. It must examine whether the available legal remedies, taken together, as provided in law and applied in practice, could be said to have secured legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see *Byrzykowski v. Poland*, no. 11562/05, §§ 104-118, 27 June 2006). Article 2 of the Convention will not be satisfied if the protection afforded by domestic law exists only in theory: above all, it must also operate effectively in practice (see *Calvelli and Ciglio,* cited above*,* § 53).

(i) The regulations on nursing homes

84. The Court notes that the activities of nursing homes were regulated by law. The nursing home in Sofia also had its internal rules and job descriptions setting out the duties of staff (see paragraphs 55-57 above).

85. The Court also observes that the regulations in force at the relevant time dated from 1965 and apparently did not reflect changes in State administrative structures (see paragraphs 55 and 56 above). One of the prosecutors who dealt with the case expressed the opinion that the duties of the nursing home staff had not been clearly regulated which made it impossible to determine any criminal liability (see paragraph 26 above).

86. The Court is not required, however, to arrive at general conclusions about the relevant legal regime *in abstracto*. It must examine whether the legal system as a whole dealt adequately with the case at hand.

(ii) The adequacy of the judicial remedies

87. As the Court stated in its above cited *Calvelli and Ciglio* judgment, if the infringement of the right to life or to personal integrity is not caused intentionally, the positive obligation imposed by Article 2 to set up an

effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. In the specific sphere of medical negligence, the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the medical staff concerned to be established and any appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained. Disciplinary measures may also be envisaged (see, *Calvelli and Ciglio,* cited above, § 51).

88. In the present case, the relevant domestic law provided for possibilities to seek accountability through criminal, disciplinary and civil proceedings.

(α) Criminal law remedies

89. The Court observes that the criminal investigation was characterised by lengthy periods of inactivity and that basic investigative measures, such as questioning the nursing home staff, were only undertaken several years after the events, upon the insistence of the applicant (see paragraphs 13-27 above). The delays not only hampered the investigation's prospects in the particular case but also demonstrated disregard for the public interest that possible errors committed in the health care sphere should be established promptly, to allow the dissemination of information and thereby prevent the repetition of similar errors and contribute to the safety of health service users (see *Byrzykowski*, cited above, § 117).

90. Furthermore, in the present case the prosecuting authorities issued contradictory decisions, refusing to indict nursing home staff each time on the basis of different factual versions and unclear legal grounds. In particular, in 1998 and 2000, the District Prosecutor's Office and the Sofia City Prosecutor's Office decided to discontinue the proceedings essentially on the basis that the staff had acted in accordance with their usual practice, without analysing whether or not that practice disclosed culpable neglect (see paragraphs 17 and 21 above). In 2001, the factual basis and the grounds for discontinuation changed – the prosecutors agreed that nursing home staff had acted in dereliction of their duties but considered in substance that under Bulgarian penal law such violations were not punishable (see paragraph 23 above). Finally, in 2003 the prosecutors changed yet again their factual findings and made suppositions such as that the applicant's mother might have scaled the fence of the nursing home or left through another exit. Eventually, the prosecution became time-barred (see paragraphs 26 and 27 above).

91. On the basis of all the material in its possession, the Court considers that the relevant criminal law remedies did not secure the accountability of those responsible for the disappearance of the applicant's mother. The

Court must examine, therefore, whether the respondent State made available other legal remedies that satisfied the relevant Convention requirements.

(β) Disciplinary or administrative measures

92. The Court notes that no disciplinary measures were taken against nursing home staff despite the prosecutors' finding that staff members – the medical orderly and the gatekeeper – had acted in breach of their duties (see paragraph 23 above). Moreover, it appears that at no time did the relevant authorities – the Ministry of Labour and Social Care, the Ministry of Public Health and the Sofia municipality – seek to identify any errors in management, training or control that may have made the impugned violations possible.

(γ) Civil law remedies

93. The Court observes that, more than ten years after their beginning, the civil proceedings for damages brought by the applicant have not yet produced even a first instance decision on the merits of the dispute (see paragraphs 29-54 above).

94. The Court further refers to its finding below that the excessive length of the proceedings was imputable to the authorities and violated Article 6 of the Convention (see paragraphs 106-119 below).

95. It reiterates that the requirements of Article 2 of the Convention will not be satisfied if the available remedies did not operate effectively within a time-span such that the courts can complete their examination of the merits of each individual case (see; *Calvelli and Ciglio v. Italy*, cited above, §§ 51-53 and *Vo* v. France [GC], no. 53924/00, §§ 89-90, ECHR 2004-VIII).

96. While the proceedings are still pending and the Court cannot speculate about their outcome, it finds that, in the particular circumstances, the lapse of time is in itself sufficient to conclude that the civil proceedings did not bring about the result wished by Article 2 of the Convention – establishing the facts surrounding the disappearance and presumed death of Mrs Stoyanova and holding accountable those responsible in an effective and timely manner.

(iii) Conclusion

97. The Court found that despite the availability in Bulgarian law of three avenues of redress in cases such as the present one – criminal, disciplinary and civil, in practice the authorities did not secure an effective possibility to establish the facts surrounding the disappearance of the applicant's mother and hold accountable persons or institutions that have breached their duties. Deficiencies in the relevant regulations undoubtedly contributed to that result (see paragraph 85 above). The Government have not argued that other means of redress existed.

98. In these circumstances, the Court considers that the legal system as a whole, faced with an arguable case of negligent acts endangering human life, failed to provide an adequate and timely response, consonant with the State's procedural obligations under Article 2. There has been, therefore, a violation of Article 2 § 1 in this respect.

B. Alleged violation of Article 2 in respect of the reaction of the police after Mrs Stoyanova's disappearance

1. Admissibility

99. The Court considers that the above complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

100. The State duty to take appropriate steps to safeguard the lives of those within its jurisdiction also extends in appropriate circumstances to a positive obligation to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual, or from self-harm (see *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3159, § 115 and *Keenan v. the United Kingdom*, no. 27229/95, §§ 89 and 90, ECHR 2001-III). In such cases, the Court's task is to determine whether the authorities knew or ought to have known of the existence of a real and immediate risk and, if so, whether they did all that could have been required of them to prevent the life of the individual concerned from being, avoidably, put at risk (see *Uçar v. Turkey*, no. 52392/99, § 86, 11 April 2006).

101. The Court considers that it is not necessary in the present case to determine the modalities of application of the above principles to situations where an individual of ill health goes missing. It observes that the police undertook a series of steps aimed at locating Mrs Stoyanova. Having being informed about her disappearance, the police immediately proceeded to hearing witnesses who testified that they had searched the area of the nursing home in vain (see paragraphs 9-11 above). Four days later, Mrs Stoyanova was recorded as a person sought by the police and within a week a press release was issued. Later, the police made verifications in respect of patients admitted to psychiatric clinics and information received by the public (see paragraphs 6 and 9-11 above).

102. In the applicant's view, the police should have undertaken intensive searches in the area immediately after his mother's disappearance. The Court reiterates, however, that bearing in mind the difficulties in policing

modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the authorities' positive obligation in cases such as the present one must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see *Osman*, cited above, pp. 3159-60, § 116 and *Akdoğdu v. Turkey* (no. 46747/99, § 45, 18 October 2005). While there is little doubt that more could have been done by the police in the present case, the decisive question is whether their reaction was adequate in the circumstances, having regard to the concrete facts and practical realities of daily police work. In this respect, the Court notes that the nursing home was located on a busy boulevard in Sofia – a city of more than one million inhabitants. Since the staff of the nursing home, who – unlike the police – knew Mrs Stoyanova's physical appearance well, had searched the area in vain, it is difficult for the Court to accept that the police officers' decision not to deploy forces for an immediate search was unreasonable.

103. In sum, the Court is not convinced that the reaction of the police to the information about Mrs Stoyanova's disappearance was inadequate in the circumstances or otherwise in breach of Bulgaria's positive duty to protect life.It finds, therefore, that there has not been a violation of Article 2 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

104. The applicant complained that the length of the civil proceedings in his case exceeded reasonable time and thus violated Article 6 § 1 of the Convention which reads, in so far as relevant.

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

A. Admissibility

105. The Court considers, in the light of the criteria established by its case-law on the question of "reasonable time", and having regard to all the material in its possession, that an examination of the merits of the complaint is required.

B. Merits

106. The applicant stated that most delays had been imputable to the authorities. In particular, unnecessary adjournments had been ordered by the Sofia City Court to "enable" the applicant to indicate the addresses of State institutions whose location was publicly known or to "prove" their *locus*

standi, an uneasy task owing to administrative restructuring and contradictions in the applicable statutory and administrative regulations. Several adjournments had been caused by the failure of the defendants – State institutions – to disclose documents in their possession. Also, the Sofia City Court's refusals to admit certain evidence had been unjustified and the Appellate Court had eventually collected that evidence, which had also engendered delays. The applicant also submitted that hearings had often been listed at lengthy intervals. He stressed, furthermore, that the failure of the Sofia City Court to determine in good time the legal characterisation of the facts of the case had caused the referral of the case for renewed examination.

107. The Government considered that the applicant had organised his case badly, kept requesting changes, failed to provide evidence in respect of the defendants' *locus standi* in time despite the Sofia City Court's instructions and failed to clarify the nature of his claim. At the same time the courts proceeded with due diligence – they organised hearings at regular intervals and gave instructions to the applicant.

108. The Court observes that the period to be taken into account started on 10 July 1996 when the applicant brought his action. In June 2006 the proceedings were again pending before the first instance court. They have thus lasted ten years and are probably still pending.

109. Having regard to the subject matter of the civil proceedings – which concerned liability for negligent acts that might have resulted in loss of life – the authorities were under a duty to exercise special diligence and conduct the proceedings with particular expedition.

110. The Court observes that the overall length of the proceedings was due to two main factors – the numerous adjournments in the examination of the case by the Sofia City Court in the period 1996 - 2002 and the courts' decision of 2002, upheld in 2004 and 2005, to recommence the proceedings under a different procedure (see paragraphs 29-54 above).

111. In respect of the first factor, the Court notes that the applicant made numerous submissions throughout the proceedings, requesting at an advanced stage the collection of evidence he could have sought at the outset. That must have caused difficulties for the Sofia City Court. It does not appear, however, that the ensuing delays exceeded several months (see paragraphs 30 and 39 above).

112. Significant delays occurred, however, as a result of the fact that the case was repeatedly adjourned for reasons imputable to the authorities: failure to summon defendants or witnesses, the prosecutor's absence, failure of the defendant State bodies to comply with disclosure orders (see paragraphs 31, 37, 38, 40 and 41).

113. In respect of the adjournments ordered to clarify addresses of State institutions and their *locus standi* (see paragraphs 31, 33, 34 and 35 above), the Court considers that the responsibility for the ensuing delays was shared

or – in respect of others – rested entirely with the authorities. In particular, the question of which administrative entity had standing to answer civil claims concerning the activities of the nursing home was not clearly regulated – despite the fact that under the relevant regulations nursing homes were under the control of municipalities, in practice they had been placed under the management of the Ministry of labour and social care (see paragraphs 56 and 62 above). Furthermore, the approach of the Sofia City Court, which adjourned hearings requiring from the applicant "proof" of the *locus standi* or the address of State organs such as the Ministry of the Interior and the Ministry of labour and social care, was excessively formalistic. In a legal system governed by the rule of law, the identity of the State administrative entities responsible for different sectors of activity and designated to answer civil claims must be transparent and easily accessible.

114. The Court considers, therefore, that while the applicant bore responsibility for delays of several months, the delay accumulated between 1996 and 2002 was in its most part imputable to the authorities.

115. The Court further notes that the proceedings are still pending as a result of the decision to recommence them afresh under a different procedure. That decision was taken in January 2004, more than seven years after the examination of the case had started in July 1996 (see paragraphs 29 and 49 above).

116. It is striking that the courts did not realise earlier that the case had been wrongly put on a track under the State Responsibility for Damage Act and that the correct procedure had been that under general tort law. That is particularly surprising having regard to the fact that the problem was raised repeatedly by some of the parties, including the applicant, and that the Sofia City Court noted it in its judgement of 31 July 2002 (see paragraphs 33, 35, 44, 49 and 50 above). The ensuing delay is entirely imputable to the courts which were under a duty to determine the legal characterisation of the claim (see paragraph 59 above).

117. Furthermore, as to the courts' decision to recommence the proceedings afresh, the Court observes that the procedure under general tort law differed from that under the State Responsibility for Damage Act in some rather technical aspects – court fees and the presence of a prosecutor (see paragraph 60 above). Having regard to the nature of those differences, the Court finds it difficult to accept that in 2004 and 2005 it was justified to begin the proceedings afresh and invalidate the procedural steps undertaken since 1996, including the collection of witnesses' testimonies and documentary evidence. The rule according to which the proceedings had to restart might have had sound basis in legal theory, however, it must have been obvious to the national courts that its implementation in the particular circumstances would engender significant difficulties, having regard to the limited possibilities to collect evidence, including witness testimony, a decade or more after the events. The duty of Contracting States to secure the

enjoyment of such fundamental human rights as the right to life requires the implementation of legal remedies that are capable of producing effective practical results without excessive formalism. It was for the national authorities to conceive such procedural rules as to avoid unjustified delays.

118. In sum, the Court considers that the authorities' decision to undo all procedural acts and commence afresh the collection of evidence was unjustified and incompatible with their duty to act with particular expedition in cases concerning the right to life.

119. Furthermore, the applicant's civil claim having been, *inter alia*, that the responsibility of the State was engaged in that nursing home staff had left Mrs Stoyanova without supervision, it was incumbent on the Sofia City Court to determine the legal characterisation of that part of the claim and conduct the proceedings accordingly. It never did so, despite repeated statements by the parties in that sense. Indeed, the Sofia Appellate Court and the Supreme Court of Cassation expressly criticised the Sofia City Court for having conducted the proceedings under the wrong procedure (see paragraph 50 above).

120. The foregoing considerations are sufficient to enable the Court to conclude that the "reasonable time" requirement was not observed. There has accordingly been a violation of Article 6 §1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

121. 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

122. The applicant claimed EUR 20,000 in respect of non-pecuniary damage on account of the alleged failure of the police to take the necessary measures to find his mother, the authorities' failure to hold accountable the institutions and persons who were responsible for his mother's disappearance and the excessive length of the civil proceedings.

123. The Government did not comment.

124. The violation of Article 2 of the Convention found in the present case concerned the authorities' failure to investigate or otherwise provide a possibility to hold accountable the persons who might have committed negligent acts related to Ms Stoyanova's disappearance. The Court considers that these omissions on the part of the authorities, which were partly the result of protracted proceedings, must have caused significant distress to the

applicant. Deciding on an equitable basis, the Court awards EUR 8,000 in respect of non-pecuniary damage.

125. The Court also found a violation of Article 6 § 1 of the Convention in respect of the excessive length of the civil proceedings. It does not consider, however, that a separate sum of money should be awarded in this respect since the anguish the applicant suffered as a result of the excessive length of the proceedings was taken into consideration in determining the award made in respect of the violation of Article 2.

B. Costs and expenses

126. The applicant, who received legal aid from the Council of Europe, did not formulate a claim in respect of costs.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the State's positive duty to make available judicial remedies capable of establishing the facts and holding accountable those responsible for imperilling the life of Mrs Stoyanova;

3. *Holds* that there has not been a violation of Article 2 of the Convention in respect of the reaction of the police to the information about Mrs Stoyanova's disappearance;

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

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,000 (eight thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 17 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President