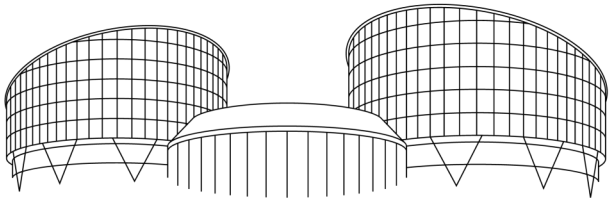

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KARANDJA v. BULGARIA

(Application no. 69180/01)

JUDGMENT

STRASBOURG

7 October 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 Karandja v. Bulgaria,

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

Peer Lorenzen, *President,*
Renate Jaeger,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 14 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 69180/01) 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, Ms Nadezhda Mladenova Karandja ("the applicant"), on 11 April 2001.

2. The applicant was represented by Mr Y. Grozev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotseva, of the Ministry of Justice.

3. The applicant alleged that her son had been killed by the police as a result of a disproportionate use of force, that the ensuing investigation had not been effective, and that she had not had effective remedies in respect of those matters.

4. On 9 September 2005 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention). On 1 April 2006 the case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1947 and lives in Sofia. She was married to a Kenyan national, Mr Robert Karandja, who died in 1993. In 1977 they had a son, Mr Peter Robert Karandja, who died on 7 June 1997 after being shot by the police on 5 June 1997.

A. Circumstances surrounding the shooting of Mr Karandja

6. Two sets of criminal proceedings were opened against Mr Karandja on unspecified dates in 1995. In the first set he was charged, together with two others, with breaking into a car on 15 December 1994 and stealing 706 pairs of stockings with a total value of 15,120 Bulgarian levs (equivalent at the material time to approximately 1,000 United States dollars). In the second set he was charged with driving a car without a valid licence on 10 October 1995. He has not been convicted of other offences and there is no indication that other charges have ever been lodged against him.

7. On 18 December 1996 the Sofia District Court revoked Mr Karandja's earlier release on bail and ordered his pre-trial detention. As a result, he was put on the list of persons wanted by the police.

8. Mr Karandja was arrested on 5 June 1997. He was placed in a cell in the Third District Police Station in Sofia. After 7 p.m. the police tried to transfer him to Bobov Dol Prison. However, the escort brigade refused to take him in their custody because it was late and at about 8 p.m. he was returned to the police station. The on-duty officers – Chief Sergeant G.P. and Captain V.S. – placed Mr Karandja in a cell on the third floor of the station. The Chief Sergeant searched him, but did not handcuff him because he looked "calm and was not boisterous". Mr Karandja's shoe laces were removed and the door of the cell was closed.

9. At about 8.30 p.m. Mr Karandja managed to open the door of the cell, apparently by forcing one the chains which was keeping it closed, rammed Chief Sergeant G.P. with it, and ran down the stairs and out of the building. Once outside, he continued to run down the streets adjacent to the police station. The Chief Sergeant chased after him.

10. The escape from the police station was witnessed by Major N.C. and Captain V.S. However, neither they nor any other officers assisted Chief Sergeant G.P. in the chase.

11. The chase continued down Pirotska Street. When Mr Karandja reached the intersection with Konstantin Velichkov Boulevard, where he attempted to cross, Chief Sergeant G.P., according to his later statement,

drew out his handgun and fired a warning shot in the air. Mr Karandja did not stop, dodged the traffic, crossed the boulevard and continued to run towards the city centre. Chief Sergeant G.P. continued the chase and ran down Pirotska Street. According to his later statement, he carried on shouting at Mr Karandja to stop and fired two more warning shots in the air. Mr Karandja then turned down Zaychar Street, followed by Chief Sergeant G.P. who ran after him in the middle of the street.

12. Before turning into Zaychar Street, Mr Karandja was spotted by two officers, Chief Sergeants I.I. and T.B., who were in a patrol car travelling from the opposite direction. The officers later stated that they had seen Mr Karandja running towards them and then turning into Zaychar Street. They also stated that they had seen Chief Sergeant G.P. running after him, shouting at him to stop, and firing two or three times in the air. The patrol car followed the two of them down Zaychar Street.

13. Somewhere around that time, the chase was witnessed by Chief Sergeant A.V. who was going to the police station to take up his night patrol duty and by Lieutenant G.G. who was on his way to take up night duty in another police department. Neither of them joined in the chase and the two men instead headed to police station to report the event.

14. The chase continued down Zaychar Street with Mr Karandja being pursued by Chief Sergeant G.P. and the patrol car. It is unclear whether Chief Sergeant G.P. was aware that a patrol car was behind him because it had apparently not switched on its siren and flashing light.

15. When Mr Karandja reached the intersection with Naycho Tzanov Street, where excavation works for the city's future underground had begun, Chief Sergeant G.P. fired in his direction. The bullet hit the back of Mr Karandja's head and he fell to the ground. Chief Sergeant G.P. went over to him, closely followed by Captain T.M. and Chief Sergeant I.I., who then returned to the patrol car to report the event, before going back to preserve the scene. Several passers-by also gathered around Mr Karandja's body.

16. Within minutes of the shooting a police car arrived and Mr Karandja was taken to the emergency ward of Pirogov Hospital. He arrived there, unconscious, at 8.45 p.m. Despite an emergency brain operation, he died a day and half later at 10 a.m. on 7 June 1997.

B. The investigation

17. Having been notified about the incident, between 9.15 p.m. and 9.28 p.m. on 5 June 1997 an on-duty investigator from the Sofia Investigation Service inspected the scene of the shooting and the cell in which Mr Karandja had been kept. He drew a sketch and took photographs, but did not try to identify the distance between Mr Karandja and Chief

Sergeant G.P. at the time of the shooting. He seized: (a) a spent cartridge found at an unspecified location in Zaychar Street by Captain T.M. who had been sitting with his son in a café close to the scene; (b) acetone-drenched swabs of Chief Sergeant G.P.'s hands; (c) handcuffs from the cell; and (d) the broken chain of the cell door. He then interviewed Captain T.M. and ordered an expert examination of Chief Sergeant G.P.'s handgun. The Sergeant made a written statement in which he said that he had been aiming for Mr Karandja's legs.

18. On 6 June 1997 a blood sample was taken from Chief Sergeant G.P. A subsequent test found no presence of alcohol or other intoxicating substances in his blood.

19. On 9 June 1997 a forensic expert performed an autopsy on Mr Karandja's body. He found that the cause of death was "a gunshot wound to the head and damage to the brain". The report also noted that there were bruises on his face and knees, which were attributed to his fall, face first, after being shot.

20. On 16 June 1997 the Sofia Regional Military Prosecutor's Office refused to open a preliminary investigation into the incident, finding that Chief Sergeant G.P. had acted in line with section 42(1)(5) of the 1993 National Police Act (see paragraph 44 below). He had used his firearm after giving a warning in order to prevent a detainee from escaping. His act was therefore not criminal.

21. On an appeal by the applicant, on 24 February 1998 the Chief Military Prosecutor's Office set that decision aside, finding that the opening of a preliminary investigation in such circumstances was mandatory. Accordingly, on 4 March 1998 the Sofia Regional Military Prosecutor's Office opened an investigation and on 6 March 1998 sent the case file to a military investigator.

22. On 7, 13, 27 and 28 April, 25 May and 4 June 1998 the investigator interviewed Captains T.M. and V.S., Major N.C., two other officers from the police station, Chief Sergeants I.I., T.B., and A.V., two civilians who lived on Zaychar Street who had not witnessed the chase or the shooting, Lieutenant G.G., and Chief Sergeant G.P. who said that when he had fired the fatal shot his intention had been to aim low and possibly hit Mr Karandja's knees.

23. In the meantime, on 5 May 1998 the investigator asked a forensic expert to determine the cause of Mr Karandja's death, the presence of any injuries on his body, the distance from which the shot had been fired and the presence of any handcuff marks. In his report the expert said that Mr Karandja had died from a gunshot wound in the back of his head which had fatally injured his brain. The rest of his injuries were bruises which could have occurred when he had fallen to the ground. It was impossible to determine the distance from which the shot had been fired because the

surgical operation had obliterated any marks on his head. However, the fact that the medical doctors had not noted any gunpowder residue near the wound could be interpreted as meaning that the shot had not been fired from a close distance. There were no clear handcuff marks.

24. On 6 May 1998 the investigator asked experts to say whether the swabs of Chief Sergeant G.P.'s palms contained gunpowder residue, and whether the spent cartridge submitted by Captain T.M. had come from the Chief Sergeant G.P.'s handgun. The swab test, conducted on 25 May 1998, found no gunpowder residue in the swabs. The handgun test, conducted on 28 May 1998, found that the cartridge had come from the Chief Sergeant's handgun.

25. Having finished his work on the case, on 31 August 1998 the investigator proposed discontinuing the investigation. In his view, Chief Sergeant G.P., by using his firearm, had strictly complied with his duties. His decision to do so had been in line with section 42(1)(5) of the 1993 National Police Act (see paragraph 44 below), as he had simply had no other means of stopping Mr Karandja from fleeing. The Sergeant's earlier decision not to handcuff Mr Karandja had also been in line with the relevant instructions.

26. On 29 September 1998 the Sofia Regional Military Prosecutor's Office found that the investigator had not sought to identify Mr Karandja's next-of-kin with a view to allowing them to acquaint themselves with the case file and to bring, if they so wished, civil claims. It referred the case back to the investigator, instructing him to rectify that omission.

27. Although the investigator did not comply with those instructions, on 21 December 1998 the Sofia Regional Military Prosecutor's Office decided to discontinue the investigation, repeating the reasons given by the investigator on 31 August 1998 almost verbatim.

28. On 22 July 1999 the applicant appealed to the Military Appellate Prosecutor's Office. She said that the investigation had failed to gather evidence about the breaking of the chain of the cell door and the way in which that door had been opened. She complained that the only witnesses interviewed were police officers and that no medical expert report had been obtained to assess the various injuries sustained by Mr Karandja. She also claimed that there were inconsistencies in the investigation's findings because it had concluded that Mr Karandja had escaped from the cell without the assistance of any tools. Lastly, she complained that she had not been allowed to consult the case file.

29. On 23 December 1999 the Military Appellate Prosecutor's Office upheld the discontinuance. It noted that the investigator had carried out a reconstruction of Mr Karandja's escape and had found that it was possible to loosen the chain and open the door in the way he had specified. The expert medical report had clarified the injuries which had led to

Mr Karandja's death and the distance from which the shot had been fired. The applicant did not specify which other eyewitness she wished to have interviewed. It was true that she was not given an opportunity to consult the case file, but in the event that was not problematic because she was informed of the discontinuance and was able to appeal against it.

30. On 5 April 2000 the applicant appealed to the Supreme Cassation Prosecutor's Office, reiterating the arguments raised in her previous appeal.

31. On 2 June 2000 the Supreme Cassation Prosecutor's Office set the discontinuance aside, citing the investigator's failure to comply with the instructions to identify Mr Karandja's next-of-kin – the applicant – and give her the opportunity to acquaint herself with the case file and to bring, if she so wished, a civil claim.

32. On 19 June 2000 the case was assigned to another investigator. On 3 July 2000 he interviewed the applicant in her home and allowed her to acquaint herself with the case file.

33. On 18 July 2000 the investigator proposed discontinuing the investigation, giving the same reasons as those given by the previous investigator on 31 August 1998 (see paragraph 25 above).

34. On 24 July 2000 the Sofia Regional Military Prosecutor's Office referred the case back to the investigator. It noted that he had interviewed the applicant in the absence of her counsel.

35. On 14 September 2000 the investigator interviewed the applicant in her home, in the presence of her newly-retained counsel, and allowed the two of them to acquaint themselves with the case file.

36. On 29 September 2000 the investigator proposed discontinuing the investigation, giving the exact same reasons as previously (see paragraph 33 above).

37. On 4 October 2000 the Sofia Regional Military Prosecutor's Office referred the case back to the investigator. It noted that he had not given the applicant and her counsel a proper opportunity to acquaint themselves with the case file and make any objections.

38. The applicant's counsel was allowed to consult the case file on 11 October 2000. On the same day he filed an objection, pointing out that vital investigative steps – such as witness interviews and the commissioning of an expert medical report – had been taken more than a year after the incident. It was also striking that despite the small area in which the chase had taken place and the number of shots fired, only one cartridge had been found. The positions of other officers present near the scene were not elucidated, which made it impossible to determine whether it had been possible to apprehend Mr Karandja without using firearms. Since under the applicable law, firearms could be used only "as a means of last resort", it was essential to clarify those facts. There were also discrepancies in the investigation's findings, the chief one being the assumption that Chief

Sergeant G.P. had fired several warning shots and the fatal shot, and the fact that the swab test had come out negative.

39. On the same day the investigator overruled the objection, saying that the delay had not been the fault of the investigating authorities; they had started to work on the case shortly after the prosecuting authorities had instituted the proceedings, had accepted all previous investigative actions, had conducted interviews, and had taken further investigative steps to elucidate the facts. Firearms had been used as a means of last resort to arrest Mr Karandja.

40. On 12 October 2000 the investigator again proposed discontinuing the investigation, giving the exact same reasons as previously (see paragraph 36 above).

41. On 24 October 2000 the Sofia Regional Military Prosecutor's Office decided to discontinue the investigation, repeating the reasons given by the investigator almost verbatim and adding that the situation fell within the ambit of Article 12a of the Criminal Code (see paragraph 46 below).

42. On 16 November 2000 the Appellate Military Prosecutor's Office confirmed the discontinuance, repeating almost verbatim the reasons given by the Sofia Regional Military Prosecutor's Office.

43. In a final decision of 21 November 2000 the Military Court of Appeal also confirmed the discontinuance. It fully agreed with the prosecuting authorities' conclusion that Chief Sergeant G.P.'s actions had been in line with section 42(1)(5) of the 1993 Act and fell within the ambit of Article 12a of the Criminal Code (see paragraphs 44 and 46 below). It also noted that the Sergeant had aimed at Mr Karandja's legs and had shot him in the back of the head only because of the increasing distance between them and speed of the chase.

II. RELEVANT DOMESTIC LAW

A. Use of firearms by the police

44. Section 42 of the 1993 National Police Act, as in force at the material time, provided, in so far as relevant:

> "(1) The police may use firearms as a means of last resort:
>
> ...
>
> 5. after giving a warning, to prevent the escape of a person duly detained for having committed a publicly prosecutable offence.
>
> (2) When using firearms the police are under a duty to protect, as far as possible, the life of the person against whom they use force..."

45. The wording of section 80(1)(5) and (2) of the 1997 Ministry of Internal Affairs Act, which superseded the above provision in December 1997, was identical. The wording of section 74(1)(4) and (2) of the 2006 Ministry of Internal Affairs Act, currently in force, repeats verbatim that of section 80(1)(5) and (2) of the 1997 Act.

B. Relevant provisions of the Criminal Code

46. Article 12a § 1 of the 1968 Criminal Code, added in August 1997, provides that causing harm to a person while arresting him or her for an offence is not punishable where no other means of effecting the arrest exist and the force used is necessary and lawful. According to Article 12a § 2, the force used is not necessary where it is manifestly disproportionate to the nature of the offence committed by the person to be arrested or the resulting harm is in itself excessive and unnecessary.

C. Discontinuance of preliminary investigations

47. Under Article 237 of the 1974 Code of Criminal Procedure, as in force until 31 December 1999, the discontinuance of a preliminary investigation could be challenged before a more senior prosecutor.

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

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

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

50. The applicant complained that her son, Mr Karandja, had been killed by the police in circumstances in which that had not been absolutely necessary. She also complained that the authorities had failed to conduct an

effective investigation into that matter. She relied on Article 2 of the Convention, which, in so far as relevant, 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:
>
> ...
>
> (b) ... to prevent the escape of a person lawfully detained; ..."

A. The parties' arguments

51. The Government stated that they had left it to the Court to assess the well-foundedness of the complaints.

52. The applicant submitted that the way in which Bulgarian law regulated the use of firearms by the police was clearly out of line with the Court's case-law because it allowed the police to use firearms to arrest persons suspected of even minor, non-violent offences. Although the Court had found that that law fell short of the requirements of Article 2, in 2006 the legislature enacted identical provisions. She also asserted that the use of firearms to immobilise and arrest her son – who was suspected of two minor offences, neither of which was even remotely indicative of a risk that he might be violent – had been clearly unjustified.

53. The applicant further submitted that the investigation into her son's death had not been effective. Despite the existence of clear evidence that a police officer had used firearms against an unarmed, non-violent person who had been arrested for a minor offence, the authorities had refused to prosecute those responsible. Moreover, the investigation had suffered from a number of omissions. It had left a discrepancy between the swab tests and the remaining evidence unresolved and had not established the distance from which the shot had been fired. The authorities had not tried to identify civilian eyewitnesses and had not sought to determine whether Chief Sergeant G.P. had been properly trained and instructed in the use of firearms. In addition, the applicant had not been properly involved in, and kept abreast of, the investigation.

B. The Court's assessment

54. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

1. Whether the force used against Mr Karandja was absolutely necessary

55. In the circumstances of the present case, the Court is prepared to accept that the officer who shot the applicant had used force in order to prevent him from fleeing. It will therefore examine the case under Article 2 § 2 (b), which authorises the use of force which is no more than absolutely necessary "to prevent the escape of a person lawfully detained". The general principles governing such situations have been summarised in paragraphs 93-97 of the Court's judgment in *Nachova and Others v. Bulgaria* ([GC], nos. 43577/98 and 43579/98, ECHR 2005-VII).

(a) The relevant legal framework

56. In the previous similar case of *Tzekov*, the Court noted with concern that section 42(1)(4) of the 1993 National Police Act allowed that police to use firearms to effect an arrest, regardless of the seriousness of the offence which the person concerned was suspected of having committed or the danger which he or she represented. Under that provision, police officers could legitimately fire upon any person who did not stop after being warned and a simple warning was apparently sufficient for the prosecuting authorities and the courts to find that the use of firearms had been "a means of last resort" within the provision's meaning. The Court further noted that until 2003 the wording of section 80(1)(4) of the 1997 Ministry of Internal Affairs Act had remained identical (see *Tzekov v. Bulgaria*, no. 45500/99, §§ 28, 29 and 54, 23 February 2006).

57. In the present case, the provision governing the actions of the officer who shot Mr Karandja was section 42(1)(5) of the 1993 National Police Act, which allowed the police to use firearms to prevent the escape of any individual detained for having committed a publicly prosecutable offence (see paragraphs 25 and 44 above). Much like section 42(1)(4), it treated as completely irrelevant the seriousness of the offence in respect of which the detainee was being kept in custody or the danger which he or she represented. Moreover, a reading of the decisions of the military investigating and prosecuting authorities and the military court shows that they apparently considered that a verbal warning and the firing of warning shots were sufficient to find that the use of firearms was "a means of last resort" within the provision's meaning (see paragraphs 25, 27, 33, 36, 40, 41, 42 and 43 above). However, the mere failure of an individual who does

not otherwise appear dangerous to heed a verbal warning or stop after the firing of warning shots cannot serve as a basis for the use of deadly force against him or her (see *Kakoulli v. Turkey*, no. 38595/97, § 118 and 119, 22 November 2005).

58. It is true that, unlike the situation in *Tzekov* (ibid., § 55), in the present case the military prosecuting authorities and the military court referred to the new Article 12a of the Criminal Code which defines the situations in which it is permissible to cause harm in order to effect an arrest (see paragraphs 41, 42, 43 and 46 above) (although it came into force two months after the incident). However, without explaining why and in apparent contradiction with the provision's plain textual meaning, they construed it as allowing the police to use firearms to arrest an escaping detainee. It is not the Court's role to question the correctness of that interpretation; it must base its examination on the provisions of the domestic law as they were applied by the national authorities (see, *mutatis mutandis*, *Minelli v. Switzerland*, 25 March 1983, § 35, Series A no. 62, and *Vasilescu v. Romania*, 22 May 1998, § 39, *Reports of Judgments and Decisions* 1998-III).

59. In view of the foregoing, the Court cannot but confirm the conclusion that it reached in *Tzekov*: the legal provisions governing the use of firearms by the police in respect of individuals fleeing from detention, as interpreted and applied in the present case, were fundamentally insufficient to protect those concerned against unjustified and arbitrary encroachments on their right to life (see, *mutatis mutandis*, *Tzekov*, cited above, § 56, and *Nachova and Others*, cited above, §§ 99 and 100, concerning the use of firearms by the military police). As the Court explained in *Nachova and Others*, the legitimate aim of effecting a lawful arrest can only justify putting human life at risk in circumstances of absolute necessity; there is no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost. The principle of strict proportionality inherent in Article 2 requires the national legal framework regulating arrest operations to make recourse to firearms dependent on a careful assessment of the surrounding circumstances, and, in particular, on an evaluation of the nature of the offence committed by the fugitive and of the threat he or she posed. Furthermore, the national law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accident. In particular, law enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect

for human life as a fundamental value (see *Nachova and Others*, cited above, §§ 94-97, with further references).

60. The Court notes with concern that identical provisions continue to be in force until the present day (see paragraph 45 above).

(b) The actions of the police

61. While the Court accepts that Mr Karandja was trying to escape from lawful detention, it observes that it was never suggested that the police had reason to believe that he had committed a violent offence, was dangerous, or, if not prevented from fleeing, would represent a danger to them or third parties (see, by comparison, *mutatis mutandis*, *Juozaitienė and Bikulčius v. Lithuania*, nos. 70659/01 and 74371/01, §§ 79 and 80, 24 April 2008). The Court does not overlook the fact that Mr Karandja was killed during an unplanned operation that gave rise to developments to which the police had to react fast and without prior preparation, and understands that the authorities' obligations under Article 2 must be interpreted in a way which does not impose an impossible burden on them (see *Tzekov*, cited above § 61, with further references). Nevertheless, it cannot accept that in the circumstances of the present case the police could reasonably have believed that Mr Karandja – who had been detained in connection with two non-violent offences, the first of which he committed while he was still a minor (see paragraph 6 above) – was dangerous and that they needed to use firearms to immobilise him. The Court considers that in those circumstances any resort to potentially deadly force was prohibited by Article 2, regardless of the risk that Mr Karandja might escape. Recourse to such force cannot be considered as "absolutely necessary" where it is known that the person to be prevented from escaping poses no threat to life or limb and is not suspected of having committed a violent offence (see *Nachova and Others*, § 107, and *Tzekov*, §§ 63 and 64, both cited above).

62. Moreover, the available evidence – chiefly the presence near the scene of a patrol car and of other officers who did not take part in the chase (see paragraphs 12 and 13 above) – suggests that the police could have tried to prevent Mr Karandja from escaping without using firearms.

(c) The Court's conclusion

63. In sum, the Court finds that the respondent State failed to comply with its obligations under Article 2 of the Convention in that the legal provisions governing the use of firearms by the police were flawed and in that Mr Karandja was shot in circumstances in which the use of firearms was incompatible with that provision.

2. Whether the investigation was effective

64. The relevant principles governing the obligation to investigate the use of deadly force by State agents have been summarised in paragraphs 110-13 of the Court's judgment in *Nachova and Others* (cited above).

65. The first thing to be noted in the present case is that the investigation limited itself to assessing the lawfulness of Chief Sergeant G.P.'s conduct in the light of section 42(1)(5) of the 1993 National Police Act, as construed by the military investigating and prosecuting authorities and the military court (see paragraphs 25, 27, 33, 36, 40, 41, 42 and 43 above). By basing themselves on the strict letter of that provision and on their interpretation of Article 12a of the Criminal Code (see paragraphs 41, 42, 43 and 46 above), the military investigating and prosecuting authorities and the military court disregarded highly material circumstances, such as the facts that the Sergeant had no reason to believe that Mr Karandja represented a danger to anyone, that other ways of preventing Mr Karandja from fleeing might have existed, and that it was questionable whether the Sergeant was at all entitled to use a firearm to prevent him from escaping. That approach fell short of the requirements of Article 2 (see *Nachova and Others*, § 114, and *Tzekov*, § 71, both cited above, as well as, *mutatis mutandis*, *Ivan Vasilev v. Bulgaria*, no. 48130/99, §§ 77-79, 12 April 2007).

66. The Court further observes that despite a prompt initial reaction by the investigating authorities, it then took more than ten months for the official investigation to get under way (see paragraphs 17 and 21 above). It does not seem that any serious effort was made to identify civilian eyewitnesses and take statements from them, or to find the spent cartridges from all the shots fired by Chief Sergeant G.P. Without the information that such steps could have yielded, it was not possible to check the Sergeant's account of the events, which was all the more important in view of the discrepancy between, on the one hand, his assertion that he had fired several shots, confirmed by the testing of his handgun, and, on the other hand, the fact that the gunshot residue test had turned out negative (see paragraphs 11 and 24 above). Nor did the authorities try to identify – through a ballistics test or other means – the Sergeant's and Mr Karandja's exact positions at the time of the shooting. This made it impossible to determine why, if the Sergeant had been aiming for Mr Karandja's knees (see paragraphs 17 *in fine* and 22 above), he ended up shooting him in the back of the head. That important question was only addressed, very briefly, in the military court's decision (see paragraph 43 above). Lastly, it does not seem that any measures were taken to prevent the opportunities for collusion between the officers involved (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 330, ECHR 2007-...). Against that background, the Court can only reiterate that a prompt and effective response by the authorities in investigating the use of lethal force is essential in maintaining public

confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Nachova and Others*, cited above, § 118).

67. The Court further notes that for more than two years the investigating authorities failed properly to acquaint the applicant with the results of the investigation (see paragraphs 26, 27, 31, 34 and 37 above) and that, as a result of the automatic system for reviewing discontinuance which was in force between January 2000 and May 2001 (see paragraphs 47-49 above), the applicant was ultimately unable effectively to challenge the investigation's findings (see, by contrast, *McShane v. the United Kingdom*, no. 43290/98, § 118, 28 May 2002). The opportunity to lodge objections with the investigator was clearly insufficient in that regard because it was the investigator himself who had responded to them and because they did not alter in the slightest his final proposal to the prosecuting authorities (see paragraphs 38-40 above). In those circumstances, and given the applicant's close and personal concern with the subject matter of the investigation, the Court finds that she cannot be regarded as having been involved in the procedure to the extent necessary to safeguard her legitimate interests.

68. In view of the foregoing, the Court concludes that the investigation into the death of Mr Karandja fell foul of the requirements of Article 2 of the Convention. There has therefore been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

69. The applicant complained that she had not had an effective domestic remedy in respect of the breaches of Article 2. She relied on Article 13 of the Convention, which provides as follows:

> "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."

70. The Government stated that they had left it to the Court to assess the well foundedness of the complaints.

71. The applicant submitted that the inadequacy of the investigation into her son's death had deprived her of any effective remedy in that respect.

72. 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, the Court considers that it is not necessary to examine whether there has also been a violation of Article 13 (see, among other authorities, *Nachova and Others*, cited above, § 123).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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. Pecuniary damage

74. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage. She submitted that, being handicapped and having difficulties in taking care of herself, she needed financial and personal assistance for her daily needs. However, the death of her son at the age of twenty, when he was about to start work and support her, had deprived her of such assistance. In the particular circumstances, she was unable to provide documents to corroborate her claim. However, it would be unfair to assume that a son would not provide help and assistance to his sick mother. The applicant therefore asked the Court to rule on her claim in equity. Alternatively, she invited the Court to base the award in respect of loss of income on 30% of the average salary which her son would have received for fifteen years – the period during which she could have reasonably expected to receive financial assistance from him. According to official statistics, the average monthly salary in Bulgaria was 460 Bulgarian levs which, in the applicant's view, was equivalent to EUR 230. The resulting sum for fifteen years was EUR 12,420.

75. The Government did not comment on the applicant's claim.

76. According to the Court's established case-law there must be a clear causal connection between the damages claimed by an applicant and the violation or violations found. This may, in appropriate cases, include compensation in respect of loss of earnings (see, among other authorities, *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 125 *in limine*, ECHR 2007-IX, and *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 82 *in limine*, 20 December 2007). In the present case, the Court has found that the authorities were liable under Article 2 for the death of the applicant's son. It also notes that her assertion that her son would have been providing for her financially was not disputed by the Government. In those circumstances, the Court sees no reason to doubt the existence of a sufficient causal link between the breach of Article 2 and the applicant's loss of financial support (see *Nachova and Others*, cited above, § 171, and *Beker v. Turkey*, no. 27866/03, § 62, 24 March 2009). However, there is no evidence as to Mr Karandja's actual income, if any (see *Nehyet Günay and Others v. Turkey*, no. 51210/99, § 122, 21 October 2008), and the method

used by the applicant to calculate the loss of financial support is far from precise. The calculations submitted by her are based on the assumption that her son would have had a stable income for fifteen years. Various eventualities, such as unemployment or incapacity to work, have not been taken into account (see *Sangariyeva and Others v. Russia*, no. 1839/04, § 128, 29 May 2008), nor has the applicant presented an actuarial report. The Court is therefore obliged to deal with her claim on an equitable basis (see *Velikova v. Bulgaria*, no. 41488/98, § 102, ECHR 2000-VI, and *Nikolova and Velichkova*, cited above, § 82). Indeed, in cases such as the present one a precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by the applicant may be prevented by the inherently uncertain character of the damage flowing from the violation. The question to be decided in such cases is the level of just satisfaction, which is a matter to be determined by the Court at its discretion, having regard to what is equitable (see *Nachova and Others*, cited above, § 171, with further references).

77. Having regard to all relevant factors, including the facts that the victim was the applicant's only child, that he was twenty years old at the time of his death, and that the applicant is a widow and is handicapped, the Court considers it appropriate to award EUR 10,000, plus any tax that may be chargeable.

B. Non-pecuniary damage

78. The applicant claimed EUR 25,000 in respect of non-pecuniary damage. She submitted that her son's death had caused her great pain and suffering because the two of them had been living together and, as a result of her illness, she had been dependent on him for financial and moral support. She had suffered additional frustration on account of the way in which the authorities had conducted their investigation into the death and of the flawed manner in which Bulgarian law regulated the use of firearms by the police.

79. The Government did not comment on the applicant's claim.

80. The Court considers that the applicant must have suffered considerably as a result of the serious violations of her rights under Article 2. Ruling in equity, as required under Article 41, it awards the amount claimed by her – EUR 25,000 – in full. To that amount is to be added any tax that may be chargeable.

C. Costs and expenses

81. The applicant sought reimbursement of EUR 300 incurred in fees for the work of her lawyer in the domestic proceedings and of EUR 3,400

incurred in fees for the work of the same lawyer in the proceedings before the Court. She requested that any amount awarded be made payable directly to her legal representative.

82. The Government did not comment on the applicant's claim.

83. According to the Court's case-law, costs and expenses can be awarded under Article 41 only if it is established that they were actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 3,300, plus any tax that may be chargeable to her. That amount is to be paid into the bank account of the applicant's legal representative, Mr Y. Grozev.

D. Default interest

84. 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 death of the applicant's son;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the respondent State's obligation to conduct an effective investigation into the circumstances in which the applicant's son lost his life;

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

5. *Holds*

(a) that the respondent State is to pay the applicant, 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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 3,300 (three thousand three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's legal representative, Mr Y. Grozev;

(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;

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

Done in English, and notified in writing on 7 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President