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

FIFTH SECTION

CASE OF KARAMITROV AND OTHERS v. BULGARIA

(Application no. 53321/99)

JUDGMENT

STRASBOURG

10 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 Karamitrov and Others v. Bulgaria,

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

Peer Lorenzen, *President*,
Snejana Botoucharova,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Javier Borrego Borrego,
Renate Jaeger, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 4 December 2007,

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

PROCEDURE

1. The case originated in an application (no. 53321/99) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Bulgarian nationals, who were members of one family, on 7 September 1999. The first, Mr Victor Petrakiev Karamitrov was born in 1965 and lives in Pazardzhik (the "first applicant"). The second, Mrs Evgenia Radionova Karamitrova was born in 1938 and lives in Pazardzhik (the "second applicant"). The third, Mr Petraki Iordanov Karamitrov was born in 1928, lived in Pazardzhik and died in 2000 (the "third applicant"). In a letter of 2 June 2004 the first applicant informed the Court that he wished to continue the application in respect of his father's complaints.

2. The applicants were represented by Mr V. Stoyanov, a lawyer practising in Pazardzhik.

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

4. The first applicant alleged that the length of the criminal proceedings against him was excessive and that he lacked an effective remedy to speed them up and to have the case brought before a court. The second and third applicants complained that their car had been illegally seized and impounded, that it had been held as evidence for the duration of the criminal proceedings against the first applicant, that they had been deprived of their possession during that period, and that after the vehicle was returned to them they had not been able to obtain adequate compensation for the damage caused as a result of the aforesaid.

5. In a decision of 9 February 2006 the Court joined to the merits the question of exhaustion of domestic remedies in respect of the applicants' respective complaints and declared the application admissible.

6. The applicants and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings against the first applicant

7. On the night of 14 October 1991 a car was stolen from an unsecured car park. Early in 1992 a preliminary investigation in respect of the theft was opened against an unknown perpetrator.

8. On 28 May 1992 the first applicant was stopped by the police while driving the car of his parents – the second and third applicants. The police established a discrepancy between the numbers on the chassis of the vehicle and those in the registration documents of the vehicle which had been issued by the Pazardzhik Traffic Police on 17 July 1973. They seized and impounded the car in order to check its registration documents and ownership. The first applicant was questioned regarding the discrepancy in the car's registration documents both on the above date and on 4 June 1992.

9. The investigating authorities commissioned a technical examination of the seized vehicle. In a report of 14 April 1993 the technical expert concluded that the number plate on the chassis of the car was not the original, but had been changed.

10. On 8 June 1993 the first applicant was charged with being an accessory to the theft of the car on 14 October 1991. He was questioned on the same day and then released. A restriction was imposed on the first applicant, not to leave his place of residence without the consent of the Prosecution Office.

11. No further investigative procedures were conducted in the course of the preliminary investigation.

12. On 3 April 1995 the first applicant complained to the Pazardzhik District Prosecution Office about the length of the criminal proceedings. He did not receive a response.

13. Subsequently, the first applicant lodged similar complaints with the Pazardzhik District Prosecution Office, the Pazardzhik Regional Prosecution Office, the Plovdiv Appellate Prosecution Office and the Chief

Prosecutor about the length of the criminal proceedings. He did not receive a response to any of them.

14. Sometime in 1998 the investigator in charge of the preliminary investigation died, while the assistant investigator retired. The first applicant's case was never reassigned to another investigator.

15. Sometime in September 1999 the first applicant lodged another complaint about the length of the criminal proceedings with the Supreme Cassation Prosecution Office. In response, the Plovdiv Appellate Prosecution Office was instructed to investigate the first applicant's complaint.

16. In a decision of 20 October 1999 of the Pazardzhik District Prosecution Office the preliminary investigation was discontinued in respect of the first applicant as unproven. The restriction on the first applicant not to leave his place of residence without the consent of the Prosecution Office was removed.

17. The criminal proceedings continued, against an unknown perpetrator, until 27 September 2004 when the Pazardzhik District Prosecution Office terminated them due to the expiry of the statute of limitations for the offence. In its decision, the Prosecution Office expressly noted that no investigative procedures had been conducted in the proceedings after 8 June 1993, the date on which the first applicant was arrested and charged.

B. The seizure, impounding and return of the car

18. The car was seized and impounded by the police on 28 May 1992 in order to check its registration documents and ownership. No protocol of seizure was prepared and the second and third applicants were not given a receipt or any other document evidencing the impounding of the vehicle.

19. The car remained impounded by the police for the duration of the preliminary investigation against the first applicant as physical evidence of the offence.

20. On 9 November 1994 the person from whom the car had allegedly been stolen on 14 October 1991 requested possession of the vehicle.

21. The question of returning the vehicle to the second and third applicants was raised by the first applicant in his complaints regarding the length of the criminal proceedings lodged with the Pazardzhik District Prosecution Office on 3 April 1995, the Supreme Cassation Prosecution Office on 19 October 1999 and the Chief Prosecutor in September 1999. No action was taken in response to any of them.

22. In its decision of 20 October 1999 to terminate the criminal proceedings against the first applicant the Pazardzhik District Prosecution Office noted that no protocol or other document existed to show "who, when, why and how" the vehicle of the second and third applicants had been

seized and impounded. Nevertheless, the Prosecution Office ordered that the car be handed over to the person from whom it had allegedly been stolen on 14 October 1991 because it considered that, *inter alia*, on the basis of the investigative procedures performed during the preliminary investigation she was the owner of the vehicle. The applicants appealed against the decision in respect of the order to hand over the car to another person.

23. On an unspecified date the police handed over the car of the second and third applicants to the person from whom it had allegedly been stolen.

24. In a decision of 10 November 1999 the Pazardzhik Regional Prosecution Office upheld the decision of the Pazardzhik District Prosecution Office on grounds similar to those contained in the latter's decision. The applicants appealed further.

25. On 18 November 1999 the Plovdiv Appellate Prosecution Office quashed the above decisions of the lower-level Prosecution Offices. It found, *inter alia*, that it was not within their competencies to determine the ownership of the vehicle and, in view of the termination of the preliminary investigation against the first applicant, the car had to be returned to the persons from whom it had been seized. It further found that the seizure of the vehicle and the resulting impounding had been unlawful because at the time the seizure had been made no protocol to that effect had been executed. The person to whom the car had been handed over appealed against the decision.

26. In a decision of 10 March 2000 the Supreme Cassation Prosecution Office upheld the decision of the Plovdiv Appellate Prosecution Office on grounds similar to those contained in the latter's decision.

27. The car was returned to the second and third applicants on 19 May 2000. As a result of the period of impounding it had been damaged – its paintwork had deteriorated and the radiator was cracked. Parts of the car were also missing, such as two spark plugs and cables, the left headlight, the spare tyre, the indicators, the cover of the right back brake light, the door handles and other things. They estimated the damage to be worth around 100 Bulgarian levs (approximately 51 euros). The first applicant, who signed the protocol of transfer, made a reservation that he would make a further assessment of the damage caused to the vehicle and that a subsequent claim might be filed against the District Prosecution Office in that respect.

28. The second and third applicants did not initiate any action to seek compensation for the alleged damage caused to the vehicle.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure (1974)

29. Paragraphs 1, 2 and 4 of Article 107 of the Code of Criminal Procedure (1974) provided as follows:

> "(1) Physical evidence must be carefully examined, described in detail in the respective record, and photographed, if possible.
>
> (2) Physical evidence shall be attached to the case file while at the same time measures shall be taken not to spoil or alter the evidence.
>
> ...
>
> (4) Physical evidence which, because of its size or other reasons, cannot be attached to the case file, must be sealed, if possible, and deposited for safekeeping at the places indicated by the respective authority."

30. Paragraphs 1 and 2 of Article 108 of the Code, as in force at the relevant time and until 1 January 2000, provided as follows:

> "(1) Physical evidence shall be held until the termination of the criminal proceedings.
>
> (2) Chattels which have been collected as physical evidence can be returned to their owners before the termination of criminal proceedings only as long as this will not hinder the establishment of the facts in the case."

31. Article 108 paragraph 2 of the Code was amended on 1 January 2000 to clarify that it was within the powers of the Prosecution Office to rule on requests for the return of chattels held as physical evidence. In addition, a right of appeal to a court was introduced against refusals by the Prosecution Office to return such chattels (Article 108 paragraph 4 of the Code of Criminal Procedure as in force after 1 January 2000).

32. If a dispute over ownership requiring adjudication by the civil courts arose in respect of items held as physical evidence, the authorities were obliged to keep those items safe until the relevant judgment became final (Article 110).

33. The Code of Criminal Procedure (1974) was replaced in 2006 by a new code of the same name.

B. State and Municipalities' Responsibility for Damage Act (1988)

34. Section 1 (1) of the State and Municipalities' Responsibility for Damage Act of 1988 (the "SMRDA": title changed in 2006) provided, as in force at the relevant time, as follows:

"The State shall be liable for damage caused to [private persons] from unlawful acts, actions or inactions of its apparatus and officials [in the exercise] of administrative duties."

35. Section 2 of the SMRDA provides as follows:

"The State shall be liable for damage caused to [private] persons by the [apparatus] of ... the investigation authorities, the prosecution authorities, the court ... for an unlawful:

1. detention ... ;

2. charge for an offence, if the person has been acquitted or the opened criminal proceedings have been terminated because the act was not perpetrated by the person [in question] or the act is not an offence ... ;

3. sentence ... ;

4. ... forced medical treatment ... ;

5. ... imposition of administrative sanctions ... ;

6. enforcement of an imposed sentence in excess of the determined period ... "

36. Compensation awarded under the Act comprises all pecuniary and non-pecuniary damage which is the direct and proximate result of the illegal act of omission (section 4). The person aggrieved has to lodge an "action ... against the [entity] ... whose illegal orders, actions, or omissions have caused the alleged damage" (section 7). Compensation for damage arising from instances falling under section 1 and 2 of the Act can only be sought under the Act and not under the general rules of tort (section 8 § 1).

37. The practice of the Bulgarian courts in the application of the Act has been very restrictive.

38. In particular, the domestic courts have ruled that liability for damage stemming from instances within the scope of section 1 of the Act are to be examined only under the Act and not under the general rules of tort (решение № 55 от 14.III.1994 г. по гр.д. № 599/93 г., ВС, IV г.о.).

39. Similarly, liability of the investigation and the prosecution authorities may arise only in respect of the exhaustively listed instances under section 2 (1) and (2) of the Act and not under the general rules of tort (решение № 1370 от 16.XII.1992 г. по гр.д. № 1181/92 г., IV г.о. and Тълкувателно решение № 3 от 22.04.2005 г. по т. гр. д. № 3/2004 г., ОСГК на ВКС). No reported cases have been identified of successful claims for damage stemming from actions by the investigation or prosecution authorities which fall outside the list in section 2 of the Act.

40. Liability under section 2 of the Act may arise only for unlawful actions, but not for unlawful inactions by the investigation authorities, the prosecution authorities and the courts (решение № 183 от 05.IV.2001 г. по гр. д. № 1362/2000 г.).

41. Up to 2005 there existed conflicting domestic case law as to whether liability of the State arose under section 2 (2) of the Act in instances, such as in the present case, when criminal proceedings were discontinued as "unproven" (решение от 04.02.2003 г. по въззивно гр. д. № 1538/2002 г. на ПАС and решение № 1085 от 26.07.2001 г. по гр. д. № 2263/2000 г., IV г.о.). The issue was clarified by the General Assembly of the Civil Chambers of the Supreme Court of Cassation in Interpretative decision no. 3/2004 of 22 April 2005 (Тълкувателно решение № 3 от 22.04.2005 г. по т. гр. д. № 3/2004 г., ОСГК на ВКС) which found that section 2 (2) of the Act was applicable in such instances.

42. The Government presented two hundred and one judgments under the SMRDA where the domestic courts had found the State liable to pay damages to claimants. Of these cases (a) thirty-seven judgments were based on section 2 (2) of the Act and related to being unlawfully charged with an offence; (b) forty-seven were based on section 1 of the Act relating to unlawful acts by the administration; (c) a further one hundred and one were also based on section 1 of the Act but stemmed from unlawful actions or inactions by the administration; and (d) sixteen cases related to more specific complaints falling under Article 3 and 5 of the Convention.

43. In their submissions, the Government stressed the existence of a judgment delivered by the Pazardzhik District Court on 14 December 2005. In that case the domestic court had ordered the Pazardzhik District Police Authority to pay compensation for the pecuniary damage suffered by a claimant as a result of the former's inactivity in keeping safe a vehicle seized as physical evidence in a case. A related claim in respect of non-pecuniary damage had been dismissed and the Prosecution Office had also been ordered to pay the claimant compensation for the non-pecuniary damage suffered as a result of being unlawfully charged with an offence.

44. In their submissions in reply, the applicants informed the Court of the subsequent development of the above-mentioned case. The judgment relied on by the Government had been appealed against both by the Pazardzhik District Police Authority and the Prosecution Office. The Pazardzhik Regional Court examined the appeal and delivered a final judgment on 10 June 2006. It quashed the first-instance court's judgment in respect of the liability of the Pazardzhik District Police Authority for the damage to the claimant's vehicle as it found that the police's actions, or inactions, as they related to the safekeeping of a vehicle as physical evidence, did not fall within the definition of "administrative duties" under section 1 nor under any of the instances under section 2 of the Act. Thus, the police could not be held liable for their actions or inactions in similar such instances. Separately, the Pazardzhik Regional Court upheld the first-instance court's judgment against the Prosecution Office.

C. The Obligations and Contracts Act

45. The Obligations and Contracts Act provides in section 45 that a person who has suffered damage can seek redress by bringing a civil action against the person who has, through his fault, caused the damage. Under section 110 the claim for damage is extinguished with the expiry of a five year prescription period.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

46. The first applicant complained of the excessive length of the criminal proceedings against him and the lack of an effective remedy relating thereto.

In its admissibility decision of 9 February 2006 the Court considered that these complaints fall to be examined under Articles 6 § 1 and 13 of the Convention, which provide, as relevant:

Article 6 (right to a fair hearing)

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

Article 13 (right to an effective remedy)

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

A. The Government's preliminary objection

47. The Government submitted that the first applicant had failed to exhaust the available domestic remedies. They claimed that he should have initiated an action under the SMRDA and should have sought compensation for all pecuniary and non-pecuniary damage which was the direct and proximate result of the alleged violation. The Government referred to the practice of the domestic courts in similar cases (see paragraphs 34-44 above).

48. The first applicant replied that the Government had failed to substantiate their objection because they had failed to show that an action

under the SMRDA was an effective remedy for his complaint of the excessive length of the criminal proceedings against him and, therefore, that it was required of him to have exhausted it. He submitted that the violations complained of could neither be established nor compensated under the SMRDA.

49. In its admissibility decision of 9 February 2006 the Court found that the question of exhaustion of domestic remedies was so closely related to the merits of the first applicant's complaint that he lacked an effective remedy for the excessive length of the criminal proceedings against him that it could not be detached from it, and therefore joined the Government's objection to the merits (see paragraph 5 above).

Accordingly, the Court will examine the Government's objection in the context of the merits of the first applicant's complaint that he lacked an effective remedy for the excessive length of the criminal proceedings.

B. Period to be taken into consideration

50. The Court finds that the period to be taken into consideration lasted from 8 June 1993 when the first applicant was arrested and charged (see paragraph 10 above) to 20 October 1999 when the preliminary investigation was discontinued in respect of him as unproven (see paragraph 16 above).

51. This is a period of six years, four months and thirteen days during which the criminal proceedings remained at the preliminary investigation stage and no investigative procedures, whatsoever, had been performed after the initial arrest (see paragraph 17 above).

C. The parties' submissions

52. The Government simply reiterated their assertion that the first applicant had failed to exhaust the available domestic remedies. They claimed that he could have initiated an action against the State under section 2 (2) of the SMRDA, which they considered to be an effective remedy. The Government referred in this respect to the alleged persistent practice of the domestic courts and the finding of the Court in the inadmissibility decision in the case of *Ekimdjiev v. Bulgaria* (no. 47092/99, 3 March 2005).

53. The first applicant disagreed with the Government and noted that the Pazardzhik District Prosecution Office, in its decision of 27 September 2004, had established that that no investigative procedures had been conducted in the course of the preliminary investigation after 8 June 1993, the date on which he was arrested and charged (see paragraph 17 above). Subsequently, for the next six and half years nothing had been done, but the restriction on his movements had been maintained and he remained concerned and anxious as to the possible outcome of the proceedings. In

respect of the Government's assertion that section 2 (2) of the SMRDA was a remedy that should have been exhausted, the first applicant claimed that at the relevant time there was no possibility of claiming damages in instances when the criminal proceedings were terminated as unproven (see paragraph 41 above) and, moreover, that this would not have remedied his complaint in respect of the excessive length of the proceedings. Thus, he considered the aforesaid provision not to have been an available effective remedy which he should have exhausted.

D. Compliance with Article 6 § 1 of the Convention regarding the length of the criminal proceedings

54. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

55. Having examined all the material before it and noting the Government's failure to submit observations on the merits of the complaint, the Court finds that no facts or arguments capable of persuading it that the length of the criminal proceedings in the present case was reasonable have been put forward. In particular, the criminal proceedings against the first applicant lasted six years, four months and thirteen days, remained at the preliminary investigation stage for the whole of that period (see paragraph 16 above) and, most notably, no investigative procedures whatsoever had been undertaken (see paragraph 17 above).

56. Thus, having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

E. Compliance with Article 13 in conjunction with Article 6 § 1 of the Convention regarding the availability of an effective remedy

57. The Court reiterates that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 of the Convention to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

58. The Court notes that in similar cases against Bulgaria it has found that at the relevant time there was no formal remedy under Bulgarian law that could have expedited the determination of the criminal charges against the first applicant (see *Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00

and 59901/00, §§ 38-42, 23 September 2004; and *Sidjimov v. Bulgaria*, no. 55057/00, § 41, 27 January 2005). The Court sees no reason to reach a different conclusion in the present case.

59. As regards compensatory remedies and the Government's preliminary objection, the Court observes that they submitted that the applicant had failed to exhaust an available domestic remedy under section 2 (2) of the SMRDA and referred to the existing possibility therein to obtain redress for having been unlawfully charged with an offence. They did not, however, indicate how that would have remedied the complaint currently before this Court in respect of the alleged excessive length of the criminal proceedings. Moreover, the Government failed to present copies of domestic court judgments where awards had been made under the SMRDA providing redress for excessive length of criminal proceedings. Likewise, the Court's findings in the case of *Ekimdjiev* (cited above) did not relate to the possibility of obtaining redress for excessive length of criminal proceedings.

60. In view of the aforesaid, the Court does not find it proven by the Government that in the circumstances of the present case an action under the SMRDA would have provided for an enforceable right to compensation which could be considered an effective, sufficient and accessible remedy in respect of the applicant's complaint in respect of the alleged excessive length of the criminal proceedings (see, likewise, *Osmanov and Yuseinov*, cited above, §41; *Sidjimov*, cited above, § 42, and *Nalbantova v. Bulgaria*, no. 38106/02, § 36, 27 September 2007).

61. Accordingly, there has been a violation of Article 13 of the Convention in that the applicant had no effective domestic remedy for his complaint under Article 6 of the Convention that the length of the criminal proceedings against him was excessive.

It follows that the Government's preliminary objection (see paragraphs 47-49 above) must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION AND ARTICLE 13 OF THE CONVENTION

62. The second and third applicants complained under several provisions of the Convention regarding the unlawful seizure and prolonged impounding of their vehicle and the lack of effective remedies relating thereto.

In its admissibility decision of 9 February 2006 the Court considered that these complaints fall to be examined under Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention. In respect of the latter, the Court found that the second and third applicants complained of the lack of a substantive right of action under domestic law rather than of the existence of procedural bars preventing or limiting the possibilities of bringing potential

claims to court. Thus, it considered that their complaint should be examined under Article 13 of the Convention in respect of the alleged lack of effective domestic remedies against the interference with their right to peaceful enjoyment of their possession, rather than under Article 6 of the Convention as an access to court issue (see, *mutatis mutandis*, *Fayed v. the United Kingdom*, judgment of 21 September 1994, Series A no. 294 B, p. 49, § 65).

Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention provide as follows:

Article 1 of Protocol No. 1 (protection of property)

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 13 (right to an effective remedy)

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

A. The Government's preliminary objection

63. The Government submitted that the second and third applicants had failed to exhaust the available domestic remedies. They claimed that they should have initiated an action under the SMRDA and should have sought compensation for all pecuniary and non-pecuniary damage which was the direct and proximate result of the alleged violations. The Government referred to the practice of the domestic courts in similar cases (see paragraphs 34-44 above).

64. The Government also considered that they could have initiated a tort action and could have sought compensation for damage from the persons responsible for the alleged violations (see paragraph 45 above). They referred to the rebuttable presumption of guilt of the respondent in such actions and that claimants need only prove the size of the pecuniary and non-pecuniary damage suffered, such as, for example, for loss of value, loss of income and amortisation of a vehicle.

65. The second and third applicants replied that the Government had failed to substantiate their objection because they had failed to show that the

suggested remedies were effective and, therefore, that it was required of them to have exhausted them. They submitted that the violations they complained of could not be compensated under the SMRDA and referred to the restrictive interpretation of the domestic courts in respect of the liability of the investigation authorities, the prosecution authorities and the courts (see paragraph 37-40 above).

66. In respect of the Government's assertion that they could have initiated a tort action against the persons responsible, the second and third applicants responded that that was not an effective remedy either. In particular, they referred to the fact that no protocol or other document had been executed for the seizure and impounding of their vehicle. Neither had they received any responses to the numerous complaints they had lodged with the Prosecution Office. Accordingly, they could never have designated a respondent party in such a tort action. They also noted that the investigator in charge of the preliminary investigation had died in 1998 and, in addition, that the investigation and prosecution authorities enjoyed immunity from civil prosecution stemming from their official activities.

67. In its admissibility decision of 9 February 2006 the Court found that the question of exhaustion of domestic remedies was so closely related to the merits of the second and third applicants' complaint that they lacked effective remedies in respect of the alleged interference with their right to peaceful enjoyment of their possession that it could not be detached from it, and therefore joined the Government's objection to the merits (see paragraph 5 above).

Accordingly, the Court will examine the Government's objection in the context of the merits of the second and third applicants' complaint that they lacked effective remedies in respect of the alleged interference with their right to peaceful enjoyment of their possession.

B. The parties' submissions

68. The Government simply reiterated their assertion that the second and third applicants had failed to exhaust the available domestic remedies. They claimed that they could have initiated an action against the State under the SMRDA, which they considered to be an effective domestic remedy. In particular, the Government referred to the judgment of the Pazardzhik District Court of 14 December 2005 which found the Pazardzhik District Police Authority liable for damage suffered by a claimant as a result of the former's inactivity in keeping safe a vehicle seized as evidence in a case (see paragraph 43 above).

69. In their reply, the second and third applicants observed that the Government had not challenged their assertion that the authorities had seized and held their vehicle for a considerable length of time in violation of the applicable legislation. Thus, they argued that the interference with their

right to peaceful enjoyment of their possession had been unlawful and, therefore, in contravention of Article 1 of Protocol No. 1 to the Convention.

70. In respect of the availability of an action against the State under the SMRDA and the domestic case law presented by the Government, the second and third applicants noted that the presented judgments dated from 2005-2006 or related to cases which were factually different from theirs. They also observed that the judgment of the Pazardzhik District Court of 14 December 2005, on which the Government relied so heavily, had been quashed on appeal in respect of the liability of the Pazardzhik District Police Authority. Moreover, the second and third applicants noted that in the final judgment of 10 June 2006 the Pazardzhik Regional Court had essentially found that the police could not be held liable under the SMRDA for actions or inactions relating to damaged items seized as physical evidence (see paragraph 44 above).

C. Compliance with Article 1 of Protocol No. 1 to the Convention

71. The Court notes at the outset that the second and third applicants' possession was seized by the authorities on 28 May 1992 while the Convention entered into force for Bulgaria more than three months later, on 7 September 1992. Thus, the act of the seizure itself falls outside the Court's jurisdiction *ratione temporis*.

However, the Court notes that the second and third applicants also complained that the authorities had held their vehicle unlawfully and that they were unable to retrieve and use it for a considerable length of time after the Convention entered into force for Bulgaria, which amounted to a continuing situation ending on 19 May 2000 (see, *mutatis mutandis*, *Loizidou v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2231-32, §§ 46 and 47, and *Vasilescu v. Romania*, judgment of 22 May 1998, Reports 1998 III, § 49).

The total period, therefore, during which they were denied use of the vehicle was seven years, eleven months and twenty-three days, of which seven years, eight months and twelve days was within the Court's competence *ratione temporis* (see, *mutatis mutandis*, *T.H. and S.H. v. Finland*, no. 19823/92, Commission decision of 9 February 1993, unreported).

72. In reiterating its case-law that the seizure of property for legal proceedings relates to the control of the use of property, the Court finds that this complaint falls within the ambit of the second paragraph of Article 1 of Protocol No. 1 to the Convention (see *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, § 27). Moreover, the seizure of the vehicle did not deprive the second and third applicants of their possession, but only prevented them from using it, because it was held as physical evidence in the course of the pending investigation into the theft of the car

(ibid.) and, more importantly, it was not within the powers of the Prosecution Office to determine the ownership of the vehicle, something which only the courts could do. In such case, it would be necessary to assess the lawfulness and purpose of the interference, as well as its proportionality.

73. The Court observes that in the present case the Plovdiv Appellate Prosecution Office on 18 November 1999 (see paragraph 25 above) and the Supreme Cassation Prosecution Office on 10 March 2000 (see paragraph 26 above) established that the interference with the second and third applicants' right to peaceful enjoyment of their possession was both unlawful and arbitrary because both the seizure, which falls outside the Court's competence *ratione temporis*, and the resulting prolonged impounding, which does not, were in violation of the applicable national law.

74. Thus, in view of the principle of subsidiarity inherent in the machinery of the Convention, the Court finds that the interference in question was incompatible with the second and third applicants' right to peaceful enjoyment of their possession under Article 1 of Protocol No. 1 to the Convention. There has, accordingly, been a violation of that provision.

This conclusion makes it unnecessary to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Iatridis v. Greece* [GC], no. 31107/96, §§ 58 and 62, ECHR 1999-II).

D. Compliance with Article 13 in conjunction with Article 1 of Protocol No. 1 to the Convention regarding the availability of an effective remedy

75. The Court notes that the complaint under Article 13 of the Convention arises out of the same facts as those to be examined when dealing with the Government's objection of non-exhaustion and the complaints under Article 1 of Protocol No. 1 to the Convention. However, there is a difference in the nature of the interests protected by Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention: the former affords a procedural safeguard, namely the "right to an effective remedy", whereas the procedural requirement inherent in the latter is ancillary to the wider purpose of ensuring respect for the right to the peaceful enjoyment of possessions. Having regard to the difference in purpose of the safeguards afforded by the two Articles, the Court judges it appropriate in the instant case to examine the same set of facts under both Articles (see *Iatridis*, cited above, § 65).

76. In the present case, the Court finds that at the relevant time national law did not provide for recourse to the domestic courts to challenge a decision by the Prosecution Office to continue to hold chattels seized as physical evidence in criminal proceedings (see paragraph 31 above). In so

far as the second and third applicants were not aware that their vehicle had been unlawfully seized and believed that it was being legally held as physical evidence in the criminal proceedings against the first applicant, it would be unreasonable to expect them to have initiated any other type of proceedings, such as *rei vindicatio* proceedings. The only possibility for them in such a case would have been to complain to the higher-level Prosecution Office, which the second and third applicants attempted on several occasions, but received no responses. It is true that the Prosecution Office eventually did find that the vehicle of the second and third applicants had been unlawfully seized and returned it to them, but that resulted from its decision to terminate the criminal proceedings against the first applicant rather than as a response to one of the many requests to return the car (see paragraphs 22-26 above).

77. In respect of the lack of compensation for the interference under Article 1 of Protocol No. 1 to the Convention, the Court notes that such a right is not inherent in the second paragraph of that provision regarding the control of the use of property (see *Banér v. Sweden*, no. 11763/85, Commission decision of 9 March 1989, DR 60, p. 128, at p. 142). Nor does Article 13 require that compensation be paid under all circumstances. However, the Court considers that in circumstances such as in the present case when the authorities seize and hold chattels as physical evidence the possibility should exist in domestic legislation to initiate proceedings against the State and to seek compensation for any damage resulting from the authorities' failure to keep safe the said chattels in reasonably good condition. This is especially true in instances when the interference itself is found to have been unlawful.

78. In the present case, the Court finds it unproven that at the relevant time domestic law provided the second and third applicants with the possibility to seek compensation for the damage to their vehicle as a result of the prolonged interference with their right to peaceful enjoyment of their possession. In particular, the Government failed to prove that at the relevant time an action under the SMRDA, or any other type of action for that matter, could be considered to be have been an effective remedy that should have been exhausted. Most notably even the much later judgment of the Pazardzhik District Court of 14 December 2005 was quashed in the relevant part on appeal and the Pazardzhik Regional Court found that the police could not be held liable under the SMRDA for actions or inactions relating to damaged items seized as physical evidence (see paragraph 44 above).

79. Accordingly, there has been a violation of Article 13 of the Convention in that at the relevant time the second and third applicants had no effective domestic remedy for their complaint under Article 1 of Protocol No. 1 to the Convention.

It follows that the Government's preliminary objection (see paragraph 63-67 above) must be dismissed.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicants did not submit a claim in respect of damage. Accordingly, the Court considers that there is no call to award them any sum on that account.

B. Costs and expenses

82. The applicants initially claimed 9,000 euros (EUR) for 180 hours of legal work by their lawyer before the Court, at an hourly rate of EUR 50. Subsequently, they claimed a further EUR 2,500 for 24 hours of legal work by their lawyer before the Court and for three hours of translation and technical work by their lawyer, at an hourly rate of EUR 100. The applicants submitted timesheets in support of their claims. They also requested that the costs and expenses incurred should be paid directly to their lawyer, Mr V. Stoyanov.

83. The Government did not submit comments on the applicants' claims for costs and expenses.

84. The Court reiterates that according to its case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. Noting all the relevant factors, the Court considers it reasonable to award the sum of EUR 2,000 in respect of costs and expenses, plus any tax that may be chargeable to the applicants on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that in respect of the first applicant there has been a violation of Article 6 of the Convention;

2. *Holds* that in respect of the first applicant there has been a violation of Article 13 in conjunction with Article 6 of the Convention and, accordingly, *dismisses* the Government's preliminary objection based on non-exhaustion of domestic remedies;

3. *Holds* that in respect of the second and third applicants there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that in respect of the second and third applicants there has been a violation of Article 13 in conjunction with Article 1 of Protocol No. 1 to the Convention and, accordingly, *dismisses* the Government's preliminary objection based on non-exhaustion of domestic remedies;

5. *Holds*
   (a) that the respondent State is to pay to the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement :
      (i) EUR 2,000 (two thousand euros) in respect of costs and expenses, payable into the bank account of the applicants' lawyer in Bulgaria, Mr V. Stoyanov;
      (ii) any tax that may be chargeable to the applicants on the above amount;
   (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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 10 January 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President