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

FIRST SECTION

CASE OF OGNYANOVA AND CHOBAN v. BULGARIA

(Application no. 46317/99)

JUDGMENT

STRASBOURG

23 February 2006

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 Ognyanova and Choban v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs S. BOTOUCHAROVA,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 2 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 46317/99) 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 Ms Zoya Kirilova Ognyanova and Ms Giulfere Yusein Choban, Bulgarian nationals of Roma ethnic origin who live in the village of Dabovo, Bulgaria ("the applicants"), on 17 November 1998.

2. The applicants were represented by Mr I. Dimitrov and Mr Y. Grozev, lawyers practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

3. The applicants alleged that Mr Zahari Alexandrov Stefanov, a person of Roma ethnic origin, de facto spouse of the first applicant and son of the second applicant, had died as a result of his ill-treatment by the police while in custody, and that the authorities had failed to conduct an effective investigation into the circumstances surrounding his death. They further alleged that Mr Stefanov's detention had been unlawful. Finally, they complained that they had not had effective remedies against the alleged violations of the Convention, and that the impugned events had been the result of discriminatory attitudes towards persons of Roma ethnic origin such as Mr Stefanov.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. By a decision of 6 January 2005 the Court (First Section) declared the application admissible.

7. The Government, but not the applicants, filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. At approximately 2 a.m. on 6 June 1993 Mr Stefanov died after having fallen the previous day from the window of room 36 on the third floor of the police station in the town of Kazanluk. Numerous injuries were found on his body. The ensuing investigation concluded that he had voluntarily jumped out of the window of the room where he had been brought for questioning, and that all his injuries had been the result of his fall. The applicants contested these conclusions.

A. The events of 4 and 5 June 1993

9. At an unknown time on 4 June 1993 Mr Stefanov, then aged twenty-three, was arrested by the police in the town of Muglizh. Another person, Mr D.O., also of Roma ethnic origin, was likewise taken into custody. According to a subsequent statement of Mr D.O., he had turned himself in, whereas according to a statement of lieutenant I.C., a police officer involved in these events (see paragraph 10 below), he had been arrested. Apparently Mr Stefanov and Mr D.O. were suspected of numerous thefts and burglaries committed in complicity. The two were brought to the Kazanluk police station either later that evening or the next morning. The applicants submitted that Mr Stefanov had been in good health at the time of his arrest. The Government did not contest this assertion.

10. The events of the next morning, as described hereafter, are only known from the statements of lieutenant I.C. and chief sergeant H.B., the two police officers who participated in the events, of Mr D.O., and partly from the statement of chief sergeant B.B., an officer guarding the cell block of the police station. Apparently the only eyewitnesses to what happened in room 36, from whose window Mr Stefanov fell to the ground, were lieutenant I.C., chief sergeant H.B. and Mr D.O.

11. Lieutenant I.C. arrived at the Kazanluk police station at approximately 10 a.m. on 5 June 1993 and first proceeded to question Mr D.O. about the thefts and burglaries allegedly committed by him and Mr Stefanov.

12. The questioning took place in lieutenant I.C.'s office – room 36 on the third floor of the police station – an east-facing room measuring 5 by 2.8 m.. It had two two-wing windows, overlooking the backyard, with sills 96 cm above the floor. It seems that the south window was opened. In the middle of the room there were two desks, adjacent to each other.

13. In the back yard, beneath the room's windows, 70 cm south of the one which was open, there was a shed for motorcycles, with a 1.95 meter high ceiling, covered with an iron sheet roof. Beside the shed there was an inspection tunnel for automobiles, leading to an underground garage. The inspection tunnel had a concrete edge. The room's windows stood at 9.6 m above the ground, the distance between the windows and the concrete edge was 7.9 m, and that between the windows and the iron sheet roof – 5.9 m.

14. After questioning Mr D.O., lieutenant I.C. sent him back to the cell block on the first floor, and brought Mr Stefanov up for questioning. During the questioning Mr Stefanov was seated in a chair behind the south desk in room 36. Lieutenant I.C. was sitting opposite him, behind the north desk. Throughout the questioning Mr Stefanov was handcuffed. It is not clear whether his hands were secured behind his back or in front of him.

15. According to the statements made later by lieutenant I.C., sergeant H.B. and Mr D.O., during the questioning the lieutenant established discrepancies between the versions of Mr Stefanov and Mr D.O about their participation in the alleged thefts. At that point, at approximately 11 a.m., the lieutenant called sergeant H.B. and ordered him to bring Mr D.O. up from the cell block in order to be able to confront the two. Sergeant H.B. took Mr D.O. and brought him in front of room 36. Sergeant H.B. and Mr D.O. stood a little south of the room's door, so that Mr D.O. and Mr Stefanov could not establish eye contact. Lieutenant I.C. started questioning Mr Stefanov and Mr D.O., to compare their answers. Apparently their versions differed and an argument erupted between the two, as they were accusing each other of being the mastermind of the alleged thefts.

16. Then Mr D.O. indicated with his head to lieutenant I.C. that he wanted to tell him something without Mr Stefanov hearing it. The lieutenant stood up from his chair, approached the half-open door and stood at the doorsill. At that moment Mr Stefanov, still handcuffed, bolted from his chair, made towards the open window and climbed on the window sill by stepping on a chair placed under the window. Chief sergeant H.B. shouted: "This one is going to run". Lieutenant I.C. turned around and saw Mr Stefanov in the window frame, one leg out in the air and the other leg inside the room. The lieutenant shouted: "Don't jump!", but Mr Stefanov threw his other leg out of the window and jumped. The lieutenant rushed towards the window.

17. There are inconsistencies in the lieutenant's statements as to whether he saw Mr Stefanov falling, or only saw him after he had already hit the

ground. In his report dated 11 June 1993 the lieutenant stated that he had only seen Mr Stefanov's body supine on the ground. However, when questioned about the incident on 20 June 1994, the lieutenant maintained that when he had rushed to the window, he had been able to see Mr Stefanov's fall, and had seen his body hit the iron sheet roof of the shed beneath the window before rolling off and onto the ground. When questioned for a second time on 21 July 1997, the lieutenant stated that he could not recall exactly the phases of Mr Stefanov's fall and could not tell whether Mr Stefanov had first hit the roof of the motorcycle shed, as he did not remember whether he had gone to the window immediately. He explained that his memories had faded because the events had taken place a long time before and had unfolded very quickly (see paragraphs 34, 36 and 56 below).

18. There are also inconsistencies in Mr D.O.'s statements as to whether he saw Mr Stefanov's fall at all. When first questioned about the incident on 8 June 1993, he stated that he had not directly seen Mr Stefanov jump. During his second questioning on 13 December 1993 Mr D.O. maintained that he had seen Mr Stefanov standing up with his handcuffs on, moving towards the window and jumping. However, he did not state that he had seen Mr Stefanov's fall, but had only seen him supine on the ground.

19. Chief sergeant H.B. rushed down the stairs to the back yard, where he found Mr Stefanov lying unconscious, half on his back, half on his right side, on an iron grill in front of the garage. His handcuffs had broken, he was bleeding and breathing heavily. Chief sergeant H.B. poured water on him to try to revive him. An ambulance was called shortly afterwards and Mr Stefanov was taken to the regional hospital in Kazanluk, where he died at approximately 2 a.m. the following morning (see paragraph 26 below).

B. The investigation into the events of 4 and 5 June 1993

20. Having been notified about the incident at 12.10 p.m., investigator G.S. of the District Investigation Service in Kazanluk inspected the scene of the incident. Starting at 1.15 p.m., he first inspected the back yard of the police station, where Mr Stefanov had fallen to the ground, and then room 36. The minutes of the inspection state that the site of the incident had "not been preserved – the injured person having been removed". The minutes describe the ground beneath the windows of room 36 as covered partly with an iron grill, the remainder being a concrete surface. Two bloodstains are noted: one on the iron grill, and one under it. The bloodstain under the grill measured 5 to 6 cm. During the inspection of room 36 a chair was found just beside the window and a piece of plaster 5 cm long was found under the window frame.

21. The same day, while Mr Stefanov was still alive but in a coma, colonel P., prosecutor at the Plovdiv Military Regional Prosecutor's Office,

ordered that he be examined by Dr E.B., medical doctor at the forensic medicine ward of the Stara Zagora regional hospital.

22. At 7 p.m. on 5 June 1993 Dr E.B. examined Mr Stefanov in the presence of Dr K., a neurosurgeon from the Kazanluk regional hospital. He found that Mr Stefanov was in a coma and could not communicate. He recorded that the "on-duty police officer" had told him that Mr Stefanov had jumped from the window of a room on the third floor of the police station, that he had fallen on an iron sheet roof, and then on the ground in front of the underground garage of the station, on an iron grill.

23. He noted the following injuries on Mr Stefanov's body:

> "The lids of the right eye are suffused and are bluish-violet in colour. An abrasion with underlying surface, measuring 6 by 6 cm, was found in the area of the right cheekbone. An arch-shaped wound with uneven and suffused edges 2 cm long, was found on the outer edge of the right eye. Two slit-shaped parallel violet suffusions, 1 cm wide and 8 cm long, are visible on the back of the right shoulder. The distance between them is 3.5 cm. At the middle of the thorax one can observe a slanted elongated violet suffusion, measuring 4 by 1 cm. A similar suffusion, measuring 3 to 2 cm, was found on the left buttock. The right upper limb is immobilised with a plaster dressing. Three oval abrasions with underlying surface, the biggest measuring 1 by 1 cm, were found on the lateral side of the right knee. The skin on the lateral side of the right sole is suffused and bluish-violet in colour. A spotted suffusion, measuring 8 by 3 cm, was found on the inner side of the left sole. An underlying abrasion, measuring 6 to 4 cm, is visible on the lateral side of the right calf. A superficial slit-shaped wound with uneven edges and length 3 cm was found on the left parietal-temporal area."

24. Dr E.B. concluded that the injuries described could have been sustained in a two-stage fall.

25. The laboratory tests detected no traces of alcohol in Mr Stefanov's blood or urine.

26. Mr Stefanov died at approximately 2 a.m. the following morning.

27. On the following day, 6 June 1993, Dr E.B. performed an autopsy on Mr Stefanov's dead body. The doctor described his findings in detail in his report. He noted the following:

> "EXTERNAL INSPECTION[:]
>
> ... The eyelids are closed. The lids of the right eye are suffused and bluish-violet in colour. An arch-shaped wound with uneven and suffused edges, 2 cm long, is visible in the outer eye angle of the right eye, on the orbital edge. An abraded spot at the level of the skin, covered with reddish scab, 6 by 6 cm, is visible in the area of the right cheekbone. ... A slit-shaped wound with uneven and suffused edges, 3 cm long, is visible in the parietal-occipital-temporal area. Small tissue bridges are visible at the bottom of the wound. ... An oblique bluish suffusion, measuring 4 by 2 cm, is visible on the frontal part [of the thorax], in the middle part, in the projection of the sternum. Two strip-shaped bluish-violet blood suffusions, parallel to one another, measuring 8 by 2 cm, at a distance of 3.5 cm between them, are visible on the back surface of the right shoulder. ... A bluish-violet suffusion, measuring 4 by 3 cm, was found on the left buttock. ... The right armpit bone is broken in the middle third with suffusions in the musculature. A wound with an irregular shape and even edges, measuring 3 by

2 cm, is visible in this area, on the lateral surface. The bone fragments are at its bottom. Two strip-shaped grazed areas covered with whitish scab at the level of the skin, each measuring 40 by 3 mm, and a distance between them of 5 mm, were found in the area of the right wrist. Three abraded areas covered with reddish scab at the level of the skin, the biggest one measuring 1 cm in diameter, were found on the lateral side of the right knee. A similar grazed area, measuring 4 by 6 cm, was found on the lateral surface of the right calf. The skin on the lateral part of the right sole is suffused and bluish. A similar suffusion, measuring 8 by 3 cm, was found on the internal surface of the left sole.

Deep skin incisions were made on the back of the corpse, and thereupon suffusions of the soft tissues and the musculature of the right part of the back, in the area of the right shoulder-blade, measuring 18 by 8 cm, vertically oriented, were found. ... A suffusion of the tissues was found in the musculature and the sub-cutaneous layer of the left buttock, in the projection of the above-described suffusion.

INTERNAL INSPECTION[:] Head. The soft cranial membranes have suffusions on the right frontal-temporal area, on the left parietal-occipital-temporal area, below the above described lacerated-contusion wound. ... A linear fracture was found at the base of the skull, beginning from the right frontal-temporal area, passing on the roof of the right orbit, and ending in the area of the sella turcica. ... The soft meninges are suffused in the temporal parts. ... Rounded violet suffusions, with diameter of not more than 2 mm, were found at the base of the brain, in the area of the right frontal parts.

... The first, seventh, and eighth ribs on the right side are broken on the posterior sub-arm line with a suffusion in the intercostal musculature. The fractures are wide open inward."

28. In the concluding part of the report Dr E.B. summarised the injuries on Mr Stefanov's body as follows:

"Combined cranial-cerebral and thoracic trauma following a fall from a substantial height. Fracture of the base of the skull. Cerebral contusion, cerebral oedema, with wedging of the cerebellar tonsils. Suffusion of the meninges. Fracture of ribs on the right side. Lacerated-contusion wounds on the head and the face. Suffusions of the cranial membranes, the face, the thorax, and the limbs. Abrasions on the face and the limbs. Open fracture of the right armpit bone. Suffusion of the buttocks. Lack of alcohol in the blood and the urine."

29. Dr E.B. concluded that the death had been caused by a cranial-cerebral trauma, consisting of a fracture of the skull, a contusion and a brain oedema.

30. Addressing the question of the manner in which the injuries had been caused, Dr E.B. stated:

"The described traumatic injuries were caused by the impact of the body against solid blunt objects and could be sustained in a two-stage fall from a substantial height. The inspection and the autopsy revealed head and body traumatic injuries: head – on the right frontal-temporal area [and] on the left parietal-occipital-temporal area; body – front and back, more pronounced on the right side; limbs – right upper limb, lateral surface of the right leg and internal surface of the left sole. The fall on the roof of the shed produced the injuries on the right side of the forehead and the face and the

front of the body. The second stage of the fall – from the roof of the shed to the ground in front of the underground garage – resulted in the injuries on the back of the body, the left parietal-occipital-temporal area of the head and lower limbs. The two chafings of the right wrist suggest sustained contact with handcuffs. The right armpit bone was broken during the first stage of the fall if the hands were handcuffed in front, and during the second stage if the hands were handcuffed on the back."

31. Dr E.B. finished his autopsy report with the following findings:

"All traumatic injuries were sustained while [Mr Stefanov was alive], is indicated by from the suffusions in the areas of the broken bones. These injuries were sustained at the same time and it is possible that they occurred at the time stated in the preliminary data.

The inspection of the body and the autopsy did not reveal traumatic injuries which cannot be explained by a fall from a substantial height.

At the time of his death [Mr] Stefanov was not under the influence of alcohol, but the expertise cannot confirm the same for the moment of the fall, because the alcohol test sample was taken more than twelve hours after the incident."

32. On 8 June 1993 Mr D.O. was questioned about the incident. He stated, *inter alia*, that he had not directly seen Mr Stefanov jump.

33. An investigation was opened on 17 June 1993 by the Plovdiv Military Regional Prosecutor's Office.

34. The military investigator in charge of the case, Mr S.S., collected the written reports of lieutenant I.C., chief sergeant H.B. and sergeant B.B., but did not question the officers. He started working on the case on 13 December 1993, when he questioned Mr D.O. The latter stated, *inter alia*, that he had not been mistreated and that Mr Stefanov body did not indicate any bodily assault at the time of his questioning in the morning of 5 June 1993. He also maintained that he had seen Mr Stefanov standing up with his handcuffs on, moving towards the window and jumping. However, he did not state that he had seen Mr Stefanov's fall, but had only seen him lying on the ground.

35. On 8 February 1994 the Plovdiv Military Regional Prosecutor's Office transferred the case to the competent district prosecutor's office, in view of the amendments to the Code of Criminal Procedure ("the CCP") of December 1993 whereby offences allegedly committed by police officers came under the jurisdiction of the general courts (see paragraph 71 below). However, on 5 April 1994 the case was sent back to the Plovdiv Military Regional Prosecutor's Office pursuant to special instructions by the Chief Prosecutor's Office of 16 February 1994. On 20 April 1994 the Plovdiv Military Regional Prosecutor's Office remitted the case file to captain I.N., a military investigator in Stara Zagora, for further action.

36. Lieutenant I.C. was questioned on 20 June 1994 by the military investigator, captain I.N. He stated, *inter alia*, that when he had rushed to the window, he had been able to see Mr Stefanov's fall and had seen his

body hit the iron sheet roof of the shed situated beneath the window before hitting the ground (see paragraph 17 above).

37. On 30 June 1994 investigator I.N. recommended that the investigation be discontinued, citing the lack of evidence for a criminal offence. He found that the medical expert report had established that all of Mr Stefanov's injuries had been sustained during his two-stage fall from the window. This finding coincided with lieutenant I.C.'s statement that he had seen Mr Stefanov's body first hit the roof of the shed beneath the window and then fall on the ground in front of the underground garage. The investigator concluded that Mr Stefanov had jumped out of the window of his own will, and that this had not been provoked by the conduct of lieutenant I.C. or another police officer.

38. On 29 July 1994 colonel Y.T., prosecutor at the Plovdiv Military Regional Prosecutor's Office, discontinued the proceedings and sent the case file to the Kazanluk District Prosecutor's Office for further action. He reasoned that Mr Stefanov had suddenly jumped from the window of room 36 during questioning, in the presence of lieutenant I.C. and Mr D.O. He had fallen on the ground and had immediately been taken to a hospital, where he had died despite the efforts to revive him. As could been seen from the medical expert report, the Mr Stefanov's death had been caused by a combined cranial-cerebral and thoracic trauma, a fracture of the base of the skull, a cerebral contusion, a suffusion of the meninges, lacerated-contusion wounds on the head and the face, and suffusions of the limbs. There was no indication that lieutenant I.C. had contributed in any way to Mr Stefanov's death.

39. On 4 August 1994 the Kazanluk District Prosecutor's Office sent the case back to the Plovdiv Military Regional Prosecutor's Office, stating that there was nothing for them to do since the proceedings were discontinued.

40. During the following year the case file was shuttled between various prosecutor's offices. On 4 October 1994 the first applicant, who was apparently unaware of the latest developments, complained to the Chief Prosecutor's Office about the delay in the investigation and stated that she had not been informed of the investigation findings.

41. In view of the amendments to the CCP of June 1995 whereby the military courts, investigators and prosecutors were restored jurisdiction over offences allegedly committed by police officers (see paragraph 71 below), on 3 August 1995 the Military Prosecutor's Office in Sofia sent the case for review by the Plovdiv Military Regional Prosecutor's Office with instructions to communicate its ruling to Mr Stefanov's heirs.

42. In a decision of 27 December 1995 colonel Y.T., prosecutor at the Plovdiv Military Regional Prosecutor's Office, once again discontinued the investigation for lack of evidence of a criminal offence. He reasoned, without much detail, that Mr Stefanov had jumped from the open window. He had been immediately transported to a hospital, where he had died

because of a cranial-cerebral trauma. It had not been established that lieutenant I.C. or another police officer had abused his office, had brought about Mr Stefanov's suicide, or had failed to discharge his or her duties. It appears that a copy of the decision was sent to Mr Stefanov's father.

43. Apparently the applicants were not informed about these developments, although they had requested to be kept abreast of the progress of the investigation on several occasions.

44. A copy of the prosecutor's decision was obtained by the applicants' lawyer on 12 November 1996. On 9 December 1996 he filed an appeal against it with the Military Prosecutor's Office in Sofia, arguing that the investigation was not comprehensive, that a number of investigative steps had not been undertaken and that various facts had not been clarified.

45. In a decision of 9 January 1997 prosecutor V.P. of the investigative department of the Military Prosecutor's Office in Sofia found that the investigation had not been full and comprehensive. It had not been established at what time on 4 June 1993 Mr Stefanov had been arrested, who had ordered that he remain in detention after the end of the workday, or whether there had been an order for his police detention for a period of twenty-four hours. If such an order existed, it was not clear who had issued it and on what legal grounds. The legality of the police officers' actions had to be assessed also from the point of view of Article 127 of the Criminal Code ("the CC") (see paragraph 66 below). Another fact which had not been clarified were the circumstances of Mr Stefanov's detention leading up to the incident on 5 June 1993. Also, it was unclear how many objects Mr Stefanov's body had hit during the fall and what was the number of impacts. No inspection had been carried out of the roof of the motorcycle shed. It was apparent from the photographs that it was not deformed although the doctor's report had stated that on his way down Mr Stefanov had first hit the roof and only then the iron grill on the ground. The doctor's report had also stated that the body had sustained two blows during the fall and that all injuries could have been caused by two consecutive blows. Finally, not all persons who could have clarified the facts had been questioned, including chief sergeant H.B., chief sergeant B.B., and others who had been in the back yard and the garage of the police station and might have witnessed the fall.

46. Accordingly, the prosecutor quashed the decision to discontinue the investigation and ordered to:

(i) gather all documents in the Kazanluk police station relating to Mr Stefanov's arrest and detention on 4 June 1993;

(ii) inspect the site of the incident with a view to establishing the exact material of which the metal sheet roof was made and whether there were any deformations on it; also, establish what the distance between the window and the ground was and whether the bloodstain found on the iron grill was situated directly beneath the window;

(iii) perform a dummy test to determine the exact spot where Mr Stefanov's body had hit the ground;

(iv) question other possible witnesses; also, take new statements from Mr D.O. about the circumstances of his and Mr Stefanov's detention and stay in the police station, the possible use of physical violence against them, as well as all other circumstances possibly relevant to the case;

(v) prepare a three-expert forensic report to establish the cause of death and whether there were injuries on Mr Stefanov's body which had not been caused by the fall form the window.

47. Following the remittal of the case, on 8 March 1997 an investigator inspected the iron sheet roof of the motorcycle penthouse situated beneath room 36, and performed a dummy test.

48. During the inspection it was found that the iron sheet roof had no marks of bending or deformation.

49. A human-size leather dummy was thrown twice out of the window of room 36. The first time the dummy was dropped perpendicularly and fell directly on the ground in front of the garage, without touching the iron sheet roof of the penthouse. The second time it was thrown at an angle south of the window and hit the iron sheet roof, then the concrete edge beneath the roof, and then fell on the ground. When the dummy hit the iron sheet roof during the second throwing, the roof gave.

50. On 25 March 1997 investigator S.S. questioned chief sergeant H.B. who stated, *inter alia*, that he had not seen Mr Stefanov's fall in its entirety, and had no recollection of how many hits he had heard during the fall.

51. On 26 March 1997 investigator S.S. questioned chief sergeant B.B.

52. Following the dummy test, three medical experts were appointed to re-examine the conclusions about the circumstances in which Mr Stefanov's injuries had been sustained. More specifically, they were requested to establish what was the cause of Mr Stefanov's death and whether some of the injuries found on his body could have been the result of factors other than the fall from the window of room 36. Dr E.B., the medical doctor who had examined Mr Stefanov on 5 June 1993 and had performed an autopsy on his dead body, was one of the experts. The others were Dr H.E. and Dr T.T., medical doctors from the forensic medicine and ethics faculty of the university of Stara Zagora.

53. On 18 April 1997 the three experts delivered their report based solely on documents contained in the investigation case file.

54. The experts confirmed the previous findings about the cause of death, namely that it was the result of a cranial and brain trauma, consisting of a fracture of the base of the skull, contusion and oedema of the brain, with a wedging of the cerebellum and paralysis of the vital brain centres. Although insubstantial, the amount of blood that had entered the respiratory system, also contributed to the fatal outcome, the experts opined.

55. As to the cause of the injuries, the experts concluded that:

"such injuries may be sustained in a fall that involves multiple blunt impacts. Such a fall [occurs] the body hits several hard surfaces at different heights, as indicated by the dummy test. Such information was gathered during the dummy test. When thrown at a right angle, the dummy hit the iron sheet roof situated under the window adjacent to the one from which [Mr] Stefanov fell. ...It is possible that [Mr] Stefanov ran tangentially against the edge of the iron sheet roof and that his body rolled off leaving no indentations on the roof. It [was] also possible that [Mr] Stefanov, regardless of whether his body came in contact with the iron sheet roof, hit the concrete edge on which the roof was built. This edge is visible on the photographs and is situated at approximately 23 cm from the wall of the shed. The final stage of the fall was hitting the ground in front of the garage, where the grill is located. It [was] possible that the suffusions on the back surface of the right shoulder could have resulted from an impact against the grill. The lacerated-contusion wound on the head, in case it was turned left, as well as the fracture of the right armpit and the suffusion on the buttocks, occurred during this final stage of the fall. The other injuries were caused earlier during the fall. The two abrasions on the right wrist are consistent with handcuff marks.

The hit which caused the cranial fracture and the brain contusion [was] sustained in the right frontal part of the head, where the lacerated-contusion wound, the abrasion and the suffusion [were] detected. This was a heavy impact that occurred during an earlier stage of the fall, most probably against the above-mentioned concrete edge.

All injuries were sustained at the same time. No injuries were found which cannot be explained with a fall from a substantial height and one that involved multiple hard impacts. [There were no injuries] from sharp weapons, firearms, or electricity. No defensive injuries were found on the body or the limbs.

56. On 21 June 1997 lieutenant I.C. was questioned by captain S.S., the military investigator who was initially in charge of the investigation. The applicants' lawyer was also present. The lieutenant stated that he could not recall exactly the mechanism of Mr Stefanov's fall and could not tell whether Mr Stefanov had first hit the roof of the motorcycle shed, as he did not remember whether he had gone to the window immediately. He explained that his memory of the events had faded because they had taken place a long time before and had unfolded very quickly.

57. Mr D.O. was not re-questioned. The Kazanluk police tried to locate him but found that his whereabouts after 1993 – when he was released and apparently not prosecuted any further for the alleged thefts – were unknown. There were some indications that he was living on the territory of the Troyan municipality, in one of the mountain villages there, but his exact address was unknown, as he had not communicated it to the address register of his previous domicile, the municipality of Muglizh. His mother's whereabouts were also unknown, his grandfather and uncle had died, and there were no other relatives in Muglizh who could provide information about him. The applicants' lawyer requested that the investigation remain pending until Mr D.O. was located and questioned.

58. Also, no documents were gathered about Mr Stefanov's arrest and detention on 4 and 5 June 1993. In a letter of 20 July 1997 the head of the

Kazanluk police station informed the investigation authorities that up until August 1993 the persons detained for less than twenty-four hours had simply been registered and no orders for their arrest had been issued, and that the registers for 1993 had not been preserved.

59. On 29 July 1997 investigator S.S. recommended that the investigation be discontinued. He stated that the instructions of the Military Prosecutor's Office had been complied with in the course of the additional investigation. The register of the detained persons in the Kazanluk police station was no longer available, nor were the police fill-in forms for detention. It was therefore impossible to establish who had brought Mr Stefanov to the police station. Also, an additional inspection of the death scene had been carried out, revealing that Mr Stefanov's body had not hit the iron sheet roof, which was not deformed, but the edge beneath it, and then the ground. This was apparent from the medical expert report. Certain witnesses had been re-questioned. The re-questioning of Mr D.O. had been impossible, as he could not be tracked down. As indicated by the medical expert report, Mr Stefanov's death had been caused by a cranial-cerebral trauma, consisting of a fracture of the skull base, contusion and oedema of the brain with a wedging of the cerebellum and a paralysis of the vital brain centres. Such injuries could be the result of a two-stage fall, when the body had encountered obstacles at various heights before hitting the ground. No injuries which could not be explained with such a fall had been found, nor injuries resulting from sharp weapons, firearms, or electricity. There was thus no evidence of a criminal offence by a member of the Kazanluk police.

60. In a decision of 13 August 1997 captain I.N., prosecutor at the Plovdiv Military Regional Prosecutor's Office, discontinued the investigation. He reasoned that all instructions contained in the decision of 9 January 1997 of the Military Prosecutor's Office in Sofia had been complied with. The dummy test, the additional medical expert report and the newly questioned witnesses had all confirmed the circumstances underlying the first discontinuation of the investigation. There were no injuries on Mr Stefanov's body which could not be explained by a two-stage fall from a substantial height. The dummy test had determined that Mr Stefanov had first hit the concrete edge under the iron sheet roof and had then fallen on the ground. A copy of the decision was sent to the first applicant with instructions that she could appeal against it.

61. On 3 and 12 February 1998 the applicants' lawyer requested information about the progress of the investigation. He was informed that it had been discontinued, but was not given a copy of the decision of 13 August 1997. He managed to obtain a copy only on 4 March 1998, and immediately appealed it before the Military Prosecutor's Office in Sofia. He argued that Mr D.O. had not been questioned and that the conclusions about the details of Mr Stefanov's fall from the window were inconsistent.

62. On 31 March 1998 colonel T.Y., prosecutor at the Military Prosecutor's Office in Sofia, dismissed the appeal, reasoning, *inter alia*, that Mr Stefanov had jumped in an attempt to leave the premises of the police, that no officers were responsible for this act, and that the investigation had been objective and comprehensive.

63. The applicants' lawyer then filed an appeal with the Chief Prosecutor.

64. On 18 May 1998 prosecutor V.P., head of the investigative department of the Military Prosecutor's Office in Sofia, to whom the appeal was apparently referred, upheld the decision to discontinue the investigation. He reasoned that there were no indications that Mr Stefanov's "attempt to flee" had been prompted by maltreatment by the police officers who had questioned him. According to the medical expert report, all his injuries had been caused by the fall. There was no indication that any offence had been committed by a police officer, that could be connected with Mr Stefanov's death. A copy of his decision was sent to the applicants' lawyer on 9 June 1998.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

A. Duty to investigate death and ill-treatment

65. By Article 115 of the CC, murder is punishable by ten to twenty years' imprisonment. Article 116 § 1 (2) of the CC provides that if a murder is committed by a police officer in the course of, or in connection with the performance of his or her duties, it is punishable by fifteen to twenty years' imprisonment, or life, with or without parole.

66. Article 127 § 1 of the CC makes it an offence to aid or incite suicide, if the person concerned does subsequently commit suicide or makes an attempt to do so. By paragraph 3 of that Article, it is an offence to drive another to suicide or attempted suicide through cruel treatment or systematic humiliation, if this other person is financially or otherwise dependent on the offender, on condition that the offender contemplated that eventuality. Paragraph 4 of that Article makes it an offence to act contrary to the previous paragraph even if the offender does so out of negligence.

67. Articles 128, 129 and 130 of the CC make it an offence to inflict a light, intermediate or severe bodily injury on another. Article 131 § 1 (2) of the CC provides that if the injury is inflicted by a police officer in the course of or in connection with the performance of his or her duties, the offence is aggravated.

68. By Article 287 of the CC, as in force at the material time, it was an offence for an official, when acting in the course of, or in connection with

the performance of his or her duties, to illegally coerce an accused, a witness or an expert with a view to obtaining a confession, a statement or an opinion.

69. All of the above offences are publicly prosecutable (Article 161 of the CC and Article 21 § 3 of the CCP, as in force at the material time).

70. Article 192 §§ 1 and 2 of the CCP, as in force at the material time, provided that proceedings concerning publicly prosecutable offences could only be initiated by a prosecutor or an investigator. The prosecutor or the investigator had to open an investigation whenever he or she received information, supported by sufficient evidence, that an offence might have been committed (Articles 187 and 190 of the CCP). If the information given to the prosecuting authorities was not supported by evidence, the prosecutor had to order a preliminary inquiry in order to determine whether the opening of a criminal investigation was warranted (Article 191 of the CCP, as in force at the material time). A prosecutor could discontinue an investigation when, *inter alia*, there was no evidence of an offence, or the alleged act did not constitute an offence (Articles 21 § 1 (1) and 237 § 1 (1) and (2) of the CCP). At the material time his or her decision was subject to appeal to a higher prosecutor (Article 181 of the CCP, as in force at the relevant time). In 2001 the CCP was amended to provide for judicial review of a prosecutor's decision to discontinue an investigation.

71. At the material time the offences allegedly committed by police officers were tried by military courts (Article 388 § 1 (2) of the CCP, as in force at the relevant time). In December 1993 this text was amended to provide that the military courts no longer had jurisdiction over such offences (Article 388 § 1 (2) of the CCP, as amended in December 1993). A new amendment in June 1995 reverted to the old regime (Article 388 § 1 (2) of the CCP, as amended in June 1995 and in force until 1 January 2000). Where a case would fall within the jurisdiction of the military courts, the preliminary investigation is handled by military investigators and prosecutors.

B. Arrest and detention

72. A person may be arrested and placed in detention in the context of pending criminal proceedings, if charges have been brought against him or her (Article 146 § 1 taken in conjunction with Article 207 of the CCP).

73. A person could also be arrested by order of an investigator and detained for up to three days if he or she was suspected of having committed an offence punishable by imprisonment, but there was not enough evidence to bring charges. The circumstances in which this could occur were limited and included the cases where (i) he or she had been caught during or immediately after the commission of the alleged offence, (ii) he or she had been named by an eyewitness, (iii) overt traces of the

alleged offence were found on the person's body or clothes or in his or her place of abode, or (iv) the person tried to flee or his or her identity could not be established and there was enough information that he or she might have committed an offence (Article 202 § 1 of the CCP, as in force at the material time).

74. Section 20(1) of the National Police Act of 1976, in force at the relevant time, provided that the police could also arrest a person if (i) his or her identity could not be ascertained, (ii) he or she behaved violently or in breach of public order, (iii) he or she refused, without just cause, to appear after having been duly summoned, (iv) he or she knowingly impeded the police from carrying out its duties, (v) he or she carried or used unlicensed firearms, cold weapons, or other dangerous devices. In all these cases the police had to immediately carry out the necessary checks. After that, but in no case later than three hours after the person's arrest, he or she had to be released, if no order for his or her detention was made. Only when the person's identity could not be ascertained that deadline was extended to twenty-four hours (section 20(2) of the Act).

C. The United Nations Model Autopsy Protocol

75. The "Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions" (U.N. Doc. E/ST/CSDHA/.12 (1991)), published by the United Nations in 1991, includes a Model Autopsy Protocol aimed at providing authoritative guidelines for the conduct of autopsies by public prosecutors and medical personnel. In its introduction, it is noted that a systematic and comprehensive examination and report were required to prevent the omission or loss of important details:

> "It is of the utmost importance that an autopsy performed following a controversial death be thorough in scope. The documentation and recording of those findings should be equally thorough so as to permit meaningful use of the autopsy results... It is important to have as few omissions or discrepancies as possible, as proponents of different interpretations of a case may take advantage of any perceived shortcomings in the investigation. An autopsy performed in a controversial death should meet certain minimum criteria if the autopsy report is to be proffered as meaningful or conclusive by the prosector, the autopsy's sponsoring agency or governmental unit, or anyone else attempting to make use of such an autopsy's findings or conclusions."

D. Reports of international organisations on alleged discrimination against Roma

76. In a number of reports the European Commission against Racism and Intolerance at the Council of Europe has expressed concern about racially motivated police violence, particularly against Roma. Certain other

bodies and non-governmental organisations have also reported in the last several years numerous incidents of alleged racial violence against Roma in Bulgaria, including by law enforcement agents. A detailed account of these reports may be found in the Court's judgment in the case of *Nachova and Others v. Bulgaria* (nos. 43577/98 and 43579/98, §§ 55-59, ECHR 2005-...).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

77. The applicants alleged that Mr Stefanov had been ill-treated and had died as a result of the actions of the police officers. They also complained that no effective investigation had been conducted into the circumstances surrounding his death. They argued that there had been a breach of Article 2 of the Convention, which provides:

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

78. The Government disputed those allegations.

A. The parties' submissions

1. The applicants

79. The applicants submitted that Mr Stefanov's fall from the window of room 36 had been either a suicide attempt provoked by severe torture, or an attempt by the police to cover up his prior ill-treatment. There was no evidence that the fall had been an attempt to escape, since the window was situated at 9.6 meters above ground level. No one could be expected to jump from such a height and subsequently be able to run away. There were no structures which could cushion the blow resulting from the fall; in

particular, it was obvious that Mr Stefanov's body had not touched the iron sheet roof before hitting the ground. The assertion that Mr Stefanov had made an attempt to flee was even more improbable in view of the facts that he had been handcuffed and that all of his injuries were inflicted on his upper body, which indicated that he had fallen head down. There was likewise no indication that the fall had been the result of a suicide attempt. Mr Stefanov had no history of mental illness and had been facing only a trivial burglary charge. Moreover, such an explanation had not been proffered during the investigation.

80. The only plausible explanations of Mr Stefanov's fall were either a suicide attempt provoked by torture, or an intentional push by the police officers in an effort to conceal his prior torture. These hypotheses were supported by the number and extent of Mr Stefanov's injuries, most of which he had probably suffered before his fall, during questioning. There was no indication that these injuries had been self-inflicted or sustained at the time of his arrest, or before that.

81. The applicants submitted that they could not prove beyond doubt the exact cause of Mr Stefanov's fall, but maintained that it was for the authorities to provide a plausible explanation, which they had failed to do.

82. In deciding that the fall had been the result of an attempt to flee, the prosecution authorities had heavily relied on the statements of lieutenant I.C., chief sergeant H.B. and Mr D.O.. However, those were extremely unreliable. First, the two police officers had an obvious interest in exonerating themselves, whereas Mr D.O. was favourably treated by the police. Second, they had been inconsistent and had changed over time and had obviously been geared towards exonerating the police officers from any responsibility for Mr Stefanov's death. Moreover, the tenor of Mr D.O.'s statements had remarkably followed the contours of lieutenant I.C's statements.

83. In concluding that all of Mr Stefanov's injuries had been sustained during a two-stage fall, the authorities had also relied on the results of the autopsy and the conclusions of the subsequent medical expert reports. However, the autopsy report was deficient in a number of respects and did not meet the standards laid down in the United Nations Model Autopsy Protocol (see paragraph 75 above). For instance, the conclusion that all injuries on Mr Stefanov's body had been sustained during the fall was based on the completely uncorroborated assumption that the fall had been a two-stage one. Moreover, the autopsy report and the subsequent medical expert report did not contain a detailed description of the manner in which each injury had been sustained, instead averring in a general manner that all injuries had been the result of a two-stage fall.

84. As regards the effectiveness of the investigation, the applicants argued that it had been slow, biased and aimed at exonerating the police officers of all responsibility for Mr Stefanov's death. They pointed to a

number of deficiencies in its conducting. In particular, the position of where Mr. Stefanov's body lay on the ground after the fall had not been marked. The investigation had not started immediately. Before the remitting by the Military Prosecutor's Office, the investigation had been very superficial. The dummy test had been carried out four years after the events and the medical experts had not received proper instructions. Moreover, the applicants had not been regularly informed about the unfolding of the investigation and had been hindered in their efforts to intensify it. The applicants also referred to their arguments in respect of the deficiencies in the autopsy and the medical expert reports.

2. The Government

85. The Government submitted that Mr Stefanov's injuries had been sustained during his fall. The dummy test carried out during the investigation had shown that if he had jumped slightly rightwards, he could have hit either the iron sheet roof or the concrete edge beneath it, and only then fallen on the ground. All medical expert reports had concluded that he had no injuries which could not be explained by such a sequence of events. It followed that the applicants' allegations of ill-treatment were groundless. The absence of abuse was further demonstrated by the statements of all the witnesses. There was no indication of collusion between them. All of them had stated that Mr Stefanov had jumped of his own will. There was no indication that he had been in a physical contact with any police officer at that time, or that force had been used against him. No traces of alcohol had been found in his blood. However, the forensic doctor had caveated the above finding with the statement that had Mr Stefanov had consumed any alcohol prior to his arrest, it would have decomposed beyond detection during the night before the incident. Mr D.O. had stated that neither he, nor Mr Stefanov had been subjected to ill-treatment either at the time of their arrest or later. The discrepancy between the statements of lieutenant I.C. and Mr D.O. as to whether the latter had turned himself in or had been arrested indicated that there was no collusion between them and that Mr D.O. had not been pressured to corroborate the police officers' version of the events.

86. The Government concluded that Mr Stefanov's death had not been caused by the actions of the police officers.

87. The Government further submitted that the investigation had fully complied with the principles set out in the Court's case-law. That was apparent from the numerous acts of the prosecution authorities and the medical expert reports. The obligation of the authorities to gather evidence had been fulfilled in good faith. Mr Stefanov's relatives had been notified of the discontinuations of the investigation and the reasons therefor.

88. The investigation had been opened exactly with a view to establishing the circumstances of Mr Stefanov's death. The conclusion of the military investigator of 30 June 1994 that there was no indication of an

offence having been committed was based on the medical expert reports, the authors of which were under a duty to state the truth. Their findings were fully coherent with the statements of lieutenant I.C.

89. The alleged discrepancies between the various statements of lieutenant I.C. and Mr D.O. were not that material, regard being had that the lieutenant's first statement had been made shortly after the incident, whereas his second statement had been made after a considerable time and had thus been more considered. It would be excessive to conclude that the differences between these statements were due to an intention to hide the truth or evade criminal liability. Moreover, this issue had not been raised by the applicants in their appeals against the discontinuation of the investigation.

90. The investigation had undergone several stages and the case had been remitted several times for further action. The issue whether the injuries on Mr Stefanov's body indicated assault had been examined on several occasions. All eyewitnesses had been questioned more than once, except for Mr D.O., whose whereabouts could not be established. The case had been examined by several levels of prosecution. It could not be argued that an investigation should always result in finding a person guilty of an offence, especially bearing in mind the criminal-law standard of proof beyond reasonable doubt.

91. In sum, the Government were of the view that the investigation had been complete, objective and comprehensive.

B. The Court's assessment

1. Mr Stefanov's death

(a) General principles

92. Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The object and purpose of the Convention as an instrument for the protection of individual human beings also requires that Article 2 be interpreted and applied so as to make its safeguards practical and effective.

93. In the light of the importance of the protection afforded by Article 2, the Court must subject complaints about deprivations of life to the most careful scrutiny, taking into consideration all relevant circumstances.

94. Persons in custody are in a vulnerable position and the authorities are under an obligation to account for their treatment. Consequently, where an individual is taken into police custody in good health but later dies, it is

incumbent on the State to provide a plausible explanation of the events leading to his death.

95. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, §§ 109-11, ECHR 2002-IV).

(b) Application of those principles to the present case

96. The Court observes that there is no indication that Mr Stefanov was injured upon being taken into custody on 4 June 1993. It remains to be examined whether the Government's assertion that his fall – which was apparently the source of the fatal injuries to his head – was unprovoked is plausible, and whether their averment that all of his numerous injuries were sustained exclusively during his fall is satisfactory and convincing.

97. In this connection, the Court notes that the domestic authorities based their conclusion that all of Mr Stefanov's injuries had been sustained exclusively during his fall on the hypothesis that his body had hit an object – the metal sheet roof or a concrete edge – before impacting against the ground (see paragraphs 22, 23, 30, 37, 38, 42, 45, 55, 59 and 60 above), the apparent reason being that the injuries, that were spread about Mr Stefanov's body, could not have been the result of a single blow. The Court further observes that this version was initially based on the note by the forensic doctor in his report that the "on-duty police officer" had informed him that Mr Stefanov's body had hit the iron sheet roof and only then the ground (see paragraph 22 above). This seemed to be corroborated by lieutenant I.C.'s statement, made, significantly, after the report had been drawn up, that he had seen Mr Stefanov hit the roof before hitting the ground (see paragraphs 17 and 36 above). That statement differed from the lieutenant's first statement, made immediately after the events, that he had not seen Mr Stefanov's fall, as he had managed to reach and look out of the window of room 36 only when Mr Stefanov's body was already lying on the ground (see paragraphs 17 and 34 above). It also differed from the lieutenant's third statement that he did not exactly remember the detailed sequence of the fall and had no recollection of whether he had been able to see Mr Stefanov falling at all (see paragraphs 17 and 56 above), which was made after the second on-site inspection and the dummy test had made it clear that his body had not touched the roof (see paragraph 49 above).

Contrary to what the Government argued, the Court finds these differences material, in particular as they were to a large degree determinative of the conclusion that Mr Stefanov had not sustained any injuries prior to his fall. The Court furthermore notes that when the dummy test established that Mr Stefanov could not have hit the iron roof before hitting the ground, thus making this theory implausible, the medical experts readily advanced the theory that he had struck the concrete edge before hitting the ground (see paragraph 55 above). On the basis of this theory the authorities again eagerly concluded that all of Mr Stefanov's injuries were exclusively caused by his fall, without exploring other hypotheses as to their possible source (see paragraphs 59 and 60 above). Their determination on this point seems very questionable.

98. It furthermore seems unlikely that all of Mr Stefanov's numerous injuries, spread about his trunk, limbs and head (see paragraphs 23 and 27 above), could be solely the product of a fall, even a two-stage one. In this connection, the Court notes the insufficient description of the physical ways through which Mr Stefanov's injuries had been sustained. The forensic doctor who performed the autopsy and the medical doctors who drew up the expert report ordered following the remitting of the case by the Military Prosecutor's Office gave a general account of the probable cause of most of the injuries. However, they did not go into detail as to the manner in which each of the different and, indeed, plentiful, injuries could have been inflicted (see paragraphs 30 and 55 above).

99. The only account of the events that took place in room 36 on the morning of 5 June 1993 is that contained in the statements of the two police officers who were present there, and of Mr D.O., the person detained at the same time as Mr Stefanov. However, their credibility is undermined by several facts. First, the officers had an obvious gain from presenting Mr Stefanov's fall and injuries as an accident or a suicide. Second, it is important to observe that lieutenant I.C.'s version of what he had seen changed over time to match the findings of the other investigative actions: the autopsy and the dummy test (see paragraphs 17, 34, 36 and 56 above). Finally, it should also be noted that Mr D.O. was later treated favourably by the police: although suspected of numerous thefts and burglaries, he was released and apparently not prosecuted any further (see paragraph 57 above). It should also be observed that immediately prior to the events he was trying to shift the responsibility for the alleged thefts and burglaries to Mr Stefanov and an argument erupted between the two (see paragraph 15 above).

100. It is unclear whether Mr Stefanov jumped off the window of his own will, or, on the contrary, was intentionally pushed or thrown, or forced in a situation where he had no other option but to jump. It is however highly improbable that he consciously tried to escape, given that the window of room 36 was at 9.6 m. above ground level, that the ground was covered with

concrete and iron grills, and that he was handcuffed. There is furthermore no indication of him having any reasons to commit an unprovoked suicide, or that he was in any way intoxicated. While testing confirmed the absence of alcohol in the blood and urine at the time of Mr Stefanov's death and not earlier (see paragraphs 25 and 31 *in fine* above), it seems highly unlikely, and it has not been claimed by the Government, that he could have consumed alcohol or other intoxicating substances during the night or the morning before his fall, seeing that he was in custody and appeared lucid during questioning. There is furthermore no indication that Mr Stefanov suffered from a mental illness which could lead him to commit suicide or act with disregard for his life or bodily integrity.

101. In view of the foregoing considerations and in particular the inconsistencies in the authorities' version of the events leading up to Mr Stefanov's death, the Court finds that the Government have not accounted comprehensively for this death and Mr Stefanov's injuries during his detention in the Kazanluk police station, and that the respondent State's responsibility for his death is engaged. There has therefore been a violation of Article 2 of the Convention in this respect.

2. Alleged inadequacy of the investigation

(a) General principles

102. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The investigation must be, *inter alia*, thorough, impartial and careful.

103. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility.

104. For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence.

105. The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony,

forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see *Anguelova*, cited above, §§ 136-39, with further references).

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

107. For the same reason, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in, or tolerance of, unlawful acts. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (ibid., § 115; and *Anguelova*, cited above, § 140, with further references).

(b) Application of those principles to the present case

108. The Court notes that a number of acts of investigation were undertaken in the present case. An autopsy and an on-site inspection were carried out shortly after the events. A number of other acts were also undertaken later, in particular when the case was remitted by the Military Prosecutor's Office (see paragraphs 20, 27-31, 34 and 47-56 above).

109. The Court observes, however, that the authorities questioned only lieutenant I.C., chief sergeants H.B. and B.B., with the first two having an apparent gain from denying any alleged wrongdoing, and Mr D.O., who might have been under pressure to corroborate the police's version of the events. What is of utmost significance, furthermore, are the inconsistencies between lieutenant I.C.'s versions of the events – the one put forward immediately after the incident, and the ones proffered after the autopsy and the dummy test results had been announced (see paragraphs 17, 34, 36 and 56 above). He was never asked to clarify those inconsistencies, which, as already noted (see paragraph 97 above), appear material, given that the conclusions that all of Mr Stefanov's injuries had been sustained solely during his fall, and that the fall had been unprovoked, were to a great extent based on the supposed sequence of the fall.

110. It is also noteworthy that even after the Military Prosecutor's Office ordered the re-questioning of Mr D.O. – the only witness who was not a member of the police force – the latter was not located and re-questioned, and no other information was gathered about the events between Mr Stefanov's arrest on 4 June 1998 and his death in the morning of the next day, 5 June 1993 (see paragraphs 57 and 58 above).

111. Two other notable omissions were the fact that the site of the incident was not preserved in its original state prior to its inspection (see paragraph 20 above) and, as noted above (see paragraph 98 above), the insufficient description of the physical ways through which Mr Stefanov's injuries had been sustained. It is furthermore noteworthy that the authorities eagerly adhered to the theory – made implausible by the dummy test and for this reason reformulated – that all of Mr Stefanov's numerous injuries were sustained exclusively during his fall (see paragraphs 37, 38, 59 and 60 above), and made no effort to explore other hypotheses as to their possible source.

112. It is also striking that, despite their finding that Mr Stefanov had jumped out of the window of his own will (see paragraphs 61 and 64 above), the authorities never investigated why he would commit suicide or choose an apparently deadly escape route. No evidence was collected on his mental state before and during his detention (e.g. psychological reports, questioning Mr D.O. on how Mr Stefanov had felt on 4 and 5 June 1993, etc.) and on any possible reasons for him to commit such an act, if not prompted by the immediate actions of the police officers present in room 36.

113. In sum, the Court finds that the investigation lacked the requisite objectivity and thoroughness, a fact which undermined its ability to establish the cause of Mr Stefanov's death and injuries. Its effectiveness cannot, therefore, be gauged on the basis of the number of reports made, witnesses questioned or other investigative measures taken.

114. As to the investigation's promptness, the Court observes that while the authorities carried out a certain number of immediate actions, such as an on-site inspection, an autopsy, and blood and urine tests, and took the statement of Mr D.O. shortly after the events, the military investigator started working on the case more than six months later (see paragraph 34 above). It is also noteworthy that lieutenant I.C. was questioned for the first time a year after the events (see paragraph 36 above), and chief sergeants H.B. and B.B. more than three and half years after the events (see paragraphs 50 and 51 above). Finally, it should be noted that the overall length of the investigation was almost five years. During that time the authorities only questioned five or six witnesses, commissioned two medical reports and one autopsy report, and carried out two inspections and a dummy test, with very lengthy periods of inactivity between the various investigative actions.

115. Finally, as regards involvement of the next of kin in the investigation, it is noteworthy that the applicants were not consistently kept abreast of its progress, despite their lawyer's requests for information (see paragraphs 43 and 61 above).

116. On the basis of the above considerations, the Court finds that the investigation in the present case fell foul of the standards set out in the Court's case-law. It follows that there has been a violation of the respondent State's obligation under Article 2 of the Convention to conduct an effective investigation into Mr Stefanov's death.

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

117. The applicants complained that prior to his fall from the window of room 36 Mr Stefanov had been ill-treated and that the authorities had not carried out an effective investigation into this allegation. They relied on Article 3 of the Convention, which provides as follows:

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

118. The applicants submitted that a number of injuries found on Mr Stefanov's body could not be the result of his impact against the ground and were indicative of torture. However, these injuries had never been properly analysed, since the autopsy report and the ensuing medical expert report had merely stated that all injuries had been sustained during the allegedly two-stage fall. The applicants submitted that in view of the lack of a plausible explanation as to the origin of these injuries, the authorities could be considered responsible for their infliction during the Mr Stefanov's detention.

119. Referring to their arguments in respect of the investigation under Article 2, the applicants also argued that there had also been a breach of the obligation of the authorities to conduct an effective investigation into the allegations that Mr Stefanov had been ill-treated.

120. The Government referred to their arguments concerning the alleged violations of Article 2.

121. The Court found above that the Government had not provided a plausible explanation for a number of injuries found on Mr Stefanov's body (see paragraphs 97, 98 and 101 above).

122. Those injuries were indicative of inhuman treatment beyond the threshold of severity under Article 3 of the Convention.

123. There has therefore been a violation of that provision.

124. The Court does not deem it necessary to make a separate finding under Article 3 in respect of the deficiencies in the investigation, having already dealt with that question under Article 2 (see paragraphs 108-16 above; and *Anguelova*, cited above, § 149, with further references).

III. ALLEGED VIOLATIONS OF ARTICLE 5 § 1 OF THE CONVENTION

125. The applicants complained that Mr Stefanov's arrest had been unlawful and that the authorities had not investigated this. They relied on Article 5 § 1 (c) of the Convention, which provides:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so[.]"

126. The applicants submitted that Mr Stefanov had been arrested and detained without an order to that effect, in breach of domestic law. They further complained that this aspect of the case had not been properly investigated by the authorities.

127. The Government did not comment.

128. The Court notes that, since the investigation did not establish the facts relating to Mr Stefanov's detention and did not gather any documents in this respect (see paragraph 58 above), it is not clear on the basis of which provisions of domestic law (see paragraphs 72-74 above), if any, he was taken into custody. Nor have the Government provided any explanations in that regard.

129. The Court's case-law is clear on the point that the absence of data on such matters as the date, time and location of detention, the name of the detainee, as well as the reasons for the detention and the name of the person effecting it must be seen as incompatible with the very purpose of Article 5 (see *Anguelova*, cited above, § 154, with further references). Since such information is in most cases by its very nature exclusively within the knowledge of the authorities, it is incumbent on them to point to the factual and legal grounds for the detention of an individual. In the case at hand they did not comment on this issue at any point during the proceedings; nor was any information about Mr Stefanov's detention gathered during the investigation, as the relevant records in the Kazanluk police station had not been preserved (see paragraph 58 above).

130. In these circumstances, the Court concludes that Mr Stefanov's deprivation of liberty was not "lawful" within the meaning of Article 5 § 1 (c) of the Convention. There has therefore been a violation of that provision.

131. Having taken into account the authorities' inability to establish the circumstances in which Mr Stefanov's was deprived of his liberty and the

legal grounds therefor, the Court does not deem it necessary to make a separate finding under Article 5 § 1 in respect of the alleged deficiencies in the investigation.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

132. The applicants complained that they did not have effective remedies in respect of the alleged violations of Articles 2 and 3 of the Convention. They relied on Article 13 thereof, which provides:

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

133. The applicants repeated their arguments in respect of the complaints under the procedural limbs of Articles 2 and 3.

134. The Government submitted that the decisions of the investigators and the prosecutors in charge of the case could be appealed against before the Military Prosecutor's Office and the Chief Prosecutor's Office. The applicants had availed themselves of this opportunity. One of their appeals had resulted in the remitting of the case for further investigation.

135. Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Its effect is thus to require the provision of a domestic remedy to deal with the substance of an arguable complaint under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicants' complaint under the Convention. Nevertheless, the remedy required by Article 13 must be effective in practice as well as in law.

136. In cases of suspicious deaths, given the fundamental importance of the right to the protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible, including effective access for the complainant to the investigation procedure (see *Anguelova*, cited above, § 161, with further references).

137. The Court finds that the applicants had an arguable claim under Articles 2 and 3 in respect of Mr Stefanov's death and ill-treatment and that, for the purposes of Article 13, they should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation.

138. However, in the case at hand, the criminal investigation into the suspicious death was ineffective as it lacked sufficient objectivity and thoroughness (see paragraphs 108-16 above). The effectiveness of any other remedy that may have existed was consequently undermined. The Court accordingly finds that the State has failed in its obligation under Article 13 of the Convention. There has therefore been a violation of that Article.

V. ALLEGED VIOLATIONS OF ARTICLE 14 OF THE CONVENTION

139. The applicants complained that the alleged breaches of Articles 2, 3, 5 § 1 and 13 of the Convention had been incited by Mr Stefanov's Roma ethnic origin. They relied on Article 14 of the Convention, which provides:

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

A. The parties' submissions

140. The applicants submitted that Mr Stefanov's ill-treatment and death and the ensuing refusal of the prosecution authorities to bring charges against those responsible had been due to his Roma ethnic origin. In their view, this allegation had to be seen against the backdrop of a pattern of police abuse and ill-treatment of Roma in Bulgaria and of the failure of the prosecution authorities to investigate and prosecute racially motivated police violence. In this respect the applicants relied on a number of reports by governmental and non-governmental organisations (see paragraph 76 above). They also referred to the Chamber's judgment in the case of *Nachova and Others v. Bulgaria* (nos. 43577/98 and 43579/98, 26 February 2004) and submitted that in view of the high incidence of police violence against Roma in Bulgaria, the prosecution authorities should have also investigated that aspect of the case, which they had completely neglected.

141. The Government submitted that the ethnicity of Mr Stefanov had had no incidence on the facts of the case. It was noteworthy in this respect that the other person who had been arrested at the same time, Mr D.O., had made no allegations of ill-treatment; on the contrary, he had corroborated the police officers' version of the events. Moreover, there were no direct or indirect indications of racial hatred or bias behind the alleged assault of Mr Stefanov.

142. The investigation into Mr Stefanov's death had been thorough and comprehensive. The authorities' findings of fact had been based on the statements of the witnesses, the medical expert reports and the dummy test. Even if the applicants contested the veracity of the statements, the other

pieces of evidence remained unrebutted. The military investigation authorities were not obliged to investigate the theoretical aspects of a case where there were no apparent leads to a possible hate crime. The authorities had performed the investigation according to principles they would have applied irrespective of the victim's ethnicity. To hold that they should, in addition, have specifically investigated any racial motives would mean to impose a duty on them to do so every time the alleged victim belonged to a minority group. In the case at hand such a line of inquiry would have been completely unwarranted and would run counter to the principles underlying the Convention and the general public international law. The Government stressed in this connection that the general reports of non-governmental organisations on the discriminatory attitudes against Roma suspected of criminal offences in Bulgaria were irrelevant, as there were no specific facts in the case which could cast doubts in that respect. These reports alone could not provide a sufficient basis for the Court to find the investigation problematic under Article 14, as it had to confine its examination to the specific facts of the case before it.

B. The Court's assessment

143. In its recent judgment in the case of *Nachova and Others v. Bulgaria* the Grand Chamber of the Court examined an almost identical complaint and set out the relevant principles for assessing whether racial prejudice had played a role in a killing by State agents and whether the authorities subsequently discharged their positive obligation to investigate the allegations of racially-motivated violence.

144. In assessing whether respondent State was liable for deprivation of life on the basis of the victims' race or ethnic origin, the Court adopted an approach based on the specific circumstances of the case and the overall context. It looked into several factual elements pointed by the applicants (excessive use of firearms and uttering a racial slur by one of the law enforcement officers), and also at the reports of a number of organisations, including intergovernmental bodies, which had expressed concern about the occurrence of violent incidents against Roma in Bulgaria. In the circumstances it found those insufficient to conclude that racist attitudes had played a role in the events leading to the death (see *Nachova and Others*, cited above, §§ 144-59).

145. As regards the authorities' obligation to investigate the deaths of persons belonging to an ethnic minority, the Court held that when investigating deaths at the hands of State agents, they have the duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice could have played a role in the events. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and

deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence (ibid., §§ 160 and 161). In its later analysis of the specific circumstances of the case, the Court placed particular reliance on the racist slur uttered by one of the State agents involved in the events and on the fact that he had used grossly excessive force against two unarmed and non-violent men. It found that these, seen against the background of the many published accounts of the existence in Bulgaria of prejudice and hostility against Roma, called for verification, and concluded that the authorities had before them plausible information which was sufficient to alert them to the need to carry out an initial verification and, depending on the outcome, an investigation into possible racist overtones in the events at issue (ibid., §§ 163-66).

146. In the case at hand, unlike the situation obtaining in *Nachova and Others*, the materials in the case file contain no concrete indication that racist attitudes had played a role in the events of 4 and 5 June 1993. Nor have the applicants pointed to any such facts.

147. It is true that, as noted above, a number of organisations, including intergovernmental bodies, have expressed concern about the occurrence of incidents involving the use of force against Roma by Bulgarian law enforcement officers that had not resulted in the conviction of those responsible (see paragraph 76 above). However, the Court cannot lose sight of the fact that its sole concern is to ascertain whether in the case at hand the death of Mr Stefanov was the result of racism (ibid., § 155), and, failing further information or explanations, must conclude that it has not been established that racist attitudes played a role in events leading to his injuries and death.

148. Concerning the authorities' duty to investigate, the Court notes that it has already found that the Bulgarian authorities violated Article 2 in that they failed to conduct a meaningful investigation into the death of Mr Stefanov (see paragraph 116 above). It considers, as in *Nachova and Others*, that in the present case it must examine separately the complaint that there was also a failure to investigate a possible causal link between alleged racist attitudes and his death. However, it notes that, unlike the situation obtaining in *Nachova and Others* (cited above, § 163), in the case at hand the authorities did not have before them any concrete element capable of suggesting that the death of Mr Stefanov was the result of racial prejudice. While the Court does not underestimate the fact that there exist many published accounts of the existence in Bulgaria of prejudice and hostility against Roma (see paragraph 76 above), it does not consider that in the particular circumstances the authorities had before them information which was sufficient to alert them to the need to investigate possible racist overtones in the events that led to the death of Mr Stefanov.

149. It follows that there have been no violations of Article 14 of the Convention taken together with Articles 2, 3, 5 § 1 and 13 thereof.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

150. 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

151. The first applicant claimed 20,000 euros (EUR) as compensation for the non-pecuniary damage resulting from the death of Mr Stefanov, whereas the second applicant claimed EUR 10,000. They submitted that the compensation claimed was for pain and suffering, as well as loss of moral and financial support. They relied on a number of judgments in similar cases and summarised the relevant criteria in the Court's case-law. The applicants argued that the events leading to Mr Stefanov's death had gravely upset them, as had the lengthy and ineffective investigation. Finally, the applicants invited the Court to take into account the vulnerability of Mr Stefanov's family, which had lost his support.

152. The Government submitted that the claim was unfounded as there had been no violations of the Convention. The cases to which the applicants referred were inapposite, as they concerned suspicious deaths in custody and inadequate investigations, which was not the case here. There was no indication that physical force had been used against Mr Stefanov, as established by the ensuing investigation, which had been thorough and objective. The Government were of the view that the applicants' claim was in fact for pecuniary damages and as such speculative and unproven. Insofar as it could be construed as a claim for non-pecuniary damages, it was excessive.

153. The Court notes from the outset that it has already found violations of Articles 2, 3, 5 § 1 and 13 of the Convention. Therefore, it does not have to re-examine the merits of the case here, as would seem to be the implication of the Government's comments. It further notes that the applicants have not sought compensation for the pecuniary damage resulting from Mr Stefanov's death, as is apparent from the tenor of their claims. It is thus unnecessary to consider the Government's arguments in this respect.

154. As regards claim for compensation for the non-pecuniary damage, the Court considers that the applicants must have suffered gravely as a result of the serious violations, found in the present case, of the most fundamental human rights enshrined in the Convention. The Court notes that the case concerns the death of the first applicant's partner and father of two of her children, and the second applicant's son. Having regard to its judgments in similar cases (see *Velikova v. Bulgaria*, no. 41488/98, §§ 96-98, ECHR

2000-VI; *Anguelova*, cited above, §§ 170-73; and *Nachova and Others*, cited above, §§ 171-72), it awards the amounts claimed in full.

B. Costs and expenses

155. The applicants sought the reimbursement of EUR 6,120 for 70 hours of legal work at the rate of EUR 80, and 13 hours of travel of their lawyer, at the hourly rate of EUR 40. They submitted a fees' agreements with their lawyer and a time-sheet.

156. The Government were of the view that the amount claimed was excessive if compared to the usual lawyers' fees in Bulgaria.

157. The Court considers that the costs and expenses claimed were actually and necessarily incurred and relate to the violations found (see *Nachova and Others*, cited above § 175). As to the amounts, it considers that the claim appears excessive. Taking into account all relevant factors, it awards jointly to the two applicants EUR 4,000, plus any tax that may be chargeable, to be paid into their the bank account of their lawyer, Mr Y. Grozev, in Bulgaria.

C. Default interest

158. 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 there has been a violation of Article 2 of the Convention in respect of Mr Stefanov's death;

2. *Holds* that there has been a violation of Article 2 of the Convention in that the authorities failed to conduct an effective investigation into Mr Stefanov's death;

3. *Holds* that there has been a violation of Article 3 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

5. *Holds* that there has been a violation of Article 13 of the Convention;

6. *Holds* that there have been no violations of Article 14 of the Convention;

7. *Holds*

(a) that the respondent State is to pay the applicants, within three months from 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 20,000 (twenty thousand euros) to the first applicant and EUR 10,000 (ten thousand euros) to the second applicant, in respect of non-pecuniary damage;

(ii) EUR 4,000 (four thousand euros) in respect of costs and expenses, jointly to both applicants;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 23 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President