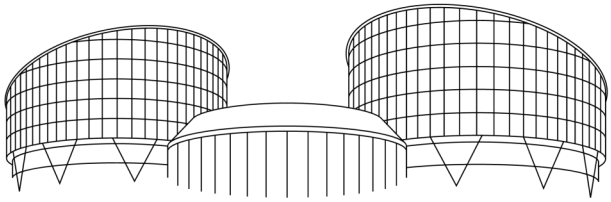

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF VASIL SASHOV PETROV v. BULGARIA

(Application no. 63106/00)

JUDGMENT

STRASBOURG

10 June 2010

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

In the case of Vasil Sashov Petrov v. Bulgaria,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 63106/00) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Vasil Sashov Petrov ("the applicant"), on 25 September 2000.

2. The applicant was represented by Mr T. Borodzhiev and Mr I. Maznev, lawyers practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Karadzhova, of the Ministry of Justice.

3. The applicant alleged that the use of firearms by the police to arrest him was unwarranted, that the ensuing investigation was not effective, that he did not have effective remedies in that respect, and that those events were the result of discriminatory attitudes towards persons of Roma origin.

4. On 7 June 2005 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and lives in Velingrad. He describes himself as being of Roma/Gypsy ethnic origin.

A. The incident of 14 January 1999

6. According to his assertions, at about 2 a.m. on 14 January 1999, in foggy weather, the applicant went to a vacant yard in Velingrad to intoxicate himself by inhaling liquid bronze, as he did frequently at that time. When he left the yard some time later, two police officers saw him and yelled at him to stop. He did not and instead started running. Suddenly he saw a torch in front of him and veered to the left to evade capture. Then he heard shots but kept on running. After a few more steps, he felt a stinging pain in his stomach and fell to the ground. The officers approached and saw that he had a wound on his stomach. One of the officers recognised him.

7. During the ensuing investigation (see paragraphs 9-20 below), the two officers, sergeants I.S. and D.N., stated that they saw the applicant jump over a fence, enter the yard of a Mr A.V., and head towards A.V.'s henhouse. After waiting for a few minutes and making certain that the applicant was trying to steal hens, the officers, both of whom were armed with pistols loaded with live cartridges, intervened. They split up and approached the yard from different directions. When the applicant noticed them, he jumped the fence and started running through empty plots towards the nearby Roma neighbourhood. Despite several warnings, he did not stop. Then one of the officers drew his pistol and fired at him with the intention of stopping him. At that moment the applicant was at about four metres from the officer and turned sideways. After that he kept on running. The other officer continued the chase, fired twice in the air, and caught up with the applicant about sixty metres from the place where he had been shot. The officer recognised the applicant, noticed that he was intoxicated, and saw a small wound on his stomach, but allegedly did not realise that it had been caused by a bullet.

8. The officers immediately took the applicant to a hospital, where he was bandaged and sent home. They did not mention that they had used firearms against the applicant. The doctor who treated him did not realise that his wound had been caused by a firearm. Not long after that the applicant's condition worsened and several hours later he returned to the hospital, where he underwent a five-hour surgical operation. The doctors found that the applicant's kidney had been ruptured by a bullet which had broken up into three pieces, that his liver was damaged and he had been haemorrhaging into the abdominal cavity. The applicant's kidney and part of his liver had to be removed.

B. The investigation

9. On 27 January 1999 Pazardzhik police informed the Plovdiv Regional Military Prosecutor's Office about the incident. On 22 February 1999 that office opened an investigation against the two officers.

10. On 12 March 1999 the investigator in charge of the case interviewed the officers, the applicant and his father. On 23 March 1999 he interviewed the doctor who had treated the applicant immediately after the incident and the person in charge of the hospital ward to which the applicant was later admitted. In their statements, the two officers predominantly referred to the applicant as a "person". At one point sergeant I.S. said that when they approached the applicant after he had fallen to the ground he saw that he was "an eighteen or nineteen year-old Gypsy" and that he reckoned that "the Gypsy had pricked himself on something while running".

11. The investigator also ordered a medical expert report on the nature and origin of the applicant's injury. The report concluded that the applicant had been shot from the front and that as a result of the shot he had lost one kidney, had suffered a temporarily life-threatening condition and a wound penetrating the abdominal cavity.

12. On 16 June 1999 the investigator proposed to the prosecuting authorities that the investigation be discontinued, stating that it was impossible to find the bullet which had wounded the applicant, that both officers stated that they had fired into the air and denied the accusation, and that the applicant had been unable to give credible evidence owing to his state of intoxication at the time of the events. In the investigator's view, these factors made it impossible to ascertain which officer had shot the applicant and therefore to identify the perpetrator.

13. On 16 July 1999 the Plovdiv Regional Military Prosecutor's Office decided to discontinue the investigation, reasoning that "despite the thorough investigation" it was impossible to ascertain who had fired the shot which had wounded the applicant. The bullet had not been found and both officers had stated that they had fired in the air.

14. On an appeal by the applicant, on 27 August 1999 the Appellate Military Prosecutor's Office set the discontinuance aside. It observed that certain mandatory investigatory steps, such as ordering a ballistics expert report and inspecting the scene of the shooting, had not been taken. Nor had the investigator ordered an expert report on the applicant's ability to give evidence, in view of his state of intoxication at the time of the incident. The conclusion that it was impossible to ascertain who had fired the shot was ill-founded. It was necessary to inspect the scene of the shooting and carry out a reconstruction of the events, and then order fresh medical and ballistic expert reports.

15. The case was then assigned to another investigator. In the morning of 6 October 1999 he carried out a reconstruction of the events in the presence of the applicant, the two officers, ballistics and medical experts and a photographer. In the afternoon he interviewed the two officers, the head of their department, the doctor who had examined the applicant immediately after the incident, the head of the surgical ward of the hospital where the applicant had been operated on, and Mr A.V., the owner of the

yard adjacent to the place where the applicant was shot. A.V. stated that the next morning he had seen footprints inside his yard and a broken plank on the wall of his henhouse, and that without the intervention of the police the applicant would certainly have stolen some of his hens. He had stolen five hens only a month after recovering from his injuries. In their statements, both officers referred to the applicant as "the civilian person Petrov" or "Petrov".

16. A ballistics report ordered by the investigator was ready the next day, 7 October 1999. It concluded that the pistols of both officers had been capable of producing the shot which had wounded the applicant. A medical expert report drawn up on 9 November 1999 concluded that the shot which had wounded the applicant had been fired by sergeant I.S., and that at the time of the shot the applicant had been standing sideways, with his right shoulder turned towards I.S., at a distance of about four metres. The bullet had travelled from front to back and from right to left. A psychiatric report ordered by the investigator concluded that the applicant had been intoxicated, but not heavily, and had been able to control his actions, and was fit to give evidence about the incident.

17. Having finished his work on the case, on 24 January 2000 the investigator proposed discontinuing the investigation. He found, on the basis of A.V.'s statement, that the applicant had tried to steal hens from A.V.'s henhouse. In his view, sergeant I.S. had acted in line with section 80(1)(4) of the 1997 Ministry of Internal Affairs Act (see paragraph 22 below) and was not criminally liable. The officer had made certain that the applicant was about to commit theft – a publicly prosecutable offence –, had warned him several times to stop, and, in view of the poor visibility and the proximity of the Roma neighbourhood, had reckoned that the applicant might flee.

18. On 29 February 2000 the Plovdiv Military Prosecutor's Office decided to discontinue the investigation, repeating the reasons given by the investigator almost verbatim.

19. On 23 March 2000 the Appellate Military Prosecutor's Office confirmed the discontinuance. It briefly reasoned that the officer had lawfully used his weapon, as a means of last resort. Before firing it, he had made certain, as required under section 80(1)(4) of the 1997 Act (see paragraph 22 above) that the applicant was attempting to commit theft. In view of that, of the fact that there was no other way to arrest the applicant, and that the necessary measures under Article 12a of the Criminal Code (see paragraph 24 below) had not been exceeded, the harm inflicted on the applicant was not unlawful.

20. In a final decision of 4 April 2000 the Military Court of Appeal also confirmed the discontinuance. It fully agreed with the prosecuting authorities' conclusion that the officers' actions had been in line with

section 80(1)(4) of the 1997 Act (see paragraph 22 below). It did not mention Article 12a of the Criminal Code (see paragraph 24 below).

C. The applicant's claim for damages against the police

21. Later in 2000 the applicant brought a tort claim against sergeant I.S. and the Pazardzhik police department. On 14 June 2000 the Pazardzhik Regional Court dismissed the claim. On 25 March 2002 the Plovdiv Court of Appeal upheld its judgment. The applicant's ensuing appeal on points of law was rejected by the Supreme Court of Cassation on 15 October 2003 (реш. № 1752 от 15 октомври 2003 г. по гр. д. № 1527/2002 г., ВКС, IV г. о.). The court held that the shooting had been a result of the applicant's own actions and his failure to comply with the lawful instructions and actions of the police to stop and arrest him. Sergeant I.S. had acted in line with section 80(1)(4) of the 1997 Ministry of Internal Affairs Act and the applicant was therefore not entitled to compensation for any resulting harm. The court did not mention Article 12a of the Criminal Code (see paragraph 24 below).

II. RELEVANT DOMESTIC LAW

A. Use of firearms by the police

22. Section 80 of the 1997 Ministry of Internal Affairs Act, as in force at the material time, provided, in so far as relevant:

> "(1) The police may use firearms as a means of last resort:
>
> ...
>
> 4. after giving a warning, to arrest a person who has committed or is committing a publicly prosecutable offence; ...
>
> (2) When using firearms the police are under a duty to protect, as far as possible, the life of the person against whom they use force..."

23. In February 2003 section 80(1)(4) was amended to specify that the person against whom firearms could be used must also be resisting arrest or trying to escape. The wording of section 74(1)(3) of the 2006 Ministry of Internal Affairs Act, currently in force, repeats verbatim that of section 80(1)(4) of the 1997 Act, as amended in 2003.

B. Relevant provisions of the Criminal Code

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

C. Discontinuance of preliminary investigations

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

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

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

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

28. The Government submitted that the application was out of time, because the criminal proceedings against the police officers had come to an end on 4 April 2000, whereas the application, which was not dated, was received at the Court more than six months after that, on 5 October 2000. The civil proceedings brought by the applicant, which were still pending at the latter date, could not be taken into account as they were separate from the investigation and could not be seen as its continuation.

29. The applicant replied that the final decision in his case was that of the Supreme Court of Cassation of 15 October 2003, whereas his application was lodged earlier – on 25 September 2000.

30. Article 35 § 1 of the Convention provides:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

31. In a similar case against Bulgaria, where the applicants had brought a tort claim against the police concomitantly with the criminal proceedings against the officers responsible for the death of their relative, the Court found, after examining the matter in considerable detail, that the starting point of the six-month time-limit in those circumstances was the date of the final judgment in the civil proceedings (see *Nikolova and Velichkova v. Bulgaria* (dec.), no. 7888/03, 13 March 2007). It sees no reason to depart from that position, and accordingly finds that the time-limit in the present case started to run on 15 October 2003, the date of the Supreme Court of Cassation's final judgment dismissing the applicant's tort claim (see paragraph 21 above). The application was lodged long before that date.

32. However, even if the Court were to take as the final decision within the meaning of the Article 35 § 1 the Military Court of Appeal's decision of 4 April 2000 (see paragraph 20 above), the application would still be timely, as it was lodged, as evident from the postmark affixed on the envelope in which it was posted, on 28 September 2000, less than six months after that decision.

33. The Government's objection must therefore be dismissed.

II. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

34. The applicant complained that life-threatening force had been used against him in circumstances where this was not absolutely necessary. The applicant also complained that the authorities had failed to conduct an effective investigation into that matter. He relied on Article 2 of the Convention, which, in so far as relevant, provides as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> ...
>
> (b) in order to effect a lawful arrest..."

A. The parties' arguments

35. The Government submitted that the force used against the applicant was not life-threatening, as could be seen from the medical expert reports drawn up during the investigation. His condition had probably worsened as a result of the inadequate medical attention he had received when first taken to the hospital. Despite the fact that he was coordinated enough to orient himself in that situation – which was confirmed by the psychological expert report drawn up in the course of the investigation – the applicant did not heed the officers' warnings to stop. The situation thus fell within the ambit of section 80(1)(4) of the 1997 Ministry of Internal Affairs Act, which allowed the use of firearms. Moreover, the officers took the applicant to a hospital immediately after the incident.

36. The Government further submitted that the authorities did their best to elucidate the facts. The investigation was opened promptly and the authorities interviewed the two officers, the applicant, his father, and the two medical doctors who had treated the applicant. Following the remittal by the Appellate Military Prosecutor's Office, the authorities carried out even a more detailed but still speedy investigation, interviewing many persons, ordering several expert reports, and eventually managing to identify the officer who had fired the shot that had wounded the applicant.

37. The applicant submitted that while he did not die of his injuries, the force used against him was life-threatening, because the officer fired at him using live cartridges and from a distance of four metres. The force was clearly excessive within the meaning of the Court's case-law and the applicable international standards, but considered normal at the domestic level, where the position appeared to be that the police were entitled to use firearms to arrest any individual suspected of criminal activities. As the investigation assessed the facts by reference to that deficient standard and thus arrived at flawed conclusions, it could not be seen as effective.

B. The Court's assessment

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

1. Whether Article 2 is applicable

39. In the present case, the force used against the applicant was not in the event fatal. The Court must therefore determine whether the facts should be examined under Article 2 or rather under Article 3 of the Convention. In so doing, it must have regard to the degree and type of force used, as well as the intention or aim behind the use of that force. If the force was potentially deadly and the conduct of the officers concerned was such as to put the

applicant's life at risk, then Article 2 is applicable (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 49-55, ECHR 2004-XI; *Tzekov v. Bulgaria*, no. 45500/99, § 40, 23 February 2006; and *Goncharuk v. Russia*, no. 58643/00, § 74, 4 October 2007).

40. The evidence adduced makes it clear that the officers who chased the applicant fired their weapons in order to stop and arrest him (see paragraphs 6 and 7 above), and the Court accepts that they did not intend to kill him. However, the Court notes that at least one of the officers fired directly at the applicant and not into the air (contrast with *Zelilof v. Greece*, no. 17060/03, § 36, 24 May 2007). Also, it cannot overlook the facts that the applicant suffered a serious and, albeit temporarily, life-threatening injury (see paragraphs 8 and 11 above and contrast with *Tzekov*, cited above, §§ 17 and 42), that both officers' pistols were loaded with live cartridges, that the injury was caused by a bullet fired from about four metres away (see paragraphs 7 and 16 above and contrast with *Tzekov*, cited above, §§ 13 and 42), and that the bullet could easily have inflicted more serious damage. Nor can the Court fail to notice that when the officers took the applicant to the hospital, they did not mention to the doctor who took charge of him that they had used firearms against him (see paragraph 8 above). It appears that that fact, which no doubt contributed to the doctor's failing to realise that the applicant's wound had been caused by a firearm, significantly increased the risk to the applicant's life.

41. The Court therefore concludes that the applicant was the victim of conduct which, by its very nature, put his life at risk, even though, in the event, he survived. Article 2 is therefore applicable.

2. Whether the force used against the applicant was absolutely necessary

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

(a) The relevant legal framework

43. In a previous similar case, *Tzekov*, cited above, the Court noted with concern that section 42(1)(4) of the 1993 National Police Act allowed that police to use firearms to effect an arrest regardless of the seriousness of the offence which the person concerned was suspected of having committed or the danger which he or she represented. Under that section, police officers could legitimately fire upon any person who did not stop after being

warned, and a simple warning was apparently sufficient for the prosecuting authorities and the courts to find that the use of firearms had been "a means of last resort" within the section's meaning. The Court further noted that until 2003 the wording of section 80(1)(4) of the 1997 Ministry of Internal Affairs Act – in issue in the present case (see paragraphs 17, 18, 19, 20 and 22 above) – was identical (see *Tzekov*, cited above, §§ 28, 29 and 54).

44. It is true that, unlike the situation obtaining in *Tzekov* (ibid., § 55), at the time of the incident in the present case the Criminal Code defined, in its new Article 12a, the situations in which it was permissible to cause harm to effect an arrest (see paragraph 24 above). However, the military court did not even mention that provision and the military prosecuting authorities construed it as allowing the police to use firearms to arrest a person suspected of theft (see paragraphs 18, 20 and 21 above). The Court does not consider that it must question the correctness of that interpretation; it must base its examination on the provisions of the domestic law as they were applied to the applicant (see, *mutatis mutandis*, *Minelli v. Switzerland*, 25 March 1983, § 35, Series A no. 62, and *Vasilescu v. Romania*, 22 May 1998, § 39, *Reports of Judgments and Decisions* 1998-III).

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

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

46. The Court notes with concern that identical provisions continue to be in force until the present day (see paragraph 23 above).

47. The Court additionally notes the apparent absence of any rules or instructions on the steps to be taken by the police in such situations (see, *mutatis mutandis*, *Celniku v. Greece*, no. 21449/04, § 68, 5 July 2007).

(b) The actions of the arresting officers

48. The applicant, when spotted by the police near a courtyard in the middle of the night and under reduced visibility, refused to heed their order to stop and instead started running (see paragraphs 6 and 7 above). The officers could have therefore reasonably suspected that he had committed an offence (compare with *Tzekov*, cited above, §§ 9-12, 58 and 59). However, it has never been alleged that they had reason to believe that the applicant had committed a violent offence, that he was dangerous, or that if not arrested he would represent a danger to them or third parties (compare with *Juozaitienė and Bikulčius v. Lithuania*, nos. 70659/01 and 74371/01, §§ 79 and 80, 24 April 2008). The Court does not overlook the fact that the applicant was wounded during an unplanned operation that gave rise to developments to which the police had to react without prior preparation, and understands that the authorities' obligations under Article 2 must be interpreted in a way which does not impose an impossible burden on them (see *Tzekov*, cited above § 61, with further references). Nevertheless, it cannot accept that in the circumstances of the present case the police could reasonably have believed that that the applicant was dangerous and that they needed to use firearms to immobilise him. The Court considers that in those circumstances any resort to potentially deadly force was prohibited by Article 2, regardless of the risk that the applicant might escape. Recourse to such force cannot be considered as "absolutely necessary" where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence (see *Nachova and Others*, § 107, and *Tzekov*, §§ 63 and 64, both cited above).

49. Moreover, the available evidence – chiefly the medical experts' findings that the applicant was shot from the front at a short distance and was intoxicated (see paragraphs 11 and 16 above) – suggests that the officers could have arrested him without using their firearms.

(c) The Court's conclusion

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

3. Whether the investigation was effective

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

52. In the present case, the authorities did not remain passive. The military prosecuting authorities opened an investigation shortly after the events (see paragraph 9 above). The investigating authorities took a number of steps and, following the instructions given by the Appellate Military Prosecutor's Office, gathered evidence which allowed them to establish the identity of the officer who had wounded the applicant and the manner in which he had done it (see paragraphs 10, 11, 14, 15 and 16 above). The investigation was also reasonably prompt, lasting in total slightly more than a year and one month. However, it limited itself to assessing the lawfulness of the officers' conduct in the light of section 80(1)(4) of the 1997 Ministry of Internal Affairs Act, as construed by the military investigating and prosecuting authorities and the military court (see paragraphs 18, 19, 20 and 22 above). By basing themselves on the strict letter of that provision and on their interpretation of Article 12a of the Criminal Code (see paragraphs 19 and 24 above), the military investigating and prosecuting authorities and the military court disregarded material circumstances, such as the facts that the officers had no reason to believe that applicant represented a danger to anyone, and that it was questionable whether the officers were at all entitled to use firearms to arrest him. Their approach did not therefore comport with the requirements of Article 2 (see *Nachova and Others*, § 114, and *Tzekov*, § 71, both cited above, as well as, *mutatis mutandis*, *Ivan Vasilev v. Bulgaria*, no. 48130/99, §§ 77-79, 12 April 2007).

53. There has therefore been a violation of that provision in that respect as well.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

54. The applicant complained that he did not have an effective domestic remedy in respect of the breaches of Article 2. He relied on Article 13 of the Convention, which provides as follows:

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

55. The Government submitted that the tort claim brought by the applicant against the officer and the police was an effective remedy. It failed to produce results solely because the civil courts found, in line with the conclusions of the criminal investigation, that the officer who had shot the applicant had not acted unlawfully.

56. The applicant submitted that the dismissal of his claim deprived him of an effective remedy. The courts based their findings entirely on those of the prosecuting authorities and did not seek to establish independently whether the use of life-threatening force against him had been absolutely necessary.

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

58. Article 13 guarantees the availability of a remedy at national level to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The scope of the State's obligation under that provision varies depending on the nature of the complaint. In the case of an arguable allegation of a breach of Article 2 resulting from the use of deadly force, Article 13 calls not only for a thorough and effective investigation, but in addition requires that compensation for the non-pecuniary damage flowing from the breach be, in principle, available as part of the range of redress (see *Bubbins v. the United Kingdom*, no. 50196/99, §§ 170 and 171, ECHR 2005-II (extracts), with further references). Like the investigation required under Article 2 (see *Nachova and Others*, cited above, § 113), any proceedings in which those concerned seek such compensation must follow a standard comparable to the one used by the Court in assessing substantive complaints under Article 2. That means that the national courts, while bound by the terms in which domestic law is couched, must review the acts alleged to amount to a breach of Article 2 in the light of the principles which lie at the heart of the Court's analysis of complaints under that provision (see, *mutatis mutandis*, *Ivan Vasilev*, cited above, § 75).

59. Having regard to its findings under Article 2 (see paragraphs 50 and 53 above), the Court is satisfied that the applicant's complaint was arguable and that he was entitled to an effective remedy in respect of it.

60. The Court notes that the dismissal of the applicant's tort claim was not due to the lack of sufficient proof that the officer had shot him, but was rather a result of the manner in which the civil courts construed the domestic-law provisions regulating the use of firearms by the police and their consequent finding that the officer's actions had not been unlawful, which was a necessary precondition for the claim to succeed (see paragraph 21 above). While it is not for this Court to determine whether that construction was correct, it must nonetheless verify whether the courts' approach led to a breach of the applicant's right under Article 13. As already noted, that right implies that allegations of breaches of Article 2 must be examined in line with the standards developed in this Court's case-law, which demand a careful review of whether life-threatening force used during arrest operations is more than "absolutely necessary", that is, strictly proportionate in the circumstances (see *Nachova and Others*,

§§ 93-97, and, *mutatis mutandis*, *Tzekov*, §§ 52 and 53, both cited above). Indeed, Article 12a of the Bulgarian Criminal Code, which calls for an assessment of the necessity of the use of force in arrest operations (see paragraph 24 above), seems to reflect similar concerns.

61. However, in the present case the civil courts, much like the military prosecuting authorities before them, found that the police had been entitled to use firearms to arrest the applicant even though he was not suspected of committing a violent offence or representing a danger to anyone (see paragraph 21 above). That approach fell short of the standards stemming from this Court's case-law (see, *mutatis mutandis*, *Ivan Vasilev*, cited above, § 79) and prevented the proceedings from providing the applicant effective redress (contrast with *McKerr v. the United Kingdom*, no. 28883/95, § 172-74, ECHR 2001-III).

62. There has therefore been a violation of Article 13 of the Convention.

IV. ALLEGED VIOLATIONS OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 2

63. The applicant complained under Article 14 of the Convention taken in conjunction with Article 2 that the police had used excessive force against him on account of his ethnic origin and that the authorities had failed to investigate the matter properly.

64. Article 14 provides as follows:

> "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' arguments

65. The Government submitted that the allegations of racial bias had no basis in the facts of the case. When they fired their shots the two officers were not aware of the applicant's ethnicity; they recognised him only after that. They did not engage in any discriminatory conduct, either at the time of the incident or during the ensuing investigation. The only time the word "gypsy" was mentioned during the investigation was when the officers referred to the nearby Roma neighbourhood. That was no more discriminatory than to speak of a Chinese neighbourhood, for example. The investigating authorities never referred to the applicant as a "gypsy".

66. The applicant argued that the police officers were aware of his ethnic origin at the time when they fired their shots. In his view, his ethnicity was a primary factor in their decision to arrest him and use firearms. That was evident from a statement made by sergeant I.S. during an interview with the

investigator on 14 January 2000, in which he said that because of the proximity of the Roma neighbourhood he and his colleague had reckoned that the individual who they saw was a Roma who had come to A.V.'s yard to steal. The applicant did not submit a copy of the record of that interview.

B. The Court's assessment

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

1. Substantive aspect

68. The relevant principles have been summarised in paragraphs 145-47 of the Court's judgment in *Nachova and Others* (cited above).

69. The available evidence in the present case suggests that the officers were not aware of the applicant's ethnic origin when they fired at him. They gave chase during the night and under reduced visibility, and recognised the applicant only after he had fallen to the ground (see paragraphs 6 and 7 above). It is true that later the authorities found that the proximity of the Roma neighbourhood had been one of the reasons why the officers had estimated that the applicant would be able to flee (see paragraph 17 above). However, even if in view of that it can be accepted that the officers were conscious of the applicant's ethnic origin, it is not possible to speculate on whether or not that had any bearing on their perception of the applicant and their decision to use firearms (see *Nachova and Others*, cited above, §§ 150-52). The use of firearms in the circumstances in issue was not prohibited under the relevant domestic regulations, a flagrant deficiency which the Court has already condemned (see paragraphs 43-47 above). Therefore, the possibility that the two officers were simply adhering to those regulations and would have acted as they did in any similar context, regardless of the ethnicity of the person concerned, cannot be excluded (ibid., and, *mutatis mutandis*, *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 66 *in limine*, ECHR 2005-XIII (extracts)). While their conduct calls for serious criticism, it is not of itself a sufficient basis for concluding that the use of life-threatening force against the applicant was racially motivated (see, *mutatis mutandis*, *Zelilof*, cited above, § 75). Moreover, there is no indication, and it has not been alleged by the applicant, either before the domestic authorities or before the Court, that the officers uttered racial slurs at any point during the events in question (compare with *Celniku*, cited above, § 80 *in fine*, and contrast with *Nachova and Others*, cited above, §§ 35 *in fine* and 153; with *Osman v. Bulgaria*, no. 43233/98, §§ 85 and 86, 16 February 2006; with *Turan Cakir v. Belgium*, no. 44256/06, § 80, 10 March 2009; and with *Sashov and Others v. Bulgaria*, no. 14383/03, § 80, 7 January 2010).

70. It has not therefore been established that racist attitudes played a role in events leading up to the shooting of the applicant. It follows that there has been no violation of Article 14 of the Convention taken in conjunction with Article 2.

2. Procedural aspect

71. The relevant principles have been set out in paragraphs 160 and 161 of the Court's judgment in *Nachova and Others* (cited above).

72. In the instant case, unlike the situation obtaining in that case (cited above, §§ 163 and 165), the authorities did not have before them any concrete information capable of suggesting that the applicant's shooting had been the result of racial prejudice (see paragraph 69 above). It is true that in the course of his interview on 12 March 1999 sergeant I.S. twice referred to the applicant as a "gypsy" (see paragraph 10 above). However, the Court is not persuaded that, given the context in which those remarks were made, they denoted racist bias and were sufficient to warrant the authorities to inquire into whether racial prejudice had motivated the officers' conduct (compare with *Beganović v. Croatia*, no. 46423/06, § 96, 25 June 2009, and contrast with *Karagiannopoulos v. Greece*, no. 27850/03, §§ 20 and 73 *in fine*, 21 June 2007, and with *Stoica v. Romania*, no. 42722/02, §§ 36 and 128 *in fine*, 4 March 2008). The Court further notes that the authorities found that the proximity of the Roma neighbourhood had been one of the reasons why the officers had estimated that the applicant would be able to flee (see paragraph 17 above). However, given that those authorities' assessment of the officers' consequent decision to use firearms was based on a flawed legal framework which authorised the use of firearms to arrest any person seeking to evade arrest (see paragraphs 43-47 and 52 above), the Court is not convinced that that element was capable of alerting them to the need to investigate racist attitudes. It appears that they regarded the proximity of that neighbourhood as a factor in the officers' appraisal of the applicant's ability to flee, and not as a thing which had in itself made them more prone to use firearms. Moreover, there is no indication that the applicant made allegations of racial bias at any point during the investigation (compare with *Karagiannopoulos*, § 78; *Turan Cakir*, § 80; *Beganović*, § 97; and *Sashov and Others*, § 84, all cited above, and contrast with *Bekos and Koutropoulos*, cited above, § 72).

73. For these reasons, the Court does not consider that the authorities had before them information that was sufficient to bring into play their obligation to investigate possible racist motives on the part of the officers. It follows that there has been no violation of Article 14 of the Convention taken in conjunction with Article 2 in that respect.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 17,000 euros (EUR) in respect of the non-pecuniary damage flowing from the breaches of Articles 2 and 13, as well as EUR 2,000 in respect of the breach of Article 14. He submitted that as a result of the use of potentially deadly force against him he suffered serious injuries which put his life at risk. He underwent a surgical intervention leading to the removal of one of his kidneys and part of his liver. That also caused him prolonged physical pain and suffering. He suffered additional frustration as on account of the way in which the authorities had conducted their investigation into the incident, of the approach of the courts to his tort claim, and of the manner in which Bulgarian law regulated the use of firearms by the police.

76. The Government submitted that the claims were excessive, as the applicant had suffered only a temporarily life-threatening injury, from which he had recovered after medical treatment.

77. The Court observes that in the present case an award of just satisfaction can be based only on the violations of Articles 2 and 13 of the Convention. The Court considers that the applicant must have suffered considerably as a result of the serious violations of his rights under those provisions. Ruling in equity, as required under Article 41, it awards him EUR 15,000 under this head. To that amount is to be added any tax that may be chargeable.

B. Costs and expenses

78. The applicant sought reimbursement of EUR 8,050 incurred in fees for one hundred and sixty-one hours of work by his lawyers on the proceedings before the Court, at EUR 50 per hour. He requested that any amount awarded be made payable directly to his legal representatives.

79. The Government disputed the necessity of the number of hours spent by the applicant's lawyers in work on the case. In their view, any award made under that head should not exceed the usual for such cases.

80. According to the Court's case-law, costs and expenses can be awarded under Article 41 only if it is established that they were actually and necessarily incurred and are reasonable as to quantum. Furthermore, legal

costs are recoverable only in so far as they relate to the violation found (see, as a recent authority, *Šilih v. Slovenia* [GC], no. 71463/01, § 226, 9 April 2009). In the present case, having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 3,000, plus any tax that may be chargeable to him. That amount is to be paid into the bank account of the applicant's legal representatives, Mr T. Borodzhiev and Mr I. Maznev.

C. Default interest

81. 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. *Dismisses* the Government's preliminary objection;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the life-threatening force used against the applicant;

4. *Holds* that there has been a violation of Article 2 of the Convention in respect of the respondent State's obligation to conduct an effective investigation into the circumstances of the incident which put the applicant's life at risk;

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

6. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Article 2 in respect of the allegation that the life-threatening force used against the applicant constituted an act of racial violence;

7. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Article 2 in that the authorities failed to investigate possible racist motives behind the use of life-threatening force against the applicant;

8. *Holds*

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

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's legal representatives, Mr T. Borodzhiev and Mr I. Maznev;

(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;

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

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President